LEAGUE OF NATIONS

PROCEEDINGS

OF THE

INTERNATIONAL CONFERENCE

ON

TREATMENT OF FOREIGNERS

FIRST SESSION

Paris, November 5th—December 5th, 1929

GENEVA, 1930.

PUBLICATIONS OF THE ECONOMIC AND FINANCIAL SECTION

International Conference on the Treatment of Foreigners.

DRAFT CONVENTION ON THE TREATMENT OF FOREIGNERS :

1. Introduction.
2. Draft Convention.
3. Commentary.

(Ser. L.o.N. P. 1928.II.14). 1/6 $0.40

INTERNATIONAL CONFERENCE ON THE TREATMENT OF FOREIGNERS (Paris, November 5th, 1929). PREPARATORY DOCUMENTS :

Draft Convention prepared by the Economic Committee of the League of Nations to serve as a Basis for Discussion at the International Conference.
Commentary.
Observations of Governments.
Remarks of the Economic Committee on these Observations.
(Ser. L.o.N. P. 1929.II.5). 4/- $1.00

INTERNATIONAL CONFERENCE ON THE TREATMENT OF FOREIGNERS (Paris, November 5th, 1929). Preparatory Documents. (Ser. L.o.N. P. 1929.II.5. Addendum). . . . 6d. $0.15

Counterfeiting Currency.

COUNTERFEITING CURRENCY. Letter from M. Briand to the Secretary-General. (Ser. L.o.N. P. 1926.II.24). 2d. $0.05

COUNTERFEITING CURRENCY. Letter from the Government of the Netherlands to the Secretary-General. (Ser. L.o.N. P. 1926.II.25) 3d. $0.05

COUNTERFEITING CURRENCY. Letter from the Austrian Federal Government to the Secretary-General. (Ser. L.o.N. P. 1926.II.59). 3d. $0.05

MIXED COMMITTEE FOR THE SUPPRESSION OF COUNTERFEITING CURRENCY. Report and Draft Convention. (Ser. L.o.N. P. 1927.II.70) 9d. $0.20

SUMMARY of the Observations received from Governments up to December 6th, 1928, on the Report of the Mixed Committee for the Suppression of Counterfeiting Currency, and on the Draft Convention drawn up by the Committee, October 1927. (Ser. L.o.N. P. 1928.II.54) 1/3 $0.30

INTERNATIONAL CONFERENCE FOR THE ADOPTION OF A CONVENTION FOR THE SUPPRESSION OF COUNTERFEITING CURRENCY :

1. International Convention for the Suppression of Counterfeiting Currency.
2. Protocol.
3. Final Act of the Conference.
4. Optional Protocol.

(French and English texts.) (Ser. L.o.N. P. 1929.II.18). 1/3 $0.30

Proceedings of the International Conference for the Adoption of a Convention for the Suppression of COUNTERFEITING CURRENCY. Geneva, April 9th to 20th, 1929. (Ser. L.o.N. P. 1929.II.48) 10/- $2.50

International Conference for the Unification of the Law on Bills of Exchange, Promissory Notes and Cheques.

(Geneva, February 17th, 1930.)

PREPARATORY DOCUMENTS : Drafts prepared by the League of Nations Experts ; Observations by Governments. (Ser. L.o.N. P. 1929.II.28). 5/- $1.25

PREPARATORY DOCUMENTS, Addendum.
(Ser. L.o.N. P. 1929.II.28. Addendum) 6d. $0.15

UNIFICATION OF LAWS RELATING TO BILLS OF EXCHANGE AND PROMISSORY NOTES. General report and individual reports submitted by Professor D. Josephus Jitta (Netherlands), Sir Mackenzie D. Chalmers, K.C.B. (Great Britain), Professor Dr. Franz Klein (Austria), Professor Ch. Lyon-Caen (France). (C.487.M.203.1923. II.) (E.106). 2/6 $0.60

COMMITTEE OF LEGAL EXPERTS ON BILLS OF EXCHANGE AND CHEQUES. Report to the Economic Committee. (Ser. L.o.N. P. 1928.II.13). 1/- $0.25

[*Distributed to the Council and the Members of the League.*]

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Geneva, April 10th, 1930.

LEAGUE OF NATIONS

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First Part.

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A. INTRODUCTION.

The International Conference on the Treatment of Foreigners, convened on behalf of the Council of the League of Nations by the Secretary-General of the League on April 10th, 1929, met at Paris at the " Institut océanographique " from November 5th to December 5th, 1929.

It was presided over by M. Albert Devèze, former Minister, Member of the Belgian Chamber of Representatives, and Advocate at the Brussels Court of Appeal, who was appointed for this purpose by the Council of the League of Nations.

The secretarial work was entrusted to the following members of the Economic and Financial Section of the Secretariat : M. P. Stoppani, Chief of Section, M. Ch. Smets, M. V. J. Stencek, M. Baumont, M. A. E. Husslein and M. J. Rueff, assisted by M. J. Nisot, member of the Legal Section.

The Governments of forty-two Members of the League of Nations and of seven non-member countries were represented. Among the latter, the Government of the United States of America and the Union of Soviet Socialist Republics sent observers.

The Economic and Fiscal Committees of the League and the International Chamber of Commerce took part in an advisory capacity, the first being represented by three, and the second by two, of its members, and the International Chamber of Commerce by three delegates. [1]

The draft Convention prepared by the Economic Committee of the League of Nations was taken by the Conference as a basis for discussion. The circumstances in which this draft was drawn up are related in the collection of preparatory documents C.I.T.E.1 (document C.36.M.21.1929.II), which contains an introduction giving the history of the question, the comments accompanying the Committee's draft, observations submitted by various Governments and the remarks made by the Committee with regard to these observations.

The Conference held eleven plenary meetings. After a general discussion it decided to divide into four Committees :

Committee A was entrusted with the study of the following subjects : safeguards for international trade ; freedom of establishment ; exercise of trade, industry and occupation (Articles 1, 2, 5, 6, 7, 8, 15, 28, 29 and Final Act) ; civil and legal guarantees (Articles 9, 10 and 11).

Committee B dealt with fiscal treatment (Articles 12, 13 and 14).

Committee C dealt with the treatment of companies and legal entities (Article 16).

Committee D dealt with the general provisions and drafting (Articles 17 to 27).

On December 3rd, 1929, the Conference decided to continue its work at a second session, and it accordingly drew up a Final Protocol of this first session, which was signed on December 5th, 1929, and the text of which is given below.

[1] A complete list of the delegates, observers and persons invited to the Conference is given below.

B. LIST OF GOVERNMENT DELEGATES AND OF REPRESENTATIVES OF VARIOUS BODIES INVITED TO THE CONFERENCE.

President appointed by the Council :

M. Albert DEVÈZE, Advocate at the Brussels Court of Appeal, former Minister, Member of Parliament.

Secretary of the President :

M. VAN LEYNSEELE, Advocate at the Brussels Court of Appeal.

GERMANY.

Delegates :

Dr. G. MARTIUS, Counsellor of Legation in the Ministry for Foreign Affairs.
Dr. L. IMHOFF, Ministerial Counsellor in the Ministry of Economy.

Substitute Delegates :

M. W. PASCHE, Ministerial Counsellor in the Ministry of Finance.
M. KRAUSE, Oberregierunsrat in the Home Office.
M. ALTSTOETTER, I. Staatsanwalt, Public Prosecutor in the Ministry of Justice.

Technical Adviser :

M. LAEMMLLE, Oberregierunsrat in the Ministry of Labour.

Secretary :

Dr. H. DITTMAN, Attaché to the Ministry for Foreign Affairs.

COMMONWEALTH OF AUSTRALIA.

Delegate :

Major-General Sir Granville de Laune RYRIE, K.C.M.G., C.B., V.D., High Commissioner of the Commonwealth in London.

Substitute Delegate :

Major O. C. W. FUHRMAN, O.B.E., of the Department of External Affairs of the Commonwealth.

AUSTRIA.

Delegates :

Dr. R. SCHÜLLER, Director in the Department of Foreign Affairs.
Dr. E. MAYER, Ministerial Counsellor in the " Chancellerie Fédérale ", Home Department.

BELGIUM.

Delegates :

M. J. DE LA VALLÉE POUSSIN, Secretary-General of the Ministry of Sciences and Arts, Member of the Permanent Commission for the Study of Questions of Private International Law, Chairman of the Delegation.
M. C. CLAVIER, General Director in the Ministry of Finance.
M. E. MEYERS, General Director in the Ministry of Justice.
M. J. DE VOGHEL, Chef du Cabinet of the Ministry for Industry, Labour and Social Welfare.
M. E. HENNIN, Director in the Ministry for Foreign Affairs.

BOLIVIA.

Delegates :

His Excellency Adolfo COSTA DU RELS, Former Minister of Finance, Former Delegate in the Pan-American Conference at Havana.
His Excellency M. Alberto CORTADELLAS, Former Under-Secretary for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

Substitute Delegate :

M. J. M. PAZ, Secretary of the Legation in France.

UNITED STATES OF BRAZIL.

Delegate :

M. Horacio LAFER, President of the " Association Graphique " of São Paulo and Secretary of the Industrial Association of that city.

GREAT BRITAIN AND NORTHERN IRELAND, AND ALL PARTS OF THE BRITISH EMPIRE WHICH ARE NOT SEPARATE MEMBERS OF THE LEAGUE OF NATIONS.

Delegates :

Sir Sydney CHAPMAN, K.C.B., C.B.E., Chief Economic Adviser to His Majesty's Government in the United Kingdom, Principal delegate.
Sir Percy THOMPSON, K.B.E., C.B., Deputy-Chairman of the Board of Inland Revenue.
Sir Gilbert C. VYLE, Ex-President of the Association of British Chambers of Commerce.
Sir Peter RYLANDS, Ex-President of the Federation of British Industries.
Mr. Arthur PUGH, J.P., Secretary of the Iron and Steel Trade Confederation.

Experts :

Mr. W. E. BECKETT, Assistant Legal Adviser to the Foreign Office.
Mr. W. STRANG, First Secretary of the League of Nations Department in the Foreign Office.
Mr. Harold SCOTT, of the Home Office.
Mr. G. T. REID, of the Ministry of Labour.

Secretaries :

Mr. F. A. GRIFFITHS, M.C., of the Board of Trade.
Mr. R. J. SCHACKLE, Private Secretary to the principal delegate.

BULGARIA.

Delegate :

His Excellency M. MORFOFF, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Substitute Delegate :

M. B. KESSIAKOFF, Secretary of the Legation in France.

CANADA.

Delegate :

His Excellency M. P. ROY, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Secretary :

Mr. E. D'Arcy MCGREER, Secretary of Legation.

CHINA.

Delegate :

His Excellency M. KAO LOU, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Substitute Delegates :

M. William HSIEN, First Secretary of the Legation in France.
Dr. SCIÉ TON-FA, First Secretary of the Legation in France.

Experts :

M. SOU HI SUEN, Secretary of the " Pouvoir judiciaire ".
M. KUOH TSE-FAN, Delegate of the Ministry of Finance.

Secretaries :

M. O. LEE, Secretary of Legation.
M. HOU YONG LING, Secretary of Legation.
M. CHEN PAO-YEN, Private Secretary to the principal delegate.

COLOMBIA.

Delegate :

His Excellency Dr. Francisco José URRUTIA, Former Minister for Foreign Affairs, Former President of the Senate and of Parliament, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

Secretary :

Dr. Victor V. OLANO, Attaché to the Legation in Switzerland.

CUBA.

Delegates :

His Excellency M. DE BLANCK, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.
Dr. Ramiro Hernández PORTELA, Counsellor of the Legation in France.

DENMARK.

Delegate :

His Excellency M. O. ENGELL, Envoy Extraordinary and Minister Plenipotentiary, Director in the Ministry for Foreign Affairs.

Substitute Delegates :

M. Carl PESCHARDT, Deputy-Director in the Ministry for Foreign Affairs.

Secretary ;

M. J. R. DAHL, Secretary in the Ministry for Foreign Affairs.

FREE CITY OF DANZIG.

Delegates :

Dr. Charles POZNANSKI, Consul-General of the Republic of Poland at Paris.
M. L. MUNDT, Conseiller de Régence at the Senate of the Free City.

DOMINICAN REPUBLIC.

Delegate :

His Excellency M. Maximo L. VASQUEZ, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Secretary :

M. Salvador E. PARADAS.

EGYPT.

Delegates :

His Excellency M. MAHMOUD FAKHRY Pasha, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
M. LINANT DE BELLEFONDS, Royal Adviser to the Ministries of Justice and Foreign Affairs.

SPAIN.

Delegate :

M. A. FLORES DE LEMUS, Professor at the University of Madrid.

Secretary :

M. E. Martinez AMADOR, of the General Secretariat for External Relations.

ESTONIA.

Delegate :

His Excellency M. C. R. PUSTA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

FINLAND.

Delegate :

His Excellency M. HOLMA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Technical Advisers :

M. George WINCKELMAN, Envoy Extraordinary and Minister Plenipotentiary, Director of Legal Affairs in the Ministry for Foreign Affairs.
M. Y. PULKKINEN, Former Minister, Chief Commissioner of the Central Chamber of Commerce at Helsinki.
M. E. CASTREN, Attaché to the Legation in France.

FRANCE.

Delegates :

M. E. DE NAVAILLES, Assistant Director in the Ministry for Foreign Affairs (Direction of Administrative and Technical Affairs).
M. P. ELBEL, Director in the Ministry of Commerce (Department of Commercial Agreements).
M. E. HAGUENIN, Director in the Ministry of Finance (Department of Régies financières et de l'Ordonnancement).
M. G. MITTLEHAUSSER, Assistant Director in the Home Office (Department of Sûreté Générale).
M. PILLAULT, of the Ministry for Foreign Affairs (Sub-Department of International Unions).
M. PÉPIN, of the Ministry for Foreign Affairs (French League of Nations Service).
M. POUILLOT, Head of Service in the Ministry of Labour (Foreign Labour Department).
M. PAON, of the Ministry of Agriculture (Department of Agricultural Labour and Immigration).
M. LIBERSAT, of the Ministry of Commerce (Department of Personnel de l'Expansion commerciale et du Crédit).

Secretary of the Delegation :

M. GUEYRAUD, of the French League of Nations Service in the Ministry for Foreign Affairs.

GREECE.

Delegate :

His Excellency M. Nicolas POLITIS, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Substitute Delegate :

M. Jean YOUPIS, Adviser to the Court of Appeal, Representative of the Hellenic Government at the Mixed Tribunals at Paris.

Secretary :

M. Georges BOUBOULIS, Secretary of the Legation in France.

GUATEMALA.

Delegate :

Dr. J. M. PALACIOS, Chargé d'Affaires at Paris.

Secretary :

M. R. GIRON, Secretary of the Legation in France.

HAITI.

Delegate :

Dr. L. A. NEMOURS.

HUNGARY.

Delegates :

M. A. DE NICKL, Envoy Extraordinary and Minister Plenipotentiary in the Ministry for Foreign Affairs.
Dr. A. KNEPPO, Ministerial Counsellor.
M. Alexandre DE WOELFEL, Chief Counsellor of State Police in the Home Office.
M. E. DE SCHLICK, Counsellor of Section in the Ministry of Commerce.
M. Eugène DE BEREZELLY.

INDIA.

Delegate :

Dr. R. P. PARANJPYE, Member of the Council of the Secretary of State for India.

Substitute Delegate and Expert :

Mr. W. T. M. WRIGHT, C.I.E., I.C.S., former Joint Secretary in the Legislative Department of the Indian Government.

IRISH FREE STATE.

Delegates :

His Excellency E. O'KELLY DE GALLAGH AND TYCOOLY, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
Mr. T. A. BARRINGTON, Assistant Director of Commercial and Industrial Affairs in the Ministry of Commerce and Industry.

ITALY.

Delegates :

His Excellency M. Giuseppe DE MICHELIS, Ambassador and Senator, First Delegate.
M. Massimo PILOTTI, Adviser to the Supreme Court.
M. Publio LANDUCCI, Consul-General, Head of Bureau in the Ministry for Foreign Affairs.
M. Tomaso PERASSI, Legal Adviser in the Ministry for Foreign Affairs.
M. Erasmo CARAVALE, Chief Inspector in the Ministry of Corporations.
M. Gino BOLAFFI, Director, Head of Section in the Ministry of Finance.
M. Elisio BALLERINI, Commercial Adviser in the Royal Embassy to the President of the French Republic.

Secretary of the Delegation :

M. Guido ROMANO, Consul.

JAPAN.

Delegate :

M. Nobumi ITO, Counsellor of Embassy, Assistant Director of the Imperial Bureau accredited to the League of Nations.

Substitute Delegates :

M. Junzo SAKANÉ, Consul at Antwerp.
M. Shikao MATSUSHIMA, Secretary to the Embassy to the President of the French Republic
M. Masatoshi AKIYAMA, Secretary at the Embassy to the President of the French Republic.
M. Katsumi NIHRO, Secretary at the Embassy to His Britannic Majesty.

Secretary :

M. Suémitsu KADOWAKI, Attaché of Embassy, Secretary to the Imperial Bureau accredited to the League of Nations.

LATVIA.

Delegates :

His Excellency M. Villis SCHUMANS, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
M. Janis MIEZIS, Director of the Economic Department in the Ministry of Finance.
M. Voldemars LUDIN, Vice-Director of the Administrative Department in the Home Ministry.

LUXEMBURG.

Delegates :

M. Ernest LECLÈRE, Chargé d'Affaires at Paris.
M. BASTIN, Consul-General at Paris.

UNITED STATES OF MEXICO.

Delegates :

His Excellency M. A. PANI, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
Dr. CASTRO-LEAL, Counsellor of the Legation in France.

NORWAY.

Delegate :

M. Sigurd BENTZON, Counsellor of the Legation in France.

Deputy-delegate :

M. Stig OLMER, Secretary of the Legation in France.

PANAMA.

Delegates :

His Excellency M. Octavio MENDEZ PEREIRA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic and to His Britannic Majesty.
M. José Isaac FABREGA, Member of the Public Ministry.

PARAGUAY.

Delegate :

His Excellency Dr. Ramon V. CABALLERO DE BEDOYA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Secretaries :

M. E. ROMERO PEREIRA, First Secretary to the Legation in France.
M. Eduardo LEYBA, Commercial Attaché.

THE NETHERLANDS.

Delegates :

M. J. A. NEDERBRAGT, Doctor of Commercial Sciences, Head of the Direction of Economic Affairs of the Ministry for Foreign Affairs, Chairman of the Commission for Treaties of Commerce.
M. E. D. VAN WALREE, Former Bank Director.
M. L. MEYERS, Administrator, Head of the Customs Division in the Ministry of Finance.
M. L. J. VAN DER WAALS, Doctor of Commercial Sciences, Director in the Ministry of Colonies.

Substitute Delegates :

M. J. DE JONG, Head of Division in the Royal Ministry of Labour, Commerce and Industry.
M. C. F. GRONEMEIYER, Doctor of Laws, Secretary in the Ministry of Defence.

Secretary :

M. J. L. F. VAN ESSEN, Doctor of Laws, Secretary in the Ministry for Foreign Affairs.

PERU.

Delegates :

His Excellency M. Mariano H. CORNEJO, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic, Representative on the Council of the League of Nations.
M. Augusto LEGUIA SWAYNE, Chargé d'Affaires at Lisbon.

Substitute Delegates :

M. José Jacinto RADA, Secretary to the Legation in France.
M. José Maria BARRETO, Secretary-General of the Permanent Delegation accredited to the League of Nations.

Secretary :

M. Ricardo H. CORNEJO, Secretary to the Legation in France.

POLAND.

Delegate :

Dr. Charles POZNANSKI, Consul-General.

Experts :

Dr. T. LYCHOWSKI, Adviser at the Ministry of Industry and Commerce.
M. Witold OBREMSKI, Head of Section in the Ministry for Foreign Affairs.
M. Jan SZUMIEL, Adviser at the Home Ministry.

PORTUGAL.

Delegates :

His Excellency M. Armando DA GAMA OCHÕA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
Dr. José Lobo D'AVILA LIMA, Professor at the Faculty of Law in the Lisbon University; Legal Adviser in the Ministry for Foreign Affairs.

ROUMANIA.

Delegates :

M. A. J. POPESCU, Commercial Attaché at the Royal Legation in France.
M. C. VALIMARESCO, First Secretary to the Royal Legation in France.

SALVADOR.

Delegate :

His Excellency Dr. J. Gustavo GUERRERO, Former Minister for Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

SWEDEN.

Delegates :

M. Martin Nikolaus FEHR, Senator, Professor of Law, Rector at the School of " Hautes Etudes Commerciales ", Stockholm.
M. Emil F. SANDSTROEM, Conseiller Référendaire at the Supreme Court, Chairman of the Third Division of the Anglo-German Arbitral Tribunal at London.

Secretary :

M. Per WIJKMAN, First Secretary in the Ministry for Foreign Affairs.

Substitute Delegate :

M. Herald FALLENIUS, Attaché to the Legation in France.

SWITZERLAND.

Delegates :

M. Paul DINICHERT, Minister Plenipotentiary, Head of the Foreign Affairs Division in the Federal Political Department.
M. Heinrich ROTHMUND, Head of the Police Division in the Federal Department of Justice and Police.

Expert :

M. Giacomo BALLI, Counsellor of the Legation in France.

Secretary :

M. Franz KAPPELER, Legal Adviser of the Foreign Affairs Division.

CZECHOSLOVAKIA.

Delegate :

Dr. François PEROUTKA, Head of Section in the Ministry of Commerce and Industry, former Minister.

Substitute Delegate :

M. Vincent IBL, Counsellor of the Legation in France.

Experts :

M. François BLASEK, Adviser in the Ministry of Finance.
Dr. Antonin KOUKAL, Adviser in the Ministry of Justice.
Dr. Josef NOVAK, Commissioner in the Ministry of Social Welfare.

Secretary :

M. Ladislav RADIMSKY, Secretary of Legation in the Ministry for Foreign Affairs.

TURKEY.

Delegate :

SALIH ZEKAI Bey, Member of Parliament, former Minister and Ambassador.

Secretary :

KEMAL SAID Bey.

URUGUAY.

Delegate :

His Excellency M. Alberto GUANI, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.

Secretary :

M. Adolfo SIENRA, Secretary of the Delegation accredited to the League of Nations, Secretary of the Legation in France.

UNITED STATES OF VENEZUELA.

Delegates :

His Excellency M. César ZUMETA, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic and to the Swiss Federal Council.
Dr. J. M. HURTADO-MACHADO, Counsellor of Legation, Chargé d'Affaires at Berne.
M. Alfredo MACHADO HERNANDEZ, Doctor of Laws.

Substitute Delegate :

Dr. M. O. ROMERO SÁNCHEZ.

Expert :

Dr. Pedro M. REYES, Former President of the Congress.

YUGOSLAVIA.

Delegates :

His Excellency M. Miroslav SPALAIKOVITCH, Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic.
His Excellency M. Ilija CHOUMENKOVITCH, Permanent Delegate accredited to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

Substitute Delegates :

M. Alexandre VOUKTCHEVITCH, Counsellor of the Royal Legation in France.
M. GIVOIN SPASSOYEVITCH, Professor at the University of Belgrade.
M. Bochko CHRISTITCH, Adviser in the Ministry for Foreign Affairs.

Attended the Conference as Observers :

UNITED STATES OF AMERICA.

Delegates :

Mr. George A. GORDON, First Secretary of the Embassy to the President of the French Republic.
Mr. Daniel Joseph REAGAN, Assistant Commercial Attaché.

UNION OF SOVIET SOCIALIST REPUBLICS.

Delegate :

M. George LACHKEVITCH, Legal Adviser in the Embassy to the President of the French Republic.

Invited to attend the Conference in an Advisory Capacity :

REPRESENTATIVES OF THE ECONOMIC COMMITTEE OF THE LEAGUE OF NATIONS.

His Excellency M. J. BRUNET, Envoy Extraordinary and Minister Plenipotentiary of Belgium.
M. D. SERRUYS, Chairman of the French Advisory Commission for Commercial Agreements.
M. W. STUCKI, Director of the Commercial Division in the Swiss Federal Department of Public Economy.

REPRESENTATIVES OF THE FISCAL COMMITTEE OF THE LEAGUE OF NATIONS.

M. BORDUGE, Counsellor of State, General Director of Direct Taxation and of "l'Enregistrement des Domaines et du Timbre " in the Ministry of Finance of France.
Dr. Hans BLAU, Director of the Swiss Federal Administration of Income.

REPRESENTATIVES OF THE INTERNATIONAL CHAMBER OF COMMERCE.

Delegates :

His Excellency M. Richard RIEDL, Former Austrian Minister, President of the Delegation.
M. Robert JULLIARD, President of the Double Taxation Commission of the International Chamber of Commerce.
M. Jean DUCHENOIS, Secretary-General of the General Confederation of French Production.

Substitute Delegates :

M. Celestino FRIGERIO, Italian Commissioner in the International Chamber of Commerce.
M. Max HERMANT, General Delegate of the General Committee for Insurance.
M. Owen JONES, British Commissioner in the International Chamber of Commerce.
M. Gerhard RIEDBERG, German Commissioner in the International Chamber of Commerce.
M. Jozef VANEK.
M. Janusez ZOLTOWSKI, Polish Commissioner in the International Chamber of Commerce.

Secretary of the Delegation :

M. André BOISSIER, Attaché to the International Chamber of Commerce.

C. PROTOCOLE DE CLÔTURE DE LA PREMIÈRE SESSION DE LA CONFÉRENCE INTERNATIONALE SUR LE TRAITEMENT DES ÉTRANGERS.

LES SOUSSIGNÉS, DÉLÉGUÉS DES GOUVERNEMENTS de l'Allemagne, du Commonwealth d'Australie, de l'Autriche, de la Belgique, de la Bolivie, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, des Etats-Unis du Brésil, de la Bulgarie, du Canada, de la Chine, de la Colombie, de Cuba, du Danemark, de la Ville libre de Dantzig, de la République Dominicaine, de l'Egypte, de l'Espagne, de l'Estonie, de la Finlande, de la France, de la Grèce, du Guatémala, d'Haïti, de la Hongrie, de l'Inde, de l'Etat libre d'Irlande, de l'Italie, du Japon, de la Lettonie, du Luxembourg, des Etats-Unis du Mexique, de la Norvège, du Panama, du Paraguay, des Pays-Bas, du Pérou, de la Pologne, du Portugal, de la Roumanie, du Salvador, de la Suède, de la Suisse, de la Tchécoslovaquie, de la Turquie, de l'Uruguay, des Etats-Unis du Venezuela, et de la Yougoslavie, réunis, sur l'invitation du Conseil de la Société des Nations à Paris, sous la présidence de M. Albert Devèze, ancien ministre de la Défense nationale de Belgique, dans le but d'arriver à la conclusion d'une convention concernant le traitement des étrangers ;

Se référant aux délibérations consignées dans les rapports des Commissions et dans les procès-verbaux de la Conférence ;

Constatant que, malgré l'effort le plus large de collaboration, la complexité de la matière n'a pas permis pour l'instant de trouver sur certaines questions des solutions généralement acceptées ;

Estimant que ces questions méritent un nouvel examen et que, dès lors, une deuxième session de la Conférence devient nécessaire pour atteindre le but envisagé,

Sont convenus :

1° De soumettre à l'appréciation de leurs gouvernements toute la documentation relative aux travaux de la Conférence ;

2° D'attirer leur attention sur l'utilité qu'il y aurait à établir la convention envisagée sur les bases les plus libérales, sauf à l'accompagner de dérogations motivées par des situations particulières actuellement existantes, de fait ou de droit, en vue desquelles les gouvernements seraient amenés à introduire leurs propositions ;

3° De les prier de transmettre, avant le 1er juin 1930, au Secrétaire général de la Société des Nations toutes observations et suggestions relatives à la documentation visée au N° 1 ci-dessus, afin qu'il soit possible de recueillir, avec l'autorisation du Conseil de la Société des Nations, l'avis de ses organes consultatifs et, pour les dispositions relatives au traitement des étrangers dénommés « travailleurs », celui du Bureau international du Travail ;

4° De charger le Bureau de la Conférence de rester en fonctions dans l'intervalle des deux sessions pour examiner la documentation susvisée et préparer, avec la meilleure méthode possible, les travaux ultérieurs de la Conférence ;

5° De laisser au président de la Conférence le soin de fixer, après en avoir référé au Conseil de la Société des Nations, la date de la seconde session de la présente Conférence, qui, autant que possible, devrait avoir lieu avant le 31 décembre 1930, à Genève.

A ladite session seront soumis, en sus des observations et propositions provenant des gouvernements et des documents visés au 1°, les avis, recueillis à l'avance, des organes consultatifs de la Société des Nations et du Bureau international du Travail et tout autre avis technique, notamment celui de la Chambre de Commerce internationale, permettant de fournir aux délégués une documentation aussi complète que possible ;

6° De prier le Conseil de la Société des Nations d'autoriser le Secrétaire général de la Société des Nations à entreprendre les tâches que comporte l'exécution du présent Protocole.

EN FOI DE QUOI les délégués des Gouvernements susnommés ont signé le présent Protocole.

FAIT à Paris le 5 décembre 1929, en un seul exemplaire, qui restera déposé dans les archives du Secrétariat de la Société des Nations.

[*Suivent les signatures.*]

C. FINAL PROTOCOL OF THE FIRST SESSION OF THE INTERNATIONAL CONFERENCE ON THE TREATMENT OF FOREIGNERS.

THE UNDERSIGNED DELEGATES OF THE GOVERNMENTS OF : Germany, the Commonwealth of Australia, Austria, Belgium, Bolivia, the United Kingdom of Great Britain and Northern Ireland, the United States of Brazil, Bulgaria, Canada, China, Colombia, Cuba, Denmark, the Free City of Danzig, the Dominican Republic, Egypt, Spain, Estonia, Finland, France, Greece, Guatemala, Haiti, Hungary, India, the Irish Free State, Italy, Japan, Latvia, Luxemburg, the United States of Mexico, Norway, Panama, Paraguay, the Netherlands, Peru, Poland, Portugal, Roumania, Salvador, Sweden, Switzerland, Czechoslovakia, Turkey, Uruguay, the United States of Venezuela, and Yugoslavia, being assembled at Paris at the invitation of the Council of the League of Nations under the chairmanship of M. Albert Devèze, former Belgian Minister of National Defence, with the object of concluding a Convention concerning the treatment of foreigners ;

Having regard to the discussions recorded in the reports of the Committees and in the Minutes of the Conference ;

Noting that, in spite of every effort of collaboration, the complexity of the subject-matter has made it impossible at the moment to find generally accepted solutions to certain questions ;

Being of opinion that these questions are worthy of further study and that, in consequence, a second session of the Conference is necessary to achieve the end in view,

Have agreed :

1. To submit to their Governments for consideration all documents relating to the work of the Conference ;

2. To draw their attention to the expediency of drafting the proposed Convention on the most liberal lines, with the possibility of appending exceptions based on special situations of fact or of law at present existing, in view of which Governments would put forward their proposals ;

3. To request their Governments to forward to the Secretary-General of the League of Nations before June 1st, 1930, any observations and suggestions they may wish to make with regard to the documents mentioned in paragraph 1 above, in order that it may be possible to obtain, with the authorisation of the Council of the League of Nations, the opinion of its advisory bodies, and, as regards the provisions relating to the treatment of those foreigners described as " workers ", the opinion of the International Labour Office ;

4. To instruct the Bureau of the Conference to remain in office during the interval between the two sessions in order to examine the documents mentioned above and prepare the future work of the Conference as methodically as possible ;

5 To leave it to the President of the Conference, after referring the matter to the Council of the League of Nations, to fix the date of the second session of the Conference, which should be held at Geneva, if possible, before December 31st, 1930 ;

To this session will be submitted, in addition to the observations and proposals of Governments and the documents mentioned in paragraph 1, the opinions, already obtained by them, of the advisory bodies of the League of Nations and of the International Labour Office, together with any other expert opinions, in particular that of the International Chamber of Commerce, so as to enable the delegates to be in possession of as full a documentation as possible ;

6. To request the Council of the League of Nations to authorise the Secretary-General of the League to undertake the work necessary for carrying the present Protocol into effect.

IN FAITH WHEREOF the delegates of the above-mentioned Governments have signed the present Protocol.

DONE at Paris on December 5th, 1929, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations.

[*Here follow the signatures.*]

Second Part.

A. MINUTES OF THE PLENARY MEETINGS.

B. MINUTES OF COMMITTEES A; B, C AND D.

C. REPORTS OF THE COMMITTEES TO THE CONFERENCE.

D. ANNEXES.

A. MINUTES OF THE PLENARY MEETINGS.

FIRST PLENARY MEETING

Held in Paris on November 5th, 1929, at 11 a.m.

President : M. DEVÈZE.

1. Opening of the Conference.

M. AVENOL, Under-Secretary-General of the League, said that, in convening the Diplomatic Conference which was now opening, the Council of the League of Nations had once again shown its confidence and hope in the value of the work carried on by its Economic Organisation and in the strength of public opinion. In the present position of the world the practical obligations embodied in Article 23 of the Covenant, adopted to ensure a closer economic co-operation between the peoples of the world, were increasingly appreciated.

In the continuous and persevering work of the Economic Committee, the question of the treatment of foreigners had played a large part from the very beginning, for it had been recognised that in that field it was important, in order to ensure equitable treatment of commerce, to discover as between Members of the League stable guarantees embodied in unilateral provisions and based on a legal foundation.

As the result of a special resolution of the International Economic Conference of 1927, the Economic Committee had drawn up the draft Convention which was submitted to the Conference as a basis of discussion.

Yielding to the wishes of several Members of the League, the Council had chosen Paris as the meeting-place of the Conference. Thanks to the hospitality of the Government of the French Republic and of the University of Paris, it had been possible, though not without some difficulty, to find a place and an environment worthy of that Conference.

In conformity with the traditions of the League of Nations, the Council had made every endeavour to ensure the proper working of the Conference by confiding its general direction to a President who, as he was not a member of a delegation, might assist the Conference by his well-known capacity and entire impartiality. M. Devèze, member of the Belgian Parliament, and a former Minister of the Belgian Government, had been good enough to accept this task. On behalf of the Council, he thanked M. Devèze and bade him welcome. M. Devèze could count—as indeed could all the delegates attending the Conference—on the entire and devoted assistance of the members of the Secretariat.

The task of the organisation of the Conference by the League having now been fulfilled, the responsibility and the labour now fell entirely on the representatives of Governments. In conclusion, he felt sure that the success of the Conference's work would be equal to the hopes entertained by the Council and the Assembly of the League.

M. DE NAVAILLES *(France)* said that the French delegation was pleased to welcome, on behalf of its Government, the representatives of the Powers invited by the League of Nations to participate in the present Conference. He hoped the charms and distractions of Paris would provide a happy diversion for the delegates from their somewhat arduous labours.

The French Government took a very keen interest in the draft Convention before the Conference. There was in France a considerable number of foreigners. These foreigners had not much occasion to note that the treatment accorded them differed from that enjoyed by French nationals. If to a certain extent the elements in the various foreign colonies established on French territory completely merged themselves in the French population, that step appeared to be quite voluntary and the result of mature reflection. No pressure was exercised by any person whatsoever. Everyone was free to live as he pleased and to keep his allegiance to his native country.

Thus for a long time, with or without diplomatic conventions, France had practised the two principles of liberty and the assimilation of foreigners with her own nationals. These principles lay at the basis of the provisions proposed for the examination of the Conference, and the French delegation was glad to note that the League of Nations could not have chosen a better or more sympathetic place for the work to be undertaken than France and her capital city.

THE PRESIDENT, in opening the work of the Conference, spoke as follows :

Gentlemen,—In welcoming you and declaring this Conference open, I am deeply conscious of the honour done me by the Council of the League of Nations in asking me to preside over your debates.

I am sure that I shall be speaking both for you and for the League of Nations in thanking the French Government for so generously placing at the Conference's disposal the magnificent premises in which we are met together. In this great and beautiful capital, which is the meeting-place of the whole world, we might well imagine that French hospitality had long ago solved the serious and delicate problems which we shall be called upon to discuss.

I am delighted to see here the delegates of the States Members of the League of Nations, so many of whom have responded to the invitation addressed to them ; and I am equally glad to welcome the representatives of the countries which, although not Members of the great international

organisation which has brought us together, have wished to give us their valuable assistance in our discussions.

I should like to express our special gratitude to the members of the Economic Committee of the League of Nations. Three of them have been invited by the Council to attend our discussions in an advisory capacity. Some others are members of the delegations of their respective countries. They will all of them allow me, I am sure, to say how much we appreciate their assistance, which I know we can rely upon to solve the difficulties which we cannot fail to encounter on our path.

The representatives of the Fiscal Committee of the League of Nations and those of the International Chamber of Commerce are with us in an advisory capacity. We shall not forget that, during the whole of the period in which the draft we are going to examine was being prepared, the Economic Committee was in close contact with the International Chamber of Commerce, whose representative, M. Riedl, worked in constant co-operation with M. Serruys, the distinguished Rapporteur of the Economic Committee. We shall not fail to have recourse to their special knowledge and to attach due importance to their weighty opinions.

The preparatory studies of which our Conference is the fruit owe their inception to Article 23 of the Covenant, which lays down that the Members of the League of Nations will ensure the equitable treatment of international commerce in their respective countries. This text would remain a dead letter if the nationals of the States Members did not enjoy the most extensive guarantees in foreign countries as regards their private rights and economic activities.

This is how we must view the problem. Its solution, extending even to States which are not Members but accede to the Convention, must lead to the establishment of more effective co-operation between peoples, thanks to the facilities given to the free circulation of persons, capital and goods and to the free expansion of industry. In this way an increase in the general well-being of humanity will be attained through the security and extension of business and the constant strengthening of the economic ties between nations.

We shall find that we have to react against the consequences of the dreadful conflict which has shaken the world. Many countries have adopted measures which they would not have thought of taking at a time when it was imagined that war was impossible, and when the majority of peoples had not tasted its horrors for many years. Of course, we shall have to take into account special situations and the individual and legitimate necessities of certain States. But our efforts will be directed towards ensuring that the widest welcome should everywhere be offered to respectable foreigners without distinction of nationality. We must therefore undertake together a sincere investigation into the present state of affairs.

We shall endeavour to ensure that the adoption of the treaty will lead national legislators to eliminate, where necessary, from the laws of their countries all that is likely to hamper cordial and pacific relations between States. Our ideal will be to elaborate a stable contractual system based on law and equity and embodying the minimum guarantees which will henceforward constitute a charter for foreigners and for international trade.

Such is the spirit which should be ours—the spirit in which the Council of the League of Nations in 1921 asked the Economic Committee to define the scope and significance of the idea of the equitable treatment of commerce. True to the positive methods it has always employed, this Committee in the first place pointed out the essential errors whose existence had to be recognised and which had to be remedied.

The recommendations which it put forward in 1923 were first of all of a fiscal character, since it was in the sphere of taxation that the unjust discrimination between the treatment of nationals and foreigners was most marked. But it has added considerations of a general character with reference to the right of foreigners to acquire, possess and alienate property of all kinds and their freedom to dispose of their interests. Thus it has widened the question to embrace all essential guarantees for the rights of the individual.

The Japanese delegate, in laying before the Assembly of the League during the same year a proposal for the extension of the Economic Committee's enquiry to the conditions in which a foreigner residing in a country is or should be admitted to the exercise of a profession, industry or private occupation, completed the framework within which we are to-day called upon to carry on our work.

This work has been admirably prepared, and for this we cannot sufficiently thank all concerned, and especially the Economic Committee and the International Chamber of Commerce. The former has not ceased to continue its task since 1923, and the new recommendations which it put forward in 1924 are reflected in the draft which is before us.

The preparation of this draft was entrusted to the Economic Committee by the Council of the League of Nations in June 1927, and in this way the recommendation made by the International Chamber of Commerce at the Economic Conference held at Geneva in the previous month was respected. The Economic Committee in its turn was able to base its work on the excellent preliminary draft which had been prepared in December 1927 by its Chairman, with the assistance of M. Riedl.

Completed in March 1928, submitted to the Council and communicated to the different countries, the text thus drawn up has been the object of numerous observations from the different Governments. These testify to the care with which each of them has studied it and to the importance which they attach to the vast problem at issue.

While, as a whole, these replies show a favourable attitude, they nevertheless demonstrate how great are the obstacles to be overcome and how numerous the objections to be removed. You are no doubt fully aware of this ; but your presence here and the task which has been entrusted to you assure us that the difficulties have not been regarded as insurmountable and that the different nations are sincerely anxious to achieve in the general interest the great work of peace and progress whose firm foundations we are called upon to establish.

You will therefore, I feel sure, bring to these discussions a sincere and unanimous desire to achieve success, a spirit of conciliation and mutual trust, an understanding of the legitimate preoccupations of the different countries and a full realisation of the heavy task we have assumed. We must, however, be careful that our desire to make the Convention acceptable to the greatest possible number of States does not lead us to attenuate the force of its provisions or to restrict their scope to such an extent as to depart from the spirit by which it is inspired, or even to give our sanction to anything which falls actually short of liberal opinion in this domain.

It is essential that our work should mark a striking progress which can be regarded as an important stage in the history of international reconciliation and the peaceful development of civilisation.

In inviting you, gentlemen, on behalf of the Council to begin your labours, I would request you not to lose sight of the considerations to which I have had the honour to draw your attention.

2. Procedure of the Conference.

THE PRESIDENT said that, as documents, the Conference had, not only the draft Convention and Protocol, but also the Economic Committee's commentary on the various articles and its observations, presented in a concise and luminous form, on each of the remarks transmitted to the Secretariat up to February 1st, 1929, by the various States consulted. All this would not fail to assist the task of the Conference considerably.

He welcomed M. Cornejo and M. Zumeta, members of the Council of the League of Nations.

The Conference would, no doubt, agree with him that it should first hold a general discussion in order to give the various delegations an opportunity of expressing their views and making general observations, without, however, examining points of detail and special questions, to which task it would proceed later when considering the individual articles.

At the close of the general discussion, he would propose the appointment of Committees to consider different groups of questions. In making those proposals, he would largely be guided by the outcome of the general debate on the draft before the Conference.

M. POLITIS *(Greece)* doubted whether it was really necessary to begin with a general discussion the work of so technical a Conference, for which the preparations had been particularly carefully carried out and in regard to which a very comprehensive amount of information had been collected. Such a discussion would be a waste of time, since the various delegations would have an opportunity of making known their general views when the reports were discussed.

THE PRESIDENT, though attaching special importance to the advice of M. Politis, based as it was upon his great experience, pointed out that it would be somewhat difficult to divide members into Committees, for the main current of opinion had not yet been expressed. Moreover, a number of delegations were not yet at their full strength. A certain number of delegates had already sent in their names to speak in the general discussion. He would ask them, should the Conference adopt the procedure which he had proposed, to confine themselves to general considerations and to avoid entering upon the discussion of special points.

M. GUERRERO *(Salvador)* supported the proposal of the President and emphasised the usefulness of a general discussion with a view to organising the work of a Conference.

M. CORNEJO *(Peru)* thanked the President for the welcome which he had extended to the two members of the Council attending the Conference.

He also supported the proposal of the President.

Dr. MARTIUS *(Germany)* and SIR SYDNEY CHAPMAN *(British Empire)* supported the views of the President and emphasised the importance of a general discussion in connection with the division of the work between the Committees.

M. POLITIS *(Greece)* withdrew his proposal.

THE PRESIDENT noted that the general view of the Conference was in favour of beginning its work by a general discussion. He considered, therefore, that the procedure which he had proposed was adopted.

3. Committee on Credentials.

On the proposal of the PRESIDENT, M. POLITIS, M. URRUTIA and M. DE BLANCK, assisted by M. NISOT, member of the Secretariat, were appointed members of the Committee on Credentials.

4. Rules of Procedure.

On the proposal of the PRESIDENT, *the Conference decided to adopt*, mutatis mutandis, *the Rules of Procedure of the Assembly of the League.*

SECOND PLENARY MEETING

Held in Paris on November 5th, 1929, at 3 p.m.

President : M. DEVÈZE.

5. General Discussion.

[*Translation.*]

PROFESSOR D'AVILA LIMA *(Portugal)* said that it had often been said that those who were born or lived on the shores of the Mediterranean were incurable romantics in the domain of thought and its expression. Yet it was not from the lips of one of them, but from those of a distinguished representative of the north, Lord Robert Cecil, that he had had the unexpected pleasure to hear, last year—at the table of the Third Committee of the Assembly at Geneva—in connection with some arduous problem or other, the rustic metaphor that the spreading oak of the Covenant of the League of Nations was beginning to show signs of age in a few of its magnificent branches. Viscount Cecil might have been right : time would show. But if, despite its short existence, the Covenant was, in some directions, displaying symptoms of deficient vitality, it was none the less certain that many of its clauses had not yet been put to a practical test. This was the case, he thought, with regard to the passage in Article 23 in which the authors, inspired by the most generous pacifist ambitions, and perhaps also remembering that material unrest could be conducive to most terrible social catastrophes, expressed their aspiration for the " equitable treatment of commerce ". Under the deliberate impulsion of the Council of the League, this principle had been set in motion some eight years ago, being first examined by the Economic Committee and more recently being placed on the agenda of the International Economic Conference in 1927. It had been analysed and discussed seriously and at great length, and had continued its progress under varying circumstances and with various interpretations, until the occasion of the present Conference, officially met together in Paris and open to every country in the world, under the title of the " International Conference on the Treatment of Foreigners ".

To form an idea on this subject, it was first of all necessary to analyse as closely as possible a part of the Convention.

In the text before the Conference, the first article postulated the recognition of general safeguards for international trade in the form of clauses of international equality, both in regard to goods and to natural and legal persons, and both directly and indirectly, *i.e.*, through their legitimate representatives.

These safeguards were then expanded in relation to the permission of foreigners to exercise their callings, and the Convention went on to sanction the various extensions of this principle in the civil and legal spheres and particularly (this being in his opinion the crux of the whole system of the draft Convention) in the sphere of fiscal taxation and its application.

If one endeavoured to get at the essence of the proposed system, it would be found that its spirit and its context answered, according to the authors' own words, to the predominating intention of " securing treatment on the same terms as nationals and equality with nationals of the country of establishment, rather than most-favoured-nation treatment, which often leads to differentiation and uncertainty " ; but they added that, in many instances, they had preferred to replace those rather relative guarantees by positive undertakings to which the various countries would make their laws and actions conform. These undertakings were to be embodied in a general convention, regarded as preferable to the conclusion of separate agreements and constituting " as complete codification on as broad a basis as possible of the law of establishment in so far as this law can, and should be, codified in view of the disparity of concepts, situations and laws and of international practice under existing treaties ".

Such was the summary or positive effect of the text prepared by the Economic Committee of the League of Nations and at present before the Conference.

Although he appreciated all the care and thought represented by this text, he ventured, nevertheless, to think that it was somewhat audacious. If it were considered only in the light of international thought and criticism, he would not hesitate to regard it as highly suggestive. It was true, of course, that the world had already progressed far since the distant days of the *Urbs*, magnificent as was its legal structure, whose city gates bore the words " *hospes, hostis* " ; when even the *jus commercii* was an individual privilege and a strict Spartan law proclaimed that " any harm that could be done to foreigners was always justified in the eyes of gods and men ".

But were they not still unfortunately rather far from the legal reality of the *civis internationalis ?* He had just been reading a book of M. Anzilotti's (whose opinion he particularly desired to quote owing to the great authority in international law enjoyed by the President of the highest legal instance in the world) that " even assuming a uniform internal law, each man would be subject to certain rights and duties in each particular legal sphere, and not in the non-existent legal sphere of humanity ".

If this were so, now that there was a prospect of realising in the international sphere the idea, dear to the classical economists, of the *homo œconomicus*, the protagonists of internationalism could not but be deeply gratified.

Would this dream prove practicable ? Would the ambitions and aspirations of abstract and generous international thought prevail throughout the world ?

This was a point to be considered if they were to appreciate the draft Convention's prospects.

The attempt to create, under the ægis of a new legal order (which, by an interesting neologism, he had heard called the " infrastructure of international law "), the economic personality of the individual in the international sphere had come at a time when circumstances were still to a great, though somewhat diminished, extent reflecting the consequences of the last world conflagration. It was not only the political map which had undergone far-reaching changes ; the component forces of all economic and financial activity, from production to consumption, had also suffered extreme modifications, so much so that some people thought that a veritable reform of social conditions was taking place, whether for good or ill. History had been shaped by individuals, and not the least consequence of this much-discussed convulsion was the appearance of re-birth of a true " nationalist individualism " of peoples, leading, in the economic sphere, to a veritable mobilisation of their energies and resources. It was certainly not the European conflagration which had invented " protectionist tactics " ; but it was undoubtedly this conflagration which by its consequences, positive and negative, had provided the occasion and the motive for countries, like individuals, to make an unwanted effort to reconstitute their shattered forces by multiplying their material resources and by consolidating their economic independence.

Was it to be concluded that the endeavour of the Economic Committee of the League was impracticable or absurd ? By no means ; for its programme was full of wisdom and prudence, striving rather to reconcile divergent legislative requirements than to promise any audacious innovations.

Generally speaking, and without prejudice to any supplementary observations he might wish to make later, he would like to add at once that the recognition of the right of foreigners to exercise their callings, and their assimilation to nationals, should be confined to purely business activities. This implied the reservation for nationals, not only of all professional activities directly or indirectly connected with the political administration of the State, but also of all posts connected with the management of vital national interests.

For this reason, he considered that the enumeration given in Article 2 of the Convention should be regarded as merely illustrative. From this point of view the draft was right in referring to the *public interest*, which he thought should also be the criterion in judging the civil, judicial and fiscal safeguards provided by the text of the Convention in supplementing the right originally postulated. Thus the exercise of the right of foreigners to acquire property could not fail to be subject to total or partial restrictions necessitated by the vital importance of safeguarding the national wealth, *e.g.*, in the case of the riches of territorial waters and of the sub-soil, motive power, monopolies, and, in general, any activity which might lead, in fact or in law, to an excessive hold over the soil and vital resources of a country.

Clearly, such reservations would apply to both immovable and movable property, the amount of which in capitalist circulation to-day was dangerously large ; hence a country must be explicitly allowed to require that certain securities, representative of the national wealth, should be registered in the holder's name. As the draft prescribed the freedom to export foreign currency, why not insert special provisions regarding Government securities ?

In the sphere of taxation, the draft advocated a complete assimilation as regards the persons, property and interests of foreigners, extending it to their trade, industry and occupations. He doubted whether this equality could be accepted as it stood.

Owing to a variety of complex causes familiar to enlightened financial circles (causes to which the imperative needs of Governments and the growing demands of their populations contributed in equal measure), the fiscal outlook at the present day was perhaps unparalleled in economic and financial history.

It was the State's turn to have the ambition of being, if not a *nouveau-riche*, at any rate well-to-do ; and, as a result, it was modifying its financial technique and organisation—preferring sacrifices to bankruptcy. This exhausting effort on the part of the majority of Governments had naturally led to striking inequalities in taxation in one country after another, the parallelism of which became still more impressive if one considered the different rates of exchange of the various currencies. Moreover, taxation had begun to exercise a stronger influence in many countries, performing not only its traditional function of filling the public exchequer, but also undertaking the economic defence of the country against the supremacy of foreign competition, rendered still more threatening by the inequality of what the economists euphemistically persist in calling " the common value of goods and the general instrument of exchanges ". How was it possible to advocate equality of taxation between nationals and foreigners, especially on a rigid basis, without any discrimination or reservation, particularly as to control or real incidence ? In this connection he wished to associate himself with the observations put forward by the British and French Governments with a view to the deletion or improvement of Articles 3 and 4. He considered that the acceptance of these suggestions could not but increase the draft's chances of success.

In concluding this analysis of the draft, he wished to make a most express reservation, which was justly required by the special colonial and expansionist circumstances of Portugal. This reservation concerned the sphere of application of the Convention, whose obligations could not extend to the Portuguese colonies without a special and supplementary agreement being concluded between them and the mother country.

Such were his country's recommendations regarding the principal aims of the draft Convention on the status of foreigners ; and he would venture to point out that his country had possessed in the past, and, indeed, still possessed, certain peculiar characteristics which determined its judgment in this matter. Portugal had been an autonomous political entity for centuries. When, far back in the Middle Ages, the country was first brought into existence—and he was particularly glad to say this, being once again the guest of that great country, France—one of those who had rendered invaluable service in the task was a stranger, a nobleman of France. Her oldest historians would bear witness that Portugal had always welcomed foreigners as her own children—to quote a saying of one of her most authoritative legal historians. There were certain archaic laws providing exceptional and oppressive treatment for foreigners—such as the old wreckage laws, the *droit d'aubaine* (the Crown's right to the property of deceased aliens), the rights of retraction and of reprisal —which had never existed in Portuguese law ; indeed, Portugal had, on various occasions, refused to introduce them. Since the earliest days of Portugal's existence as a State, documents had been in evidence granting to foreigners concessions and privileges, sometimes so extensive as to awaken the desire of the Portuguese themselves to do as well.

This generous treatment of foreigners had continued and developed under the influence of the best principles of the *comitas gentium*, to which Portugal had steadfastly adhered. Her existing laws, from general constitutional provisions to the precepts of commercial and civil private law, carried on this tradition of liberal legislation and laid down the principle that foreigners should be guaranteed a legal status based on " equalitarianism " and not on mere " reciprocity ", as was the case in other systems of law. He did not propose to give details of the numerous Portuguese laws regulating the complex problem of the status of foreigners. It would be too lengthy a process and might hardly be respectful to the high abilities and legal erudition of the members of the Conference.

He would, however, give a brief account of those laws.

In the first place, the political constitution itself specifically enjoined equality as between nationals and aliens. That assimilation was prescribed not only in strictly civil matters, but also in the domain of what was known as " public law " ; and, although Portuguese law imposed certain restrictions and disabilities upon foreigners, they were few in number and were dictated primarily by vital and universally admitted considerations of a national nature, such as the right to fish in territorial waters, certain concessions relating to land, and the ownership of ships of the mercantile marine, which was regarded as of a national character.

Indeed, it might truly be said—and Portugal was proud of the fact—that the legislative balance-sheet showed a result very favourable to the status of those who were the country's guests and collaborators. It was so far in their favour that recently, in one of the provisions relating to the revision of taxation by which his young and distinguished colleague, Professor Oliveira Salazar, the present Portuguese Minister of Finance, had carried out his work of restoring the finances of the country, it was decided that, for purposes of taxation, foreigners should be assimilated to nationals ; they were, in point of fact, taxed considerably less. He would also venture to point out another indication clearly showing how favourable the Portuguese laws were to foreigners. They knew how jealously—and rightly so—most States reserved political rights exclusively for their own nationals. In Portugal that bar was not absolute ; foreigners had the right to be electors to the colonial administrative bodies and they were also allowed to fulfil certain consular functions.

Thus Portugal threw open to foreigners, with a free and hospitable hand, the numberless amenities of her Continental and oversea empire, which was one of the largest in the world. She gave this hospitality ; but she received it too. The Portuguese was an exceptionally cosmopolitan person. Inherited instinct drove him to seek lands other than his own, a fact which explained the great part he had played in world emigration. Practically everywhere Portuguese were enjoying the hospitality of countries which were friendly, when, indeed, they were not fraternal, as was that second country of the Portuguese—Brazil. The Portuguese sought to give a return for the welcome he had received in the persons of hundreds of thousands of fellow-countrymen in distant lands.

How could Portugal be indifferent to the status and the destinies of those who lived under the rule of so many different countries and who had so much at heart the high esteem and friendship of the Portuguese people ? For all these reasons, and without prejudice to certain corrections *ad referendum*, the draft Convention under consideration called in general for the sympathy and support of the Portuguese delegation, more especially since, in the course of its liberal and progressive development, a number of the clauses of the Convention had long been incorporated in Portuguese law.

M. RIEDL *(International Chamber of Commerce)* said that he spoke on behalf of a body which had no right to take part in decisions, but which was the legitimate mouthpiece of interests at stake, namely, industry and commerce in all countries in the world. The International Chamber of Commerce comprised forty-six countries and among its adherents were more than a thousand economic organisations, chambers of commerce, industrial and commercial federations and banking associations. It further grouped more than three hundred thousand very important concerns. The International Chamber was keenly desirous of the conclusion by the present Conference of a

grand charter of international commerce and of a statute firmly founded on an international agreement, secure from the fluctuations and accidents of commercial policy and the instability of commercial treaties. The Conference, by its spontaneous and disinterested endeavours, would contribute to the success of the even greater work that had been begun at Geneva, namely, that of economic pacification. He thought that, in order to express the hopes of the International Chamber and its representatives, he could not do better than recall the resolutions which had been voted by the Amsterdam Congress in July. They were as follows :

" The International Chamber of Commerce,

" Wishes express its firm conviction that the work of the Diplomatic Conference will lead to the conclusion of a Convention settling the question of the treatment of foreigners. The International Chamber also hopes that this Convention will be signed and ratified from the very outset by as many States as possible. An international Convention on the Treatment of Foreigners, based upon the principles laid down in the draft Convention prepared by the Economic Committee of the League of Nations and enacting the provisions contained therein, would be a great progress towards the codification and unification of international law, and would meet the demands long put forward with increasing insistence by economic interests throughout the world, anxious to remove, one by one, the barriers standing in the way of an evolution towards greater economic welfare. Such a Convention would also mark a very considerable advance along the road traced by the World Economic Conference, and would contribute largely to the improvement and development of economic relations between peoples and consequently to the stabilisation of economic and political peace. Finally, such a Convention would establish a sound, stable and equitable legal status, under the protection of which business men of all countries adhering to the Convention could carry on their professions and occupations in complete security, to the great advantage of all classes of the population.

" Despite its earnest desire to see the Convention in question signed and ratified by as many States as possible, the International Chamber, however, formally states its conviction that it would be a great mistake if, in order to obtain the accession of all countries taking part in the Conference, the latter consented to weaken the tenor of the provisions contained in the existing draft Convention.

" The International Chamber is fully convinced that a Convention giving effect to the provisions of the existing draft Convention, even if, at first, it were only accepted by a limited number of States, would—by reason of its beneficial results—exert such a force of attraction upon States that had remained aloof from the Convention that, little by little, they also would be induced to accede thereto in order to share its advantages.

" The International Chamber is therefore confident that the Diplomatic Conference will lead to the conclusion of an international Convention on the Treatment of Foreigners, giving final approval to the principles of the existing draft.

" In this connection, the International Chamber cannot refrain from emphasising the fact that the conclusion of a Convention on the Treatment of Foreigners admitted to establish themselves in a country, is only preparatory to the regime of liberty hoped for by the World Economic Conference and by the International Chamber of Commerce. It is desirable that it be later completed by a Convention on the admission of foreigners and the abolition of passport visas, an abolition already effected by many States by means of bilateral agreements, ...

" Finally, the International Chamber expresses the hope that the adoption of the Convention will so influence general sentiment that countries whose laws are still more or less restrictive will be induced to render them more liberal. "

M. DE BLANCK *(Cuba)* wished first to draw the attention of the Conference to the conclusion in America at the last International Pan-American Conference, which was held at Havana in January and February 1928, of a Convention on the Status of Aliens, consisting of nine articles, and open to the adhesion of non-signatory States. That Convention, while not as fully detailed as the Convention of twenty-nine articles, accompanied by a Protocol and Final Act, before the present Conference, contained an article which dealt with the military burdens and charges for relief purposes which might be required of foreigners domiciled in a country in case of a natural disaster or of peril not due to war.

At the Second Peace Conference held at The Hague in 1907, a recommendation had been adopted to the effect that the Powers should regulate by partial conventions the situation, from the point of view of military burdens, of foreigners established in their territory. Article 11, of the draft Convention under discussion prescribed that foreigners should be exempt from all military obligations and exactions.

At a time when the States had just concluded, under the auspices of the League, humanitarian Conventions like that of the International Relief Union, he thought it somewhat remarkable that the only hypothesis contemplated was that of war. It was necessary as well to make provision in peace-time for the occurrence of an event like a natural disaster or a peril which came within the category of events which ent ailed measures of assistance and mutual relief, in which foreigners should logically bear their part.

Article 3 of the Havana Convention read :

" Foreigners may not be obliged to perform military service ; but those foreigners who are domiciled, unless they prefer to leave the country, may be compelled, under the

same conditions as nationals, to perform police, fire-protection, or militia duty for the protection of the place of their domicile against natural catastrophes or dangers not resulting from war. "

The Convention before the Conference did not provide for this third eventuality, which in his opinion should also be covered.

There was another question of primary importance connected with the legal status of foreigners. According to Article 9, paragraph 2, of the draft Convention, foreigners were to have free access to the Courts upon the same conditions as nationals. There was, however, a principle which had been recognised in bilateral arbitration treaties, and even in the most recent treaties—the principle namely, that, in a question coming under the jurisdiction of the national judicial or administrative authorities in conformity with a country's territorial laws, recourse could only be had to arbitration after a final decision had been given within a reasonable time by the competent national authority, except in cases of a refusal of justice. Foreigners, therefore, would be obliged, before bringing proceedings of an international character against the State or private persons, to follow the normal course and to exhaust the possibilities of legal procedure offered by each State for the administration of justice.

The force and universality of the established usage of introducing this principle into bilateral arbitration conventions were indicated by the fact that the General Act of Arbitration of September 26th, 1928, approved by the Ninth Assembly of the League, likewise contained that principle in Article 31.

A similar clause appeared also in the corresponding articles in the Model Bilateral Conventions for the Pacific Solution of International Disputes. This principle had been included in the General Act, which was a sort of codification of the rules of arbitration, because there were two reasons in its favour : first, that it was the current practice to recognise it in arbitration conventions between States, and, secondly, that it was really important for the settlement of difficulties which might arise, in judicial matters, between national competence and international competence.

It would be impossible to depart from this road, already traced, but the Conference would certainly be doing so if, in the matter of the treatment of foreigners, it failed to support the principle that, if a foreigner was authorised to plead before the national courts on a footing of complete equality with the nationals of a State, it was intended that he should use the right to plead in exactly the same way as nationals and that, consequently, it would be irregular to admit that a foreigner could choose between national jurisdiction and international jurisdiction. That would be placing him in a privileged position. In his view, it was highly desirable to introduce into the Convention the necessary provisions to obviate any difficulties in this respect. While he did not argue that the present wording of Article 9 was incompatible with the rule to which he had alluded, he thought that the text should be remodelled so as to prevent any ambiguity and, consequently, any possible subsequent difficulties ; further, the clause should be completed to bring it into line with the practice followed and recognised by States which placed foreigners on a footing of equality with their nationals, without, however, enabling them to claim to go further.

Another case connected with the question of equality, exclusive of any preferential treatment for foreigners established in a country, related to the hypothesis of a revolution or civil war. If, in such circumstances, a State gave its own nationals no compensation whatever, it would be inadmissible for a foreigner to be allowed to make claims. Foreigners formed to a certain extent part of the environment in which they were situated. The case was of importance and it was to be hoped that allowance would be made for it.

In conclusion, he would ask the Secretariat to circulate for the information of the Conference the Convention signed at Havana on February 20th, 1928, on the status of aliens.

He hoped that place would be found in the admirable draft Convention prepared by the Economic Committee for the observations he had submitted. The Conference would thus attempt to place foreigners and nationals on a footing of equality and by the establishment of identical rights to merge all nationalities into the commonwealth of man.

M. DE LA VALLÉE POUSSIN *(Belgium)* began by paying a tribute to the care with which the Economic Committee had prepared the draft and the thorough study which it had made of the problems to be solved. Its work would, in particular, greatly facilitate the work of the Conference. In its main lines and general principles, the draft gave rise to no fundamental or insuperable objection on the part of the Belgian delegation, on condition, however, that no very serious modifications were made by the Conference. In the course of the preparatory work, it had been foreseen that the draft might have the effect of forcing certain States to amend their internal legislation. In the case of Belgium, such amendments would be quite insignificant, and that was one of the reasons why the Belgian delegation adhered to it in principle.

He recalled that, whereas general unanimity had prevailed in the Economic Committee in regard to the fundamental policy of the draft—that was to say, the assimilation, to a very large extent, of foreigners to nationals—the same could not be said of the choice of the best method to attain this object, and, in this connection, two opinions had been advanced. Some considered that the best method to follow was that of bilateral treaties. In the view of others, a multilateral treaty would be a broader solution, and might, perhaps, be more easily achieved. The Belgian delegation was strongly in favour of the multilateral method. Belgian law granted foreigners not, perhaps, all the advantages stipulated in the draft, but, at any rate, a very great part of them. Further, it must be pointed out that the negotiations for a mutlilateral treaty developed in a far better atmosphere than those for a bilateral treaty. In the latter, the loudest voice was that of private interests, whereas in discussions of a multilateral treaty the dominating voice was that of the general interest. He would add that, whereas the bilateral method excluded other methods, the multilateral method did not. When two States which were parties to a general agreement

had particularly close relations in regard to passenger traffic and the exchange of goods they could, within the four corners of a collective treaty, conclude an even wider and more complete bilateral treaty.

M. NEDERBRAGT *(Netherlands)* wished to deal with the four following points :

(1) The principle at the basis of the draft Convention ;

(2) The importance of the practical application of that principle for the Netherlands and its colonies ;

(3) The attitude of the Netherlands Government and the Government of the Netherlands East Indies towards the draft ;

(4) The question of the number of adhesions.

(1) The question of the treatment of foreigners was not only a question of civilisation, as the Peruvian delegate had said, but a question which was, at all points, bound up with the problem of international law and of world peace, and the fact that the favourable treatment of foreigners was one of the most ancient institutions of mankind must not be overlooked. It was true that Fustel de Coulanges had written that, in ancient times, hatred of the foreigner was compulsory, but the Holy Scriptures contained some moving passages on the treatment of foreigners. The injunction : " Deal with the stranger within thy gates as with one of thine own people ", might serve as a motto for the draft Convention.

(2) The practical application of the principle of the Convention to the Netherlands and the Netherlands East Indies was a question of the highest importance. Agriculture and industry in the Netherlands worked to a very wide extent for foreign markets, while commerce and navigation were two of the most important branches of the country's economic activity. Dutchmen were to be found everywhere and the flag of the Netherlands was carried over every sea and into every port. What country, then, could have greater interest than the Netherlands in the good treatment of foreigners ? He would pay a particular tribute to the beneficial activities carried on in the Netherlands by the Jews who had come there in large numbers and, among other nations, by the French. The activity of the Chinese in the Netherlands East Indies had been equally beneficial.

(3) It was hardly necessary to say what would be the attitude of the Netherlands Government and of the Government of the Netherlands East Indies towards the Convention. The two Governments had nothing to lose and everything to gain by the Convention. The Netherlands tariff was a very low one and it made no discrimination. It contained nothing in the nature of a system for fighting other tariffs. The door was open to foreigners, their activities and their products. The Netherlands delegation, indeed, proposed to urge a slight extension of the Convention, and he would remind the Conference that the Netherlands Minister for Foreign Affairs had written to the Secretary-General of the League to the effect that the present work should be continued in other fields so as to eliminate all existing barriers as far as possible. There was some difficulty, more particularly in regard to Articles 3, 4 and 12 (§ II) and the Netherlands delegation would perhaps have to join those delegations which had asked for their omission. The draft Convention had been submitted to a special Netherlands commission, which had stated that there would be practically nothing to change in the Netherlands law. If certain concessions were found to be necessary, the Netherlands Government would do its best to introduce certain slight amendments into the existing legislation. The Government would do its utmost to bring the Netherlands East Indies within the proposed combination, and it believed that it would be possible to do so. Certain slight amendments or reservations might, perhaps, be indispensable, not for the Netherlands, but for its colonies ; but he had been instructed by his Government to say in any case that, in the Netherlands overseas territories, the policy followed was that of the " open door ", in the sense that those territories were open to foreign activities and to enterprises with foreign capital in so far as such activities were compatible with the security of the territory and subject to the fulfilment of certain legitimate obligations. Furthermore, the Government of the Netherlands East Indies was even now prepared to make certain concessions, which would be indicated later on.

(4) Regarding the number of adhesions, two solutions might be contemplated. It would be possible either to have a Convention with practically nothing in it which would obtain a very large number of adhesions, or a Convention which would be considered as a very definite improvement of the present situation and which might perhaps obtain only a limited number of adhesions. Speaking for his Government, he would choose the second solution without any hesitation. If, of course, the Convention obtained only two or three adhesions it would hardly be worth while to introduce amendments into national legislation ; but the position would be different if there were, for instance, five or six adhesions.

In conclusion, he would assure the Conference of the co-operation of his Government, which was animated by a sincere desire to reach a compromise, of the co-operation of his delegation, and finally of his own co-operation, which would be given in the warmest possible manner. He had always held that those who desired progress for their own country should have an open mind and open wide the door to foreigners.

Dr. MARTIUS *(Germany)* observed that his Government had indicated its views on the draft Convention in two long letters, which were reproduced on page 70 of the " Brown Book ". The German delegation hoped that the Conference would end in the signature of a Convention based on the proposals which had been submitted and accepted by the largest possible number of States represented. He recalled the recommendation made by the tenth session of the Assembly that " the Conference should examine the principles of the draft Convention in the most liberal spirit ". For the moment, he would confine himself to emphasising certain considerations which would be decisive for the attainment of the result contemplated by the Assembly. The object to be

attained was the conclusion of a collective treaty which would include, in respect of the treatment of foreigners, provisions which were already to be found in a very large number of bilateral treaties of commerce, so as to create, not only in Europe, but throughout the entire world, a single uniform law in this field. That object could not be attained if the Conference went against the proposals which had been submitted to it and confined itself to recommending a model treaty, the fate of which would be highly doubtful. The German delegation wholeheartedly supported the view of the International Chamber of Commerce and thought that it would be an error if, in order to obtain the greatest possible number of adhesions, the Conference was satisfied with a Convention which would have no real efficacy.

The draft Convention stipulated in Article 18 that the " provisions of the draft should not prevent any of the High Contracting Parties from granting more favourable conditions to one or more of the other High Contracting Parties under the terms of a special agreement ". He would lay special emphasis on this clause. The collective treaty should serve as a point of departure for an even more liberal development of the situation through the use of bilateral conventions.

It was generally desired that the collective treaty should serve, not only in substance, but in form, as a basis for bilateral conventions to be concluded in future. There was, however, a great difficulty in regard to form. The collective treaty would, of course, be drafted in the two official languages of the League—French and English. He did not intend to make any suggestion which would result in an infraction of that principle, but it was clear that the conclusion of a collective treaty could not alter the method followed by the majority of States, namely, of using their own languages when they concluded bilateral conventions. It followed that the provisions of the present draft would necessarily have to be reproduced in other languages. The terms they employed for settling similar matters in different conventions often varied and it would be for the Conference to overcome that difficulty. He therefore ventured to suggest a procedure which was based on the Standing Orders adopted by the International Labour Conference in 1927. Article 6, paragraph 17, read as follows :

> " After the adoption of the French and English authentic texts, official translations of the draft Conventions and Recommendations may, at the request of interested Governments, be drawn up by the Director of the International Labour Office and deposited with the Secretary-General of the League of Nations. It will be open to the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Conventions and Recommendations."

He would make a concrete proposal later in this sense.

In regard to questions of substance, he hoped that the objections which delegations might have to one term or another, or to one clause or another, would not have the effect of revolutionising the draft submitted to the Conference, and he urgently pressed the technical advisers and experts of the various delegations to bear this consideration in mind.

What were the modifications to be contemplated ?

He had been asked which article in the draft covered the profession of journalism. Personally, he thought that the right article was Article 7, but definite guidance might be helpful on the subject. He laid emphasis on the point that any modifications which might be made in the draft should have the effect of increasing the facilities granted to foreigners, over and beyond the facilities already granted under the draft as it stood. Without wishing to go into too many details, he would emphasise that neither the list of exceptions given in Article 7, paragraph 2, nor the so-called colonial clause in Article 28, more especially in regard to the mandated territories, were held by the German Government to be satisfactory.

It would be for the Conference to see that the result of its discussions was not hampered by the postponement of the solution of the question of the admission of foreigners. The German Government, of course, shared the view adopted in the draft in the sense that the question of the admission of foreign labour was so important that its solution could not be contemplated within the scope of a special convention ; that view was in conformity with the opinion which had been expressed by the Assembly of the League. In regard to the question of the rights of a foreigner admitted to a territory, it would be necessary to define what was meant by admission ; similarly, something more definite would be very helpful in regard to the question of expulsion.

He hoped that the various delegations would be inspired by the same feelings of optimism as had influenced the authors of the draft. The authors belonged to a large number of countries and included representatives of the International Chamber of Commerce.

The meeting rose at 5.20 *p.m.*

THIRD PLENARY MEETING

Held in Paris on November 6th, 1929, *at* 10.30 *a.m.*

President : M. DEVÈZE.

6. **Election of Vice-Presidents.**

On the proposal of the PRESIDENT, M. DE NAVAILLES *(France)*, M. ZUMETA *(Venezuela)*, Professor FLORÈS DE LEMUS *(Spain)* and M. POZNANSKI *(Poland)* were elected Vice-Presidents.

7. **General Discussion** (continued).

M. LAFER *(Brazil)* submitted the following draft resolution :

" The International Conference on the Treatment of Foreigners makes the following recommendation :

" Whenever in the province of private international law, whether with regard to the status of foreign nationals or to the problem of the conflict of laws, an international agreement is deemed to be necessary, the method of a plurilateral treaty should be preferred to that of a bilateral treaty. "

Chapter III of the Preparatory Documents, containing a statement of the principles of the draft Convention dealt in Section B, No. 2 (page 20), with the problem of the method of drafting international treaties. Since it dealt mainly with the conditions accorded to foreigners, the document solved the question in favour of plurilateral treaties. It was unnecessary to return to the arguments contained in that study, but he would pay a tribute to the far-sighted nature of the observations made and would state his conviction that they were well founded.

Furthermore, it was thought that this method of work should be extended to the whole of private international law, of which the treatment of foreigners formed only a preliminary chapter, the main object of private international law being to deal with the conflict of laws. However desirable from a rational and ideal point of view might be the uniform solution of conflicts of laws in all countries, in order to establish a branch of law which should be really international in the full sense of the term—that was to say, common to all nations—it must unhappily be noted that in practice quite a different situation was to be found. Legal texts devoted to the matter, which were rare and difficult to obtain, were bringing to light in the various countries of the world the phenomenon of legal nationalism, and the legal practice of countries, which was the main and living source of private law was moving steadily in the same direction. The idea of sovereignty latent in any conflict of laws, though it could scarcely be justified, explained at any rate the autonomous establishment of a whole series of national systems for solving conflicts of laws each distinct from the other and each ignoring the other or seeming to do so. Yet it was highly desirable, both in the interests of persons subject to the law, who were legally entitled to demand a stable settlement of international legal relations, and in the interests of the better administration of justice and of a legal science which should be worthy of that name, to achieve unification even though this could only be done progressively.

To do so, recourse could be had to three methods, and two of these methods, at least as regarded the administration of justice and legal science, had been tried. The first, the simplest and the most radical, consisted in the doing away with the possibility of any dispute by unifying the *Sachnormen* or material rules contained in the positive legislations in force in the various States. The difficulty would then disappear, but it would not have been solved. This method of work appeared to him to be both dangerous and impossible to achieve in practice. The legislation of a particular State bore the impress of its national thought. It was not merely a logical exercise, but a reflection of the history of the people, of the country, of their customs and habits, and a reflection, too, of their idealistic aspirations. In those circumstances, was it of any use to ask States to sacrifice their legal rules, so closely knit with the life of the territory in which they had been born and developed, in exchange for a model type of legislation common to all questions ? The divergence of national legislations was a fact which must be realised and not criticised. It was an inevitable premise.

An endeavour had also been made to unify, or at any rate to achieve, the progressive unification of the rules governing concurrency *(Kollisionsnormen)*. International treaties were the best instruments to use in order to achieve this object. These treaties, however, could be concluded either between two States or between several. The latter method appeared to him preferable for several reasons.

It was to be noted that, in bilateral negotiations, States for the most part had only one desire —to maintain their laws and regulations as well as their former contractual status. A real compromise between the existing legislations of the contracting States was finally achieved, based on bargaining and mutual concessions. This was not an instance of scientific progress of a really international kind. A means of conciliation was sought at the expense of progress, and considerations of law were sacrificed to those of expediency. The system of the multilateral treaty, which by its very name comprised a large number of States, would no longer make it possible to take account of these considerations of expediency which one or other State might wish to defend. A higher view would be taken of the problem. The system which he urged would not exclude discussion, but the doctrine scientifically recognised as best would gain the day and would be adopted by all, though in order to do so they might have to modify to a certain extent their national systems. He hesitated all the less to recommend this method, in view of the fact that the sacrifice required from States was, relatively speaking, very small. The national rules for the solution of conflicts of laws were not so vital a part of the legal national patrimony as were the rules of material law. The rules for settling conflicts of law were for the most part much more recent in origin than the other rules and were simply the result of legal practice. Very often it would be sufficient to change the direction followed by the legal practice of a country rather than to make any important amendments in its legislation. This, then, he thought, was one consideration which would provide a strong argument in favour of plurilateral treaties.

Another advantage of the plurilateral treaty, the value of which the Economic Committee had fully appreciated, was that the system established by plurilateral agreements was stable and created an atmosphere of security which could not be achieved even by a network of bilateral agreements. It was impossible to do better than to refer purely and simply to the observations

made by the Economic Committee on the present draft Convention (Preparatory Documents, page 21). These observations were of general value and could in consequence, without any great difficulty, be applied to private international law taken as a whole. This was a method which had been adopted by the Conference on Private International Law at The Hague and quite recently by the Sixth Pan-American Conference, which had achieved the construction of a private international law known as the " Bustamante Code ". The solemn adoption by the Conference of the recommendation submitted on behalf of the Brazilian delegation would, he thought, have the double advantage of creating, as the result of the Conference's work and of its discussion of the articles composing the draft Convention, a movement in international law as liberal as it was clear and definite, and at the same time of constituting for the future a declaration of principle whose moral and psychological effect would shortly be felt.

Brazil was happy to be able to uphold such a view, especially in regard to the treatment of foreigners. Brazil had for a long time adopted the principle of equality in the treatment of foreigners in her territory. Her constitution and her civil and commercial laws both laid down and guaranteed identical treatment for nationals and foreigners. This system applied both to the freedom they enjoyed and the inherent rights, granted to human beings, as well as to the rights and guarantees contained in the field of law and civil and commercial procedure. Finally, it could be maintained without fear of contradiction that the essential nature of this equality of treatment was to be found not only in the constitution of Brazil and in her laws but also—and this was the main point—in the methods and procedure followed by Brazilian officials in their relations with foreigners who wished to live in Brazil and carry on their activities in that country. To sum up, the Brazilian law gave the same treatment to foreigners as it did to nationals, and the regulations were interpreted in a very liberal sense in favour of foreigners. Brazil expressed the hope that such guarantees and such a practice would in future become the law and practice of all peoples Members of the great international community of nations.

Sir Gilbert Vyle *(British Empire)* said that the interesting speeches made at the previous meetings demonstrated fully the usefulness of a general discussion which would, he felt sure, help substantially the work of the Committees.

In common with other members of the commercial and industrial communities in Great Britain, he had watched with ever-growing interest the activities of the League of Nations in the economic sphere, and he was glad to have the opportunity of participating again in the work of an international Conference held under its auspices.

The World Economic Conference of 1927 had asserted in its final report that the granting of the legal, fiscal and judicial guarantees necessary for the firms and companies of one country which were carrying on their trade or industry in another was one of the essential conditions of economic co-operation between nations. This view had his wholehearted support, and he was sure that it was fully endorsed by business men of every nationality.

The purpose of the present Conference was to fulfil the promise of 1927 and to embody these guarantees of the fair treatment of foreigners in an international code. This was obviously a work of great responsibility, for success or failure must have far-reaching effects on the economic policies of the nations ; if the Conference could establish a generous standard for the mutual treatment of the traders and companies of other nations a great step forward would have been made in the direction of increased international co-operation and peace ; any failure must entail reaction and increased scope for international hostility.

The subject was one not only of great importance in its main principles, but of considerable intricacy. In the draft which had been prepared with so much care and industry by the Economic Organisation of the League, however, the foundations of the work of the Conference had been laid ; it was, of course, impossible to hope that there would not be very extensive amendment of the draft. The Conference's labours must inevitably be long and heavy, but the business world, which was so vitally concerned, would expect members to address themselves to their task in a liberal spirit and with a strong determination to make a good job of this piece of work. That was the spirit which he was sure would animate every delegate.

This was not the occasion to refer to any details or special divisions of the very large field covered by the Convention, and he would confine his further remarks to a matter of general principle which was, in his view, of the utmost importance. This was the application of the most-favoured-nation principle to the treatment of foreigners. He was induced to raise the question now because he observed that in several places in the draft this principle was given only a limited or conditional application. He wished, however, to emphasise in the strongest possible terms the importance of full and unconditional most-favoured-nation treatment from the business point of view, especially, of course, in those cases in which the treatment was the only protection afforded.

What did conditional most-favoured-nation treatment lead to in practice ? It led to differentiation, to confusion and to delay, hindrances to international trade which everyone was anxious to avoid. The very existence of differential rules resulted not only in inevitable delays in administration, but also in additional and, to his mind, unjustifiable difficulties for the trader who had to be at pains to ascertain which particular set of rules his business was subject to at any particular moment. A trader operating in a particular country had to know and observe the rules of that country. That was difficult enough, but, if there was to be one set of rules for firms and companies of country " A " and another for those of country "B ", the position would be impossible. It was conceivable in the extreme case that there might be as many sets of rules as

there were nationalities concerned. Such differentiation and confusion would be intolerable, and he could not but feel that, if the Conference included in the Convention provisions which departed from the plain rule of equality, it would be robbed of a great part of its value to business men. Surely, if the countries represented were prepared to enter into an agreement of this kind in which they professed to facilitate the business of traders and industrialists from abroad, they should not hesitate for one moment to give them all the same treatment.

He would again refer to the World Economic Conference. Among the many questions examined by it had been that of the interpretation of the most-favoured-nation clause. What had been its attitude towards this question ? He would quote two passages from its final report. First : " It is highly desirable that the widest and most unconditional interpretation should be given to the most-favoured-nation clause "; and secondly: "The Conference . . . considers that the mutual grant of unconditional most-favoured-nation treatment . . . as regards . . . conditions of trading is an essential condition of the free and healthy development of commerce between States. "

The Conference should be very careful before it rejected this policy. If it did so, it would mar what would otherwise be regarded as a very great step forward in the efforts which were being made to secure equality of treatment for all in international commerce.

M. SERRUYS *(Representative of the Economic Committee)* said that the delegates of the Economic Committee chosen by the Council to attend the Conference had instructed him as Rapporteur to give a number of general explanations regarding the draft Convention drawn up by the Economic Committee to serve as a basis of discussion for the Conference.

He would recall at the outset that the International Economic Conference of 1927 had proclaimed the necessity of recourse to collective action and a plurilateral agreement in order that decisive progress might be made in regard to the question of the treatment of foreigners. The Economic Committee had always shown special interest in that question, and he recalled that the Economic Committee had, in 1921, at the time when it had established the framework of its task, realised that the problem of the equitable treatment of commerce, as defined in Article 23 *(e)* of the Covenant, had a double aspect—*i.e.*, the equitable treatment of goods and the equitable treatment of persons and companies engaged in economic activities in foreign countries. For that reason, in 1923 and 1925, the Economic Committee had studied the recommendations concerning the treatment of foreigners which the Council had forwarded to Governments. It became obvious, however, that the recommendations of the Council had remained without effect, and that the arbitrary autonomous measures adopted in a number of countries persisted, that the system of sterile bargaining between Governments for the negotiation of bilateral treaties of establishment was continuing. For that reason, the International Conference of 1927 had strongly urged recourse to concerted action leading to the adoption of international contracts which could be accepted by all States, based either on a common doctrine or upon a compromise between the very different doctrines and practices prevalent among States.

That method was one which precisely corresponded with the duties of the League, which consisted in preventing or settling such disputes between peoples by drawing up an international code regulating their relationships or by promoting the adoption of treaties to settle points of fact and thus improving their former relations.

The question now submitted to States for concerted action was of the utmost urgency. Since the end of the war the world had gone backwards and not forwards in the matter of the establishment of foreigners. Was it not a return to conditions prevalent some centuries previously to be unable to proceed to the contemplated system of migration because it was impossible to ensure populations living in a foreign country proper guarantees safeguarding their existence ? If a review were made of economic activities, it would be noticed that nations, as a result of the great war, were only too willing to allow themselves to be influenced by feelings of exaggerated nationalism, amounting to xenophobia. Every nation, while showing itself desirous of attracting foreign capital and enterprise for the development of its country, had shown itself to be equally ready to appropriate the fruit of that enterprise and to eject the persons who were entitled to it by vexatious administrative regulations or fiscal discrimination. It was the task of the present Conference to find a remedy for this form of injustice, which was unhappily of daily occurrence.

Members, however, should not ignore the difficulty and complexity of their task. In a number of countries the laws dealing with the matter were what might be described as sporadic. There were countries in which it was not possible for foreigners to establish a bank or to carry on transit trade or to contribute in any degree to the exploitation of the natural resources of the country. In other countries the treatment of foreigners depended on the goodwill of the administrative services. Foreign enterprises developed in security or were evicted according to the haphazard variations of the economic policy followed by successive Governments. The contractual law, in the same way as the internal law, governing establishment was unstable and defective. For example, up to quite a recent date some of countries, such as France and Belgium, between whose nationals there was an active commerce, had been bound by all kinds of treaties except treaties of establishment, while those same countries had treaties of this kind of a particularly detailed and minute nature with other countries between which the same kind of commerce existed on a far smaller scale.

The bases of treaties of establishment were more numerous and varied than those of any other kind of treaty. A number of treaties based on common law only contained non-discriminatory guarantees. Others were based on the most-favoured-nation clause. Others granted national treatment. In this connection, he would point out to Sir Gilbert Vyle that, though he agreed with him in thinking that the application of the most-favoured-nation clause was the most important guarantee for the equitable treatment of foreigners, it was none the less true that this guarantee was in many cases insufficient and that the guarantee of national treatment must be substituted for it. Finally, there were other treaties based on reciprocities in fact or in law.

The main use of the work undertaken by the Conference would therefore be—if members successfully reached agreement on the principles of the draft Convention—to ensure to traders and industrialists in foreign countries security based on a unanimously adopted doctrine in regard to the law and practice applicable to the various aspects of establishment. If it were agreed that, in so far as taxation was concerned, national treatment should be the rule and that in other matters the treatment should be that of the most-favoured-nation, that some cases should in principle receive one solution while in other cases that solution should be reserved, it was obvious that arbitrary practices in regard to establishment would be strictly limited, and that the status of foreigners would be based upon sounder foundations. The draft prepared by the Economic Committee was designed to achieve that result. That Committee had sought to determine for every aspect of the problem principles or compromises to be applied universally. Its draft was both a general framework and as accurate and opportune a body of proposals as could be found for the solution of each problem in the matter. There could be no question that the Conference would find it necessary to alter the draft radically in the light of the special situation of each country represented and the discussions which would quite certainly be held on points of doctrine. The draft was merely a thesis for discussion, submitted by the Economic Committee in all modesty, for it fully realised the difficulty of the task before the Conference.

How had the draft been worked out ? The Economic Committee had started with the general idea that international commercial relations presented themselves under two aspects, the exchange of goods and the activities of persons. The Committee had accordingly attempted to introduce into the Convention everything that bore on the activities of persons in foreign countries without, however, touching the field of politics. Certain delegates thought that the Committee had taken too large a view. He wondered whether that was really so. There had, in point of fact, been excluded from the field of application of the Convention a number of subjects in which discrimination in regard to foreigners was constant : public tenders, for instance, to which in certain countries the nationals of some other countries were admitted or excluded according to rules which showed a refined sense of injustice. The position with regard to concessions was also subject to arbitrary administrative action, but it was difficult to deal with it since it often involved a devolution of public powers. Arbitrariness was sometimes displayed not only in the granting but also in the execution of the concession contract. A Government granting a concession bound itself, for instance, by a contract in private law. It entered into engagements with regard to the other contracting party, but, when the concession was developed, the State became both judge and plaintiff and arrogated to itself the power of altering unilaterally the terms of the contract. In such cases the dispute must necessarily be brought before a State tribunal or an administrative jurisdiction. That was a problem with which the League might perhaps be called on to deal.

The Economic Committee had, however, thought it good to eliminate these problems, for it was impossible to contemplate a solution at the moment. The draft Convention, far from being too wide in scope, was still gravely lacking in a number of respects.

Nevertheless, a number of members had wondered whether it would be possible to achieve a collective agreement on certain special parts of the draft Convention, particularly in regard to Articles 1 to 6, which afforded guarantees of a commercial kind to foreigners not established in the country, and in regard to Articles 12, 13 and 14, which granted them guarantees of a fiscal nature. Why had the Economic Committee inserted these articles in its draft Convention ? The reason was because, instructed as it had been by the terms of the Covenant itself to ensure equal treatment to commerce in all its aspects, it had perceived that between conventions of a commercial kind and conventions concerning the establishment of foreigners there was still an intermediate field which had not yet been covered. That was the object of Articles 1 to 6.

Articles 12, 13 and 14 dealt with a particularly complex question in regard to which very different opinions would certainly be expressed during the discussion. Even in the League there was still no complete unanimity of doctrine on the point. The draft Convention had already been circulated to the various Governments when the Council had appointed a Fiscal Committee composed of persons with specially expert qualifications in fiscal matters. They had examined the conditions governing the application of the clause of the Convention and had emphasised a number of difficulties, while expressing the opinion that it would be possible to obtain the guarantees requisite in the field of taxation. A convention which failed to give foreigners fiscal equality with nationals would be in the nature of a paradox. In this domain, equality as between foreigners did not suffice. What must be secured was equality for foreigners with nationals. That principle had been enunciated by the Genoa Conference as long ago as the end of the great war. It was enunciated once again in the draft Convention.

It would, however, be for the Conference to decide whether, within the framework proposed by the Economic Committee, it was not desirable to have different rules of application for specified headings. He would carefully refrain from doing anything to prejudice the ultimate opinion of the Conference, for the Economic Committee was merely a body for the study of questions and could not in any way influence the decision of Governments.

What method had been followed by the Economic Committee in preparing the solutions proposed for each part of the draft which it was submitting to the Conference ? He wished first to say that the Committee had considered that the draft must not merely constitute a declaration of doctrine. In this connection, the statements made by M. Riedl and by M. Nederbragt must not be taken too literally. It must not be inferred that the Economic Committee had desired to pronounce in favour of a doctrine which might be called the maximum doctrine. The Committee had confined itself to adopting the most liberal doctrine in the form in which it was practised in various countries. It had endeavoured, further, to take into account differences in the legislation, traditions and customs of the various countries and had attempted in many cases to establish a working compromise rather than a uniform doctrine. That was the reason for which the Convention proposed one solution in one chapter and another solution in another. The object

was not to obtain the adhesion of those countries which already showed the maximum of liberalism in their policy towards foreigners. If, for instance, France, Belgium or Germany accepted the terms of the Convention, that would not mean that the question of the treatment of foreigners would have made progress throughout the world. What was desired was to assure to this conception of liberalism a practical application in the largest possible number of countries. The countries, however, might be less developed economically and they might have to take into account different legal traditions. The objective, then, should be not a uniform worldwide law, but a number of solutions which would be applicable notwithstanding the different situations of the various countries in fact and law. This was the explanation of the form taken by certain chapters, which were merely a compromise.

This was the first time that an attempt was being made to codify the questions at issue in a collective agreement. The Conference would not only have to choose between different principles for each aspect of the problem, but to make up its mind on a law which would cease to be relative and would become a positive law.

In existing bilateral agreements, the rights guaranteed were in the great majority of cases relative. Their object was to ensure most-favoured-nation treatment irrespective of the status which it implied, or national treatment the nature of which would not be defined. The attempt would now be made to substitute for these relative guarantees guarantees of a positive nature. That was the great advantage which was expected to result from the Convention before the Conference. It was hoped that the countries, instead of saying : We grant you legal assimilation with such-and-such a treatment which we do not define, should say : In this domain, these are the effective guarantees which will be granted to you.

That in point of fact was the great advantage of international conventions and collective agreements. There was, however, one difficulty due to the still obscure relation between the relative law embodied in bilateral agreements and the positive and reciprocal law established by multilateral treaties. It was a danger which called for special precautions. The States must not be allowed to use as a plea the guarantees as to assimilation given in their bilateral agreements in order to claim the positive advantages of the multilateral treaties without assuming the corresponding responsibilities. This important problem had already been raised by the Belgian representative at the Assembly. The situation would be intolerable if a country were allowed to claim the benefit of international agreements on the basis of the most-favoured-nation clause, while refusing to adhere to these international agreements in order to avoid the obligations they involved. The Economic Committee had paid particular attention to this antagonism between the provisions of plurilateral conventions and previous agreements. The Committee had studied the question and had adopted a compromise system, which had been embodied in Articles 16, 17 and 18 and constituted an innovation on which opinions would certainly be strongly divided. The proposed compromise was intended to make it impossible to infringe the most-favoured-nation clause in previous agreements, while obviating the possibility that the application of the clause might itself infringe the guarantees granted by the new international conventions.

The difficulty presented by this question must, however, be realised, for the whole subject must be treated upon two different planes and there were two sorts of view which might become irreconcilable. From the moment that work was begun on the great international conventions on which co-operation between the countries would in future be based, it was essential that the whole work of the League should not be ruined by the use of bilateral agreements as a pretext.

Such was the general structure of the draft prepared by the Economic Committee. The draft represented only a basis of discussion. When it had concluded its first preliminary draft, which had embodied both its doctrine and its attempts at compromise, the Economic Committee had been confronted with 240 amendments, which had been proposed to the draft. The Committee had endeavoured to make a selection, and it was that selection which it was now submitting to the Conference.

The work, then, which the Conference was asked to achieve was, first, to assure in a form acceptable, if possible, to all countries equity in human relations, equity in regard to foreigners who had been received into a country and who, by virtue of their reception, had acquired rights there. The second object to be attained was stable conditions of work for foreigners. It was essential to obviate the changes that might be made in their status by arbitrary action, and to make it impossible by a unilateral decision to say to foreigners who had brought their genius, their labour and their capital into the country : *Sic vos non vobis*. If the Conference succeeded in providing stable guarantees in this domain it would have achieved a memorable result.

FOURTH PLENARY MEETING

Held in Paris on November 6th, 1929, at 3.30 p.m.

President : M. DEVÈZE.

8. Report of the Committee on Credentials.

M. POLITIS *(Greece)*, Chairman of the Committee on Credentials, made the following report :

> " The Committee appointed by the Conference to verify the credentials of delegates has examined the documents which were communicated to it by the Secretariat. The

Committee noted that the delegates of the fifteen following States have produced full powers from the head of the State : China, Czechoslovakia, Denmark, the Dominican Republic, Egypt, Estonia, Germany, Great Britain, Greece, Japan, Luxemburg, the Netherlands, Sweden, Switzerland, Turkey.

" The full powers granted in respect of the foregoing countries cover both the negotiations and the signature of the Convention if concluded.

" The delegates of thirty-two States have either received powers from the Prime Minister or the Minister for Foreign Affairs of their Governments, authorising them to take part in the Conference, or have been accredited by a communication to the Secretary-General of the League of Nations either from the Minister for Foreign Affairs or by their representative on the Council or by their permanent accredited representative to the League or, lastly, by a diplomatic representative of the Government concerned. These States are : Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Cuba, Danzig, Finland, France, Guatemala, Haiti, Hungary, India, Ireland, Latvia, Mexico, Norway, Panama, Paraguay, Peru, Poland, Portugal, Roumania, Salvador, Spain, Uruguay, Venezuela, Yugoslavia.

" The Committee ventures to propose that the Conference should request the delegates of this last category of States who have not received the powers necessary to sign any instruments which may be adopted by it to be good enough to obtain, before the end of the Conference, authorisation for this purpose, at any rate in the form of a telegram from their Government announcing the despatch of the necessary powers. The Committee further points out that the United States of America have furnished their representative with advisory powers only, and that the Government of the Union of Soviet Socialist Republics has appointed only an observer. "

The report was adopted.

9. **General Discussion** (continued).

M. KAO LOU *(China)* wished first, on behalf of the Chinese Republic, to thank the Government of the French Republic for the hospitality it had offered the Conference. He then proceeded as follows :

" China, more than perhaps any other country, was desirous of signing a Convention on the Treatment of Foreigners provided it was based on complete and entire equality and reciprocity.

" Were the discussions of the present Conference to result in a Convention of that kind without any reservation or discrimination of any sort as to the articles embodied in it, China would warmly accept it. If the reverse were the case, there could be no ground for surprise during the debates of the Committees or of the Conference in plenary session if the Chinese delegation were to find itself compelled to make reservations on certain articles. China, not by any act of her own nor of her own free will, was placed in a very special or, rather, abnormal situation. Foreigners on her territory enjoyed there privileges of a kind which were not enjoyed by Chinese nationals and such as made it impossible for the Chinese Government, notwithstanding its goodwill, to ensure, grant or even guarantee certain rights to foreigners and, in particular, to assure them the protection of the common law by which all Chinese citizens were governed ".

M. POPESCU *(Roumania)* said that the Roumanian Government welcomed with keen satisfaction the general principles and objects of the Conference. The Roumanian delegation ventured to remind the members of the Conference that the spirit which had directed all the economic legislation of the Roumanian Government throughout the current year had been inspired by the ideal of economic co-operation which M. Serruys had expounded with such authority at the morning meeting.

The first result of the agrarian tendency of Roumania's economic policy had been the frank acceptance of the principle of economic interdependence and the abandonment of the idea of economic self-sufficiency.

Roumania's entire foreign economic policy had been turned in the direction of the international economic co-operation which had been so warmly recommended by the 1927 Conference and which was the basis on which the League relied for the foundation of peace.

It was that spirit which had led to the reduction of the level of the Roumanian Customs tariff, which had come into force on August 1st, 1929, and which was the first tariff subsequent to the World Conference to show a reduction in rates.

A number of new economic laws had recently been prepared in the same spirit. There was, for instance, the law creating free zones in Roumanian ports with a view to facilitating the transit of international goods and assisting in the economic and financial revival of Eastern Europe.

As to labour policy, M. Madgearu, Minister of Industry and Commerce, had made himself the mouthpiece of a tolerant labour nationalism as opposed to an aggressive capitalist nationalism. The assistance of experts was gladly welcomed by the peasants who struggled to acquire land solely as a means of assuring their work its full value.

The protection of national labour was imposed as a " State dogma " owing to the inevitable increase of the necessary population.

The regulations on immigration had been drafted in tolerant terms and tended towards co-operation between national labour and foreign labour, preference invariably being given to properly qualified labour irrespective of nationality.

Roumania had suffered seriously from her isolation from the world market and the State had sustained great losses owing to the exclusion of the foreign capital required to develop the country's resources. A radical change had been made in regard to the regulations governing

foreign capital, which had been placed on a footing of complete equality throughout the national economic legislation.

He would venture to recall the statements made by one of the most important Belgian capitalists with interests in Roumania, M. Meeus, who, at a banquet offered to the Roumanian Minister for Industry and Commerce on his visit to Brussels, had congratulated the Roumanian Gover ment not only on the spirit of progress with which its economic legislation was imbued, but also on the absolutely impartial manner in which the laws were enforced. The Roumanian Government would follow the proceedings of the Conference with the keenest interest and would give steady and sympathetic consideration to the final text submitted to it.

MAHMOUD FAKHRY PASHA *(Egypt)* said that the Government of his Majesty the King of Egypt had examined the draft Convention drawn up by the Economic Committee of the League with the closest attention.

The draft as a whole fully corresponded with the desires of the Royal Government, which wished to grant foreigners allowed to establish themselves in Egypt the same privileges as those granted to Egyptian nationals. An old tradition existed in Egypt under which the foreigner was welcomed with cordiality on entering Egyptian territory. It was desired that he should be granted every facility for the exercise of his profession, his trade or industry and should be allowed to acquire movable or immovable property and dispose of it freely.

At the outset of the Conference, however, the Royal Government could not but point out that certain classes of foreigners possessed privileges in Egypt which secured for them a treatment different from national treatment and which exempted them to a certain degree from the sovereignty of the Egyptian State.

This situation was the result of treaties known as the Capitulations concluded in former days between Christian States and the Ottoman Empire and also, he must say, as the result of the progressive extension of guarantees conferred by these treaties gradually obtained owing to the feebleness or too great spirit of tolerance shown by the local Governments.

The Royal Government was well aware that the object of the present Conference was not to discuss the question of the abolition or amendment of the capitulary regime, and the draft Convention which was the object of its work was designed to deal with other situations. Nevertheless, inasmuch as the aim of the draft was to put an end to the differential treatment practised between nationals and foreigners to the prejudice of the latter by various States in their own territory, the Royal Government, which proposed to enter into negotiations with the capitulary States in regard to the capitulations, expressed the hope that the Conference would be prepared to consider the case of Egypt where there was also a differential system as between certain classes of foreigners and nationals but one which operated in favour of foreigners.

This differential regime was primarily characterised by three privileges or immunities—immunity of jurisdiction, immunity of taxation and immunity of legislation.

I. *Immunity of jurisdiction.*—This meant that the subjects of capitulary States would not be tried by the national Egyptian courts. Their persons and property remained under the protection of the States of which they were nationals, with the result that both in criminal, civil and commercial cases they were amenable to the consular courts of their own countries sitting in Egypt or to courts containing a majority of foreign magistrates (the mixed tribunals) which had been established in Egypt with the consent of the capitulary States.

Since Egypt was prepared to accept the provisions of Article 9 of the draft Convention, which covered civil and legal guarantees, she trusted that the capitulary States would recognise that the time had come to modify the existing regime in the direction of that national treatment provided for in Article 9.

II. *Immunity from taxation.*—It was maintained that Egypt was not free to subject nationals of the capitulary States in every respect to the same taxes and charges to which Egyptians themselves were subject, but that in the case of several categories of taxes and charges the previous consent of those States had to be obtained.

The Royal Government contested that view. According to the texts of the capitulations and to precedent, nationals of the capitulary States should be granted only equality of treatment with Egyptian nationals, that equality being the maximum which the foreigner could reasonably demand. The theory that the capitulations restricted the freedom to impose taxation could only be explained by the fear that, in the political and administrative conditions which obtained in the old State, discrimination might be established between foreigners and nationals either in regard to establishment or in regard to taxation.

By accepting Article 12 of the draft, Egypt would undertake to observe perfect equality of treatment. The Royal Government was entirely confident that in those circumstances the present Conference would be viewed by the capitulary States as a suitable opportunity for considering whether the regime set up by the draft Convention did not now provide ample guarantees.

III. *Legislative immunity.*—This immunity consisted in the fact that, under the influence of ideas more or less similar to those which had caused the claim that foreigners were immune from taxation, the system had been set up in Egypt according to which Egyptian laws, in order to be applicable to foreigners, required the sanction of the General Assembly of the Mixed Tribunals.

In regard to legislation in general, as well as in regard to fiscal legislation, the Royal Government was convinced that the regime set up by the draft Convention would amply safeguard the legitimate interests of foreigners and might with advantage ultimately replace the previous approval of the General Assembly.

The present system interfered with the responsibilities of the territorial Government, wounded its dignity, was not consistent with legislative activity—especially under the parliamentary system —and might in the long run injure the interests which it was supposed to protect.

In putting the foregoing considerations before members of the Conference, the Royal Government had no intention of asking it to pronounce an opinion on the questions set out above. These were very properly a matter of concern to the Royal Government more than to any other Government. As, however, these questions were closely linked with those with which the Conference had to deal, the Royal Government ventured to hope that, either in the form of a recommendation or in any other suitable form, the Conference would express its general agreement with the Egyptian Government's aim, which was, while accepting the regime of ordinary law between civilised countries which the Convention was to establish, to put an end to the differentiation of regime still existing in Egypt to the advantage of certain foreigners, as that regime had now become incompatible with the dignity of Egypt, with the state of her legislation and her administrative and judicial organisations, and also with the general interests of all foreigners established in that country.

The result of that system was to create little States within a State and was quite incompatible with the exercise of territorial sovereignty as understood and practised to-day. The system was, indeed, a veritable anachronism. At the time when the capitulations had been concluded, public authority in the Moslem world was bound up with religious authority. There was no other legislation in existence except the Koranic law. Since non-Moslems could not be made amenable to the laws of the country, they necessarily remained outside them. At that period in Western Europe itself the system of the personal character of laws still existed, and the modern notion that the State legislated for all persons living in its territory had not then been precisely defined.

The capitulations went back to the twelfth century, if the first agreements concluded between Moslem princes and a number of Italian republics were to be counted among them. In any case, their starting-point might be said to be the year 1535, on which date the Treaty of Alliance between Sultan Soliman the Second (the Magnificent) and King Francis the First of France had been signed.

In allowing to subjects of the King of France coming to transact business in his States, their own laws and their own judge, the Sultan had abdicated none of his rights, since those foreigners were not amenable at that time to the religious law which only regulated the relations between the sovereign and his subjects.

So little did the Sultan regard the recognition of the situation of the French merchants to be inconvenient that, while waiting the establishment of diplomatic relations and the signature of similar treaties with other Christian princes, he agreed to extend the system enjoyed by subjects of the King of France to all foreigners travelling " under the name and banner of France from olden times to the present day on condition that from now henceforth they travelled in Egypt in the same way ".

At that time foreigners were not only legally but also materially outside the common law of the countries of Islam. They lived apart in a separate quarter called the " Fondouk ". That quarter, which was generally walled and closed with gates, contained the warehouses in which their goods were stored and the dwelling of their consul. It would be understood that, in those circumstances, the status constituted by what were now called the capitulary immunities had been granted to a small number of foreign traders living apart from the population of the country.

That state of affairs, however, had not existed for a long time.

Foreigners were taking part in the economic, social and even the public life of the country. Not only were they traders, but lawyers, doctors, bankers and officials. Their number was considerable. The statistics for 1917, the last published, gave the following figures : Greeks : 56,731 ; Italians : 40,198 ; English : 24,354 ; French : 21,270 ; Austro-Hungarians : 2,789 ; Germans : 157 ; other nationalities : 29,653.

The organisation of the State had become entirely lay. Legal relations, except in the special matter of family law, were kept entirely distinct from religious relations.

The capitulary regime, therefore, had now become an indescribable anomaly.

It was, indeed, inconceivable that the Egyptian State should be prevented from legislating for all the inhabitants of Egypt at the moment, and that it should be unable to bring before its own magistrates for judgment any breaches of the penal code committed in its territories. It was inconceivable, too, that it should be disallowed the power to tax certain foreigners when important public works necessitated by the constant increase in the population, care for the general health of the territory, and the spread of education, demanded corresponding increases in the resources of the State.

This was all the more inconceivable in view of the fact that alone among the nations created as the result of the dismemberment of the Ottoman Empire, Egypt was still required to support the burden of the capitulary system. When Bulgaria, Greece, Roumania and Serbia had been granted political existence, they had not had to submit to capitulations. More recently Iraq, Palestine, Syria, Transjordan, the Kingdom of the Hedjaz and Turkey, the direct heirs of the Ottoman Empire, had been freed from the capitulations.

The dynasty which for more than a century had had the glorious task of guiding the destinies of Egypt had resolutely led the country in the direction of Western civilisation. In the organisation of public services, in legislation and in methods of administration the countries of modern Europe had served and still served as models. His Majesty King Fuad the First, with a clear perception of the needs of his people, was carrying on this work with energy. In authorising its representatives to sign the draft Convention to be discussed by the Conference, the Royal Government clearly showed that it was ready to grant to all foreigners those guarantees which were at the moment regarded as good and sufficient. He would voice on its behalf the hope that the Conference

would afford an opportunity to those States which still enjoyed in Egypt out-of-date guarantees resulting from the capitulations to discuss whether the moment had not come to cause this state of affairs to disappear, for in the unanimous view of the Egyptian Government nothing could henceforth justify it.

M. ENGELL *(Denmark)* recalled that, in the memorandum on the draft Convention sent to the Secretariat, the Danish Government had congratulated the Economic Committee on its work on the subject under discussion, realising that the problem was extremely difficult. The Government had further stated that the draft was in general acceptable to Denmark, although there were certain divergencies between Danish law and its provisions. These divergencies were more or less important, and some of them were due to the economic development and structure of the country. In the view of the Danish Government, divergencies of this kind were quite natural and could not be regarded as antagonistic to the general principle of the draft.

The Danish Government had enumerated the differences between Danish law and the draft, but it had not done so in order to suggest that it would be impossible to remove, if need be, certain of those differences. He thought it desirable, however, to draw the Conference's attention to the general features of Danish economic policy. He ventured to claim that Denmark belonged to a group of countries which had long proved in actual fact their attachment to the principle of the freedom of trade.

Whether in the matter of Customs policy or in the domain of import and export prohibitions, no country was more enthusiastic than Denmark for the abolition of the existing impediments to international trade. As to the treatment of foreigners, it might also be maintained that the principle of national treatment was in general adopted in Denmark. He would therefore make a small observation on what M. Serruys had said. He thought that it would not be fair to ask countries which, like Denmark, had adopted the most liberal principles in their economic policy to make yet further sacrifices by complying with the draft Convention in all its details without being given credit for their general liberality.

The Danish Government accordingly hoped that, in the discussion on the detailed clauses, it would be possible to agree to certain modifications which would enable those countries which were enthusiastic upholders of the work of the League to sign and ratify the Convention, for, on this point, Denmark had certain principles which were somewhat in the nature of a doctrine. If Denmark signed an international Convention, she was anxious to ratify it as well.

As to the question of the coming-into-force of the Convention, he fully realised the purpose with which Article 26 had been drafted in the form proposed. It was, if he might employ a metaphor, to assure beforehand the birth and life of the child, but, if he might say so, of a sickly child which would probably have to overcome certain difficulties if it was to win its way in the economic world. For this reason, the Danish Government thought that it would be better to adopt, in regard to the coming-into-force, a system similar to that adopted in the Convention on Import and Export Prohibitions.

M. SANDSTROEM *(Sweden)*, speaking on behalf of his delegation, paid a tribute to the Economic Committee of the League and to the International Chamber of Commerce for the happy initiative they had taken in the question now before the Conference and the valuable work they had achieved. At the same time, his delegation wished to confirm Sweden's desire to extend her co-operation to this field of international relations.

In regard to the draft Convention, it would be useful to recall in the first place that the regime proposed for foreigners was only part of a general body of reforms recommended by the International Economic Conference, all intended to remove obstacles to international commerce and the movement of capital.

As the Swedish representative had stated at the recent session of the League Assembly, a large number of Governments had formally subscribed to the principles enunciated by the world Conference, but a far smaller number had attempted to put them into execution. It would be difficult for the liberal countries, among which Sweden was entitled to claim a place, to continue their policy if the principles in question were neglected by the other countries, and it might have been hoped that a larger number of States would have shown their goodwill in this field. He was alluding more particularly to the present tariff situation.

He did not say this as a prelude to a criticism of the draft of the Convention on the Treatment of Foreigners. The loyalty of Sweden to the League and to the work of the League had been displayed on too many occasions for her goodwill to be suspected.

There were, of course, in the commercial section of the draft difficulties due to certain provisions in the Swedish legislation which the members of the Conference had probably noted in reading the observations which the Swedish Government had submitted to the Conference on the draft Convention.

There were certain discrepancies between the Swedish law and the draft Convention, more particularly on two points. In the first place, Sweden employed the concession system for foreigners who wished to establish themselves as traders or to carry on an industry. Secondly, she had restrictions in regard to the right to acquire immovable property.

Obviously, account could not be had of the individual characteristics of national legislations, except within very narrow limits : otherwise, a result highly undesirable would ensue—and one to which many delegates had already referred—namely, the enunciation of a principle which, as a result of the modifications adopted, would no longer be recognisable. In order to achieve a solution, each State must make its contribution, and the Swedish delegation was fully conscious that it must bear its part in questions so important and delicate as that of the draft Convention. It was, however, undesirable to allow oneself to be carried away by adherence to a principle so far as to reject any modification that was proposed. The object which the Conference should place

before itself was not a convention perhaps embodying an ideal but remaining a dead-letter in default of ratifications, but a convention which would really be able to live, and which might form, as the representative of the International Chamber of Commerce had expressed it, the *Magna Charta* of foreigners. There was the more reason for a word of caution when the difficulties of achievement encountered by the recommendations of the Economic Conference and the fate of certain recent Conventions were remembered. Sweden was entitled to make these observations in view of the attitude which she had taken towards the economic work of the League.

The task of the Conference was difficult and the field to which it extended a very wide one. The Swedish delegation wished to remind members that it was important to achieve a real and definite solution which would meet with the sincere support of the Governments and thus contribute to the welfare of mankind.

M. LANDUCCI *(Italy)* said that the Royal Italian Government had been very happy to accept the invitation to the Conference which had been called for the important object of drawing up a Convention on the Treatment of Foreigners.

The International Economic Conference held at Geneva, in enunciating the principle that the legal, administrative, fiscal, and judicial guarantees required by the nationals of one State carrying on their activities in the territory of another State and establishing themselves there were one of the essential conditions of international economic co-operation, had, in the last analysis, laid down the best method of reconciliation among the peoples.

Italy, which in regard to safeguards for foreigners possessed one of the most advanced and most liberal legislations in force, had endeavoured to secure the acceptance in the bilateral Convention concluded with other States of a principle which fully met the essential conditions formulated by the Geneva Conference. It was for that reason that, in fulfilling the duties entrusted to him by the head of the delegation, who had been detained at Rome by other engagements and was unable to take his place at the Conference before the following day, he wished to assure the delegates to the Conference that the Italian delegation would co-operate with the utmost goodwill in the drafting of a convention prepared with a view to securing the greatest possible number of adhesions.

With this object, the Italian delegation proposed to expound and press for the adoption of certain principles which it considered of importance, and to formulate certain reservations suggested by the examination of the draft submitted by the Economic Committee. There was one essential previous question on which the work of the Conference was based and which had especially attracted the attention of the Italian delegation. He was referring to the problem of the admission of the nationals of one State to another State for the purpose of carrying on their business. This question should, in the Italian view, be contemplated from two aspects, that of safeguarding public order and that of achieving true economic co-operation between the different countries. The solution of the other questions connected with establishment in the strict sense of the term, for the purpose of a specific economic activity, was less difficult. The Italian delegation would take its stand on the fact that this question in Italy, save for certain exceptions which were commonly admitted, was regulated on the basis of equality with nationals.

The fact that the present Conference was to attempt to conclude a multilateral Convention made the task of the Conference of course more onerous. It was not easy to conciliate differences of law and policy when it was still uncertain what States would sign the Convention and what would be the scope of the concessions which it would be necessary to make for the purpose of its application in the event of such application being found feasible in the case of all countries.

The Italian delegation considered that the Convention should keep rather to the determination of general principles by the choice of the most elastic formulæ possible, so as not to impose excessive burdens in practice on certain countries or to grant unjustified concessions to other countries.

A Convention which fixed general lines and was characterised by sufficient elasticity might facilitate, by the conclusion of bilateral treaties, the adoption of agreements which, after a previous examination of the laws and circumstances existing in the countries of the contracting parties, would result in a fair reciprocity of treatment in conformity with the respective interests of the countries concerned.

In other terms, the Italian delegation thought that the valuable draft prepared by the Economic Committee and illustrated by the articles in the Protocol provided a useful basis of discussion. It also thought, however, that the draft, with its excess of detail and owing to certain over-specialised provisions, was far from being in the form which it believed to be the most appropriate for multilateral treaties.

On the foregoing grounds, the Italian delegation would be obliged to formulate on behalf of the Royal Government a general reservation in regard to certain of the clauses in the draft. It proposed to put forward its point of view when the Conference came to examine these articles individually. It was in this spirit that the Italian delegation would co-operate cordially and sincerely in the work of the Conference.

M. MENDEZ PEREIRA *(Panama)* said that, of all the countries of Latin America, none had come into the world in more favourable circumstances as regarded the equitable and sympathetic treatment of foreigners than the Republic of Panama. Panama was situated near one of the most frequented routes in the world. The country had consented to be divided in two, for the general welfare of mankind, and shipping routes, in which the interests of the whole human race were involved, met on her territory. The legislation of Panama was in broad conformity with the country's international situation, which, although highly advantageous, was at the same time very dangerous to the stability of the national character and the formation of pondered national ideals.

Such, in a few words, were the reasons for which the Panama Government had, from the very first, viewed with the greatest interest the calling of the present international Conference, which was to attempt to solve in a satisfactory way the question of the treatment of foreigners, while taking into account the lessons of civilisation and the humanitarian point of view. It was for these reasons that the Panama delegation had given the most careful consideration to the draft Convention prepared by the Economic Committee of the League, which was to serve as a basis for the discussions of the Conference. The economic and legal co-operation, which were unquestionably indispensable to international harmony and good understanding, had been studied in the broadest possible manner. These questions, however, were so complex that they might have, for each country, different effects and reactions which could not be foreseen. Certain problems which arose as a consequence of the attempt to settle the matter internationally had already been indicated to the Conference.

The American countries, which had recently concluded a Convention on Aliens at Havana, had included in that Convention certain clauses which could not be ignored by the present Conference, and which, moreover, had not been ignored, since mention had already been made of them. Article 3 of that Convention gave full force to what he would venture to call " active citizenship ", the idea of which should be introduced into the present draft in order to complete Article 11. Article 7 of the Pan-American Convention provided an essential safeguard, at any rate at the present time, for the young democracies of America.

The Cuban delegate had already referred to the privileged position which would result for foreigners as compared with nationals from Article 9 of the draft covering the defence of personal interests in the courts of law and in dealings with the administrative authorities. Furthermore, Article 11 of the draft contained an exception in regard to judicial and administrative obligations —an exception which was also at variance with the American wider conception of active citizenship—whereby a foreigner was obliged to give his entire co-operation in the environment in which he lived or carried on his activities. In many American countries foreigners must, or at any rate might, serve on a jury. They might also serve on municipal corporations. In 1864, a representative citizen of Panama, Dr. Justo Arosemena, anticipating the future Utopia, had, at an international conference, urged that the same political and civil rights should be granted to all Americans, irrespective of their place of residence.

The delegation of Panama reserved its right to advance in the proper Committee the foregoing observations, with others relating to the articles which covered the complex questions of commerce and industry. These observations, although offered from a practical point of view, would, needless to say, be marked by a spirit of sincerity—far removed from xenophobia ; they would, indeed, be marked by an appreciation of the interdependence of nations. The delegation of Panama believed in any case that xenophobia, like an inflamed nationalism, was a question of mentality and sentiment that must be cured by education if it was desired to achieve international agreement on a sincere, effective and firm basis.

M. HOLMA *(Finland)* said that the Finnish Government had accepted with the greatest satisfaction the invitation to take part in the Conference. The important objects at which it aimed in the various fields of economic life were fully realised by his Government.

Fully conscious of the usefulness of concluding an international convention achieving a satisfactory settlement of the conditions of establishment and activity of the nationals of one country on the territory of another, the Finnish Government was ready to support any effort made towards achieving this object.

In its observations submitted to the Secretariat of the League, the Finnish Government had pointed out that certain provisions of Finnish legislation, concerning among other things the position of foreigners, were at the moment being subjected to a complete revision. Since this legislative work was not yet finished, he could assure the Conference that the principles contained in the draft Convention would be the object of very close attention on the part of the Finnish Government.

He must, however, during the general discussion point out that the Finnish legislation now in force differed mainly in two essential points from the principles underlying the draft Convention.

In the first place, he would refer to the provisions concerning the right of foreigners to acquire and possess immovable property, in regard to which the Finnish laws in force differed from the draft Convention. On this point the Finnish legislature had taken into account the principle adopted by the Economic Committee of preserving the national resources of the country for the national production.

In the second place, in regard to the exercise of activities of an economic nature by foreigners, the present Finnish law was based on a system of concessions which was due to the difficulties experienced by a country not well favoured by nature when competing in the international market with countries economically more happily situated.

He would, however, emphasise that, in so far as the application of the provisions in force were concerned, the Finnish authorities had always shown themselves to be of a very liberal disposition in regard to foreigners.

He would add that the draft contained a number of provisions which might give rise to observations concerning various questions of secondary importance which it was not yet the moment to enumerate.

He would reserve his right to submit later the more detailed observations which the Finnish delegation might find it necessary to make.

Mr. GORDON *(United States of America)* said that, upon its receipt of the communication from the League of Nations dated December 18th, 1928, enclosing a copy of the draft Convention, the United States Government, as it had informed the Secretary-General of the League in its

answer of February 23rd, 1929, had transmitted the draft Convention to the appropriate American authorities and in the meantime had itself given the matter its careful attention and consideration, the result whereof had served to confirm the interest which the Government entertained in the subject-matter of the draft Convention and in the purposes and objects of the discussions to be held by the Conference.

This study of the draft Convention had made it apparent that the right which the Constitution of the United States of America reserved to the several States to enact laws upon various matters covered many of the important subjects dealt with by the proposed Convention. For instance, the right of foreigners with respect to real estate within their territories was a question which, under the American Constitution and the system of laws flowing therefrom, fell within the exercise of their legislative powers by the several States, and in consequence the right of foreigners to own lands and to succeed thereto by inheritance was prohibited in some of the States by statute, and in others by their Constitution as well. Likewise, the several States were entitled to withhold and to grant freely or conditionally the privilege of engaging in business within their borders to corporations organised under the laws of another jurisdiction.

This did not mean, however, that the Government of the United States was not in a position to assure to aliens within its jurisdiction as favourable treatment as was generally accorded by other Governments to aliens within their confines. On the contrary, he ventured to recall that there were at present residing within the United States millions of non-naturalised aliens who not only were as well protected in their persons and property as American citizens, but who also for all intents and purposes were untrammelled in their activities, whether of commercial, educational or professional character. In this connection, it should be emphasised that aliens, as well as citizens of the United States, came within the purview of the fourteenth amendment to the Constitution, which provided in part that no State shall " deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws ". With very few exceptions, aliens had been free to exploit the natural resources of the United States ; they had been permitted to engage in commerce and other commercial pursuits, and even the professions, with the exception of admission to the bar, had been open to them.

Because of the powers reserved to the several States, as above indicated, it had necessarily been the general policy of the Federal Government to abstain as far as possible from concluding treaties with foreign Powers, the provisions of which directly affected the police power of the several States. However, in view of the provisions of the fourteenth amendment to the Constitution of the United States above referred to, and of the existing practice of the several States in regard to the treatment of aliens, as well as of the provisions of bilateral treaties concluded between the United States and foreign Powers, it might be asserted that in general the rights and privileges of aliens in the United States were as broad as those accorded by any other State to aliens within its jurisdiction.

As the delegates to the Conference were aware, the American Government had in recent years concluded various treaties of friendship, commerce and consular rights based upon both national and unconditional most-favoured-nation treatment and containing provisions conferring very broad privileges upon the nationals of each contracting party. The Treaty with Germany, signed on December 8th, 1923, was typical of this favourable form of treaty, and its provisions had since been followed in subsequent treaties which the United States Government had concluded, and was in process of negotiating, with other Governments. This liberal type of treaty represented substantially the range of subjects in this general field regarding which the Federal Government was supreme. For the Government of the United States was one of limited or enumerated powers, and this fundamental principle was explicitly set forth in the Constitution itself, which provided that " the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were reserved to the States respectively, or to the people ".

In view of the foregoing, it would, of course, be understood why the United States Government felt that it was unable at this time to become a party to the Convention before the Conference. He trusted that it was equally clear that, far from such inability being an indication of any lack of interest on his Government's part in the subject-matter of the Convention and the objects of the Conference, the legislative and administrative provisions in force in the United States showed clearly its very lively concern in a liberal regulation of the rights of nationals or companies of a State admitted to exercise their trade, industry or other occupation, or to settle, in the territory of another State. It was, then, with the greatest interest that his Government welcomed the opportunity to follow the deliberations of the Conference and it had been glad to designate a representative for that purpose.

M. PEROUTKA *(Czechoslovakia)* said that his Government was very appreciative of the considerable advantages which were certain to result for international relations from, first, a precise settlement of the question forming the subject of the draft Convention as between even those countries which were most widely separated from one another and would be bound by the terms of the Convention, and, secondly, from the very noteworthy progress which would be made by the adoption of fundamental principles conceived in as liberal a spirit as possible in view of the present circumstances. He must observe that the Czechoslovak Republic granted foreign nationals substantially the same treatment as that granted to its own nationals. The relevant guarantees were to be found in the treaties of commerce concluded by Czechoslovakia and were based on Czechoslovak laws covering the exercise of the various possessions and the carrying-on of industrial trade. It was only stipulated in the field of industry and commerce that countries whose subjects

established themselves in Czechoslovakia for the purpose of carrying on these various activities must not refuse reciprocal treatment to Czechoslovak subjects. These guarantees were also laid down in the provisions of civil law and judicial and administrative procedure ; likewise in the matter of fiscal treatment, in which field Czechoslovakia had already entered into definite engagements in a certain number of fairly detailed bilateral conventions.

As to the position of companies, Czechoslovakia had a legal system requiring previous authorisation for limited liability companies. In present conditions of national economic development, the Czechoslovak Government considered it impossible to abstain from examining and laying down conditions for the constitution of companies whose transactions affected public interests, as, for instance, big industrial, commercial, transport, financial or insurance companies, etc. Foreign subjects were under exactly the same regime as nationals to whom the principles of the regime were applied.

In regard to the draft Convention on the Treatment of Foreigners, one of the clauses—that in Article 8 referring to the choice of persons for the direction of foreign establishments in a country—was closely related to a system of previous authorisation, to be found in Article 16, paragraph 7, of the draft, subject to reciprocity. The above-mentioned system contemplated an assimilation or virtual naturalisation of foreign concerns in the country offering them various resources in raw materials and labour, as well as access to the national market, all of which were indispensable to them. This system was based on the mutual interest of individual activities which knew no frontiers and of the community whose horizon was naturally more restricted. The system might have advantages as well as disadvantages ; but it seemed essential—or at any rate useful—in the case, for instance, of key industries, over which the country might wish to exercise a stricter supervision either in the form, for instance, of a monopoly or otherwise.

If it were proposed that the Conference should establish a Convention on the Treatment of Foreigners on the basis of absolutely complete equality with nationals, it would have to take into account the fact that the system laid down in Article 8 of the draft might perhaps make it possible for foreigners to remain genuinely foreign in the environment which offered them hospitality, material support and moral security.

In conclusion, he would state that the Czechoslovak delegation would place on the table of the Conference a number of observations and suggestions with a view to the special discussion of the various articles in the draft. These observations and suggestions formed a continuation of the comments which the Czechoslovak Government had already offered and were inspired by the keenest desire to reach a solution which would advance the common interest at stake. He wished to associate himself with the tribute which had been paid to the work of the Economic Committee.

FIFTH PLENARY MEETING

Held at Paris on November 7th, 1929, at 3.30 p.m.

President : M. DEVÈZE.

10. **General Discussion** (conclusion).

M. POZNANSKI *(Poland)* said that the Polish Government had noted with very great interest the draft Convention on the Treatment of Foreigners.

He would first emphasise the importance of the work which the Conference was invited to undertake. The Convention on the Treatment of Foreigners was only one stage in the great work of bringing nations together in the political and economic field which the League of Nations had been pursuing for several years, and in which his Government was collaborating with the utmost enthusiasm.

The Convention before the Conference was of great importance. Its success, which he did not for a moment doubt, would be a proof to public opinion of the increasing vitality of the League and of the practical nature of the work of economic reconciliation as between the nations which was being urged forward at Geneva.

However important the economic aspect of the work entrusted to the Conference might be—and he was completely in agreement on this point with the delegate of the Netherlands—it had also a humanitarian value which it was not possible for the Conference to neglect ; and he would, as a native of Poland, lay particular emphasis upon this aspect.

He would venture to remind the Conference that, for a whole century, numerous Poles—as the result of the partitions of their country—had been obliged to leave their homes and to seek refuge in various countries of the world. Everywhere they had found means of making themselves useful and of taking an active part in the life or the countries in which they resided.

Since the Conference was meeting in France, whose hospitality towards political emigrants had always been cordial by tradition—and he would pay a tribute to France on this account—he would venture to recall that a large number of Polish emigrants had taken an active part in the economic life of their country of adoption. Further, at the present moment, following the restoration of the Polish State, numerous Poles were leaving their country in order to assist various countries with their industry and thus to contribute to the industrial and agricultural activity of those countries.

The Polish people could therefore appreciate at its full value the wide scope of the problem of the treatment of foreigners, which the Economic Committee, as the result of its happy initiative, was proposing should be settled by means of a Convention.

The very interesting discussion which had taken place had already enabled him to perceive two characteristic tendencies.

On the one hand, an ideal Convention might be contemplated closely resembling the draft submitted ; but such a Convention would, he thought, be adopted only by a very small number of States. On the other hand, a more practical view had been expressed to the effect that it would be better to draft a more supple convention, taking into account the very different positions of the adhering States, which might more easily obtain the signatures of a large number of countries.

The Conference should realise that there was no question of recommending a meaningless Convention falsifying the aims of the present draft. In order carefully to explain the attitude of his country he desired to state that Poland was in favour of a solution which would make it possible, while maintaining untouched the objects assigned to the Conference by the League, to obtain as large a number as possible of signatures and of ratifications. In his view only an international convention binding on a large number of States would result in achieving a universal system, which was the object of the League's work. The Conference could achieve that object if the Convention were sufficiently supple and if it really fulfilled the requisite conditions of justice and contained a true understanding of the great interests at stake. These interests, as members were aware, differed very greatly according to the countries concerned.

He desired to emphasise as an example, the variety of positions of which account would have to be taken in the interests of the Convention.

For example, there were peculiarities in the case of Poland due to her special geographical situation. He could not pass over in silence the problem of emigration which, owing to the rapid increase in the population of Poland, was becoming a factor of continuously increasing importance. It was closely bound up with the economic problems dealt with by the League. Emigration was of great importance not only to the economic life of countries of emigration but also to countries employing foreign labour. It was therefore to be hoped that an international solution of that question would successfully and quickly complete the present Convention on the Treatment of Foreigners.

Everyone agreed, he thought, on the importance of the economic character of the work entrusted to the Conference. At the same time, however, it was necessary to bear in mind that, in this respect, the position of the participating States differed greatly. Some were highly industrialised, while others were agricultural States and others were still in the process of completing their industrial evolution. Account must be taken of the great differences existing between economic conditions obtaining in the various countries if a just Convention were to be achieved.

In conclusion, he wished to state that, acting on the instructions of his Government, the Polish delegation was firmly determined actively to co-operate in the work of the Conference in the sincere hope that it would be fruitful in results and would achieve success in the form of a Convention which would become an international charter for the equitable treatment of foreigners in as large a number of States as possible.

THE PRESIDENT declared the general discussion closed.

11. Allocation among Committees of the Articles of the Draft Convention.

THE PRESIDENT proposed that the Conference should constitute four Committees with the following programme :

Committee A : Safeguards for international trade ; freedom of establishment ; exercise of trade, industry and occupation (Articles 1, 2, 5, 6, 7, 8, 15, 28, 29 and Final Act) ; civil and legal guarantee (Articles 9, 10 and 11).

Committee B : Fiscal treatment (Articles 3, 4, 12, 13 and 14).

Committee C : Treatment of companies and legal persons (Article 16).

Committee D : General provisions and drafting (Articles 17 to 27).

The President proposed that Committees A and B should begin their sessions immediately. Committees C and D would meet later, according to the progress of the work of Committees A and B. Only the *Drafting Sub-Committee* of Committee D would sit permanently.

He requested delegates to put down their names for the different Committees according to their wishes and interests.

12 Appointment of Chairmen and Rapporteurs of Committees.

On the proposal of the PRESIDENT, *the Conference appointed the following Chairmen and Rapporteurs for the different Committees :*

Committee A :

Chairman : Sir Sydney CHAPMAN (British Empire) ;
Rapporteur : M. POLITIS (Greece).

Committee B :

Chairman : M. GUERRERO (Salvador) ;
Rapporteur : M. ENGELL (Denmark).

Committee C :

Chairman : Dr. MARTIUS (Germany) ;
Rapporteur : M. DINICHERT (Switzerland).

Committee D :

Chairman : M. DE MICHELIS (Italy) ;
Rapporteur : M. ITO (Japan).

Drafting Sub-Committee :

Chairman : M. DE MICHELIS (Italy), to be assisted by a French-speaking and an English-speaking jurist and by M D'AVILA LIMA (Portugal).

An official of the Secretariat will be responsible for the Secretariat of each Committee and Sub-Committee.

13. Procedure.

M. PUSTA *(Estonia)* pointed out that the small delegations would be in a difficult position. Many of them consisted of only two members or even of one member, as was the case of the Estonian delegation. In view of the importance of Committees A and B, he proposed that they should not sit simultaneously.

THE PRESIDENT recognised that the difficulty to which M. Pusta had drawn attention was an important one. He thought, however, that, in order to ensure the good progress of the work, it was indispensable for the Committees to sit simultaneously. Otherwise, the various questions might as well be discussed in plenary session. The work of the Committees was intended to expedite the examination of the different questions. Delegations with only one member would of course be entitled to put down that member's name for all the Committees. In this way they would have an opportunity of defending their points of view in each Committee. As to the larger delegations, their right to be represented on any of the Committees would make it possible for them easily to secure the same object.

M. GUERRERO *(Salvador)* shared M. Pusta's view and urged that the Committees should not sit simultaneously.

THE PRESIDENT laid emphasis on the desirability of not prolonging the work of the Conference beyond reasonable limits. That could not fail to occur if, as M. Guerrero had proposed, the Committees met only in turn. He reminded delegates, moreover, that it would be for the Chairmen of the Committees to overcome the difficulty to some extent by determining the agenda of the meetings so as to enable the members of the smaller delegations, who had drawn attention to certain articles on which they had observations to make, to take part in the discussions when necessary.

M. PUSTA *(Estonia)* said that, if the Conference adopted the procedure proposed by the President, he would be obliged to reserve his right to make, if necessary, at a plenary meeting of the Conference, any observations he might have been unable to offer in the Committees.

M. SCHÜLLER *(Austria)* supported the President's proposal and observed that, although he was the only remaining member of his delegation, he had no fear of being unable to expound his point of view in the Committees, for long experience had taught him that the discussions in the Committees always lasted long enough to permit him to do so.

M. PARANJPYE *(India)* suggested that the rapid distribution of complete Minutes of the debates in the Committees would make it possible for delegates to ascertain what had happened at meetings which they had been unable to attend and to take the necessary steps.

M. NEDERBRAGT *(Netherlands)* supported the President's proposal. He wished to be informed on one point. The Netherlands delegation represented the Netherlands East Indies as well as the Netherlands. The member of the Netherlands delegation who also represented the Netherlands East Indies was empowered to speak on behalf of the two countries. He therefore asked whether only one member of each delegation would be entitled to speak in each of the Committees. He thought that each member of the delegations should be authorised to express his point of view.

THE PRESIDENT replied that the delegates were free to put down their names at their own discretion for the various Committees. There was nothing to prevent any delegation from expressing its views through the mouth of more than one of its delegates.

M. GUERRERO *(Salvador)* urged once again the inconveniences which would result from the two Committees sitting simultaneously. The reading of the Minutes would not be an adequate substitute for the advantages offered by attendance at the debates. He recalled that the League endeavoured so far as possible to avoid simultaneous meetings of Committees for which the same members had put down their names.

M. ITO *(Japan)* proposed as a compromise that a trial should be made for a few days in order to avoid dividing the Conference, by voting, into a majority and minority.

THE PRESIDENT welcomed this suggestion. He would only have proposed a vote in order to ascertain the opinion of the Conference. The experiment proposed by M. Ito would of course relate only to the question of the two Committees sitting simultaneously.

Dr. MARTIUS *(Germany)* supported the President's proposal which, in his view, afforded the only practical method. In any case, even the large delegations, like that of Germany, which consisted mostly of technical advisers, would be represented by the same Government representatives in the various Committees.

M. POPESCU *(Roumania)* also supported the President's proposal and pointed out that countries represented by a single delegate often had common interests with other countries. He suggested that they should make an agreement to represent one another, if necessary.

THE PRESIDENT concluded that the Conference was agreed that four Committees should be established, two of which should sit simultaneously, namely, Committees A and B. He would follow their work with close attention, and consult the Chairmen of the Committees should any difficulties arise.

The Conference approved the suggestions of the President.

It was understood that the Drafting Committee would be at the disposal of the other Committees in order to settle the wording of any proposals or resolutions put forward.

It was further understood that delegations with a restricted number of members should have the right to sit on any Committee.

THE PRESIDENT pointed out that it would be impossible for Committee C to meet until Committee A had completed part of its labours.

M. DINICHERT *(Switzerland)* agreed with the President. Committee A, however, which was to deal with the legal status of foreigners in general, would have to deal not only with physical but also with moral persons, and would necessarily therefore have to discuss the question of the treatment of foreign companies. Care must therefore be taken that a repetition of the discussion should not take place when Committee C began its work.

THE PRESIDENT agreed. Committee C would deal only with exceptions to the provisions drawn up by Committee A.

The President asked the delegates to submit their draft amendments in advance to the Secretariat.

SIXTH PLENARY MEETING

Held in Paris on November 29th, 1929, at 3 p.m.

President : M. DEVÈZE.

14. Examination of the Report of Committee B on Articles 3, 4, 12, 13 and 14 of the Draft Convention (Annex 1).

THE PRESIDENT said that the report of Committee B on Articles 3, 4, 12, 13 and 14 had been distributed.

15. Retention of Articles 3, 4, and 12 (2) : General Discussion.

THE PRESIDENT opened the discussion on Articles 3, 4 and 12 (2).

M. FLORES DE LEMUS *(Spain)* reminded the Conference that he had supported the maintenance of Article 3, provided that Committee B succeeded in achieving a more supple and more practical text than that contained in the "Brown Book". To his regret, he felt compelled to note that the Committee had not been successful. The text now submitted would inevitably encounter grave fiscal difficulties in many countries which would, in consequence, be quite unable to apply it. To take but one example, the Netherlands delegation had raised the question of the taxation on alcoholic liquors. An indirect tax on such liquors would inevitably mean discrimination between national and foreign goods. There were countries where, from the point of view of taxation, a distinction was made between alcohol produced by the Vine-Growers' Associations and alcohol from other sources. If the higher tax were placed on the latter products, discrimination was inevitable. He would recall the important reservations made in connection with this article by certain countries of Scandinavia, and, indeed, any country with a small population and a large territory would be forced to make such reservations.

M. BOLAFFI *(Italy)* said that he had already voted against Articles 3, 4 and the second paragraph of Article 12 in Committee B, solely for practical reasons. Italy made no discrimination whatever between foreign and national goods. Her policy was, therefore, in no way contrary to the spirit of the articles. The problem, however, which they raised had not been sufficiently studied, and he was of opinion that the treatment of foreign goods should not be one of the main objects of a Convention which dealt with the establishment of foreigners. The articles in question were closely allied to other problems connected with Customs duties and fiscal matters. In his view, therefore, it was better to delete the articles in order to avoid raising grave problems for which a solution could not be found.

M. ENGELL *(Denmark)*, Rapporteur for Committee B, said that the report showed that two very divergent tendencies had become manifest in Committee B from the start. The observations of M. Bolaffi showed the preoccupations of principle which had animated the adversaries of the articles. Those principles were quite clear. It was felt that there was a relation between internal taxation and Customs duties, and that therefore the question of internal taxation was better dealt with by means of bilateral conventions.

A large number of delegations, however, had, despite the close relationship of internal taxation and Customs duties, felt that the opportunity might not occur again in an international conference of settling such matters. They had been strongly of the view that, if there were to be any discrimination between foreign and home goods, it could only be effected by means of Customs tariffs and not by internal taxation. Some delegations, for example the Spanish delegation, had raised technical objections to the articles, and Denmark fully realised their force.

Committee B, after having examined the articles with great care, had voted for their maintenance by a very small majority, and, following the vote, the delegations which had been opposed to them had nevertheless taken part in the discussion on their form. Despite difficulties of principle which still existed, though the articles had been amended, the Danish delegation was prepared to vote for them. It did not feel that the observations of M. Flores de Lemus had the same force as formerly.

M. BRUNET *(Economic Committee)* explained that the Economic Committee, in framing the provisions submitted to the Conference, had been careful to avoid raising problems connected with Customs duties. Problems of that kind would be examined by the Conference on the Customs Truce. They would be the subject of negotiations which would follow that Conference, and these negotiations would, he hoped, lead to an appreciable improvement in commercial relations between States.

The provisions which were embodied in Articles 3 and 4 and the second paragraph of Article 12 in no way affected Customs duties, and the subject with which they dealt could not normally be connected with the study of problems concerning Customs duties. The Economic Committee had thought that it was essential not to let slip the opportunity afforded by the present Conference to settle the problems dealt with in these articles, as such an opportunity could not recur for some time to come. The guarantees which the articles in question were intended to give to the contracting States in the field of commerce and industry constituted, moreover, a really necessary supplement to those which the Convention was intended to secure for nationals themselves. But he would add that he had been particularly glad to hear the declaration of the delegate of Denmark, who had expressed his approval of these articles, whose expediency his colleague had doubted at the beginning of the work of the Committee.

Dr. MARTIUS *(Germany)* said that the decision which the Conference would now be called upon to take would be symptomatic of the general attitude towards the Convention. A very full discussion had taken place of all the articles in the draft prepared by the Economic Committee, and the German delegation was compelled to note that there had been many objections made to the draft and but few supporters of it. The problem raised by Article 3 was important from the economic point of view. A number of systematic reasons had been brought forward against the inclusion of the article in a general Convention, though it was to be found in a large number of bilateral treaties. The representative of the Economic Committee had informed the Conference that, if it did not adopt articles under discussion, the problems with which they dealt could not be settled by a collective treaty owing to technical difficulties. There might be one or two countries

in which, for technical reasons, the articles could not be applied, but, in the view of the German delegation, that was no reason why the other countries represented in the Conference should not adopt them. The Conference could choose to settle the matter or not, but if it decided not to do so, the favourable opportunity might not recur. The Rapporteur stated in his report :

> " . . . These articles, owing to the opposition of several Governments, had been placed in brackets in the draft, and thus gave the impression that there was the possibility of their being deleted. This consideration led many Governments not to pay special attention to this serious problem, and not to propose all the amendments they might otherwise have submitted. "

It seemed to him that this argument was futile. Every member was well aware to the work done by the Economic Committee, and no Government could seriously be held from proposing amendments merely because the articles in question had been placed in brackets

While the German delegation intended to submit a number of amendments to the articles, it would certainly vote for their maintenance and it would regard the vote of the Conference in that respect as of great significance.

M. DE NAVAILLES *(France)* said that the question whether Article 3 should be included in a Convention on the Treatment of Foreigners had arisen from the very outset. The French delegation had thought that the article should not be included in such a Convention, but it had, at the same time, maintained that the principles embodied in the Article 3 under discussion were so natural and obvious that the present Conference afforded a happy opportunity of settling the problems it raised on an international basis and by international means. The Conference could not hope for success if States were prepared to receive everything and to grant nothing. There could be no possible objection, he thought, to the principles contained in Article 3. National goods were protected by Customs duties. All that Article 3 stipulated was that foreign goods, once they had paid those duties, should not be the subject of further discrimination by means of internal taxes. The objections raised by the Spanish delegation really referred to the second paragraph of the Protocol, but the articles were designed to facilitate international relations and were therefore worthy of the greatest attention. If the French delegation were convinced that those relations would not be improved as a result of the Convention, it would undoubtedly refuse to sign it.

SIR SYDNEY CHAPMAN *(British Empire)* was in favour of the retention of the texts under discussion.

THE PRESIDENT said that, when the general discussion had been closed, he would call on members to vote on the principle of the maintenance of the Articles 3 and 4 and of the second paragraph of Article 12. Should the articles be retained, then their actual text would be discussed.

M. ZUMETA *(Venezuela)* said that Articles 3 and 4 clearly showed the conflict between certain proposals in the draft and the principle of just reciprocity urged by the Council. This had been described by the Economic Committee as the equivalence of taxes.

Since the articles established the same taxes on national products and on similar foreign products, thus annulling all distinction between the two, the resultant reciprocity was fundamentally unjust and unequal as between agricultural countries or countries with young industries and the large industrial States. The interests of both groups of countries were not fundamentally antagonistic, but each was the complement of the other, for in some it was labour which was unemployed and in others it was the land itself. The two kinds of interests must be conciliated. This had been forgotten in the draft, with the result that it seemed very doubtful whether any formula of conciliation could be found. The Conference was therefore running the risk of drafting a Convention which could only be accepted by one of the groups which he had mentioned, the other group being unable to adhere to it.

M. GUERRERO *(Salvador)* desired to speak as a representative of his country, having been unable to do so as Chairman of Committee B. He agreed with the observations of M. Bolaffi. The principle contained in the articles was excellent, but they were not opportune, nor were they in their proper place in the present Convention. It had not been merely the fact that the articles had been placed in brackets in the Economic Committee's draft that had induced Governments to pay less attention to them than to the others. They had done so from the conviction that they were out of place. The Economic Committee maintained that it had not desired to lose an opportunity of dealing with the problems in question by means of an international convention. That was a perfectly legitimate view, but it was equally legitimate for countries which required to safeguard their national industries to maintain that the articles in question were not in their proper place in the convention.

He was therefore against their adoption. The weak point of the Convention was that it sought to cover too many problems. Had the Conference been content to confine itself solely to the treatment of foreigners, it would, he thought, have fulfilled the desires of the League. It seemed, however, to be seeking to include the treatment of goods and the question of internal taxation, which were matters ordinarily settled by means of commercial bilateral treaties.

M. CARAVALLE *(Italy)*, referring to the symptomatic importance of the discussion, said that the Italian delegation had, throughout the Conference, displayed a spirit of liberalism which had not always met with its reward. The proposal of the Italian delegation to delete Articles 3 and 4 had been made purely for reasons of method. The draft convention on the tariff truce contained proposals connected with the same subject as that dealt with in Article 3. If, however, the Conference thought that considerations of method were not of importance, and, if the Italian proposal were regarded as inspired by restrictive tendencies, he would reply that Italy had always applied in the most complete manner the principle embodied in Article 3. The Italian delegation, as the result of the discussion, was not opposed to the maintenance of the articles in question, but reserved the right to present certain observations as regarded paragraph 2 of Article 12.

M. NEDERBRAGT *(Netherlands)* wished to make a declaration of principle. At the outset of the Conference, the Netherlands delegation had said that it was essential to make a step forward at whatever cost. A Convention which did so was infinitely preferable to one which was so vague in character that any State could sign it. His delegation had not wavered from this view.

M. de Navailles had said that States demanded a great deal, but very few were ready to give anything. That was not the case with the Netherlands. She had experienced considerable difficulty in regard to Articles 3 and 4 and the second paragraph of Article 12, but she was able to accept them now that they had been amended. In view of her acceptance, he desired to define the attitude of his Government quite clearly.

A number of sacrifices were necessary, and he had received precise instructions to make such concessions, provided that the other States represented at the Conference did the same and that the Netherlands obtained guarantees that the Convention would be justly and fairly applied. Acting on those instructions, he would vote in favour of the retention of the articles, and he would even do so with enthusiasm. If, however, the Convention proved to be weak and inadequate and did not mark any real progress, the Netherlands delegation would refuse to sign it, though it would take this step with the greatest regret.

THE PRESIDENT reminded the Conference that a vote in principle upon retaining the articles under discussion would not pre-judge the vote to be taken on all the articles together.

M. ITO *(Japan)* said that his delegation had voted for the suppression of the articles under discussion in Committee B, because, first, it thought they would be better placed in a bilateral convention than in one which dealt with the treatment of foreigners. Further, the articles in question dealt fairly closely with the internal taxation of foreign goods. Those goods, however, had to pay Customs duties before they could enter a territory. Customs duties were barely mentioned in the Convention though much was said of internal taxation. In this, therefore, the Conference appeared to be putting the cart before the horse. It happened extremely rarely that a country discriminated against foreign goods once those goods had crossed its frontier. The only real dispute arose over Customs duties.

Finally the Japanese delegation was of the opinion that Article 4 as at present drafted was too vague for its Government to be able to apply it.

It was not, in principle, against the articles. It was only opposed to including them in the Convention. He would point out that in many commercial treaties concluded by Japan the terms of Article 3 were reproduced almost textually.

In conclusion, he referred to the fact that a number of delegates had shown great scepticism in regard to the success of the Convention. Such pessimism was unjustified, for the Conference was only at the beginning of its final task.

M. DE NICKL *(Hungary)* said on behalf of his delegation that he was in favour of keeping these articles in the Convention. It was true that a question had been raised whether they were in their right place in a convention on establishment, but the Hungarian delegation considered that the principles contained in them were so fundamental to all commercial transactions that the Convention would be incomplete if they were omitted.

THE PRESIDENT said that the Conference would now vote on the question whether Articles 3, 4 and 12 (2) should in principle be kept in the Convention, the text being reserved for subsequent decision.

The delegations voted as follows :

For : Germany, Australia, Belgium, British Empire, Canada, Denmark, Dominican Republic, Finland, France, Greece, Hungary, Latvia, Roumania, Netherlands, Switzerland, Czechoslovakia, Turkey.

Against : Bolivia, Brazil, China, Spain, Haiti, India, Irish Free State, Panama, Peru, Poland, Salvador, Sweden, Venezuela.

Abstained : Austria, Bulgaria, Colombia, Cuba, Danzig, Egypt, Estonia, Guatemala, Italy, Japan, Luxemburg, Mexico, Norway, Paraguay, Portugal, Uruguay, Yugoslavia.

The Conference decided in favour of retaining Articles 3, 4 *and* 12 (2) *by seventeen votes to thirteen, with seventeen abstentions.*

16. **Article 3 and Protocol *ad* Article 3 : Discussion and Adoption.**

THE PRESIDENT submitted for discussion the text of Article 3 and its Protocol, as submitted by Committee B :

> " *Article* 3.—Internal taxes on production, distribution or consumption, which are levied or which may in future be levied on goods—no matter on whose behalf—in the territory of one of the High Contracting Parties, may not, on any grounds, be so levied on the products of the other High Contracting Parties as to involve fiscal charges more burdensome than those imposed on like products of the country itself.
>
> " *Protocol* ad *Article* 3.—The provisions of Article 3 shall also apply to the turnover tax (*taxe sur le chiffre d'affaires, Umsatzsteuer*, etc.). They shall not apply to Customs duties or to the other charges attaching to the import or export of goods.
>
> " The fiscal charges mentioned in the said Article cover, not only the rate of taxation, but also the method of levying the taxes.
>
> " Article 3 is not intended by the High Contracting Parties to prejudice the question of the treatment applicable in the Contracting States when no national products of a like character exist in those States. "

Dr. MARTIUS *(Germany)* observed that the Committee had decided to omit the word " *conditionnement* ", which had been contained in the French text of the Economic Committee's draft. Did this omission involve a question of form or a question of substance ? If it involved only a question of form he would agree to it.

THE PRESIDENT replied that the term " *conditionnement* " signified the packing or get-up of the goods. It seemed natural that this point should not be taken into consideration. He enquired whether the German delegation was satisfied with this declaration.

Dr. MARTIUS *(Germany)* replied in the affirmative.

THE PRESIDENT said that the Conference would vote by roll call on the text of Article 3.

The delegations voted as follows :

For : Germany, Australia, Austria, Belgium, British Empire, Canada, Denmark, Finland, France, Greece, Hungary, Italy, Latvia, Netherlands, Portugal, Roumania, Switzerland, Czechoslovakia, Turkey.

Against : Bolivia, Dominican Republic, Spain, Haiti, India, Irish Free State, Panama, Peru, Poland, Salvador, Venezuela.

Abstained : Brazil, Bulgaria, China, Colombia, Cuba, Danzig, Egypt, Estonia, Guatemala, Japan, Luxemburg, Mexico, Norway, Paraguay, Sweden, Uruguay, Yugoslavia.

The PRESIDENT declared Article 3 *adopted by nineteen votes to eleven, with seventeen abstentions.*

Protocol ad *Article* 3.

First Paragraph.

Dr. MARTIUS *(Germany)* wished to raise a question of principle in regard to the last sentence in the first paragraph of the Protocol. The words " or to the other charges attaching to the import or export of goods " had been added in committee in order to make allowance for the observations made by certain delegations with regard to special features of their national legislation. While the German delegation was quite prepared to take these observations into account, it thought that the preoccupation felt by two or three countries—and only two or three countries were involved—was not a sufficient reason for having a general reservation in the Convention. He would, therefore, propose that the words referred to should be deleted and that the delegations should be allowed to make a reservation. Reservations, even if necessary, were undesirable, but some were inevitable if it was hoped to establish a convention to be signed by some forty-eight or more States. Furthermore the words " other charges attaching to the import or export of goods " were far from clear, and in any case it would be much better not to have a restrictive text of that kind.

M. NEDERBRAGT *(Netherlands)* said that his delegation had been responsible for proposing the insertion of the words in question. It had done so from a desire to keep the list of reservations as short as possible. If the text proposed by Committee B were not adopted he would, however, be prepared to agree to the course of making a reservation.

M. PEROUTKA *(Czechoslovakia)* asked whether the term " turnover tax " in the Protocol *ad* Article 3 was to be taken to include luxury taxes.

THE PRESIDENT replied that the Rapporteur said that the answer to this question was in the affirmative.

M. BRUNET *(Economic Committee)* said that this question had not been examined in detail in Committee B. It was, however, in accordance with the views of the Economic Committee that luxury taxes should, from the point of view of the application of Article 3, be included under the term " turnover tax ". It was, however, for the Conference to take a decision.

THE PRESIDENT observed that the Conference had before it a proposal by Dr. Martius to omit the words " or to other charges attaching to the import or export of goods ", it being understood that a reservation would be authorised in the case of countries wishing to make one.

Personally, he would, in this case, prefer a reservation.

M. NEDERBRAGT *(Netherlands)* said that, as evidence of its goodwill, the Netherlands delegation would accept the President's opinion.

M. FLORES DE LEMUS *(Spain)* said that his delegation would have to make the same reservation as the Netherlands delegation.

THE PRESIDENT pointed out that it was open to any country to make a reservation. It was not necessary to make a formal reservation at the present meeting. Countries wishing to do so could make one at the time of signature.

M. ITO *(Japan)* had no objection to the omission of the words in question or to the adoption of the procedure proposed by the President in this particular case. He felt, however, some doubts as to the procedure proposed by the President in regard to the general question of reservations. He thought that the whole question of reservations should be held over for a general discussion at which all delegations concerned would have an opportunity of expressing their views.

THE PRESIDENT entirely agreed with M. Ito. The reservations made at thepresent meeting applied only to the articles now being voted upon. The reservations would be discussedwhen the Conference came to vote on the Convention as a whole.

He asked the Conference to vote, by a show of hands, on each paragraph in the Protocol and, by roll call, on the Protocol as a whole.

The first paragraph of the Protocol ad *Article* 3 *was adopted by thirteen votes to four.*

Paragraph 2.

M. CARAVALLE *(Italy)* asked what was the meaning of the words "the method of levying the taxes ". A difference must necessarily be made between the method of taxing goods produced in the country and that of taxing goods imported into the country. He thought that an explanation of this point should be given in the Minutes.

M. ENGELL *(Denmark)*, Rapporteur, thought the text quite clear. Differences necessitated by the fact that the goods were imported or produced in the country did not, of course, come under the Convention. The Committee had interpreted the words in question in the sense that no difference should be made in the method of taxing which would involve more burdensome formalities for imported than for national goods.

The paragraph 2 *was adopted.*

Paragraph 3.

Dr. MARTIUS *(Germany)* asked what was the bearing of the words "when no national products of a like character existin those States ". The adoption of these words might have unexpected results. Coffee, for instance, did not exist in Europe as a plant, and the coffee bean was imported into all European countries. The effect of the text as it stood might be such as to allow a European country to make a discrimination between Brazilian coffee and Guatemalan coffee. This amendment to the Economic Committee's draft therefore tended to nullify the sense of the Article. He accordingly proposed the omission of paragraph 3.

SALIH ZEKIAI BEY *(Turkey)* said that the paragraph 3, which had been accepted by the Committee, was due to a proposal made by the Turkish delegation. Turkey would never think of making any discrimination between identical goods from two different countries. If, however, the German delegation thought that the provision in question might give rise to discrimination, he would propose the addition of the words " without discrimination between goods from different countries ". It should, however, be observed that there were countries which levied internal taxes upon goods, for instance colonial products, when the country itself did not produce similar goods. If paragraph 3 were omitted, a country might be unable to tax such products. The Turkish delegation would, however, be satisfied if the Conference agreed to placing the necessary explanations on record.

THE PRESIDENT thought it possible to satisfy both the German and the Turkish delegations. Article 3 referred only to similar national goods. If there were none such, the obligation involved in this provision would not apply and the Government concerned would be completely free. He therefore thought it was possible to accept the German delegation's proposal.

SALIH ZEKIAI BEY *(Turkey)* said that, in view of the President's explanation, he would agree on behalf of the Turkish delegation to the omission of the third paragraph.

The Conference agreed to delete the third paragraph of the Protocol ad *Article* 3.

THE PRESIDENT asked the Conference to vote by roll call on the Protocol *ad* Article 3 as a whole.

The delegations voted as follows :

For : Germany, Australia, Austria, Belgium, British Empire, Denmark, France, Greece, Hungary, Italy, Latvia, Netherlands, Roumania, Switzerland, Turkey.

Against : Spain, Salvador.

Abstained : Bolivia, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Danzig, Dominican Republic, Egypt, Estonia, Finland, Guatemala, Haiti, India, Irish Free State, Japan, Luxemburg, Mexico, Norway, Panama, Paraguay, Peru, Poland, Portugal, Sweden, Czechoslovakia, Uruguay, Venezuela, Yugoslavia.

The Protocol ad *Article* 3, *with the omission of the last paragraph, was adopted by fifteen votes to two, with thirty abstentions.*

17. Article 4 and Protocol *ad* Article 4 : Discussion and Adoption.

THE PRESIDENT asked the Conference to discuss Article 4 and the Protocol *ad* Article 4, as submitted by Committee B :

> " *Article* 4.—In regulating the freedom of trade, especially as regards the sale, offering for sale, distribution and consumption of goods, no distinction shall be drawn between products of the country itself and products of the other High Contracting Parties.
>
> " This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods.
>
> " Any measures taken in the matter of marks of origin applicable to imported goods shall not be deemed to conflict with the provisions of Article 4, provided that they are not of a discriminatory nature contrary to the spirit of the Convention.
>
> " *Protocol* ad *Article* 4.—The provisions of Article 4 shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities by way of tender. "

M. NEDERBRAGT *(Netherlands)* reminded the Conference that the Netherlands delegation had felt some difficulty with regard to Article 4. No opportunity had been offered for an exhaustive exchange of views, but a rapid consultation among the members of the delegation had resulted in the conviction that some sacrifice would have to be made. The Netherlands delegation therefore, although it was assuming a heavy responsibility towards its Government, would ask permission to withdraw the request it had made to the Conference in connection with this Article. It did so on the assumption that the Convention would be one whose provisions would be of some real value. Should the Convention mark not a step forward but a step backwards, the Netherlands delegation would reserve its right to present a reservation at the time of signature.

M. ZUMETA *(Venezuela)* said that his country had always put into practice the principles contained in Articles 3 and 4.

M. CARAVALLE *(Italy)* observed that the Protocol *ad* Article 4 was almost word for word a reproduction of the Protocol *ad* Article 1. The Italian delegation would therefore accept the Protocol, subject to the reservation of its right to suggest a change in the text of the first paragraph of the Protocol *ad* Article 1.

THE PRESIDENT put Article 4 and the Protocol *ad* Article 4 to the vote by roll call.

The delegations voted as follows :

For : Germany, Australia, Austria, Belgium, British Empire, Canada, Denmark, Spain, Finland, France, Greece, Hungary, Italy, Latvia, Netherlands, Roumania, Switzerland, Czechoslovakia, Turkey.

Against : Haiti, Salvador, Venezuela.

Abstained : Bolivia, Brazil, Bulgaria, China, Colombia, Cuba, Danzig, Dominican Republic, Egypt, Estonia, Guatemala, India, Irish Free State, Japan, Luxemburg, Mexico, Norway, Panama, Paraguay, Peru, Poland, Portugal, Sweden, Uruguay, Yugoslavia.

Article 4 *and the Protocol* ad *Article* 4 *were adopted by nineteen votes to three, with twenty-five abstentions.*

18. **Protocol *ad* Articles 3 and 4 : Discussion and Adoption.**

THE PRESIDENT asked the Conference to discuss the text of Protocol *ad* Articles 3 and 4. The text, which had not been amended by Committee B, was as follows :

> "Ad *Articles* 3 *and* 4.—" 1. The provisions of Articles 3 and 4 shall not preclude the High Contracting Parties from introducing taxes or taking other steps to safeguard their interests in the matter of any State monopolies which they have instituted, or may institute in the future.
>
> " 2. The High Contracting Parties declare that they refer solely to monopolies which, individually, are applied only to one or several specified products. "

The President suggested that the two paragraphs should be taken separately, in order to give the German delegation an opportunity of suggesting an amendment to the second paragraph.

Paragraph 1.

Paragraph 1 *was adopted.*

Paragraph 2.

DR. MARTIUS *(Germany)* said that, with the object of further defining the scope of the second paragraph, his delegation wished to submit the following addition to the paragraph :

> " . . . and that the measures mentioned in the preceding paragraph shall affect only products similar to those forming the subject of the monopoly in question."

M. BRUNET *(Economic Committee)* said that the representatives of the Economic Committee agreed to the German delegation's amendment, which was intended to ensure that there should be no undue extension of the exceptions allowed.

DR. MARTIUS *(Germany)* agreed to a suggestion by the President that his amendment, if adopted, would be referred to the Drafting Committee for a consideration of the text.

M. FLORES DE LEMUS *(Spain)* asked the German delegate whether the word " similar " covered substitutes.

DR. MARTIUS *(Germany)* replied in the affirmative.

M. FLORES DE LEMUS *(Spain)* said that, if the amendment were referred to the Drafting Committee, he would ask that this point should be mentioned.

M. SCHUMANS *(Latvia)* requested the President to put the German amendment to the Conference separately from the Paragraph 1.

THE PRESIDENT asked the Conference to vote by a show of hands on the text of Paragraph 2 and by roll call on the German amendment.

The Conference adopted Paragraph 2 *by fourteen votes to none.*

The delegations votes as follows on the German amendment :

For : Germany, Australia, Austria, Belgium, British Empire, Denmark, Spain, France, Greece, Italy, Netherlands, Switzerland, Turkey.

Against : Latvia.

Abstained : Bolivia, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Danzig, Dominican Republic, Egypt, Estonia, Finland, Guatemala, Haiti, Hungary, India, Irish Free State, Japan, Luxemburg, Mexico, Norway, Panama, Paraguay, Peru, Poland, Portugal, Roumania, Salvador, Sweden, Czechoslovakia, Uruguay, Venezuela, Yugoslavia.

The amendment was adopted by thirteen votes to one, with thirty-three abstentions.

The Protocol ad *Articles* 3 *and* 4 *as a whole, with the addition proposed by the German delegation, was adopted.*

SEVENTH PLENARY MEETING

Held in Paris on November 30th, 1929, at 10 a.m.

President : M. DEVÈZE.

19. Examination of the New Text for Articles 3, 4, 12, 13 and 14 of the Draft Convention adopted by Committee B (document C.I.T.E./29) : Article 12 and Protocol *ad* Article 12 : Discussion and Vote.

THE PRESIDENT said that Committee B had decided to maintain Article 12, paragraphs 1 and 2. The text was as follows :

> " 1.—In the matter of taxes and duties of every kind or any other charges of a fiscal nature, irrespective of the authority on whose behalf they are levied, nationals of each of the High Contracting Parties shall enjoy, in every respect, in the territory of the other High Contracting Parties, both as regards their person and property, rights and interests, including their commerce, industry and occupation, the same treatment and the same protection by the fiscal authorities and tribunals as nationals of the country.
>
> " 2.—In fixing the rates of taxation and duties of any kind levied on commerce and industry, no discrimination shall be made on account of differences in the origin of the goods employed or offered for sale."

The President recalled that the Committee had, moreover, proposed to add a new provision to the Protocol *ad* Article 12. The text of the Protocol would, therefore, be as follows :

> " It is understood that paragraph 2 of Article 12 shall not apply to Customs duties or any other duties connected with the importation or exportation of goods.
>
> " The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to promote national industry, and for this purpose grant certain facilities in the matter of taxation, irrespective of nationality, to undertakings established in the country which instal plant therein and employ national products."

M. PEROUTKA *(Czechoslovakia)* said that his delegation desired the Conference to discuss Article 12. This article allowed discrimination by means of fiscal policy. In virtue of Article 20, however, the High Contracting Parties undertook not to impair the guarantees of equality by granting exemptions from taxation. Article 12 formed part of the fiscal articles ; Article 20 dealt with guarantees of equality. He would take the case of a sugar refinery or of another industry which was installing new machinery. It could choose between machinery which had been manufactured in its own country and foreign machinery. In accordance with the present text, it would only be possible for that factory to choose machinery manufactured in its own country, for a number of exemptions from taxation would be granted to it if it did no. If it were a question of encouraging a particular industry in a particular case, he would raise no objection, but the encouragement allowed implied, at the same time, the adoption of very definite measures, of which the effect would be to create inequality and preferential treatment.

It might be that the provisions voted by Committee B in regard to Article 12 were identical with those which had been voted in regard to Article 20, but, in any case, the Protocol *ad* Article 12 went much further than Article 20.

M. MAYER *(Austria)* thanked M. Peroutka for having drawn attention to the form of Article 12, paragraph 2. Austrian legislation was in conformity with the ideas embodied in the draft. The Austrian Government, which was strongly in favour of the draft Convention, had suggested the insertion of this formula in order to avoid the impression that Austrian legislation was inconsistent with the terms of the Convention.

To explain the legislation of his country, he would point out that there was a law in Austria of which the object was to promote the renewal of Austrian industry. He would emphasise the fact that this law was designed to secure the *renewal* and not the encouragement of industry, for it was a question of renewing Austrian industrial plant, some of which was more than twenty years out of date. The special situation of industry during the war and the years following the war had resulted in the neglect of the machinery installed in factories. To remedy this state of affairs, the law which he had just quoted had been adopted. It authorised a partial relief from taxation in the case of all industries established in Austria. The law also stipulated that orders for new machinery covering material and products of the same nature and quality as those to be found in Austria must be given in Austria.

He would add that these provisions were applied in a most liberal manner, and that many foreign States also enjoyed the advantages granted by this law, more particularly the neighbours of Austria, for a large part of the machinery in question was ordered from abroad. Should the Conference be unable to accept its amendment the Austrian Government would have to repeal the law in question, an action which would prove harmful both to the interests of the neighbours of Austria and to the Austrian industries themselves.

To emphasise the very limited nature of the stipulation compelling the use of national products, he was ready to add :

> " . . . provided that material of the same nature and quality is to be found in its own country ".

He was prepared to go even further. At the previous meeting the delegation of the Netherlands had agreed to withdraw its amendment urging a restriction of the right to mark national goods, to satisfy the countries which had reserved that right. M. Nederbragt had explained his resolution in a very remarkable speech. He was ready to accept the original Dutch proposal in order to show clearly the approval felt by his Government for the spirit of the Convention. Thus amended, he would willingly accept Article 12 and its Protocol.

THE PRESIDENT summarised the various observations.

Paragraph 2 of the Protocol must be applied in cases where a particular State found itself faced with exceptional circumstances, justifying special measures of protection for its national economic life. It was obvious that the exception provided for in paragraph 2 of Article 12 was designed to meet the case of countries suffering from exceptional circumstances. Its interpretation must therefore be of a very limited kind.

Secondly, advantages could be granted to undertakings with their seat in the country, in order to contribute to the prosperity and reconstruction of these enterprises.

In the third place, no discrimination must be allowed from the point of view of nationality.

If this were the common view of the Conference, he proposed that Article 2 of the Protocol should read as follows :

> " The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to assist the national economic life by granting certain facilities in the matter of taxation to undertakings established in the country, maintaining installations therein and employing national products, though no distinction may be made based on the nationality of these undertakings. "

M. BRUNET *(Economic Committee)* said that, when the request of Austria had been examined in Committee B, he had expressed the view that, owing to the special circumstances in which the law mentioned by the Austrian delegate had originated, the Conference might perhaps be prepared to make an exception in favour of that country based on the existing position. He had emphasised that, if the request of the Austrian delegation were met, it should rather be in that form than by means of a general exception in favour of all contracting States. A general exception of that kind would appreciably weaken the force of the article.

The Economic Committee maintained its preference for exceptions covering particular cases for the benefit of particular States which could point to a special situation justifying a special regime as a temporary arrangement. Any other procedure would run the risk of prejudicing essential principles generally recognised either by internal law or bilateral treaties.

THE PRESIDENT noted that several delegations had not withdrawn their request for exceptions. There might be a large number of other and different cases. The exception, however, was only justifiable provided that its scope was very greatly restricted. In view of the restrictions which had been placed on the exception, it corresponded to a collective necessity and could therefore be included in the text of the Convention.

M. SERRUYS *(Economic Committee)* noted that the draft met the desires both of those who wished for exceptions and those who desired to limit them. He must, however, draw the Conference's attention to two points. In the first place, a text such as that proposed might limit considerably the international trade in half-finished products. Supposing a premium were granted in certain exceptional circumstances to foreign or national industries employing national products. The metallurgical industries would have the right to protest and would point out that such a proceeding would kill their foreign trade. In this instance, therefore, a limitation was being imposed on international trade, the legitimate nature of which it was desired, for the first time, to recognise in an international convention. The case would be all the more serious in view of the fact that certain countries which demanded the insertion of this exception had concluded treaties with other countries entirely excluding that conception. Not only was a more restricted doctrine about to be established internationally, but preparations were being made for a very grave attack on the more liberal principles at present in force.

M. FLORES DE LEMUS *(Spain)* did not think the text was very clear. What were the countries particularly affected in whose favour exceptions would be introduced ? It was necessary to avoid saying one thing in the text of the Convention and the opposite in the Protocol. He would not insist on the obvious fact that texts drafted in this way would not have the authority essential to render them acceptable to the conscience of mankind or likely to be regarded as binding on the nations. He had already, on several occasions, made a reservation as to the inclusion of problems of indirect protectionism within the Convention where they could only be dealt with in a hasty, inadequate and piecemeal manner. If, however, the Conference insisted, it was necessary at whatever cost to embody just principles in the Convention and not to eliminate them in the Protocol, if, as in the present case, there were States which, owing to special circumstances of a character entirely temporary, experienced for the moment insurmountable difficulties in accepting these

principles, such special cases might be examined after the text embodying the principles had been established. When the legitimacy of the exceptions had been recognised, these States must necessarily be allowed to make their necessary reservations in the Protocol of Signature. In taking up this attitude, he was not pleading the special interests of his country. The interests of his own country required the acceptance of the text as it stood. Spanish legislation for the encouragement of industry did not permit of a discrimination between national and foreign goods, which was the point at issue for the moment, except within very restricted limits. If Spanish law were adjusted in accordance with the text presented by the Committee, it would be possible to multiply the discrimination against foreign goods in Spain a hundred or a thousandfold . . . He would ask the Conference to reflect carefully on the consequences of such a step. He was adopting an attitude contrary to the special interests of Spain, but which took into account the general interests of nations, because his instructions on the point were quite definite, namely, that it was essential that a convention drawn up by a Conference meeting under the auspices of the League of Nations should not, in any case, be reactionary. If the text of the Protocol were left as it stood, however, it would not only be a retrogression but a direct encouragement to make several further measures, as he had just indicated with special reference to his own country.

THE PRESIDENT said that the text which he had proposed was only subsidiary in character and would not be introduced if the Conference decided that no exceptions could be made. The text stipulated that certain countries could admit a number of reservations covering exceptional cases. The President did not represent his own country but the Council of the League of Nations, which desired to see the adoption of the most liberal treatment possible. Once more he would repeat that his proposal was only subsidiary and that he would only present it, if the Conference decided that such reservations should be introduced.

DR. MARTIUS *(Germany)* said that this observation completely cleared up the position. In support of it, he proposed the deletion of the second paragraph of the Protocol, which would make it possible to introduce reservations within the meaning of the President's proposal. The second paragraph was not to be found in the Economic Committee's draft. Committee B had voted it in order to meet a proposal submitted on behalf of the delegations of Austria, Bulgaria and Egypt, whose fears in this respect were not without foundation. Generally speaking, the Conference should avoid, as far as possible, any general addition to the Convention which might give the impression that it was not following the liberal policy which had led to its conception. He would ask the representatives of the countries which had proposed the exception to agree with the President's text.

THE PRESIDENT said that, as soon as the discussion was closed, he would, first, put to the vote the question whether the exceptions should be eliminated, at the same time stipulating that countries could mutually agree to allow exceptions in special circumstances.

Secondly, if this proposal were adopted, he would put the subsidiary text to the vote.

M. FLORES DE LEMUS *(Spain)* proposed that the principles which it was proper to include in an international convention should be maintained and that any kind of discrimination should be rejected. The exception proposed would completely destroy the principle of general co-operation. If an undertaking bought machinery costing 3,000,000 francs and the Customs duties amounted to 500,000 francs, there were laws which granted a rebate of taxation equivalent to these Customs duties, provided that the machinery bought had been manufactured in the country itself. This was a most formidable form of protectionism and completely outside the scope of the Convention. The insertion of the text proposed would make it possible for Governments which had adopted such measures of protection to sign the Convention, while Governments which had adopted far more moderate measures in the matter of discrimination would be compelled to make reservations.

M. POZNANSKI *(Poland)* agreed with the opinion and proposal of the Austrian delegation. Paragraph 2 of the Protocol to Article 12 implied the principle of equality, since the text proposed by the Committee and the President would ensure equality of treatment to foreign and national undertakings in conformity with the spirit of the Convention. It had been stated that these stipulations might be contrary to certain bilateral treaties. This was possible, but the fault lay in the treaties in question.

A very short time ago, certain States had suffered severely in their economic life. It was impossible to prevent them seeking to reconstruct their devastated industries. To do so would be contrary to justice.

In any case, he would express no opinion on the principle of reservations. To insert such stipulations was regrettable from the practical point of view. The text of the Committee and of the President referred to temporary provisions which might be adopted to meet certain exceptional circumstances. He accepted the Austrian proposal and the text of the President.

M. BOLAFFI *(Italy)* recalled that his delegation had always tried to give to the Convention the widest scope. He was therefore favourable to the second paragraph of Article 12 and opposed to the reservation contained in the second paragraph of the Protocol. The legislation of a number of States, however, granted exemptions from taxes to national and foreign undertakings which were transforming their machinery with the object of exploiting the natural resources of the country. The Italian delegation considered that this case was not covered by the clause in question.

THE PRESIDENT said that the reply to this view was undoubtedly in the affirmative.

SIR SYDNEY CHAPMAN *(British Empire)* had no objections to the proposed addition to the Protocol. The general question of reservations, however, had been raised, and a guiding principle must be sought. Personally, he took the view that exceptions ought to be agreed to by means of reservations. It was easier in that way not to grant more than was strictly intended. The Conference should constantly bear in mind the principle that, whenever possible, the exceptions agreed upon should be only temporary and of a special nature.

M. FEHR *(Sweden)* said that the Swedish Government was prepared to accept the provisions of Article 12, paragraph 2, with the following reservations : (1) The provisions of Swedish law, in virtue of which alcohol manufactured from raw material coming from abroad paid a higher duty than alcohol derived from native raw material ; (2) The provisions according to which starch extracted from foreign raw materials paid a special tax.

SALIH ZEKIAI BEY *(Turkey)* said he had made proposals in Committee B in this connection. He had explained that a law, of which the object was to encourage in Turkey the reconstruction of industry, granted exemption from taxation during a certain period, and also freedom from Customs duties on the material imported without distinction of nationality. This law had been passed with no intention to effect any form of discrimination. Its object was in fact to encourage the establishment of foreign capital and foreign experts. He supported the text proposed by the President.

THE PRESIDENT put the deletion of paragraph 2 of the Protocol to the vote, with the provision that certain countries should, in exceptional circumstances, be authorised to formulate temporary requests for exemption which would require an agreement of the Governments.

M. POLITIS *(Greece)* asked that the situation should be made clear. Delegations which wished to retain the right to make reservations might not have received instructions from their Governments. They must, therefore, be allowed time to make their reservations later. It would, however, be impossible for certain States to receive instructions before the end of the Conference.

THE PRESIDENT replied that the right to make reservations could be left open for a month.

M. DINICHERT *(Switzerland)* did not desire to re-open the discussion, but the question was of importance from a legal point of view. A vote was to be taken on an established text. Was the vote on reservations, of which the scope was not yet known, to be prejudged, especially when they might be made at some future date ? It was impossible for the present vote to concern more than the deletion or maintenance of the text, it being understood that the Conference would examine at a later stage the possibility of consenting to such reservations as might be submitted.

THE PRESIDENT replied that the position was very simple. A general proposal had been made on the part of M. Flores de Lemus. It consisted of deleting the reservation to paragraph 2 in the Protocol to Article 12, and of taking into account, possibly at a later stage, the exceptional circumstances in which certain countries might temporarily find themselves. The observation of M. Dinichert was correct. It was necessary, if the exceptions were to have the force of a contract, that they should be inserted in the Convention.

M. POZNANSKI *(Poland)* said, if the reservations were examined during the coming week, several States would be prevented from signing.

THE PRESIDENT replied that those who agreed with M. Poznanski would merely have to vote against the present text. The Conference, however, must be logical. It was impossible to state in a Convention that something would be done, if that something were not defined in the contract. The fears of M. Politis were justified. The President would put to the vote the deletion pure and simple of the paragraph. Up to the end of the Conference's work, certain countries might submit requests for reservations having the force of a contract and based on temporary and special circumstances.

DR. MARTIUS *(Germany)* raised a point of order. Would it not be possible to reserve the vote on the period to be granted for the presentation of reservations, for this was a problem of an entirely general nature which would only arise after the examination of all the articles ?

THE PRESIDENT urged that the Conference should not discuss the vast question of reservations. Would signatures to the Convention be admitted with reservations ? That was a question which would have to be raised at the end of the Conference's work.

SIR SYDNEY CHAPMAN *(British Empire)* took the view that the question of reservations was so important as to necessitate the appointment of a small Committee. If it were decided that it was impossible to grant them because they were too numerous, it would then be necessary to make provision for them in the Protocol.

THE PRESIDENT agreed with this proposal and put the following question to the vote : the deletion of paragraph 2 of the Protocol to Article 12, subject to the future examination of any exceptions having the force of a contract which might be asked for by certain countries due to temporary and exceptional circumstances.

M. POLITIS *(Greece)* raised the point of order and asked that the Conference should vote on paragraph 2 of Article 12. The deletion of that paragraph would constitute the most radical solution and he preferred it.

THE PRESIDENT accepted this proposal which he had not put forward because he thought that the Conference desired to vote on the whole text.

He invited the Conference to vote by roll-call upon the maintenance or deletion of paragraph 2 of Article 12.

The result of the vote was as follows :

For : Germany, Belgium, British Empire, Canada, Denmark, Estonia, Finland, France, Italy, Japan, Latvia, the Netherlands, Switzerland, Turkey.

Against : Austria, China, Colombia, Danzig, Spain, Greece, Haiti, India, Irish Free State, Mexico, Panama, Paraguay, Poland, Portugal, Salvador, Sweden, Venezuela.

Abstentions : Australia, Bolivia, Brazil, Bulgaria, Cuba, Dominican Republic, Egypt, Guatemala, Hungary, Luxemburg, Norway, Peru, Roumania, Czechoslovakia, Uruguay, Yugoslavia.

Paragraph 2 of Article 12 was rejected by seventeen votes to fourteen with sixteen abstentions. As a result of the vote *the two paragraphs of the Protocol were also deleted.*

Dr. MARTIUS *(Germany)* noted that the Conference had voted the deletion of a text adopted by Committee B, which raised a point of very great importance in so far as a number of delegations were concerned. He would not press the point at the moment, but asked that the article in question should be read a second time.

M. GUERRERO *(Salvador)*, Chairman of Committee B, was surprised at a request to put to the vote a second time, a question which had just been settled definitely. The Conference would never bring its work to an end if such a procedure were followed.

SIR SYDNEY CHAPMAN *(British Empire)* replied that the usual procedure was to have a second reading of the entire text of the Convention. During the course of the second reading every delegation was free to raise any special point it liked.

M. MAYER *(Austria)* explained that he had voted against the text owing to the question of exceptions. It was necessary to disallow an exception relating to the Final Act and he could not agree to the insertion of the Austrian reservation in the Protocol, because this reservation was not really an exception but merely a means of establishing that the Austrian law was not inconsistent with the spirit of the Convention. He was, therefore, obliged, in order to avoid voting on the German amendment, to vote against paragraph 2, Article 12, though his Government keenly desired to maintain that Article.

THE PRESIDENT noted that the result of his acceptance on the point of order had been that those who had not been certain that they would be allowed to make exceptions had voted against the principle. That was the reason for the request just made by the representatives of Germany and British Empire. The vote had not consequently been free and he would ask whether, for the sake of clearness and precision, it would not be better to reject it and to return to the procedure which he had suggested in the first place.

SIR SYDNEY CHAPMAN *(British Empire)* agreed with this proposal.

M. POLITIS *(Greece)* said that the question raised a wide point of principle which would affect a large number of other articles. What had made the vote of principle indispensable was the attitude of several delegations to the system of contractual reservations. If every delegation had the right, as the result of exceptional circumstances, to make reservations, and if they had to submit them before the end of the Conference, a large number of delegations would have found it impossible to do so. Faced with this impossibility there were only two clear situations. Either paragraph 2 of Article 12 must be deleted or else, in accepting it, a general exception must be allowed. What was the meaning of the vote ? It did not mean that the majority of the Conference desired each State to reserve the right of discrimination, but merely that this question, among a large number of others, could not be settled at the moment after an insufficient discussion.

M. ITO *(Japan)* noted that M. Mayer had given one interpretation and M. Politis another interpretation of the vote. He could, if he so desired, give yet another, but he would not do so Once a vote had been taken it was impossible to proceed to a second examination. If, however, the Conference did not clearly understand the meaning of the vote, each delegation would be free during the second reading to make any proposal which it liked, provided that it was drafted in a slightly different manner from the text which had just been rejected. Prudence and expediency required that the Conference should in no respect prejudge the final result. Each delegation would preserve untouched the freedom which was its right during the second reading.

THE PRESIDENT replied that in all assemblies, after the examination of a text, a second reading took place, during which the articles could be amended. It was possible to introduce not only amendments, but even similar texts expressing more accurately the views of the Assembly. It would be more in order to agree that a second reading should take place at the end of the Conference's work. The vote just taken was a definite case which showed the necessity of a second reading.

It was proposed that the vote should remain and that the Conference—as would be the case in any other Conference—should proceed to a second reading at the end of its work.

M. FLORES DE LEMUS *(Spain)* urged that the vote should be allowed to remain.

M. POZNANSKI *(Poland)* asked whether this promise could be kept when it was impossible even to know whether the Conference would have time to finish its first reading.

M. NEDERBRAGT *(Netherlands)* accepted the decision to proceed to a second reading. The difficulties in connection with reservations, however, still remained. He had raised this question in vain in two committees From the very beginning his delegation had received instructions to sign a useful Convention. If that Convention were to be weakened by amendments of all kinds, it would not be able to sign it. If, moreover, every kind of reservation were allowed it would also be unable to sign it, as long as it was unaware of the scope of the reservations in question. M. Poznanski had stated that it was impossible for the list of reservations to be known before the end of the Conference. Only one solution remained : to draw up a useful Convention without weakening it in order that States, which were in the same position as the Netherlands, could sign it. He wondered whether it would not be necessary to call a second Conference to study the list of reservations.

THE PRESIDENT said that his presence in Brussels was essential and he was therefore compelled to leave. He proposed that the vote should remain. As far as the second reading was concerned, the only question it raised was a question of time. It was understood that all the necessary time would be available if the progress of the work were still further hastened.

In so far as the questions of reservation and a future Conference were concerned, this was an entirely different matter and it must be placed on the agenda, as a point of order.

The Conference would not rise until the work on which it had been engaged since November 5th was concluded.

EIGHTH PLENARY MEETING

Held in Paris on December 2nd, 1929, at 3 p.m.

President : M. DEVÈZE

20. Appointment of Additional Delegates of the Roumanian Delegation.

The Conference noted that M. ANTONIADES and M. NECULCEA had been appointed by the Roumanian Government as members of the Roumanian delegation.

21. Procedure of the Conference : Proposal of the President.

THE PRESIDENT said that the Conference would now examine the problem of reservations. He hoped that the debate would be kept on a high and wide plane. The results, as a whole, of the work of the Committees were now known, and the Conference had seen what came of discussing the articles in plenary meetings. Such a procedure would inevitably lead to a Convention which would make general throughout the world a situation which would be a retrogression as compared with the present position. When the reasons for this were sought, it would be found that the Committees had taken into account all the objections submitted by certain countries whose special situation might perhaps justify the exceptional measures upon which they made their adhesion contingent. The Committees, therefore, had shown a tendency to submit restrictive texts which would be appropriate to the worst possible situation which could be contemplated. On the other hand, an important group of States were determined not to sign a reactionary convention. In these circumstances, the Conference must consider the danger involved for the issue of its labours. There could be no question of an exhaustive discussion of the position of the different countries, but it was time to give the closest attention to the bearing of their reservations.

There were two possible hypotheses : first, a country might ask for an amendment on a point of principle because it did not agree with what had been proposed for the common law relating to foreigners. In this case, the attempt must be made to achieve agreement among the largest possible number of States. This examination of points of principle must not, however, be vitiated by the special situation of certain countries which appealed to an exceptional and existing position of fact. To say that these countries would sign the Convention and then would declare that certain reservations were essential amounted to making the Convention inoperative. The adhesion of a certain number of signatories, each of which submitted reservations on different articles, would rob the Convention of all meaning.

He therefore invited the Conference to consider whether it would not be possible to set aside the question of the special situation of certain countries by incorporating in the Convention the

principle of contractual exceptions. Once the Convention had been adopted, the countries which were in special, exceptional and temporary positions would be allowed to submit derogations which the Conference would be free to accept or refuse. It was on this point that M. Politis had raised the objection that there had not been sufficient time for the delegations to present their reservations or for the Conference to take a decision upon them. This was a legitimate objection, but it was not only at this Conference that this question had been raised. The same difficulty had been met in other conferences in the following way. The conference established and signed the text of a diplomatic document, which embodied the *quod plerumque fit.* The conference then adjourned to a distant date, the diplomatic instrument which had been drawn up being considered as a first stage. Each country was then given sufficient time to submit its application for the derogations which it considered indispensable. These applications were transmitted by the Secretariat to all contracting parties, who then gave their opinion and a second conference took the final decision and put the treaty, as agreed upon, into force.

This procedure had already been followed on other occasions. It would eliminate from the discussion the individual aspect of special situations.

He accordingly hoped that the Conference would decide to confine itself to signing a first act which would determine the rules to be applied generally throughout the world, subject to the reservation of certain special situations. The States would then have sufficient time to intimate their derogations, which would be examined at a later conference, whose task it would be to prepare the diplomatic instrument to be put into force.

His proposal was embodied in the following memorandum :

" The discussions of the various Committees of the present Conference have revealed a tendency to make allowances for conditions peculiar to certain countries by introducing modifications to the principles embodied in the draft Convention. The effect of these modifications, taken altogether, would be to sanction a regime less liberal than that which is at present in force under the majority of the national legislations and certain bilateral Conventions.

" The danger of such a sanction is that it might make a system general which is at present only applied in a few countries, and thus a step would be taken which would constitute a retrogression from the present state of affairs.

" Consideration of the text adopted by the various Committees tends to confirm this view.

" I have the impression that, in these circumstances, a number of delegations would hesitate to sign on behalf of their Governments a convention which would not achieve in international relations the progress which they desire. I think that, on the contrary, these delegations are keenly desirous of acceding on behalf of their Governments to an international act establishing a genuinely liberal system.

" It seems to me that it would not be difficult to frame, on the bases of the preparatory work of the Economic Committee and of the first discussions of the Conference and its various Committees, a body of provisions which would give effect to this desire.

" The value of the instrument the Conference is contemplating would, however, be greatly diminished if a number of States—for reasons which frequently seem entirely legitimate—considered themselves unable to accede to it. In order so far as possible to allay the doubts of these States, it seems to me that a procedure might be introduced into the Convention which has already proved satisfactory in connection with the Convention on Prohibitions.

" The object of this procedure is to make it possible for countries signing the Convention to submit requests for exceptions ; these would then be examined by a subsequent conference, which would, moreover, have to settle the conditions of the Convention's coming into force.

" The application of this system would serve a twofold object : it would make the proposed instrument as effective as possible, while affording countries where special conditions obtain an opportunity of associating themselves with this international act.

" In order to explain the idea I have in mind, I subjoin hereto the draft of two new articles laying down the procedure to which I have referred. These texts are copied *mutatis mutandis* from the provisions of the Convention for the Abolition of Prohibitions :

" *Article A* (New).

" 1. The High Contracting Parties, recognising that there exist in the case of certain of their number, situations of fact or of law which would involve them in difficulties as regards the fulfilment in their entirety of the engagements entered into under Articles . . . , have deemed it equitable to authorise these High Contracting Parties to submit applications for exceptions.

" 2. Such applications may only be submitted by the High Contracting Parties which sign the Convention on to-day's date, or which shall have signed it before March 1st, 1930.

" 3. The exceptions referred to may be applied for only on the ground of the existence of national measures in force on to-day's date.

" 4. The applications for exceptions provided for above shall be subject to the following procedure :

" *(a)* Any High Contracting Party may make known by a communication addressed to the Secretary-General of the League of Nations any measures which

It desires to be able to maintain in virtue of paragraph 1 above. Such communications must reach the Secretary-General before March 1st, 1930.

" *(b)* As soon as possible after that date, the Secretary-General of the League of Nations shall notify the High Contracting Parties of all applications which he has received under the preceding paragraph.

" *(c)* Any High Contracting Party wishing to make observations on any applications so communicated may forward such observations to the Secretary-General of the League of Nations not later than June 1st, 1930. As soon as possible after that date, the Secretary-General will inform the High Contracting Parties of all observations received.

" (5) Any applications and observations made by the High Contracting Parties shall be individually examined at the meeting provided for in Article B hereunder.

" *Article B* (New).

" The present Convention shall come into force under the conditions and on the date to be determined at the meeting provided for hereinafter.

" In the course of the year 1930, the Secretary-General of the League of Nations shall invite the duly accredited representatives of the Members of the League of Nations and of non-Member States in whose behalf the Convention shall have been signed on or before July 15th, 1930, to attend a meeting at which they shall determine :

" *(a)* The reservations which, having been communicated to the High Contracting Parties in accordance with paragraphs 1 and 4 of Article A may, with their consent, be made at the time of ratification ;

" *(b)* The conditions required for the coming into force of the Convention, and, in particular, the number of the Members of the League and of non-Member States whose ratification or accession must first be secured ;

" *(c)* The last date on which the ratifications may be deposited and the date on which the Convention shall come into force if the conditions required under the preceding paragraph are fulfilled.

" If, on the expiration of this period, the ratifications upon which the coming into force of the Convention will be conditional have not been secured, the Secretary-General of the League of Nations shall consult the Members of the League of Nations and non-Member States on whose behalf the Convention has been ratified and ascertain whether they desire nevertheless to bring it into force. "

" *Note.*—The other articles regarding procedure should, of course, be modified in order to adapt them to the procedure provided for above."

THE PRESIDENT asked the delegates to express their views on this memorandum.

M. NEDERBRAGT *(Netherlands)* said that the question before the Conference was a general one which he had put himself at the previous meeting. He accordingly entirely supported the proposal under discussion, and he would remind the Conference that he had already said on many occasions that it would be impossible for him to sign a Convention containing certain articles. It would therefore be impossible for him to sign it even provisionally, unless the text of certain articles, which were well known were modified.

He had said that the Conference was playing a tragedy of errors. This fact must be faced frankly, and the procedure hitherto followed must be changed. Otherwise, it would be impossible to obtain from him even a provisional signature, since it was not possible to sign a text when there was no certainty that it would not be modified later. The new Article 1 mentioned the engagements accepted in the following articles and left a blank for the enumeration of the articles in question. This was equivalent to an unrestricted right to make reservations.

The list of reservations would accordingly be studied at the second Conference proposed by the President, but note must first be taken of what had been done so far, and the authorisations which had been granted must be determined. It was proposed to establish a more liberal text and to sign it, and within a few months the second Conference would decide on the reservations which could be granted in certain special temporary cases. Under this procedure there would still be an opportunity of doing good work, which would satisfy those who desired to achieve genuine progress. In this sense, he supported the President's proposal.

M. GUERRERO *(Salvador)* was sure that all his colleagues would agree in congratulating the President on his endeavour to secure an unquestionable success. A success indeed must be achieved, for the moral responsibility of the League was at stake. He did not, however, think that the President's proposal was the best possible. In the first place, it would be difficult to find delegations which would consent to attach even a provisional signature to an Act which would have no meaning, since it was itself provisional. In the second place, the reservations and exceptions to be made later would remain unknown. The proposal which had been made by the Italian delegation seemed more acceptable. For the moment, all that it appeared possible to do was to establish a general declaration stating that the Conference intended to carry out its work to the end.

It would prepare a draft Convention which, prefaced by a general declaration on the part of the Conference, would be sent to the Council and transmitted by the latter to all Governments. The Council, as soon as it received the replies of the Governments, would convene the second session of the Conference.

THE PRESIDENT said that he would take no part in the discussion, but he was obliged to explain his proposal. The diplomatic instrument to be signed would not be of a provisional but a definitive character. It would be capable of subsequent completion by the legal and contractual exceptions requested by certain countries. This was the normal procedure, and it had been followed in particular by the Conference on Prohibitions.

M. PEROUTKA *(Czechoslovakia)* thought that this proposal might conduce to the finding of a happy solution. It would be possible in the course of the proceedings to place definite limits on the possibility of making exceptions. So far the Conference had accepted an exception in the case of commercial travellers, a further exception in the previous meeting, and, finally, another exception in regard to Article 6. Other exceptions would be submitted for Article 7. He hoped, however, that at the end of the proceedings the Conference would have all possible light on the exceptions which would be requested and on their application in the various countries. He believed that in this was there would be all the necessary safeguards for success.

SIR SYDNEY CHAPMAN *(British Empire)* was in sympathy with the idea that the Conference should aim at making a good Convention with reasonable exceptions covered by reservations, instead of a few exceptions and a weak Convention. He imagined that all the delegations were of that opinion. There were, however, certain difficulties in the President's proposal, difficulties rather of detail than in the general idea. It would apparently have the logical result that the Convention would not obtain any signatures at the present Conference. A number of countries would not be prepared to sign until they knew what reservations were going to be accepted and how many countries would come into the Convention. Others would not sign until they were certain that their own reservations would be accepted.

Another procedure might be adopted—that followed by the Conference on the Abolition of Prohibitions, at which the same difficulties had been encountered. That procedure was to consider the reservations which had already been submitted to the Conference, and it would probably result in a number of signatures at the end of the Conference. A fairly satisfactory number of signatures had been secured at the Conference on Prohibitions. The examination of the reservations presented later could be held over for a second Conference. Some time might be gained by setting up immediately a small Committee to examine the reservations and report to the Conference. In this way, it would be possible to lay down a definite programme at once. He would not indicate his preference for either of these procedures, but the second would seem to make it possible to conclude a Convention which would be signed by a fair number of delegations.

THE PRESIDENT thought that this second solution was in no way incompatible with the proposal he had himself presented. He could willingly accept the idea of having all applications for exceptions examined at once and of thus ensuring a certain number of signatures. If the Conference agreed on this proposal, he would distribute a draft text for the next meeting independently of the work of the Committees. The coming into force of the Convention would, of course, only take effect when the second Conference had decided on all the contractual exceptions.

M. DE MICHELIS *(Italy)* raised a point of order. He requested the President to explain clearly the central point under discussion. Would the second Conference be limited to those States which signed the Convention at once with or without exceptions or reservations ? It was in this sense that he had understood the President's proposal, which differed essentially from that which he had himself submitted and to which he would refer at the next meeting.

THE PRESIDENT said that the reply should probably be in the affirmative. At the end of the proceedings, the instrument to be signed would indicate the maximum number of Powers which adhered in principle. He understood that there might be reasons for granting a time-limit of two or three months to allow delegations which proposed to sign time to receive instructions from their Governments. The second Conference, however, which would decide on the contractual exceptions, would be attended only by the Powers which had signed the Convention or adhered to it in principle. It was on this point that his proposal differed from that which M. de Michelis had been good enough to communicate to him.

NINTH PLENARY MEETING

Held in Paris on December 3rd, 1929, at 10.30 a.m.

President : M. DEVÈZE.

22. Procedure of the Conference: Proposal of the President (continuation): Proposal of M. de Michelis.

THE PRESIDENT explained the proposal submitted by him on the previous day. First there was an initial difficulty. The Conference was moving in a direction in which a group of States was unable to follow it. Secondly, he had suggested a solution based principally on the procedure followed by the Conference on Prohibitions and successfully applied in other circumstances. His proposal was merely a suggestion and every member of the Conference was free to accept or reject it.

Dr. MARTIUS *(Germany)* reminded the Conference of the proverb: "The better is often the enemy of the good". He submitted the following point of order.

> "The German delegation proposes to establish a small Committee with instructions to examine in detail the draft presented by the President and to make proposals to the full Conference in regard to the articles concerning which exceptions can be admitted and, if necessary, immediately presented."

The Conference must decide on two points. In the first place, should the Conference immediately discuss the result of the work of the Committees, or should it refer to another Conference the voluminous documentation collected ? It was necessary and possible to take a decision, at least provisionally, on the various articles submitted by the Committees. Secondly, should an agreement be reached on the question of the exceptions to be allowed ? The Conference had before it the proposal of the President, which was for the moment the most practical method of procedure. In any case, it was essential to reach agreement on the various articles to which exceptions would be admitted, and such agreement would depend somewhat on the reply to the following question : What was the most practical solution ? This question could not be examined in plenary Conference, but by a small sub-committee. In conclusion, he urged the adoption of his suggestion and asked the Conference to attack the substance of the matter by adopting a procedure which all considered to be the most practical.

M. GUERRERO *(Salvador)* recalled that at the previous meeting the President had explained the meaning of his proposal. This explanation had confirmed his view that the procedure was not sufficiently practical. In the first place, the Convention now to be signed would be final and not provisional. Every Government, however, would have the right to submit within a certain period the exceptions and reservations it desired to make. These would be examined by the second Conference. How would it be possible to sign a Convention which should be both final and dependent on the examination of future reservations ?

In agreement with the Italian delegation, moreover, the President had stated that only States which had signed the Convention would be invited to attend the second Conference. Such a procedure would run counter to the decisions of the Council and to the spirit of the League, which had contemplated only the possibility of a plurilateral convention and not a convention limited only to certain States. The result of such a procedure would be that States which did not intend to sign immediately would take no further part in the continuation of the work.

The proposal of the President could not, therefore, be accepted. For his part, he would propose that the discussion should be continued until the Conference had taken a decision on all the articles. Those articles which had been accepted by the majority should then be retained, and a general declaration made to the effect that the first stage towards a general Convention had now been concluded. This declaration and the text adopted by the Conference would be sent to the Council, not as a draft Convention, but as a draft to be distributed to all Governments. On the basis of the replies received, the second Conference, or perhaps a small committee, would examine the articles approved by the majority, together with replies from Governments.

THE PRESIDENT said that M. Guerrero's observations made it very necessary for him to give two explanations regarding procedure. First, the signature by States of the Convention would only become definitely binding after the second Conference, at which the question of the putting into force of the Convention would be raised. Those who had exceptions to submit could therefore sign, but they would always be free to disengage their responsibility if their reserves were not admitted. Secondly, and precisely for that reason, there would be no objection to limiting the admission to the second Conference to those States only which had adhered to the Convention in principle. This procedure had been followed in regard to the Conference on Prohibitions. The procedure was therefore in conformity with the traditions and views of the Council, which he represented. On the other hand, the Conference was master of its own decisions. It was for it to decide whether all States should be admitted to the second Conference.

M. DE MICHELIS *(Italy)* did not agree with the way in which the President had raised the problem, which consisted in saying that the Conference was in a difficult situation owing to the fact that it had not been able to achieve a satisfactory Convention. What was a satisfactory Convention ? The President thought that it was one inspired by the most liberal principles. There were, however, perhaps some members of the Conference who thought that, on the contrary, a good Convention was one which respected the interests of each State, while not injuring the interests of the others. The present difficult situation consisted in the fact that it was impossible to reach an agreement on any text at all. After a month's conscientious work, the Conference was compelled to note that the question was too complex and the time at its disposal too short for it to be possible to draft a text which would conciliate the innumerable divergencies of view which had become apparent. The matters dealt with by the present Convention were different from those dealt with by any previous Convention, and, therefore, the most that could be done was to follow a number of precedents in connection with procedure. It was easy, however, to grant exceptions and reservations in matters concerning statistics, Customs prohibitions, skins and bones. But this was not the case with a text which must settle universally the activity of commercial circles, of the labour market and industrial firms, etc. This question was so vast and so complex that, though the Conference had been unable to cope with it after a month's work, it was difficult to be severe in regard to what had been accomplished. Where was the way out ? The President had proposed the procedure hitherto followed by the Secretariat, which was somewhat the same as the German proposal. The proposal had been made that a sub-committee should be appointed to examine the exceptions demanded in regard to articles which the full Conference had not yet examined or voted. Furthermore, there were articles which had only been voted by Committees. The Conference had only examined a small number of them and had on occasion adopted them by a very small majority. The Conference would therefore realise that it was impossible to reverse the procedure hitherto followed. It had been called upon to discuss principles and it had shown that it was impossible for it to do so ; it had preferred to delete the articles containing those principles. From the first to the last article, the present text was based on a combination of special cases. Herein precisely was the difficulty encountered by the Conference in drawing up a text which might be adopted by a great number of countries.

It was impossible for the present session to achieve a text which would satisfy the great majority of delegates, even if a number of reservations were allowed. Governments must be informed of the work accomplished up to the moment, and this Conference should be regarded as a preliminary meeting which had enabled Governments to come together and explain the various situations throughout the world.

He would, therefore, ask that the Conference should hold a second session, attended by all the delegates, without exception, to examine the suggestions submitted in the interval by the countries concerned.

In addition to the advisory organisations already summoned to attend the present Conference, the International Labour Office might also be asked to attend and an omission of great importance would thus be rectified. The second Conference would have before it a text voted by the majority, reports from Committees, articles adopted by the Committees or by the Conference and reservations made by Governments. It would be possible for it, therefore, to achieve a workable text which would secure general adherence. He was not in favour of a suspension of the work of the Conference. He proposed merely that a definite conclusion should be drawn from the work now done and that the Conference should learn from its experience. To decide in favour of an adjournment would mean an adjournment of six to eight months. He could not adopt the proposal that the Convention should be referred to the Council. The delegates were meeting in conference and their relations with the League were purely a matter of internal arrangements, for the Council had surrendered the question as soon as the Conference which it had set up had begun its work. The way out which he proposed was an honourable solution. The work of the first session had been extremely useful and it would be wrong to think that the Conference had wasted its time. Every delegate should return to his country fully conscious of having accomplished work of the greatest utility.

He would submit his proposal in the following terms :

" *Protocol of Closure of the First Session of the International Conference on the Treatment of Foreigners.*

" The undersigned delegates of the Governments of :

[names of countries follow]

met at Paris, on the invitation of the Council of the League of Nations and under the chairmanship of M. Albert Devèze, former Minister, with a view to the conclusion of a Convention concerning the establishment of foreigners ;

" As a result of the discussions recorded in the reports of the Committees and in the Minutes of the Conference ;

" Noting that, notwithstanding a spirit of the widest co-operation, the complexity of the subject-matter has made it impossible to find generally accepted solutions to certain questions requiring more detailed study ;

" Being convinced that a second session of the Conference is necessary to achieve the end in view,

" Have agreed :

" 1. To submit to the approval of their Governments the drafts for a Convention resulting from the work of the Conference, representing majority and minority texts, together with a summary of the exceptions and reservations put forward by the delegates in regard to certain articles or in regard to the whole of the aforesaid drafts ;

"2. To request their Governments to forward to the Secretariat of the League of Nations before April 1st, 1930, any observations and suggestions they may wish to make with regard to the draft Conventions mentioned above, in order that it may be possible to obtain, with the authorisation of the Council of the League of Nations, the opinion of its advisory bodies and that of the International Labour Office as regards the part relating to the treatment of the foreigners described as "workers";

"3. To request the Council of the League of Nations to fix, after consultation with the President of the Conference, the date of the second session of the present Diplomatic Conference, which should take place at Geneva before December 31st, 1930.

"To this session will be submitted, in addition to the observations and proposals of the Governments, the opinions obtained in advance of the advisory bodies of the League of Nations and of the International Labour Office and any other technical opinions of a nature to supply the delegates with as complete a documentation as possible.

"4. The delegates request the Council of the League of Nations to authorise the Secretariat of the League to proceed with the preparatory work and to undertake the tasks entailed by the carrying into effect of the present Protocol."

M. PUSTA *(Estonia)* felt sure that every delegation would be unanimous in its desire to make a supreme effort to achieve a more liberal system. The President had thought that the amendments and reservations put forward were drawing the Conference away from its object and that it was necessary to achieve the most liberal Convention possible. He regretted that, in his desire to obtain a bold solution, he was unable to follow the proposals of the President. Bound as he was by instructions received from his Government and by considerations based mainly on the international position of Estonia, he thought that a new Conference was necessary and agreed to the proposal of M. Guerrero. The present Conference should fulfil its duty and should carry on the work to its logical conclusion. He did not think that the proposals of M. Guerrero and M. de Michelis contradicted each other. During the discussion, a number of amendments proposed in the Brown Book had disappeared as the result of the Committee's work. At the moment, there was an excellent opportunity for obtaining the views of jurists and experts in order to prepare a new Conference.

At the beginning of the work, a number of delegations had thought that it would have been preferable to achieve a good Convention signed by only a few States rather than a Convention enfeebled by reservations. He agreed with that view. If the majority of the fifty States represented could accept the views of the most advanced countries, that was the only method which it would be possible to follow.

M. ZUMETA *(Venezuela)* said that his delegation, as was the case with all the others, was filled with a most sincere desire to achieve success in order to enhance the prestige of the League and to contribute loyally to the achievement of a common object. That object was the patient and solid organisation of peace by means of certain agreements which must be as universal as possible. That object would not be attained if too hasty a procedure were followed, of which the result would be Conventions concluded between only a small number of States.

In conformity with the procedure proposed by the President, the Conference was asked to sign a definite contract in which States would know what they were contributing, but would remain in ignorance of what they would receive. This contract was imprudent and contrary to the principles of *do ut des* and of *idem placitus consensus*.

The Conference was asked to preserve as principles of international law texts in regard to which several delegations had made express reservations. International realities and that universality which must be the guiding principle were being sacrificed to a dangerous theory applicable in the case of a commerce in skins and bones, but useless when it was a question of organising the economic peace of the world.

The representative of the Netherlands had warned the Conference that it might be staging a tragedy of errors. He thought that it was still more necessary to avoid staging a comedy of errors. The Venezuelan delegation represented a country in which the laws had always been particularly liberal in respect of foreigners and which had been obliged to introduce certain restrictions merely in order to defend essential interests threatened by that wave of nationalism which had overwhelmed the world. His delegation would vote for the proposals of the Italian delegation.

M. DE BERCZELLY *(Hungary)* agreed with the proposal made by the honourable delegate of Italy. He considered that the work done up to the present was indispensable to gain an idea of the different points of view, and to discover in what directions and how far it was possible to find or create a common basis for agreement.

From the discussions which had taken place on all these questions, it might also, in his opinion, be concluded that there were certain questions which must absolutely be eliminated from the subject matter of the Convention on the Treatment of Foreigners. These questions were those touching upon the sphere of private international law in general and the responsibility of States in particular.

If it was desired to deal with these questions also, it would be essential to convene a conference of jurists, without whom this very complicated subject, requiring as it did the most thorough preliminary study, could not be dealt with.

He also considered the atmosphere of an Economic Conference to be hardly favourable to the discussion of these problems. In the sphere of private international law it was absolutely essential to follow through to their logical conclusion the propositions recognised as correct, and

no reservations, counter-reservations and exceptions could be admitted in dealing with situations of fact.

To make the distinction clear, he would urge that a conference on private international law was a conference of a predominantly scientific character. The Conference was aware that the Government of the Netherlands was engaged in organising a conference on private international law, and especially on " Sales ", a subject which was of the greatest interest to international trade, and the preliminary work of this conference was already far advanced. At the same time, another Committee of the League of Nations had begun a very detailed study of the complicated subject of the responsibility of States. In order not to hamper these two conferences, the Hungarian delegation suggested that all clauses likely to affect this sphere of international law should be strictly excluded from the new draft on the treatment of foreigners. In his opinion there could be no objection to this course, since private international law, as at present applied, in no way hindered the international relations of trade and industry.

M. CLAVIER *(Belgium)* submitted a compromise proposal. He had been much disappointed at the discussions which had taken place. Despite repeated affirmations of goodwill, were the representatives of forty-three nations coming from all parts of the world to avow their inability to obtain any result, despite assiduous efforts, night meetings, etc. ? This would be deplorable. He urged, therefore, that a final effort should be made. What was actually dividing the Conference was the question of reservations. It had arisen from the rejection of the second paragraph of Article 12. In the Sub-Committee, however, he had already demonstrated that this second paragraph was superfluous, for Article 3 said exactly the same thing, and that, if it bore any other meaning, then the paragraph in question was outside the scope of the Convention. If, therefore, the second paragraph were deleted, the reservation in this connection would, *ipso facto*, disappear. Why should a decision now be taken on the reservations when no one knew what reservations would be made ? He thought that it would be better for the Conference to continue to discuss the articles. At the end of its work, when the Conference knew what reservations would be formulated, either the procedure of the President or that of M. de Michelis might be adopted. When the examination of the articles had been ended, those in regard to which no reservation had been made would be set aside. In regard to those which had given rise to reservations, a distinction would be made according to whether those reserves were temporary or of principle. If reserves were submitted by countries whose internal legislation still contained out-of-date laws incompatible with the new principles laid down, the countries in question could not justifiably ask those who enjoyed a more liberal system to move backwards. It was rather for the first class of countries to make an effort to adopt their internal legislation to the new situation. He would therefore propose an article to the following effect :

> " The provisions of the articles mentioned hereunder shall not come fully into effect until five years after the ratification of the present Convention in the case of States mentioned opposite each of these several articles :
>
> " Article 3 : . . . . .
> " Article 4 : . . . . .
> " Article 12 : . . . . .
> etc. "

In this way, the Conference would have accomplished something which might not be perfect, and which might be only partially effective, but which would at any rate represent tangible results.

In so far as reservations of principle were concerned, the Conference could detach from the Convention the articles regarding which reserves had been made. These should be made the object of a special agreement signed by a certain number of States to which other States could adhere subsequently. Faced with that situation, many delegations would hesitate to refuse their signature and considerable progress would be made towards the adoption of a general and liberal Convention.

M. DE NAVAILLES *(France)* stated that the French delegation was very anxious to sign the Convention. It had noted with regret that the articles had given rise to restrictions which had reduced the scope of the Convention to far smaller limits than those of the draft Convention of the Economic Committee. As far as the present proposal was concerned, when a delegation signed, it desired to know the exact meaning of the text which it was accepting. If the result of the reservations to the articles was to be that, at a subsequent date, ten or twelve of the signatory States refused to apply the Convention, all the signatory States would also refuse to apply it. It was difficult, in his view, for him to accept any proposal which would engage the responsibility of his Government without knowing exactly what the other Governments were undertaking to do.

A further difficulty arose. It was impossible for the delegates to sign a text which had not been discussed in plenary conference. Any delegate, however, had the right to make any proposal he wished, and the discussion in regard to Articles 2, 3 and 12 had already shown how much time was necessary to achieve even an unsatisfactory result. If the Drafting Committee were to lay the results of the Committee's work before the Conference, it would be possible to review the text as a whole, and in this respect the proposals of M. Guerrero and M. de Michelis seemed to him to be the most practical. Governments would be asked to express their opinions and to state whether they wished a more liberal or a more restricted system. As the result of this consultation, a number of observations would be received which would make it possible to appreciate the various points of view. It would be possible to discover whether twelve, fifteen or a larger number of States could reach agreement on essential points. At a second Conference, a text would be available which would satisfy a certain number of countries in regard to essential points, and at that Conference the coping-stone would be set on the work accomplished since November 5th. He

would ask the President, therefore, to invite the Conference to discuss at its next meeting the proposals of M. Guerrero, M. de Michelis and M. Clavier.

THE PRESIDENT thought that it was important to grasp the meaning of these proposals. M. de Michelis proposed the signature of a Protocol of Closure. What would happen until that Protocol was signed ? Would the Conference continue to vote texts or draw up an inventory of the various proposals, summarise them and thus discover the actual amount of work accomplished by it during the month ?

M. DE MICHELIS *(Italy)* explained his proposal. The Conference should adjourn and hold a second session at a suitable date. If the majority agreed as to the text which he had proposed, subject to certain amendments, the Committees must be given an opportunity of finishing the examination of the articles and of adopting the reports of the Rapporteur. The Conference would then approve the text and the reports in plenary session, but would not vote on each article. Every delegate could make any suggestion which he thought useful. In that manner the amount of work accomplished by each Committee would be discovered and it would be possible to ascertain what articles had been adopted and by what number of votes. An exact and complete picture of the activity of the Conference could thus be presented.

TENTH PLENARY MEETING

Held in Paris on December 2nd, 1929, at 4 p.m.

President : M. DEVÈZE.

23. Procedure of the Conference : Protocol of Closure : Proposal of M. de Michelis (continued).

M. GUERRERO *(Salvador)* said he had distributed to the delegates the draft of a general declaration.

He pointed out that there was no fundamental difference between his proposal and that of the Italian delegate, but only certain slight shades of difference in regard to form. M. de Michelis had proposed that the documentation of the Conference should be sent direct to the Governments, whereas he proposed that it should be sent to the Secretariat and, through the Secretariat, to the Governments. This was the invariable custom of League Conferences. Secondly, M. de Michelis had referred to draft conventions in the plural ; that was to say, the articles adopted by the majority, and those adopted by the minority were to be regarded as different draft conventions. He, however, was proposing to drop the word " draft conventions " and to substitute for it simply the word " documentation ".

There was another question to which he attached greater importance, namely, the necessity of the preparatory work for the second session being carried out as thoroughly as possible, and it was with this object in view that he proposed the appointment of a preparatory committee. It was for the Conference itself to prepare the work for the second session, and for this purpose it would have to set up, on its own initiative, a committee chosen from among its own members. The committee should represent the extreme points of view, for only in this way would it be possible to establish a draft which would take account of the views of all Governments and thus be generally acceptable.

M. Guerrero then read his general declaration as follows :

> " The Conference, being convinced that a second session is necessary to achieve the end in view, has resolved :
>
> " (1) To send to the Secretariat of the League of Nations all the documentation regarding the proceedings of the Conference on the Treatment of Foreigners ;
>
> " (2) To request the Secretariat of the League of Nations to forward this documentation to all the Governments, together with the exceptions and reservations laid before the Conference, asking them to communicate to the Secretariat of the League of Nations, before May 1st, 1930, any observations and suggestions they may wish to make ;
>
> " (3) To request the Secretariat also to obtain the opinion of its advisory bodies and of the International Labour Office as regards the part relating to the treatment of foreigners described as ' workers '.
>
> " (4) The Conference appoints a committee consisting of the following delegates . . .
>
> " The Secretariat of the League of Nations shall communicate to this committee all the replies of the Governments and the opinions of the bodies consulted, with a view to the drawing up of the draft Convention, which will serve as a basis for the work of the second session of the Conference on the Treatment of Foreigners ;

" (5) To request the Council of the League of Nations to fix, after consultation with the President of the Conference, the date of the second session of the present Diplomatic Conference, which should take place at Geneva before December 31st, 1930.

" To this session will be submitted, in addition to the observations and proposals of the Governments, the opinions obtained in advance of the advisory bodies of the League of Nations and of the International Labour Office, and any other technical opinions of a nature to supply the delegates with as complete a documentation as possible. "

He added, in regard to the composition of the preparatory committee, that certain members had suggested that it should consist of the General Committee of the Conference.

In conclusion, if the Italian delegation were able to accept his proposal, he would ask the President first to put to the vote the question of principle, and then to appoint a sub-committee to prepare a draft.

M. DE MICHELIS *(Italy)* observed that M. Guerrero's declaration was, as he had stated, in points 1, 2, 3 and 5, either a reproduction of M. de Michelis's own 'proposal or a purely formal amendment thereto. Point 4, on the other hand, brought in a new proposal for the appointment of a new preparatory committee to work alongside the Secretariat. As M. Guerrero's amendments, on points of form, did not affect the substance, he would suggest that his proposal should be put to the votes, ubject to the reservation that M. Guerrero and he, with certain other members, should confer as to the final text. He would ask the President, however, to put the new proposal contained in point 4 to the Conference separately, and would reserve his opinion on this point for the moment.

M. PARANJPYE *(India)*, referring to M. de Michelis's proposal, said that the date proposed for the reception of the comments of the Governments, April 1st, 1930, was practically impossible for the more distant countries like India and Australia. The Governments must be given sufficient time to consider the documentation and formulate their reservations. He suggested that the time-limit should be fixed at July 1st. Otherwise, he was in general agreement with M. de Michelis's proposal as to the way in which the Conference should continue its work.

M. POLITIS *(Greece)* said that, from the outset of the Conference's proceedings, he had had the impression that it would be difficult to establish a Convention which would obtain the signatures of all the countries represented. That impression had been strengthened during the proceedings of the committees. The " Brown Book " showed that only about half the States consulted had sent replies to the Economic Committee's draft, and, of them, a very large number had stated that they accepted the draft as a basis, but that they would present their observations and reservations at the Conference itself. He had, from the beginning, considered it obvious that many delegates had come to Paris with too rigorous instructions from their Governments, with the result that they did not have sufficient latitude to agree on a compromise or to seek for intermediate solutions. It should, however, be observed that it was difficult for the Governments, as it had been difficult for his own Government, to give more precise instructions, since they had been confronted by too many unknown factors ; for instance, the attitude which other Governments would take up, the reservations they would make and the precise sense which the Conference would give to certain terms used in the Economic Committee's draft. He thought that, in these circumstances, it would be useless and even dangerous to force matters and to try to establish a text which would secure the adhesion of even a large number of States. It seemed to him that it would be more sincere, loyal and practical to recognise the situation such as it had been and still remained. All delegates were anxious to reach agreement on a matter which had been so well prepared and worked over by the Economic Committee, but it was impossible to overlook the situation of fact and law which existed in many countries. What the Conference could do was to register certain principles, while limiting their application in time and space in respect of certain countries which were in a special situation.

Such were the reasons for which he accepted M. de Michelis's proposal, which expressed very clearly the existing situation. The proposal stated that the delegates had worked in a sincere desire for co-operation, but that they recognised that it was impossible to conclude an agreed text which would be signed by a sufficient number of States, and that in these circumstances it was better to adjourn the session and continue the examination of the text to be submitted later to the Governments. There was another question which might be regarded as complementary to the Italian proposal. All delegates recognised the necessity of the economic work of the League and considered it as indispensable for the good of the world. That work should be continued in a manner which would command the sympathetic consideration of the Governments. Everyone desired genuine progress and progress on as wide a scale as possible, but certain countries could not go as far as others or as they themselves would like to go, owing to obstacles which were inherent in their special situation, but which were limited in time and space. It was for this consideration that he submitted the following new paragraph to be inserted between paragraphs 1 and 2 of M. de Michelis's draft :

" To direct their attention to the expediency of establishing the proposed Convention on the most liberal bases, subject to the right, in the case of States which may so request, to make it conditional on derogations justified by special situations of fact or of law which exist at present. "

With this addition, M. de Michelis's proposal would afford not only a complete picture of the existing situation, but would also indicate the hopes of all members of the Conference in regard to future developments.

As to the question of procedure, he agreed in principle with M. de Michelis' suggestion, but urged that the Committees must be left to finish their work. Only one had not yet done so, but it would most probably be in a position to submit a report very shortly. He did not think that it would be useful to ask the Conference to vote on the reports. A vote might be mischievous, since it might have the effect of crystallising the attitudes which had been taken up in the Committees —attitudes which might subsequenthy undergo alteration. The examination of the reports by the Conference would hardly be of any great value and it would be difficult for it to examine them without reopening the discussion on the substance of the questions which had already been considered in the Committees. It would be sufficient if the President were to ask delegates whether they had any reservations to make as to the various passages in the reports which did not exactly express their ideas.

As to M. Guerrero's proposal for a preparatory committee, he would go even further—he thought such a Committee essential and that it already existed in the shape of the General Committee of the Conference. If this idea were adopted, the preparatory committee would correspond to M. de Michelis's idea of the permanence of the Conference. The Conference had been appointed for a special task, and, until that task had been accomplished, the work would have to be continued, and it should be continued by the General Committee, whichh ad the requisite authority and competence. There was a danger that public opinion might suppose that the Conference had been a failure. That was not the case. The session had been devoted to preparatory work which had been extremely useful. Its advantage lay in the fact that the Conference had drawn the attention of the Governments to the difficulties which existed and would now ask them to study them. The appointment of a preparatory committee would show public opinion that the economic work of the League had been really fruitful. The work of international economic reconciliation was one which required much time and thought. It was only after a very large number of meetings that the Economic Committee had submitted its draft as a simple basis of discussion, and it was now recognised that, without further technical preparatory work and full consideration of all the difficulties involved, it would be impossible to establish a Convention which would be really adequate. In this, there was no admission of failure ; on the contrary, it was proof of the Conference's conviction of the utility and value of the difficult work which it had undertaken.

The Conference, therefore, would continue, but independently of the League. There were precedents for this in League procedure. There were certain Commissions which continued their work without requiring a fresh mandate from the Council. The Preparatory Disarmament Commission, for instance, met in response to a summons from its own President. The present Conference had greater autonomy than any Commission, because its members were Government delegates in possession of full powers to discuss and sign the Convention. The Conference, therefore, had every right to consider itself an independent body. This, however, did not mean that it would not avail itself of the valuable help of the organs of the League, and especially of the Secretariat. In conclusion, he trusted that the Conference would unanimously agree to adopt M. de Michelis's proposal with the amendments he had himself indicated, and he hoped that in this way future events would confirm the legitimate expectations of the Conference.

M. NEDERBRAGT *(Netherlands)* wished to make a short declaration on behalf of his delegation and an additional proposal. He had said on the previous day that the Netherlands delegation would be unable to agree to the proposal that had been made by M. de Michelis. However, after M. Politis's speech and his interpretation of, and amendment to, that proposal, the Netherlands delegation would be able to concur in it, though more particularly in that of M. Guerrero. It did so with pleasure because, previous to M. Politis's observations, M. Guerrero had altered his proposal in a more liberal sense. If, however, the Netherlands delegation voted for the proposal, it would not be exactly in the sense indicated by M. Politis, who had said that the Conference must continue its work in order to avoid the impression that there had been a failure on the part of the League. The Netherlands delegation agreed that any such impression must be obviated ; but, in its opinion, a minimum Convention would have been not only a failure for the League but a serious danger to the whole world. With the proposals which had been made by M. Guerrero and M. Politis, there would be a possibility of finding a compromise between countries which were prepared to go far in the matter of the treatment of foreigners and those which were not prepared to do so. In this connection, he would draw special attention to the contention of M. Guerrero and M. Politis that the extreme points of view must be taken into account. It must also be remembered that the extreme points of view were not all to be found in the documents of the Conference. If, however, the Conference accepted the view of M. Guerrero and M. Politis, the Netherlands delegation was prepared to vote for the proposal.

In conclusion, he would point out that the work of the Conference had been based on the text drawn up by the Economic Committee in co-operation with the International Chamber of Commerce. It was essential that this collaboration should remain intact, and, for this reason, he proposed that the work of the preparatory committee for the second session should be carried out in co-operation with the Economic Committee and the International Chamber of Commerce.

M. URRUTIA *(Colombia)* agreed with M. de Michelis's proposal and likewise with that of M. Guerrero for a preparatory committee. He understood that a special vote was to be taken on this latter point. He agreed further with M. Politis's remarks on the constitution of the preparatory committee and on the continuation of the work of the conference by the committee.

This being so, he suggested that the Conference should accept M. de Michelis's proposal, while reserving its opinion on that of M. Guerrero.

As regards the actual text of M. de Michelis's proposal, he would urge that the words " draft Convention " should be retained and that the draft Conventions should be sent as such to the Governments. It was essential to crystallise, so to speak, the work of the Conference, and for this purpose it would be necessary to obtain the views of the Governments. The text of M. de Michelis therefore appeared preferable to that of M. Guerrero.

As to the date of the second session, M. Urrutia pointed out that the month of December 1930 was inconvenient, owing to the programme of the League's work and to conditions. Further, it would be difficult for certain States to send in their replies by April 1st. He suggested that the Council of the League should be left free to fix the date for the next session.

He agreed with M. Politis's observations that it was the desire of all members of the Conference to conclude a Convention based on the most liberal principles; but what were liberal principles? Was it not necessary to be liberal towards Governments as well as towards foreigners? Governments had hitherto been in a difficult position in dealing with foreigners, because foreigners kept their national legal status and in many cases received the backing of their Governments. It must not be overlooked that a foreigner, if he had certain rights, also had certain duties towards the country in which he lived. The modern conception of international law in this matter was the principle of equality between States. That principle had been laid down for the first time by the Washington Conference of 1889. He was certain that all American delegates to the present Conference would be glad to see that principle adopted.

M. SERRUYS *(Economic Committee)* said that the Conference was grateful to M. de Michelis for his proposal that it should recognise plainly and courageously the position in which it was now placed after the laborious work and efforts to which the world would pay a tribute.

The present situation was the result of an attempt which had, throughout the realm of economic ideas, invariably been found unfruitful. The work of the Conference had tended towards the creation of a uniform doctrine, notwithstanding disparities in situations of law and fact. This was an experiment which the Economic Committee itself had been forced to make on many occasions. The fate of the present Conference did not differ in this from that of previous conferences. In the Conference on Import and Export Prohibitions and Restrictions, the Economic Committee had enunciated a doctrine somewhat similar to that which had emerged from the present Conference, an adulterated or attenuated doctrine in which considerations of law and progress had, little by little, been set aside owing to the special situation of certain countries. The Conference on Import and Export Prohibitions had stated that it was unable to find a compromise between the desire for progress and for a new stimulus to international commerce on the one hand, and the special situation, on the other hand, of certain States which had been unable to associate themselves with the Convention. That Conference had recognised the necessity of changing Articles 4 and 5 of the Convention, and of admitting reservations to take account of certain situations which were inevitable and irremediable at the present time. The position at the present Conference was much the same. The delegates had recognised that it was impossible to lay down a strict doctrine in a text and then to contradict that doctrine in the Protocol. They had recognised that it was impossible to find a compromise between irreconciliable legal conceptions. They had said that it was their purpose to establish a doctrine of equity and progress, but that they would recognise the situation of certain States which were prevented from associating themselves with the conclusions reached owing to their inferior development, their recent sufferings, their perhaps still backward legislation and the exigencies of their future evolution. There was nothing in this to surprise the Economic Committee, which was accustomed to this sort of experience.

What was to be the programme for the future work of the Conference? It was here that the Economic Committee would venture to say that, if, in point of fact, the attempt made by the Conference to lay down a minimum or compromise doctrine had failed, the Conference must not take this as a starting-point for the continuation of its work. The law must either be uniform for all and applicable to all—and in this case it would be an adulterated law—or it must be an efficient law, and in this case compromise solutions could not be taken as a starting-point. The starting-point, on the contrary, must be a new doctrine, which was even now emerging from the divergent views expressed—the doctrine of liberalism. The Conference would then examine, in the same liberal spirit, the special position of each country.

There were certain countries whose geographical situation and history was such that they could not for the moment, nor perhaps within less than fifteen years, join in the effort which certain other countries were prepared to make or had already made.

The second Conference would consider their reservations. Taking as its doctrine that of the most liberal States, it would be able, in greater security, to try to bring within the fold those States which might still need to adapt themselves to this more liberal doctrine in five or even ten years, when certain conditions had been removed. This would be the work of the League.

The Conference had loyally and sincerely attempted to establish a uniform law which would be applicable to all, but it had now accomplished the most difficult act of all—a public confession of the difficulties and obstacles which had been encountered. Certain delegations had confessed that they could not carry into effect certain ideas; that they considered this confession to be one of inferiority; but that the confession must be regarded as due to the fact that they were economically undeveloped.

Such was the situation, and this first experiment concluded with the liquidation of individual attempts and with the establishment of a valuable body of documentation which would be extremely useful in the second phase. In this second phase the work must be taken up, not on the basis of compromise, but on that of a new, courageous and equitable doctrine.

Such was his view of the programme of the Conference. The position was much the same as that of the Conference on Prohibitions, and as, perhaps, would be that of the Customs Truce. In all cases, equality excluded equity. The Convention to be concluded by the Conference on the Treatment of Foreigners must be, first and foremost, an equitable Convention. It was thus that the Economic Committee approved, in so far as it was concerned and by the only form of approval it could give, of the proposals which had been made. The members of the Conference held that the experiment had been inevitable, but that progress in future was assured.

At the second session, the Economic Committee, under the instructions it had received from the Council, would participate in so far as its long experience of these questions could still be useful. It would, however, perhaps be necessary to consider another form of preparatory work than that provided by the Economic Committee. The Economic Committee, when it drafted its report, had been in possession of practically the entire documentation submitted to the Conference, since the States had been consulted, not only on the Committee's draft, but also on the preliminary drafts. The consultation had been a very wide one, and the Committee had received no less than 148 amendments. The Committee had been forced to establish, not a compromise of doctrine, but of fact.

The Economic Committee believed that the Conference was progressing in the right direction. The documentation would be found, in part, by referring to the preliminary work which had served as a basis for the preparation of the " Brown Book ". If the Conference would read this preliminary documentation, it would be able to come to a decision on certain reservations, to ascertain why these reservations had met with objections from certain States, and why they corresponded to the needs of certain others. He hoped that this point would be taken into consideration in the future work.

He wished to associate himself with M. Politis's observation that there could be no question of a failure. The present Conference had been a first attempt at a task which could not be carried out in a single session. So far from there being any question of failure, it had been frankly recognised that one method must be substituted for another, and that the work generally must be equitable for all. The Economic Committee had taken up this question without any illusion.

At the beginning of the Conference he had indicated what were the general questions of law and fact which would be placed before the delegates. The fact that the Conference was proposing a second session could not be held to constitute either a failure or even a sign of temporary impotence. It was simply a proof of the good faith and confidence in which the Conference had carried out its work. It was not even necessary to say this to world opinion, for public opinion had confidence in the League, but did not expect miracles of it. The League was carrying on a long campaign by the art of persuasion and making a sustained effort on behalf of international co-operation. In conclusion, he would borrow a remark which had been made by M. Nederbragt. The Economic Committee had need of hope in order to undertake its task, but the Conference had no need of success at the outset in order to persevere in its accomplishment.

M. JULLIARD *(International Chamber of Commerce)* said he felt that a heavy responsibility rested upon him. The International Chamber of Commerce was a body which represented business men throughout the world. The business men were a special element in the economic structure of States, and were particularly interested in the task of the present Conference. The business men would stand to benefit most from the results of the Conference, and awaited its decisions with anxiety.

The International Chamber of Commerce regarded the Convention to be concluded as a first indication of a period of liberation. The International Chamber of Commerce had a high respect for the Conference, and, without desiring to interfere in the question of its methods of debate, it would express its confident hope that, whatever procedure were adopted, the Conference would end by achieving the progress so cordially desired by the Chamber. The last Congress of the International Chamber at Amsterdam had given a solemn expression to the hope that a Convention, all liberal in its terms, would be concluded, even though it secured only a small number of signatures. The International Chamber of Commerce attached great importance to the following point : in future discussions, sight should not be lost of the importance of the work of the Economic Committee, even when reservations appeared to be legitimate in view of the special conditions existing at the present moment.

The representatives of the International Chamber of Commerce had been glad to note that several delegates shared this opinion. He would declare in conclusion that, whenever a body of the League of Nations appealed to the International Chamber of Commerce for its collaboration, the Chamber would do its utmost to assist the League in a spirit of disinterested devotion. He paid a tribute to the League of Nations for the task which it had endeavoured to accomplish in an effort to assure rather more liberty and greater facilities for international commercial relations.

M. BORDUGE *(Fiscal Committee)* said, on behalf of the Fiscal Committee, that the members of the Committee would employ the interval between the two sessions of the Conference in studying fiscal texts which might secure, if not unanimity, at any rate the adhesion of the majority of the delegates to the Conference. In its work previous to the Conference, the Committee had observed certain difficulties and had come to the conclusion that the only possible method of obtaining results was that of bilateral treaties. In the months to come, however, and more particularly at its meeting in May, the Fiscal Committee would study Articles 13, 14, etc., of the Convention, and would endeavour to suggest provisions which, while liberal, would secure the adhesion of the greatest possible number of States. The Conference might count on the devoted assistance of the members of the Fiscal Committee.

THE PRESIDENT declared the discussion closed, and observed that, according to the normal procedure, the Conference should now take a vote on the two proposals before it. One of these,

however, had been submitted by himself. He had followed the debate with attention, even with emotion, and, in view of the considerations which had been urged by many delegates, more particularly by M. Serruys, he would withdraw his proposal and concur in that of M. de Michelis. If, therefore, the Conference agreed to this suggestion, the only proposal before it in principle would be that of M. de Michelis. It would be unfortunate if the debate ended in the triumph of majority over minority, and it would be far preferable to take a unanimous decision.

The proposal of M. de Michelis was adopted in principle.

THE PRESIDENT said that there remained the amendments proposed by M. Guerrero and M. Politis, and likewise an amendment by the Brazilian delegation concerning the time-limit for the submission by Governments of their observations and the date of the second session.

He would propose that these amendments should be referred to a small Committee of Four consisting of M. de Michelis, M. Guerrero, M. Politis, and Dr. Martius, the latter to represent the delegations which had made no proposal. The Committee would be asked to prepare a text on the following day. He would ask M. Serruys to place himself, if necessary, at the disposal of the Committee.

M. POZNANSKI *(Poland)* drew attention to a question of procedure. The President had suggested that the best course would be to have a unanimous decision on the principle formulated by M. de Michelis. He would point out that, both in the plenary Conference and in the Committees, delegates had invariably been asked to vote on texts and never on principles. It would therefore be useful to have a vote on the text proposed by M. de Michelis in order that delegates might know on what they were voting and so as to obviate difficulties which might arise later when the final draft came back from the Drafting Sub-Committee.

M. GUERRERO *(Salvador)*, in reply to the Polish delegate, pointed out that a Sub-Committee had been appointed and would consider the text of M. de Michelis's proposal in conjunction with the amendments which had been submitted. The Conference would then decide on the final text thus presented. This should meet the point raised by M. Poznanski.

There was, however, another question. There were two delegations, those of Italy and Colombia, which had asked for a separate vote on the question of constituting a preparatory committee for the next session. M. Politis had stated that he regarded this committee as consisting of the General Committee of the Conference. It would be necessary to have a separate vote on this point.

DR. MARTIUS *(Germany)* said that, after the explanations of the President, he had supposed that the decision of the Conference was to be taken on the basis of the text to be presented by the Drafting Sub-Committee. If there were any other proposals as to procedure, such as that of the Polish delegate, he would ask the President to give other delegations an opportunity of proposing amendments. He thought, however, that the procedure suggested by the President much the most practical.

M. POZNANSKI *(Poland)* said that the question he had raised was a purely formal one. On the previous Friday, the Conference had, in plenary session, begun the ordinary procedure of adopting the texts submitted by the Committees. This work had been suspended without any final vote being taken on the subject. He thought that a vote should be taken, on a definite text, on the question whether the Conference should suspend its work.

M. DE MICHELIS *(Italy)* asked whether the proposal he had submitted had been adopted in principle, and whether it had been adopted unanimously or by a majority. He further enquired whether the decision taken had been merely to refer all the proposals put forward to a Drafting Sub-Committee, which also would consider the amendments submitted.

THE PRESIDENT, in reply to the Polish delegate, observed that the Conference had already, in principle, accepted the proposal of M. de Michelis for the suspension of its proceedings. No objection had been made to that proposal. He did not think that M. Poznanski had desired a vote by roll call. There remained, therefore, only the drafting of the final text, which would take into account the amendments that had been submitted.

There was, however, still the question of the constitution of the preparatory committee. He had supposed that this point would be considered by the Drafting Sub-Committee. Did M. Guerrero, however, desire a separate vote ?

M. PUSTA *(Estonia)* did not see the use of taking a separate vote on M. Guerrero's amendment. The Conference was at the moment merely deciding in principle to postpone its work. The rest was merely a question of drafting, and the President had proposed that the Drafting Sub-Committee should be instructed to submit a single text. When that was done, the Conference would be able to vote on M. Guerrero's proposal.

THE PRESIDENT wished to make a slight correction to what M. Pusta had said. The underlying idea of M. de Michelis's proposal was not the postponement but the continuation of the Conference's work, with an interval for full preparation and a second session. That proposal had been accepted in principle, and the only question now before the Conference was whether the

amendment which M. Guerrero had submitted for the appointment of a new committee should be referred to the Drafting Sub-Committee or whether a vote should be taken at once. In this matter he was in the hands of the Conference.

M. GUERRERO *(Salvador)* said that there was a question of order involved. M. de Michelis had detached M. Guerrero's amendment from his own proposal, and M. Guerrero therefore thought that a vote must be taken on it. It was not yet known whether the Conference agreed to the constitution of a preparatory committee. The Conference must therefore take a decision in order that the Sub-Committee might know what was its desire in the matter.

M. POLITIS *(Greece)* said that, while he had no objection to a vote being taken on M. Guerrero's proposal, the latter was an amendment to M. de Michelis's proposal in exactly the same way as his own amendment.

If the procedure proposed by M. Guerrero were adopted, the Conference would have to vote on all the amendments submitted. The position would be much clearer if no vote were taken and the matter left to the Sub-Committee.

THE PRESIDENT said that, as his proposal for procedure was more general than that of M. Guerrero, he would be in order in putting his own proposal first to the vote. He therefore requested the Conference to vote on his proposal.

The proposal of the President for procedure was adopted by twenty-three votes to three.

M. ZUMETA *(Venezuela)* asked whether it was understood that the composition of the Preparatory Committee, whose creation had been decided in principle, would be determined by the Conference itself in plenary session.

THE PRESIDENT explained that, in virtue of the principle adopted, the texts concerning the constitution of the Committee would be referred to the Drafting Sub-Committee, which would prepare a final text, including a proposal for the composition of the Preparatory Committee.

M. STOPPANI *(Secretariat)* pointed out that the decision taken by the Conference would have certain administrative consequences for the Secretariat, although, of course, it would not become effective until the report had been approved by the Council.

In the first place, the Secretariat would have to prepare, not only for the second session of the present Conference at the end of 1930, but a number of other Conferences. The Secretary-General must be free to take the necessary decision in this matter.

Secondly, there was a point on which he would be obliged to make a reservation, although, no doubt, a temporary one—namely, in regard to the budget. The decision taken by the Conference might bring the Secretariat into conflict with the budget provisions which had already been determined. He would therefore request that, in the text submitted by the Sub-Committee, there should be inserted some such words as " if possible ", in order to reserve the freedom of the Council.

THE PRESIDENT drew the attention of the Drafting Sub-Committee to M. Stoppani's statement.

ELEVENTH PLENARY MEETING

Held in Paris on December 3rd, 1929, at 3.30 p.m.

President : M. DEVÈZE.

24. **Procedure of the Conference.**

THE PRESIDENT said that, in consequence of the decision taken in principle at the meeting on the previous afternoon, the Conference should now endeavour to close its proceedings at the present meeting.

He would therefore submit at the end of the meeting a report by the Committee of Four on the proposal of M. de Michelis (Italy), account being taken of the amendments submitted by M. Guerrero (Salvador), M. Politis (Greece), M. Paranjpye (India) and M. Lafer (Brazil), for a draft Protocol of Closure.

He would further request the Conference to take note of the Committees' reports without discussing them. The delegations would be able to make any important observations they might wish to offer on behalf of their Governments in connection with each report. Their observations would be attached to the general records of the Conference which were to be forwarded to the Council.

SALIH ZEKIAI BEY *(Turkey)* pointed out that some of the reports from the Committees had not yet been distributed. When would it be possible for the delegates to take a decision on them ?

THE PRESIDENT explained that all the reports from the Committees had been distributed except that from Committee D.

M. DE MICHELIS *(Italy)* said that Committee D of which he was the Chairman had finished its work that morning. It had adopted a report submitted by M. Ito, and had left it to the Rapporteur to complete the report in accordance with the discussion at the morning's meeting.

25. **Procedure in noting the Reports of the Committees.**

THE PRESIDENT invited the Conference to take note of the reports of the Committees, and recalled that the reports were to be regarded as an exact reproduction of the discussions which had taken place in Committee. The Conference was not invited to discuss the reports but only to take note of them.

M. DE BEREZELLY *(Hungary)* handed in the observations in writing of the Hungarian delegation on Articles 9, 10 and 11 (Annex 2).

THE PRESIDENT said that these observations would be included in the records of the Conference and transmitted with them.

M. POZNANSKI *(Poland)* asked how delegates could satisfy themselves that the reports faithfully reflected the meetings in the Committees unless they were given an opportunity of discussing them

THE PRESIDENT pointed out that the reports from the Committees had been submitted to the Committees which had adopted them. If certain delegations considered that they did not faithfully reflect the discussions, they would be invited to indicate any corrections they thought necessary. These corrections would be attached to the documentation of the Conference.

M. NEDERBRAGT *(Netherlands)* said that, if the delegations were authorised to make a general declaration at the end of the meeting, he would abstain from making one in connection with the reports.

THE PRESIDENT proposed the following procedure : The Conference would take note of the reports from the Committees, and each delegation would be allowed to submit at the end of the meeting any important observations they might wish to make upon them.

This procedure was adopted.

M. PARANJPYE *(India)* wished to explain the attitude of the delegation of India. During the discussions, many of the amendments proposed by other delegations had been in conformity with the views of the delegation of India. The delegate for India had accordingly refrained from speaking. This should not be taken to mean that the delegation of India had always been in favour of the text finally adopted.

THE PRESIDENT observed that, in addition to the observations which the delegations would be authorised to submit during the examination of the reports, the Governments retained the right to submit their observations within a time-limit of six months.

M. PUSTA *(Estonia)* said that it would be very difficult for certain delegations to indicate their opinions, seeing that they had not yet received the reports. Furthermore, the documents were very voluminous. He recalled that it had been agreed that the Conference would begin by discussing the report from the Committee of Four and would then prepare a statement of the work done with a view to the next Conference on the Treatment of Foreigners.

He asked that the reports should be read before they were adopted.

THE PRESIDENT explained that, in the present stage of the Conference proceedings, it was impossible to prepare a document which would give an exact picture of the results obtained by it. The Conference had decided on the previous afternoon to prepare a statement upon its work. The report submitted to its approval gave an exact picture of the work done. At the end of the meeting, the delegations would be authorised to submit any general observations and the Conference would be requested to determine the Protocol of Closure.

The procedure proposed by M. Pusta, namely, the immediate discussion of the report by the Committee of Four before the reports of the Committees were noted, and the preparation of the Protocol of Closure of the Conference, was different from the resolution which had been adopted on the previous afternoon.

M. POZNANSKI *(Poland)* considered that the Estonian delegation's proposal was justified, and he supported it.

SIR SYDNEY CHAPMAN *(British Empire)* drew attention to the misunderstanding to which the procedure proposed by the President appeared to give rise. When reports came from

Committees, three procedures might be adopted. First, the reports might be submitted to the Conference, which would confine itself to taking note of their submission. Secondly, they might be discussed, and, thirdly, they might be adopted.

The Conference was at the present meeting merely invited to take note of the submission of the reports from the Committees. It would be for the next Conference to discuss and adopt them. This procedure was essential if the co-ordination of the work of the Committees as a whole was to be ensured.

M. PUSTA *(Estonia)* had supposed that the Conference would be able to submit to the next Conference the texts which had been adopted by it and which would serve as documentation, more particularly in regard to the reservations. As he had not received any reports, he asked that the Conference should examine the report by the Committee of Four. If he was alone in this opinion, he would not press his proposal.

M. POZNANSKI *(Poland)* wished to be clear on one point. Were the reports from the Committees to be regarded as official documents of the Conference and to serve as a basis of discussion at the next Conference without having been read in plenary session and adopted by the present Conference ? In view of the declarations which had been made during the discussions, he thought that the Minutes of the Conference would form an official document which would be equal in value to the reports.

M. DE MICHELIS *(Italy)*, Chairman of the Committee of Four, urged the Estonian delegation not to press its proposal. The decisions taken at the meeting on the previous afternoon had dealt with the form in which the statement of the work of the present Conference would be transmitted to the next Conference. As a result of the resolution taken at the same meeting, the Committee of Four, which had met in the morning, had been instructed to find a formula to express the view of the Conference. The Committee of Four had unanimously decided to establish the Protocol of Closure. Various proposals had been made during the last session of the Conference as to the way in which the statement of the present Conference should be transmitted to the next one. Of the three suggestions made by M. Guerrero, M. Politis and M. de Michelis himself, that of M. Guerrero had been adopted by the Committee of Four. This proposal was contained in the report by the Committee of Four in the following terms :

> " The undersigned . . . having regard to the discussions recorded in the reports of the Committees and in the Minutes of the Conference ;
>
> " Noting that, in spite of every effort of collaboration, the complexity of the subject-matter has made it impossible to find generally accepted solutions to certain questions ;
>
> " Being of opinion that those questions deserve to be examined afresh and that in consequence a second session of the Conference is necessary to achieve the end in view ;
>
> " Have agreed. . . "

It followed that the Conference was not requested to vote on the text of the reports from the Committees. It was simply invited to take note of the reports which had already been adopted by each Committee individually and which, as they stood, should be considered as giving an exact picture of the debates in the Committees on which all delegations had been represented. The Conference might, without misgiving, take note of the reports submitted to it, as it would leave the Committees responsible for their reports.

DR. MARTIUS *(Germany)* supported the observations of Sir Sydney Chapman and M. de Michelis. The reports submitted were in sum only part of the documentation which would be presented at the next Conference.

M. PUSTA *(Estonia)* explained that he had merely asked that the documents in question should be read. He would, however, abide by the opinion of the majority.

THE PRESIDENT pointed out that the reading of the documents would take a very long time. Each delegation had had an opportunity of studying them. It was assumed that the reports which had been distributed were known to the delegations. Only the last report, that by Committee D, which had not been distributed, would be read in session. The reports would form part of the documentation transmitted to Governments and to the Secretariat of the League.

He would point out, in reply to M. Poznanski, that the reports in question formed part of the official documentation of the Conference to be forwarded to the Secretary-General. They would be used for the discussions at the next Conference, together with the observations of the Governments on them and those of the advisory organs of the League.

M. DINICHERT *(Switzerland)*, in view of the stress laid by certain delegations on the character of the reports, explained that the act to be accomplished by the Conference at the present meeting would be solely that of taking note of the submission of the reports by the Committees, without in any way assuming responsibility for their contents. The only fact to be noted would be that of their submission.

26. Presentation of the Reports of the Committees.

THE PRESIDENT requested the Conference to take note of the reports of Committee A.

The Conference took note of the reports of Committee A.

THE PRESIDENT requested the Conference to take note of the reports of Committee B.

The Conference took note of the reports of Committee B.

THE PRESIDENT requested the Conference to take note of the reports of Committee C.

M. DINICHERT *(Switzerland)*, Rapporteur for Committee C, said that he had received instructions to draw the serious attention of the Conference and, through the President, that of the advisory organs of the League to the necessity of introducing into the Convention a provision which would give satisfaction as to the fiscal regime to be applied to companies. The drafts which had been placed before the Conference were entirely unsatisfactory in this respect.

The Conference took note of the reports of Committee C.

THE PRESIDENT invited the Conference to take note of the reports of Committee D.

The Conference took note of the reports of Committee D.

27. General Observations by the Delegations.

THE PRESIDENT invited the delegations to submit any general observations they might wish to make on the work of the Conference as a whole.

M. NEDERBRAGT *(Netherlands)* said that he intended to make an observation, a suggestion and a declaration. The Netherlands delegation thought that the result of the Conference's discussions had not been what might have been expected, for the reason that the question of the treatment of foreigners was not ripe for examination internationally. It would be difficult for him to say whether this question would require much time before it reached the stage of maturity, but the Netherlands delegation thought that the proper time must be awaited, since time did not respect anything that was done without due regard to it. He therefore urged that the Committee appointed to prepare for the next Conference should await the right moment before convening the Conference.

His attention had been aroused by the paragraph on page 2 of the Report of the Committee of Four, in which mention was made of the great complexity of the problem. The suggestion he wished to submit on behalf of the Netherlands delegation was that, if it should be noted that a part of the question had reached the stage of maturity and that there were grounds for hoping that an international conference would reach a satisfactory solution in regard to it, it would be well for the liaison Committee which had been appointed to submit this particular matter to the second session of the Conference, drawing attention to the points regarded as having reached maturity, the remainder of the Convention being left on one side.

The Netherlands delegation wished finally to make the following declaration.

The results of the Conference's discussions had been a great disappointment to the Netherlands, more particularly in regard to Articles 6, 7 and 8 of the draft. The Netherlands delegation would have been able to accept Article 6 as framed in the draft Convention, in view of the stipulations of Article 19 relative to admission, which was regarded as being outside the scope of the Convention. The modifications, however, which had been made to Article 6 were such that the question of admission as dealt with there made Article 6 unacceptable to the Netherlands delegation.

Article 7 in its first wording would also have been accepted by the Netherlands delegation, which would have contented itself with making certain observations, but the new wording of Article 7 and the unduly numerous restrictions made in it rendered the article unacceptable.

As to Article 8, he would refer to what he had said in committee, namely, that the Netherlands delegation would be unable to sign a Convention which contained Article 8 as drafted at present.

He would therefore say, in conclusion, that the discussions of the Conference had been a disappointment to the Netherlands delegation. That, however, did not mean that the Conference as a whole had been merely a source of disappointment. The Netherlands delegation highly appreciated the opportunity which had been given it of expounding the very liberal policy of the Netherlands. It was grateful for the explanations which had been given by other delegations as to the difficulties which their countries had to meet. The Netherlands delegation had thus had an opportunity of ascertaining the reasons which prevented certain countries from accepting the liberal policy which had been practised in the Netherlands not for a few decades, but for centuries. The advantage of the discussions had been that they had revealed the difficulties which the various countries still had to surmount, and thus enabled the Netherlands delegation to observe that in substance many countries wished to pursue the same policy, although they were still at different stages. It had been realised that it was difficult to apply immediately the same liberal policy in a large number of countries, even in Europe.

If in the Netherlands the failure of the Conference was used as an argument for assailing the point of view upheld by the Netherlands delegation and for showing that it was impossible

for the Netherlands Government to continue its liberal policy, he would give an assurance that the Netherlands delegates had no intention on their return home of encouraging such an attack or of suggesting that the Government should change its position. On the contrary, the Netherlands delegates had unanimously decided, if necessary, to advise the Government to continue its present policy. There could be no question that the Netherlands Government intended to follow the line of conduct it had followed hitherto and to practise the same policy of bilateral treaties. In these bilateral treaties, however, an attempt would be made to introduce, in addition to the provisions resulting from the work done at Geneva, some of the stipulations contained in the Economic Committee's draft. If it were possible, by extending the field of the bilateral treaties, to induce other countries to form a solid block for the defence of the same principles, the work of the League would have made considerable progress.

He had not spoken on the reports of the Committees. On the report of Committee D, he wished to point out that the Netherlands delegation desired to make a reservation in regard to the colonies and the special position of the Netherlands East Indies. Conditions in the colonies were, in point of fact, peculiar. Regard must be had to them, and the Netherlands delegation would be glad of an opportunity to revert to this question. Had the Convention been submitted for signature at the present moment, the delegation would have been obliged to make reservations, but as the Convention had been postponed, the various Governments would have time to reflect, and the Netherlands Government in particular might perhaps succeed in inducing the Government of the Netherlands East Indies to change its somewhat obsolete legislation. In that case, the Netherlands delegation would have to submit only a very few reservations to the second Conference.

He urged his colleagues to carry out the same work in their countries, so that they might attend the second session of the Conference in a spirit of conciliation and with very few reservations to formulate. The present Conference had enabled delegates with antagonistic views to consider one another as mutual friends and collaborators. It was in this spirit of co-operation that the Netherlands delegation left Paris full of hope in the success of the next Conference.

M. PEROUTKA *(Czechoslovakia)* said that his delegation would have no hesitation in signing, with the approval of its Government, a Convention established on the basis of the results which had already been reached by the work of the Committees, provided it obtained a final appreciation of the precise significance of the texts at an examination by the plenary Conference sanctioned by the adherence of the majority as expressed by a vote.

The result of the work was maintained, as had been noted on the motion of the Polish delegation.

It was clear from the events of the last few days that there had been some anxiety owing to the lack of time, since the duration of the present work was necessarily limited.

He ventured to call the attention of the Conference to the following points.

In the opinion of several delegations which were keenly anxious to contribute to the success of the Conference, difficulties appeared to subsist owing to the attitude of certain delegations in the Committees on various questions. These difficulties, if they really existed, were not always due to the desire of certain Governments to obtain exceptions to the common regime to be established by the Conference. They had also been caused by the marked tendency of certain delegations to go outside the scope of the Convention and to go beyond the draft of the Economic Committee.

This fact, which he believed would be recognised by the Conference, forced his delegation to appreciate the great value of the scope and tenor of the draft which had been prepared by the Economic Committee, with so much moderation and knowledge of existing conditions, to serve as a generally opportune and acceptable basis and as a fresh stage on the road towards progress.

The final Protocol said that it was only a stage. This was, therefore, a reply to M. Nederbragt. He would venture to add a few words on behalf of his own country.

So far as Czechoslovakia was concerned, he would remind the Conference that his delegation had wholeheartedly supported the work of the Conference. Even in the discussions on Article 8 and Article 11, the Czechoslovak delegation had upheld the thesis of the Economic Committee. True, the Czechoslovak Government had, before the opening of the Conference, thought that Article 8 should not be kept in the Convention. After the adoption of the provisions taken in the Committees in regard to this article, the Czechoslovak delegation had, however, agreed to it and had merely opposed the tendency to widen the scope of the article on lines which did not correspond with the original text of the Economic Committee.

The Czechoslovak delegation had applied for no reservations or exceptions except in connection with the regime laid down in Article 7, paragraph 2. All it had asked for in that connection was that the possibility of applying the rule laid down to cases in which Czechoslovakia was concerned should be examined.

He wished to dissipate a misunderstanding in regard to the question of reservations. When he had drawn the Conference's attention to the scope of the Protocol, *ad* Article 12 (Austrian reservation), he had not had any intention of making use of the said reservation on behalf of his country, but rather in the contrary sense—that was to say, it had been his intention to preserve the pure principle without any reservations whatever and without any exceptions.

He would venture once again to remind the Conference that it was the vote of the Czechoslovak delegation which had brought about the decision of the Committee to keep Articles 3, 4 and 12 within the four corners of the Convention.

The Czechoslovak delegate recognised the important reasons for which the Conference had decided to examine certain proposals on the continuation of its work and on the most appropriate subsequent procedure to ensure its final success, as embodied in the proposals of M. Guerrero, M. de Michelis and M. Politis, which had now been combined in a common text. The Czechoslovak delegation would vote in favour of these proposals.

COUNT E. O'KELLY *(Irish Free State)* read the following declaration :

" The delegation of the Irish Free State wishes formally to place on record the following declaration of its interpretation of Articles 2, 7 (2), Protocol *ad* 8, 10 (3) and (4), 16 (7), 17 of the Convention :

" 1. Nothing in the said articles shall prevent the grant of privileges by the Irish Free State, a member of the British Commonwealth of Nations, to British subjects, protected persons or companies belonging to any other member of the British Commonwealth of Nations, whether the Convention has or has not been ratified or acceded to on behalf of such other member, without thereby creating any obligation to extend these privileges to nationals of any other High Contracting Party."

SIR SYDNEY CHAPMAN *(British Empire)* said that his Government desired to make a declaration in similar terms and that a copy of it had already been distributed to the Conference.

MR. PARANJPYE *(India)* said that he would make a general declaration which he hoped would be included in the records.

MR. MCGREER *(Canada)* made a similar statement.

M. SCIÉ TON-FA *(China)* said that, during the discussions in the Committees, the Chinese delegation had asked for instructions from its Government, feeling that it would be obliged to refuse to sign the Convention as it appeared to be shaping as the result of the work of the Committees. China was not opposed to the liberal spirit of such a Convention, but, in view of the special situation of China as regarded her contractual relations with foreign Powers, and in view of the fact that the Chinese Government was at present engaged in the direct negotiation of bilateral treaties, the Chinese delegation had not considered that it would be possible to sign the Convention. The Conference was now concluding its first session somewhat abruptly, and he hoped that, before the next session of the Conference, the Chinese Government would enjoy an international legal position of greater freedom such as would enable it to sign the future Convention.

M. LAFER *(Brazil)* said that he would submit his observations in writing and asked that they should be attached to the records of the Conference.

SALIH ZEKAI BEY *(Turkey)* supported the declaration of the Czechoslovak delegation. He had accepted all the texts which had been adopted in Committee. The reservation which he had made in regard to Article 7, paragraph 2 *(b)*, was more in the nature of an explanation justified by the text of the paragraph in question, and the reservation which he had made to Article 22 referred only to certain formalities due to the fact that the Turkish Government had not adhered to the Protocol of the Hague Convention of 1920.

SIR SYDNEY CHAPMAN *(British Empire)* associated himself with the tribute which had been paid to the work of the Committees and did not think that the proceedings of the Conference should be closed on a pessimistic note. As happened in all Conferences, it was left to the Committees to do the pruning. In this connection, the various Committees had done valuable work, especially in view of the considerable difficulties involved. They had been confronted with a veritable thicket of amendments and the Conference on adjourning would pass on to the next session a task in which the pruning had already been carried out. It was miraculous that it had been possible to achieve so much work in four weeks. There were, therefore, good reasons for feeling optimistic and for contemplating the future with hope. Certain extremely difficult problems would still have to be solved ; but, even so, there was ground for confidence in the successful outcome of the final Conference.

M. NECULCEA *(Roumania)* said that he had already had an opportunity of expressing his Government's point of view during the discussions of the draft of the Economic Committee. Certain amendments had been made in the draft submitted by the Economic Committee and the Roumanian Government reserved its right to indicate its views later. For the moment, he would confine himself to calling attention to the following observations submitted by the Roumanian delegation in connection with Article 11, which expressed the opinion of the Roumanian Government on the way in which they thought national treatment should be interpreted :

" Roumania intends to apply to foreigners national treatment as provided in Article 11. Since, however, in its comments on the Convention the Economic Committee has stated that the provisions of Article 11 do not cover the special case of a capital levy or a forced loan, Roumania feels obliged to declare that in her view national treatment also includes these cases, provided that such measures are decreed by the laws of the country.

" Roumania notes that the national courts are the authorities competent to fix compensation. Equal treatment for foreigners with nationals must mean equality in regard to prices, conditions, and jurisdiction.

" In no case can Roumania admit that a foreigner should have against a national or against the Roumanian State a means of recourse other than that provided for under the national legislation. "

THE PRESIDENT *declared the general discussion to be closed.*

28. Report by the Committee of Four on the Proposal of M. de Michelis, taking into Account the Amendments submitted by M. Guerrero, M. Politis, Mr. Paranjpye and M. Lafer, for a Draft Final Protocol.

M. POZNANSKI *(Poland)* asked that the draft might be read paragraph by paragraph. He wished to submit the Polish delegation's amendments in connection with each paragraph as it was read. He noted that in the draft Final Protocol there was a gap which was also to be found in the Minutes of the last plenary meeting concerning the narration of the events which had occurred on Friday, November 29th, 1929.

The meeting in question had begun with the reading of the texts adopted in committee. The last article read had been Article 12 ; since then the Conference had ceased to deal with the texts adopted in committee. No proposal had been made in this connection, so that, so far as he himself was concerned, he was in the following position : if his Government questioned him as to the way in which the Conference had decided to suspend its work and which delegation had suggested the suspension, he would be forced to reply that he knew nothing about it. He asked that the Final Protocol, which gave an account of the events in the Conference, might contain an indication of the proposal on which it had been decided to adjourn the Conference. The only document available was a communication from the President of the Conference. He asked, therefore, that in the report of the Committee of Four it should be stated whether it was on the proposal of a delegation that the Conference had decided to suspend its work, and, if so, which delegation had moved the suspension, or whether the suspension had been decided on the proposal of the President.

M. DE MICHELIS *(Italy)*, Chairman of the Committee of Four, agreed with M. Poznanski's proposal to submit the draft to the Conference paragraph by paragraph. He thought he might say that M. Poznanski's wishes could be satisfied in regard to the second part of his observations by the considerations given as an explanation why the delegations had taken the decision to suspend the work of the Conference. The Protocol referred both to the report and to the Minutes of the Conference. It would be sufficient to refer to the Minutes of the Committee and to the plenary meetings in order to have an exact picture of the facts which had decided the various delegations to take this resolution. The Committee of Four had thought that it was unnecessary to explain this point.

THE PRESIDENT pointed out that his communication to the Conference had proposed a procedure which would make it possible for the Conference to continue its work. He had withdrawn his proposal in view of the general feeling expressed in plenary session. It would therefore be the reverse of the truth to say in the Protocol of Closure that the decision to put an end to the work had been taken on the suggestion of the President.

M. POZNANSKI *(Poland)* noted with satisfaction the President's statement. He had alluded to the President's communication only because it was the sole document before him which had any relation to the decision taken to put an end to the work of the Conference. It was none the less true that there was no information as to which delegation had made the proposal on which the Conference had taken this decision. At the last plenary meeting, no delegation had made any definite proposal to suspend the Conference. If it were possible to reconstruct the last plenary meeting and to ascertain the origin of the proposal, he would be happy to withdraw his suggestion.

M. POLITIS *(Greece)* thought that, in view of the insistence of certain delegations, it was desirable to remove a misunderstanding. He reminded the Conference that at the plenary meeting of November 30th, the discussion had dealt with the articles in the Convention which had been examined in Committee B. The Conference had reached Article 12, which had given rise to a protracted debate. It had been proposed that the second paragraph of the article should be struck out. The Conference had taken a vote and had decided in favour of striking out the paragraph, whereupon the German delegation had stated that it must be understood that at the second reading the delegations would be authorised to re-open the discussion on the text of paragraph 2 and to apply for a fresh vote.

The discussion which had followed in connection with the reservations had been somewhat confused. It had, however, been clear that the meeting was confronted with a far more complicated question than had been originally thought. The meeting had then risen and the remainder of the debate had been adjourned to December 2nd. In the interval, he had supposed that the General Committee and the President had thought that it would be necessary to elucidate the question of reservations before continuing with the examination of the text of the Convention, seeing that the question of reservations was a question of order or procedure. It was in these circumstances that the President had drafted his resolution. The discussion in the plenary meeting had shown that it was impossible to continue to examine the text with any hope of success, and M. de Michelis had then stated that he had intended to submit a motion for a Final Protocol.

It was, of course, true that no formal proposal for the adjournment of the work of the Conference had been made, but the Conference was not bound by red tape. It had been clear after the discussions that the Conference felt itself unable to continue its work. It was unquestionable that, if the Conference were now invited to formulate its general feeling, the majority could clearly decide in favour of an adjournment to a new session. Any such motion would therefore be asking for an opinion which had already been formed.

M. POZNANSKI *(Poland)* said he was satisfied with the explanations of M. Politis.

29. **Final Protocol of the First Session of the International Conference on the Treatment of Foreigners.**

The draft Final Protocol was read paragraph by paragraph in the following form :

" The undersigned delegates of the Governments of Germany, the Commonwealth of Australia, Austria, Belgium, Bolivia, the United Kingdom of Great Britain and Northern Ireland, the United States of Brazil, Bulgaria, Canada, China, Colombia, Cuba, Denmark, the Free City of Danzig, the Dominican Republic, Egypt, Spain, Estonia, Finland, France, Greece, Guatemala, Haiti, Hungary, India, the Irish Free State, Italy, Japan, Latvia, Luxemburg, the United States of Mexico, Norway, Panama, Paraguay, the Netherlands, Peru, Poland, Portugal, Roumania, Salvador, Sweden, Switzerland, Czechoslovakia, Turkey, Uruguay, the United States of Venezuela, and Yugoslavia ; being assembled at Paris, at the invitation of the Council of the League of Nations, under the chairmanship of M. Albert Devèze, former Belgian Minister of National Defence, with the object of concluding a Convention concerning the Treatment of Foreigners ;

" Having regard to the discussions recorded in the reports of the Committees and in the Minutes of the Conference ;

" Noting that, in spite of every effort of collaboration, the complexity of the subject-matter has made it impossible to find generally accepted solutions to certain questions ;

" Being of opinion that these questions deserve to be examined afresh and that in consequence a second session of the Conference is necessary to achieve the end in view ;

" Have agreed :

" 1. To submit to their Governments for consideration all the documents relating to the work of the Conference ;

" 2. To direct their attention to the expediency of establishing the proposed Convention on the most liberal bases, subject to the right to make it conditional on derogations justified by special situations of fact or of law which exist at present, in view of which the Governments will be called upon to put forward their proposals ;

" 3. To request their Governments to forward to the Secretariat of the League of Nations before June 1st, 1930, any observations and suggestions they may wish to make with regard to the documents mentioned in paragraph 1 above, in order that it may be possible to obtain, with the authorisation of the Council of the League of Nations, the opinion of its advisory bodies, and, as regards the provisions relating to the treatment of those foreigners described as " workers ", that of the International Labour Office ;

" 4. To instruct the bureau of the Conference to remain in office during the interval between the two sessions, in order to examine the documents mentioned above and prepare the future work of the Conference as methodically as possible ;

" 5. To leave it to the President of the Conference, with the approval of the Council of the League of Nations, to fix the date of the second session of the Conference, which, as far as possible, should be held at Geneva before December 31st, 1930 ;

" To this session will be submitted, in addition to the observations and proposals of the Governments, the opinions obtained in advance of the advisory bodies of the League of Nations and of the International Labour Office and any other technical opinions, notably that of the International Chamber of Commerce, of a nature to supply the delegates with as complete a documentation as possible ;

" 6. To request the Council of the League of Nations to authorise the Secretariat of the League to undertake the tasks entailed by the carrying into effect of the present Protocol.

" IN FAITH WHEREOF the delegates of the above-mentioned Governments have signed the present Protocol.

" DONE at Paris on December . . . , 1929, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations."

Preamble.

M. POZNANSKI *(Poland)*, referring to the last line in the third paragraph of the preamble, moved that the word " unanimously " should be substituted for the word " generally ".

M. PEROUTKA *(Czechoslovakia)* also thought that a distinction should be made between solutions which had been accepted by a simple majority and solutions which had been generally accepted. He suggested that : the end of paragraph 3 from the word "matter " should be deleted and combined with paragraph 4.

THE PRESIDENT proposed the addition of the words " at the moment " after the words " has made it impossible " in the third paragraph.

He noted that three amendments had been submitted. 1. The addition of the words " at the moment ", 2. the substitution of the word " unanimously " for the word " generally ", and 3. the deletion of the end of the third paragraph.

M. POLITIS *(Greece)*, member of the Committee of Four, saw no objection to the acceptation of the first amendment, *i.e.*, the addition of the words " at the moment ", although he thought they were superfluous.

The substitution of the word " unanimously " for " generally " would, on the other hand, have a serious disadvantage. A large number of decisions had been taken by a majority vote, but it would be untrue to say that the majority expressed the general feeling of the Committee, since the majority had often been very small and there had also in many cases been a very large number of abstentions. What it had been intended to say in the Protocol was that the decisions taken did not sufficiently express the general feeling of the Conference, although they had been taken by a majority of votes. Care must be taken to obviate creating the impression that in such cases the decision had been very near to unanimity.

The third amendment would have the effect of making a considerable change in the sense, spirit and general structure of the Protocol. The object of the third paragraph had been to underline the fact that in a certain number of cases it had been impossible to arrive at a solution which expressed the general feeling of the Conference and that these questions deserved a further examination and therefore required a new meeting.

M. POZNANSKI *(Poland)* appreciated the way in which M. Politis had explained the value of the decisions taken in Committee. He did not altogether share his view on the matter of abstentions. The delegations which had preferred to abstain might have rallied either to the majority, and this seemed a legitimate inference, or the minority. The sense of their opinions could only be verified by submitting the same question at a plenary meeting. For that reason, he had considered that the word " generally " did not express quite exactly the events which had occurred in Committee. If the word " unanimously " could not be accepted, he would agree to the word " generally " if it were completed by the words " although adopted by a majority in the Committees ".

M. POLITIS *(Greece)*, Member of the Committee of Four, thought that any additions would be entirely superfluous, since the second paragraph referred both to the report and to the Minutes of the Committees. Reference to these reports and Minutes would furnish an exact picture of what had occurred in the Committees. Furthermore, the votes taken in plenary session were hardly more significant than those taken in Committee, since certain decisions in plenary Conference had only been adopted by a majority of two or three votes with a large number of abstentions.

M. POZNANSKI *(Poland)* observed that M. Politis considered his proposal useless, but not incorrect. If the Minutes of the Committees gave an exact picture of the discussions which had occurred, it might not perhaps be useless to emphasise the fact. It was for that reason that he suggested the addition of the words that he had proposed.

M. NECULCEA *(Roumania)* proposed the following compromise text : " solutions expressing the general opinion of the Conference ".

M. DE MICHELIS *(Italy)*, Chairman of the Committee of Four, suggested that the Conference be invited to take a vote first on the text proposed by the Committee of Four. The Committee had prepared that text as a result of the mandate entrusted to it, and taking into account the various amendments.

It was quite impossible to accept the word " unanimously ", since the authors of the Protocol had intended to stress the fact that, notwithstanding every endeavour at conciliation, it had been impossible to obtain on certain questions a sufficient number of votes expressing the general opinion of the Conference and thus giving ground for optimism as to the future of the Convention.

The Conference *agreed to the addition* of the words " at the moment " before the words " has made it impossible to find " in the third paragraph.

The Conference decided by twenty-eight votes to two to adopt the third paragraph in the wording proposed by the Committee of Four, subject to the above addition.

M. PEROUTKA *(Czechoslovakia)* proposed the insertion in the fourth paragraph of the words " *for this reason* " before the words " to be examined afresh ".

The Conference rejected this amendment, and adopted the text of paragraph 4 as proposed by the Committee of Four.

The four paragraphs of the Preamble were adopted.

Articles of the Protocol.

M. LAFER *(Brazil)*, referring to Article 1, asked for an explanation as to documentation to be transmitted to the Governments. Were the Governments to receive all the documents which had been distributed to the delegations ? In his opinion, it would be well to be more precise and say : " all the documents *considered useful* ".

THE PRESIDENT replied that if it were proposed to limit the term " documentation " and to decide what documentation was useful, the Conference would have to embark on an interminable discussion.

M. LINANT DE BELLEFONDS *(Egypt)* asked when the Governments would receive the documentation.

M. POLITIS *(Greece)* replied that this question was one of direct concern to the delegations, since, in the text now under discussion, they assumed an engagement to submit the documentation to their Governments.

M. LINANT DE BELLEFONDS *(Egypt)* pointed out that the documents distributed to the delegations were in many cases scattered about in a number of single sheets. He thought that it would be well if the documentation could be published, or at any rate assembled, by the Secretariat. He asked when the documentation would be available in this form.

M. STOPPANI *(Secretariat of the League of Nations)* replied that, speaking generally, the delegates were arleady in possession of the documentation which they were to forward to their Governments. The Minutes would be sent to them for correction. The Secretariat would make an effort to co-ordinate the various documents and to send them as soon as possible to the Governments. It would not be possible to publish the documentation of the Conference with advantage until the Secretariat had received the further observations of the Governments.

Articles 1, 2 *and* 3 *were adopted.*

THE PRESIDENT, referring to Article 4, explained that the Standing Committee which M. Guerrero proposed to set up would remain in office between the two sessions of the Conference and would consist of the General Committee, that was to say, the President, the four Vice-Presidents, the four Chairmen of Committees and the five Rapporteurs.

M. LINANT DE BELLEFONDS *(Egypt)* enquired as to the way in which the Standing Committee proposed to prepare the subsequent work of the Conference. Would it draw up a new draft, or would it merely classify the work which had already been done ?

M POLITIS *(Greece)* replied that it was difficult to determine the functions of the Committee at once. It was possible that the Committee, after examining the Governments' replies, would think it necessary to prepare a new preliminary draft. It might perhaps be necessary to establish several preliminary drafts or to submit certain texts accompanied by variants based on the Governments' suggestions.

The task of the Committee could in any case be summed up as follows : it would do everything possible to facilitate the work of the second Conference.

M. PUSTA *(Estonia)* stressed the importance of the question raised by the Egyptian delegation. It was important to know whether the Governments were invited to submit their observations on the basis of the draft of the Convention contained in the " Brown Book " supplemented with the documentation of the Conference. In other words, did the draft Convention in the " Brown Book " remain the draft for the basis of the second Conference ?

M. DE MICHELIS *(Italy)* did not altogether share M. Politis's opinion as to the task to be carried out by the Standing Committee. The Committee comprised fourteen persons who would confer on the best way of successfully carrying out their task, and it would be committing itself too far if it fixed in advance the procedure to be followed. The work of the Committee was undoubtedly one of classification.

Article 4 *was adopted.*

DR. MARTIUS *(Germany)*, referring to Article 5, asked if it was quite clear that the work done by the Standing Committee, in other words, the General Committee, would be communicated to the second Conference.

THE PRESIDENT replied that this was understood.

M. POZNANSKI *(Poland)* thought that there was an omission in the second paragraph of Article 5. He asked that, before the words " in addition to the observations ", there should be inserted the words " all the documents ". The sentence would then read as follows : " To this session will be submitted all the documents, in addition . . . "

This amendment was adopted in principle.

Articles 5, 6 *and the conclusion of the Protocol were adopted.*

THE PRESIDENT then requested the Conference to vote by roll-call on the draft Final Protocol as a whole.

The Protocol was adopted by all the delegations present.

The delegation of Panama communicated its vote in favour of the Protocol in writing.

The delegations of the following countries were absent : Australia, Bolivia, Colombia, Cuba, Dominican Republic, Salvador.

M. DE MICHELIS *(Italy)* noted that there had been no abstentions, the delegations which had not replied to the roll-call being absent.

30. **Close of the Session.**

THE PRESIDENT said that the diplomatic instrument of the Protocol would be deposited for signature by the delegations on Thursday, December 5th, in the office of the President from 10.30 a.m. to 12.30 p.m. and in the Secretariat of the League of Nations (at the Institut océanographique) from 3 p.m. to 5 p.m.

Before the Conference separated for a time which the President hoped would be as short as possible, he wished to express his gratitude for the assistance which all the delegations had loyally and wholeheartedly given the work of the League of Nations. He wished to thank in particular the Vice-Presidents, the Chairmen of Committees and the Rapporteurs, and all the members of the Secretariat for the zeal and punctuality which they had shown, thereby assisting the task of the Conference.

He wished finally to express his special thanks to the advisory organs which had also given their assistance, the Economic Committee, the International Chamber of Commerce and the Fiscal Committee.

It was his sincere hope that at the next session of the Conference, for which preparations were now to be made, the great work which the Convention on the Treatment of Foreigners would represent would be achieved. It was with this hope that he would declare the first session of the Conference on the Treatment of Foreigners to be closed.

B. MINUTES OF THE COMMISSIONS

COMMITTEE A.

FIRST MEETING

Held in Paris on November 8th, 1929, at 10.30 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

1. Procedure.

THE CHAIRMAN proposed that the Committee should take the articles of the Convention and the relevant clauses of the Protocol, which it would have to consider seriatim, together with the amendments proposed by the various delegations. These articles would be discussed at a first reading. The Rapporteur would then revise the text of the articles, taking into account the amendments proposed and any suggestions put forward during the discussion. The revised text of the articles would be again considered at a second reading.

The proposal of the Chairman was adopted.

2. Examination of the Articles of the Convention : Article 1.

M. SMETS, Secretary of the Committee, said that the various amendments proposed had already been distributed.

M. HENNIN *(Belgium)* represented that it was necessary for some agreement to be reached as to the precise meaning of the word " nationals " which was employed in Article 1 and other articles of the Convention.

Was it understood that this term should cover only citizens properly speaking of the various countries, or was it used in a wider sense, and did it include any persons who might be classified as subjects of a country ? This question must not be confused with the question whether in the case of a particular country the Convention was or was not applicable to its colonies (Article 28).

Suppose a country had excluded its colonies from the Convention. If the word nationals were understood in the limited sense of citizens, the natives in the colonies of the country in question would not be able to claim the benefit of the provisions of the agreement in other countries which had signed the agreement. They would, on the contrary, have the right to claim the benefits of the agreement if the word " nationals " was used in the wider sense of subjects, the natives in the colonies being, in effect, subjects of the country to which they belonged.

M. SERRUYS *(Economic Committee)* said that the Convention was intended to apply to nationals generally. Such nationals might be resident in the countries of the contracting parties, or in the countries of other contracting parties, or in the countries of States which were not parties to the Convention. It might, therefore, apply to citizens of a State, even though they were residing in another State, and persons covered by the Convention might be nationals of one State and citizens of another State. It would be for the Conference to define the exact meaning of the word " nationals " and the consequent scope of the Convention. The question raised by the Danish delegate was of importance and had been the subject of many decisions taken by international courts and arbitral bodies.

THE CHAIRMAN pointed out that the question raised by the Belgian delegate applied not only to Article 1 but to the whole Convention, and he proposed that it should be referred to Committee D.

DR. MARTIUS *(Germany)* said he understood that the articles to be discussed by the Committee A included Article 28. The question raised by the Belgian delegation might therefore be properly discussed in connection with Article 28, or, as the Chairman had suggested, in Committee D.

THE CHAIRMAN said that he did not think there was any doubt that the question was one which should be decided by Committee D. It affected nearly all the articles of the Convention. If Committee D succeeded in satisfactorily defining the term " nationals ", such a definition would greatly facilitate the discussion of Article 28 by Committee A.

M. DINICHERT *(Switzerland)* said that two different questions were involved. There was first the question whether the term " nationals " should be taken to include persons with a special status, such as those residing in protectorates, colonies and mandated territories. That was a question which could be usefully discussed when the Committee came to examine Article 28. There was, secondly, the question of distinguishing between nationals according to their domicile. He thought that the position in regard to this question was clear. The Convention applied to nationals of a given country in whatever territories they might be established. No distinction was drawn in respect of domicile. There might be a distinction in the application of the provisions of the Convention to the nationals of a country according to their place of residence, but there could be no doubt as to the precise significance of the term. The provisions of the Convention might be indifferently applied in cases where nationals lived either in the countries which applied the Convention to them in their own or another country.

The Committee agreed that the definition of the term " nationals " should be left to Committee D.

M. NEDERBRAGT *(Netherlands)* said there were four points to which he desired to draw attention. He presumed that the text of the preamble was not to be discussed by the present Committee, but he would draw attention to the fact that this text must be considered in relation to the text of Article 1. The preamble referred to nationals of a contracting party who had been allowed to establish themselves in the territories of another party, whereas Article 1 referred to the nationals of the high contracting parties even though they were not resident in the territory of the other high contracting parties. It seemed necessary to bring these two texts into conformity or at least to explain the relation of one to the other.

Secondly, he would enquire whether the commercial transactions referred to in Article 1 included the activities of insurance companies and whether the provision that the nationals of the contracting parties should not be subject to any condition or charge other, or more burdensome, than those to which nationals of the country were themselves subject consequently referred to insurance companies. He would point out that the conditions under which foreign insurance companies worked in the Netherlands were not identical with those under which the national companies conducted their business. Foreign insurance companies were required to deposit a guarantee. If commercial transactions included the activities of insurance companies it might be necessary for the Netherlands Government to make some reservation in regard to this point.

Thirdly, he would enquire whether the conditions or charges referred to in Article 1 should be identical for foreign and national, persons and firms. Foreigners were not subjected to more burdensome charges, but there might be a slight difference in the system of regulations under which they were required to conduct their business.

Fourthly, he would enquire as to the relation between Article 1 and Article 7 in respect of the references made in these articles to the subject of concessions. Article 1 laid down a general rule to be applied to all national whereas, in Article 7, foreigners might be prohibited from engaging in certain professions, occupations, industries and trades. He would probably find it necessary to raise this question again when Article 7 came to be discussed.

THE CHAIRMAN said that the text of the preamble was reserved for discussion by Committee D

M. SERRUYS *(Economic Committee)* pointed out that the text of paragraph 3 of the preamble referred to two different considerations. The first half of the paragraph referred to civil, legal, fiscal and economic safeguards indispensable for nationals of any contracting parties who had been allowed to establish themselves in the territories of the other parties. The second part of the paragraph referred to was intended to prohibit any differential or unfair treatment which might, in the territory of a contracting party, impede the trade of nationals of other countries. The relation of the second part of the paragraph to the passage in Article 1 to which M. Nederbragt had drawn attention was logical, and there appeared to be no inconsistency or omission in respect of it.

The term " commercial transactions ", used in Article 1, certainly covered the activities of insurance companies. He would point out, however, that the provisions of Articles 1 to 5 of the Convention referred to commercial transactions in goods and did not apply to insurance companies, whereas the point raised in respect of insurance companies was covered by Article 7*b*, which related to the exercise of occupations.

The conditions and charges to which M. Nederbragt had alluded included all taxes, charges and fees. If there was any discrimination in the imposition of such charges, as between foreigners and nationals, the parties to the Convention would be bound to modify their legislation in order to secure identity or equivalence in the charges imposed. This was one of the benefits which the Convention was intended to secure for foreign persons and firms. If, according to the legislation of one of the contracting parties it was necessary for any persons or firms to be registered, there must be no imposition of any differential fee or condition in respect of such registration.

The relation between Article 1 and Article 7 in respect of concessions was a simple one. Article 1 was intended to cover commercial transactions in goods such as the ordering, sale, delivery or purchase of commodities. Article 7, on the other hand, referred to the activities of foreign persons and not to the transactions themselves.

M. NEDERBRAGT *(Netherlands)* thanked M. Serruys for his explanations. He was re-assured in regard to the first and second points which he had raised and noted, in regard to the third point, that the practice in his country was not considered to be contrary to the provisions of the Convention. He would return to his fourth point when Article 7 came to be discussed.

M. SANDSTROEM *(Sweden)* said that his country was also interested in the question which M. Nederbragt had raised with regard to insurance companies. He was grateful to M. Serruys for his explanation, but was not quite sure that the text of the draft was entirely satisfactory. He would return to this question when Article 7*b* came to be considered by the Committee.

M. SCHÜLLER *(Austria)* said he wished to draw attention to paragraph 2 of Article 1 of the Protocol, which referred to the granting of licences and other formalities arising out of the control of imports or exports. He felt that this paragraph might possibly give rise to some misunderstanding. He was thinking in particular of cases in which imports or exports might be subject to a rationing or the fixing of a quota. It might be difficult to ensure that, in such cases, foreign persons and firms would be treated in exactly the same way as national persons or firms. It might be necessary to limit the quota to nationals in order to ensure an efficient control of the rationing. In the Convention on Import and Export Prohibitions, certain exceptions had been made to the effect that prohibitions might be maintained in cases where they were justified by considerations of public health or the national defence. Similar provision should perhaps be made in the present Convention to provide for cases in which a quota was fixed or cases where special measures might be necessary.

He would therefore submit the following amendment :

> " No obligation as regards establishment, residence or registration shall, however, be required for the granting of licences and other formalities arising out of the control of imports or exports, except in cases in which it may be necessary to reserve the grant of import or export licences to nationals with a view to assuring the equitable distribution of a quota, or to supervising the fulfilment of special conditions to which the granting of these licences may be subject. "

M. SERRUYS *(Economic Committee)* said that the point raised by M. Schüller was of considerable importance. Should it be legitimate for countries accepting the obligations of the Convention to grant a quota in cases where there was a rationing of goods only to their own nationals ? This right had been recognised subject to certain limitations in the Convention on Import and Export Prohibitions. Three courses were possible in respect of the present Convention : either there should be no reference to the question at all, or the principle defined in the Austrian amendment should be adopted, or an allusion might be made to the principle admitted in the Convention on Import and Export Prohibitions.

M. POZNANSKI *(Poland)* said that he thought that the first of the methods suggested by M. Serruys was the most logical. The question raised by M. Schüller had been dealt with in the Convention on Export and Import Prohibitions. The problem would therefore be settled as soon as that Convention came into force and, pending that event, the matter must necessarily remain open.

M. PEROUTKA *(Czechoslovakia)* wondered whether the second paragraph of the Protocol *ad* Article 1 should be connected with Article 1 or some other provision of the Convention. The obligation relating to establishment might be a necessary guarantee to ensure the imposition of certain fees or taxes arising out of the system of import and export licences. This was a matter which would have to be considered by Committee B.

M. NEDERBRAGT *(Netherlands)* said he would regret the adoption of the amendment submitted by the Austrian delegation. The adoption of such an amendment was particularly undesirable from the point of view of countries engaged in world wide commerce. He had always understood that it was the object of the present Convention to eliminate such discrimination as was suggested in the Austrian amendment and he would strongly urge the Austrian delegation to withdraw any suggestion which might as a result impede international commerce.

M. SAKANE *(Japan)* pointed out that the first chapter of the Convention contained provisions of a general character for the safeguarding of international trade. Those provisions were positive in character and, according to the explanation given by the representative of the Economic Committee, they did not constitute either provisions for national treatment or provisions for treatment in accordance with the most-favoured-nation clause. The whole Convention was based on the principle of the national treatment of foreigners and, in the view of the Japanese delegation, the provisions of Article 1 would be clearer if the first paragraph of the article were amended by the insertion of the words " on the same terms as the nationals of the territory in question " after the words " and carry out work on order ".

THE CHAIRMAN said that the Rapporteur would consider the various amendments which had been put forward and the observations made during the discussion. The Rapporteur would amend the text of Article 1 in accordance with these proposals and submit it for a second reading.

M. PILOTTI *(Italy)* agreed with M. Peroutka in his references to the second paragraph of the Protocol *ad* Article 1. The utmost that could be required under the Convention was that States which granted import licences only to persons or firms established upon its territory should make no discrimination as between foreign persons and firms so established and national persons and firms. Paragraph 2, however, required that the granting of a licence should not be subject to residence within the territory, but implied that licences might be granted to persons living outside. He did not think that any equitable principle would be violated if a State granted licences only to persons established on the territory, irrespective of their nationality.

DR. MARTIUS *(Germany)* referred to the Austrian amendment and the proposals of M. Serruys in regard to it. In his view, the question whether the paragraph referring to this matter should be suppressed or a reference made to the Convention on Import and Export Prohibitions was merely a question of drafting and might be reconsidered when the Rapporteur was able to submit a revised text for the consideration of the Committee. There were, however, a number of other points in regard to which he still had certain doubts.

The Czechoslovak delegation desired to raise the question whether taxes on foreign persons resident in a country were admissible. That question would have to be examined by Committee A but should, in his opinion, be discussed in reference to Article 6.

The Spanish Government had also submitted observations in connection with this matter which appeared to be in opposition to the spirit of the Convention. There were, moreover, the amendments which the British delegation had proposed to Article 1 (Annex A, 1).

He would like, before expressing his views on these amendments, to hear a reasoned statement from the delegations in support of their contentions.

M. PUSTA *(Estonia)* shared the views of the Italian delegation with reference to paragraph 2 of the Protocol *ad* Article 1.

He submitted the Estonian amendment to Article 1 and explained the views of his Government as contained in its note which had been submitted on this subject (Annex A, 2).

M. HERMANT *(International Chamber of Commerce)* suggested the addition of the following sentence to paragraph 2 of Article 1 :

> " They would also have full power to choose, for the settlement of their business and the safeguarding of their interests, such persons as they may deem suitable and competent for the purpose. "

He would ask the Rapporteur to take that amendment into consideration.

M. SANDSTROEM *(Sweden)* said he had been under the impression that Article 1 applied to all commercial transactions including the activities of insurance companies, to which M. Nederbragt had referred. He had been somewhat re-assured by the observations made by M. Serruys on the subject, but thought that the text might perhaps be made less ambiguous.

M. FLORES DE LEMUS *(Spain)* said that the amendment proposed by the Spanish delegation (Annex A, 3) had special reference to circumstances which had arisen in regard to the economic and political development of his country. Before the war the Spanish Government had decided upon the reconstruction of its fleet and had invited an important English firm to assist it in this work. This firm had been invited to establish a great shipbuilding enterprise in Spain, which was directed technically and financially by Englishmen. The Spanish Government, as an encouragement to this firm, had exempted the undertaking from any taxation of its profits. Further industries, British and other, had since been founded, subject to arrangements of more or less the same kind. He did not think that such transactions could be regarded as cases of discrimination, as there were no other enterprises of the kind established in Spain. The Spanish financial experts had, since the war, invited similar forms of collaboration from other countries. A German firm had, for example, established a dye industry which enjoyed special privileges in respect of taxation. If such arrangements were considered to be contrary to the provisions of the present Convention, it would be impossible for Spain to participate.

MR. PUGH *(British Empire)*, in explanation of the British amendment, to which the German delegate had referred, said that the British Government could not accept obligations which might involve interference with the internal rules and regulations of private commercial associations. Matters of internal organisation must be left to the associations themselves.

M. SERRUYS *(Economic Committee)*, referring to the proposal of the delegation of Estonia, said he thought that the questions raised by this amendment should be left to be decided by the forthcoming Conference on Import and Export Prohibitions. The grading of dairy produce and regulations enforcing a certain standard in the quality of the goods were not necessarily contrary to the provisions of the Convention. The Danish Government had already submitted similar observations in regard to this matter. It had been decided that such regulations were not in conflict with the principles of equitable trading. It must be understood, however,

that such regulations would not be used in any way to discriminate against foreign traders or unfairly to restrict commerce with another country. This matter was dealt with in Article 6 of the Convention on Import and Export Prohibitions.

The difficulty to which the Swedish delegate had drawn attention would have to be discussed in connection with Article 5.

The point raised by the representative of the International Chamber of Commerce was one which would have to be examined during the discussion of Article 8.

The problem raised by the Spanish delegation would have to be discussed under Article 12, when the Committee came to consider the whole question of fiscal facilities.

M. PUSTA *(Estonia)* thanked M. Serruys for his explanation. He would point out, however, that Article 1 raised many questions which would perhaps require to be considered by the Conference on Import and Export Prohibitions. He was not entirely convinced that some of these questions should not be discussed by the present Committee. He felt that the argument that a discussion of the particular point which he had raised was out of place in Committee A would apply to a consideration of the article as a whole.

The further discussion of Article 1 was adjourned to the next meeting.

SECOND MEETING

Held in Paris on November 8th, 1929, at 3 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire)

Secretary : M. SMETS.

3. **Examination of the Articles of the Convention : Article 1** (continuation).

MR. PUGH *(British Empire)* pointed out that the amendments proposed by his delegation were contained in a special document (Annex A, 1).

DR. MARTIUS *(Germany)*, referring to the British delegation's amendment, thought that the misgivings of the British delegation were due to the word " transactions ". The British point of view appeared to be in conformity with the sense of the draft, and an amendment might perhaps be unnecessary. It would suffice if the Rapporteur gave the necessary explanations in his report.

In regard to the Spanish amendment, M. Serruys had proposed at the previous meeting that this point should be discussed under Article 12. He understood the views of the Spanish delegation ; the question of subsidies was a very difficult one and neither should be nor could be solved in the draft Convention. The question to be decided was whether the Committee was competent or not to consider the Spanish amendment. It would be possible to contemplate a different solution from that suggested by M. Serruys, namely, that the discussion in Committee A should simply be postponed, it being pointed out that the question was not so closely bound up with Article 1 that there was any need to consider it at once. Would the Spanish delegate consent to the discussion of his amendment being provisionally postponed and being taken up again in connection with another article ?

M. FLORES DE LEMUS *(Spain)* explained that, when considering the right place for the introduction of his amendment into the Convention, he had thought that it should be inserted, not under Article 12, but under Article 20.

He had only submitted his amendment in connection with Article 1 by reason of the statement made by the Hungarian delegation. If, however, the Committee considered that the question should be postponed until Article 12 or until Article 20 was discussed, he would make no objection.

THE CHAIRMAN thanked Professor Flores de Lemus. Personally, he thought that the Spanish amendment might be examined in connection with Article 20. He recalled, moreover, the fact that the Economic Committee had already discussed the question favourably in connection with Article 20. The Spanish amendment would accordingly be referred to Committee D for examination in connection with that article.

THE CHAIRMAN invited the Committee to examine the various amendments to Article 1 in turn, in order to furnish the Rapporteur with the necessary material for his report. He pointed out that the Hungarian amendment would be found in the "Brown Book" (page 25), the suggestion of the International Chamber of Commerce in a special document (Annex A, 4). Referring to this suggestion, he thought that the addition suggested (to add the words " under the same circumstances ") might be left to the Rapporteur. As to the proposal on the point of substance, this was, he thought, already covered by Article 8. If any amendment were necessary, it might be made in Article 8.

Amendments proposed by the British Delegation (Annex A, 1)

MR. PUGH *(British Empire)* explained the British amendments. The delegation proposed to delete in Article 1, paragraph 1, the word " even ", which was superfluous.

The second amendment, the words " licence or permit " after the word " concession ", was necessary in order to place foreigners on the same footing as nationals.

He was prepared to withdraw the amendment of paragraph 2 of the Protocol *ad* Article 1 on condition that it was made clear in Article 1 that foreigners would be placed on terms of equality with nationals.

THE CHAIRMAN thought that the first two amendments proposed by the British delegation might be left to the Rapporteur.

M. POLITIS *(Greece)*, Rapporteur, understood that there was no objection to the adoption of the first two amendments.

THE CHAIRMAN asked whether the Committee agreed with the proposal of the British delegate, who was prepared to withdraw his third amendment if it were stipulated that foreigners should receive the same treatment as nationals.

The Committee agreed.

THE CHAIRMAN observed that there was an amendment to the second paragraph of Article 1 proposed by the British delegation.

DR. MARTIUS *(Germany)* thought that in this amendment the words " by law " were superfluous. The prohibition might be enacted, not in a law, but by an administrative measure or other means.

M. POLITIS *(Greece)*, Rapporteur, pointed out that in this case the British amendment would go beyond what was desired, for there might exist laws prohibiting certain kinds of publicity.

DR. MARTIUS *(Germany)* drew attention to the words " provided they conform . . . to the laws and regulations of the country . . . ", in the first paragraph. Further, it seemed that in the British delegation's view the question was merely one of a textual amendment, consisting in the substitution of the words " shall not be prohibited " for the words " shall be free ".

MR. PUGH *(British Empire)* agreed to the deletion of the words " by law ".

The British amendment, with the foregoing modification, was adopted.

Amendments proposed by the Austrian Delegation (Annex A, 5), *the Egyptian Delegation* (Annex A, 6), *and the Turkish Delegation* (Annex A, 7).

M. SMETS *(Secretary of the Committee)* observed that the Turkish amendment merely endorsed the Austrian proposal contained in the " Brown Book " on page 71.

M. SCHÜLLER *(Austria)* recalled the fact that a number of delegations had proposed the omission of paragraph 2 from the Protocol. Furthermore, M. Serruys had said that it could either be struck out or that the Austrian proposal could be accepted or that the clause might be replaced by a reference to the Convention on Prohibitions and Restrictions. He was prepared to accept any of these solutions. He thought, however, that the reference to the Convention on Prohibitions would be somewhat in the nature of a compromise, since certain delegations would oppose a mere deletion of the paragraph.

M. POLITIS *(Greece)*, Rapporteur, understood that the proposal was to suppress the paragraph in question and to postpone the matter.

THE CHAIRMAN explained that, in substance, the proposal was to omit the paragraph. Personally, he thought that its deletion would merely simplify the text of the Convention.

M. LINANT DE BELLEFONDS *(Egypt)* pointed out that, if the first paragraph of the Protocol *ad* Article 1, which mentioned only concessions, were retained, it might be interpreted as allowing complete liberty in regard to all matters which were not in the nature of concessions. Under these circumstances, the mere omission of the article would not adequately represent the feelings of the Committee. It was for that reason that the Egyptian delegation had submitted its amendment, in which it proposed the omission of the second paragraph of the Protocol *ad* Article 1 and a new wording for the first paragraph. If that proposal were adopted there would no longer be any ambiguity.

M. DINICHERT *(Switzerland)* thought that, before deciding on the utility or non-utility of the second paragraph in the Protocol *ad* Article 1 and on its mere omission, the Committee should first consider the relation between Article 1 of the draft Convention and the Protoocl *ad* Article 1.

Article 1 of the Convention covered the question of the activity of foreign subjects whether they were resident in the country or not In his opinion, this article referred more especially to foreigners who were not established in the country, since the status of foreigners established in the country was regulated in far more explicit terms in Article 7. Article 1 had a more general bearing and, as M. Serruys had said, it covered, not so much the status of foreigners, as the facilities to be assured to international trade. There was a fundamental exception in regard to the position as to concessions, the States reserving their full liberty in regard to foreigners. In the first paragraph of the Protocol *ad* Article 1, the position as to public tenders was assimilated more or less generally to that of concessions. In the second paragraph, however, it was stated that the rules governing import and export licences did not come within the rules governing concessions, and going, perhaps, beyond the object in view, it was added that no obligation could be required as to residence. In his view, the question of licences was separate from that of the general system of commerce and that of concessions. As the Italian and Austrian delegates had said, there were national laws governing the granting of such licences, and the only condition required was that no discrimination should be made between foreigners and nationals, since the obligation as to residence might be required of a foreigner as much as of a national. In these circumstances, the terms of the Austrian proposal were not acceptable.

He considered that the mere suppression of the second paragraph of the Protocol *ad* Article 1 would not be satisfactory. It would be necessary to have a clause covering foreigners' rights in regard to the system of licences, foreigners being subject in the same way as nationals to the special laws on licences.

He did not think that the reference to the Convention on Prohibitions would overcome the difficulty, since that Convention did not deal with the treatment of foreigners.

DR. MARTIUS *(Germany)* observed, in accord with what M. Dinichert had said, that the problem was a very complex one. He suggested that a sub-committee, on which the representatives of the Economic Committee might sit, should be instructed to seek for a solution. He thought that it would be very difficult to solve the question without making any reference to the Convention governing export prohibitions and the system of licences, but it would not probably be very difficult to find a compromise between the various opinions.

M. PEROUTKA *(Czechoslovakia)* agreed in principle with the proposal to appoint a sub-committee. He wished to submit certain observations which might throw light on the discussion. In his opinion, the connection between the second paragraph of the Protocol *ad* Article 1 and Article 1 of the Convention was a very weak one. It was rather, if he might say so, a philosophical connection, since the term " the granting of concessions " might be taken to include the granting of licences in the matter of imports and exports.

He concurred in the proposal mentioned by M. Schüller to refer the question to the Conference on Prohibitions, which was to be held in the following month.

If, however, the provision remained within the scope of the Convention on the Treatment of Foreigners, he was of opinion that the provisions of this paragraph of the Protocol should not be connected with Article 1 of the Convention, since they were based on certain fiscal considerations, touching, for instance, the fiscal evasion which might result from the collection of taxes in connection with the granting of licences. Furthermore, the problem of these other necessary guarantees against abuse in this field had lost its importance since it had first been brought under discussion, for the Convention on Prohibitions, which would shortly come into force, would limit the scope of these provisions.

THE CHAIRMAN said that, personally, he had serious doubts whether the Conference to which M. Peroutka had alluded would be competent to settle the question, since it would only have to deal with the question how and when the Convention on Prohibitions, which had already been signed, was to come into force.

M. ELBEL *(France)* thought that there was a possible compromise between the two currents of opinion. It seemed that members were unanimous in recommending that the system of licences should not form the subject of State concessions. On the other hand, the granting of licences varied as to conditions in the different countries so considerably that it seemed difficult to agree upon a common text. In order to secure the provisions on which the Committee was unanimous, it would suffice if the first paragraph stated that the granting of licences could not form the subject of a State concession and if the rest of the question were left in obscurity. The problem would be regulated by bilateral conventions in the event of the Conference on Prohibitions being unable to settle it.

M. PILOTTI *(Italy)*, referring to the proposal to set up a sub-committee, thought that it would be more practical and quicker to request the Rapporteur to confer with the various delegates who had spoken on paragraph 2 of the Protocol. Further, he did not see the use of referring anything at all to the Conference on Prohibitions. The latter Conference was merely to decide whether a Convention which had already been approved was to enter into force as between the States which had ratified it, although it had not yet received the full number of necessary ratifications. He wondered whether the delegates who were to meet in December would be empowered to amend or interpret the text of a Convention which had already been adopted.

The Italian delegation would concur either in the omission of the second paragraph or in the Egyptian proposal or in the Swiss proposal.

M. LINANT DE BELLEFONDS *(Egypt)* noted that certain delegates appeared to object to the assimilation of licences to concessions from the point of view of form, and he thought that the second paragraph might be retained if its wording were modified in such a way as to satisfy those who were opposed to assimilation without leaving any opportunity for discrimination between foreigners and nationals, and if the freedom which the States must necessarily retain for the imposition of special conditions in the case of licences—that was to say, for the admission or exportation of commodities in particular circumstances—were safeguarded.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that his delegation thought that it would be preferable to leave the States completely free to legislate in regard to export licences on condition that there was no inequality between foreigners and nationals. The Belgian delegation would submit an amendment which merely involved the addition of the words " unless nationals are subject to the same restrictions ".

THE CHAIRMAN proposed that the Committee should adopt the motion of the Italian delegation that the delegations which had moved amendments should confer on the following morning with the Rapporteur.

The proposal was adopted.

Amendment by the Swedish Delegation (Annex A, 8).

M. SANDSTROEM *(Sweden)* recalled that at the morning meeting he had said that his delegation's apprehensions had been allayed by M. Serruys's statement. For this reason, his delegation would not press its proposal, seeing that the transactions in question were not covered by Article 1.

M. POLITIS *(Greece)*, Rapporteur, noted that the Swedish delegation agreed that its proposal should be postponed until the discussion on Article 7.

Amendment by the Spanish Delegation (Annex A, 3).

THE CHAIRMAN reminded the Committee that it had been decided that this amendment should be referred to Committee D.

Amendment by the Turkish Delegation (Annex A, 7).

SALIH ZEKAI BEY *(Turkey)* said that his delegation had further proposed an amendment to the Protocol for the addition of the following clause :

> " Nothing in the present Convention shall impose on any of the High Contracting Parties any obligation whatever as regards charitable associations and organisations of all kinds. "

Article 1 of the Convention referred solely to physical persons carrying on commercial transactions and industrial activities, while Article 16 dealt with companies. In both cases, these articles were concerned with occupations carried on with the object of gain. In the Turkish delegation's opinion, associations having a non-lucrative object should not come within the scope of the Convention and, in so far as they were concerned, the high contracting parties should remain completely free.

THE CHAIRMAN wished to clear up the situation in regard to the Turkish amendment. The first part of the amendment, *i.e.*, the addition of the words " licence or permit ", had already been covered by the adoption of the proposal of the British delegation. As to the second part of the amendment, the British delegation had made a proposal of a somewhat similar kind, and had agreed that the matter should be dealt with in the Rapporteur's report. If the Turkish delegation agreed to a similar course, it would, he thought, obtain the protection desired.

SALIH ZEKAI BEY *(Turkey)* said that, if the Conference agreed that the Convention referred to physical persons and profit-making organisations and not to non-profit making associations, he would not press his amendment.

DR. MARTIUS *(Germany)* thought that the Turkish proposal differed somewhat from the British proposal. He considered that Article 1 referred to physical persons. Furthermore, the persons concerned were invariably physical persons in the language of the treaties of commerce which had been reproduced in the draft Convention. The case of moral persons was dealt with in Article 16, which would be discussed by Committee C. The Turkish delegation's wishes could certainly be met, seeing that the word " national " referred to physical persons, and the distinction between profit-making organisations and non-profit making organisations would be left to Committee C to examine.

M. POLITIS *(Greece)*, Rapporteur, enquired whether the Turkish delegate consented to the question being referred to Committee C, in the sense indicated by the German delegate.

SALIH ZEKAI BEY *(Turkey)* agreed to the question being referred to Committee C. It would suffice if it were said in the Protocol that the words in question in Article 1 referred to physical persons.

DR. MARTIUS *(Germany)* insisted that this reference should only be made in the Rapporteur's report. He would have objections to its appearing elsewhere.

SALIH ZEKAI BEY *(Turkey)* said that, if the Committee concurred in this view, he would not press his point.

Amendments proposed by the Norwegian Delegation (Annex A, 9) *and the Japanese Delegation* (Annex A, 10).

M. BENTZON *(Norway)* explained that his delegation's amendment was based on the provisions of Norwegian law, which laid down the obligation of domicile without making any distinction between nationals and foreigners. Norway obviously could not grant foreigners more facilities than it granted its own nationals.

THE CHAIRMAN pointed out that the licences to which the Norwegian delegate referred were licences to carry on trade and had nothing to do with import licences. The question was not one of those which the Rapporteur could settle on the following morning with the movers of amendments. He would therefore open the discussion on the Norwegian proposal.

M. SAKANE *(Japan)* recalled that, at the morning meeting, his delegation had submitted an amendment as to which the Committee had taken no decision. The proposal was to add after the words " and carry out work on order " the words " on the same terms as nationals of the territory in question ".

He asked that his amendment should be examined by the Rapporteur together with the proposals of the same kind which had been made by other members.

M. SCHÜLLER *(Austria)* pointed out that the second amendment by the Norwegian delegation, " to the same extent as nationals ", was covered by the text of the Economic Committee, which had considered that foreigners could not have more extensive rights than nationals. For that reason, the text of the first paragraph of Article 1 included the words " under the laws of the territory in question ".

As to the first Norwegian amendment for the omission of the words " even if not resident ", he would point out that the words had been inserted with the same intention, namely, that foreigners should not have more extensive rights than nationals, since otherwise the system would be one of capitulations.

M. NEDERBRAGT *(Netherlands)* failed to understand the bearing of the first Norwegian amendment. If the words in question were omitted, the sense of the article would not be changed and the article would merely say that the nationals of the contracting parties might carry on all transactions without restriction. The words in question served merely to define the intention. If, however, they were omitted, after having been inserted in the draft by the Economic Committee, it would be possible to claim that the Conference had intended to modify the meaning of the Article.

M. BENTZON *(Norway)* explained that a licence was indispensable for carrying on trade in Norway and that it could only be granted subject to residence. However, if the Committee concurred in M. Schüller's observations, the Norwegian amendment was useless, it being understood that more could not be claimed for foreigners than was enjoyed by nationals.

DR. MARTIUS *(Germany)* asked the Norwegian delegate whether a Hamburg merchant not being domiciled at Oslo could place an order with an Oslo firm without having a licence.

M. BENTZON *(Norway)* replied that in this case the trader would not need a licence.

In reply to M. Nederbragt, he said that his delegation withdrew its amendment in view of M. Schüller's explanations.

M. POLITIS *(Greece)*, Rapporteur, wished there to be no misunderstanding. He repeated M. Nederbragt's arguments as to the advisability of retaining the words " even if not resident ". If they were now omitted, it might be thought subsequently that the Conference had intended to exclude foreigners not established in the country from the right to carry on trade.

M. BENTZON *(Norway)* said that there was no misunderstanding. The Norwegian delegation withdrew its two amendments, since M. Schüller had said that greater advantages could not be required for foreigners than those granted to nationals.

Amendment by the Estonian Delegation (Annex A, 2).

M. POLITIS *(Greece)*, Rapporteur, recalled that, on the proposal of the British delegation, the Committee had decided to add the words " licence or permit ". It appeared that this addition would meet the wishes of the Estonian delegation. He added that the proposal for the omission of paragraph 2 of the Protocol *ad* Article 1 had been referred for discussion between the Rapporteur and the delegations moving amendments.

M. PUSTA *(Estonia)* proposed that in this case his amendment should also be referred to the Rapporteur for examination.

He recalled that, as he had already explained, Estonian law made no distinction between nationals and foreigners, but provided for a system of licences and concessions for the exportation of dairy products and eggs. The Estonian delegation had considered that the terms of the draft would be embarrassing to Estonia, and that an exception should be made on behalf of the Estonian system. No reservation, however, would be necessary if the second paragraph of the Protocol were struck out.

M. SERRUYS *(Economic Committee)* apologised for reverting to the British amendment, which had already been discussed. He feared that, in voting for that amendment, the Committee had failed to realise the close connection which existed between the amendment and the second paragraph of the Protocol. The effect of the amendment would be to change entirely the whole structure of the system presented by the Economic Committee. The latter considered that commerce should be entirely free, and that no discrimination should be made in any matters appertaining to free commerce. The Committee had defined what was meant by free commerce. The assimilation that had now been made between concession contracts and the granting of licences altered the whole bearing of the draft. The Economic Committee had said that all commerce should be free except concession contracts—that was to say, business forming the subject of a special act by the public powers. This idea had been replaced by a quite different idea—namely, that of the granting of licences—and under the British amendment the granting of licences would be excluded from Article 1 in which it had been included under the original draft.

He was not empowered to advance any opinion on the subject, because he was not a Government representative. He merely suggested that the small sub-committee which was to meet on the following morning with the Rapporteur should examine the difficulty to which he had drawn attention.

M. SCHÜLLER *(Austria)* said that the explanations of the British delegation had shown that its amendment was purely one of form, and bore solely on the question of translation. The French word " concession " could not be translated in English by the word " concession " but by the word " licence ".

M. NEDERBRAGT *(Netherlands)* was convinced that, in adopting the British amendment, the Committee had no intention of changing the whole structure of the draft Convention. If this were understood, he concurred in the observations of M. Serruys.

THE CHAIRMAN concurred in M. Schüller's remarks. He understood that the British delegation had not had any intention, when it submitted its amendment, of changing the whole structure of the system. The question was purely one of wording. Perhaps the Rapporteur would be good enough on the following morning to consider which were the exact words to be employed in order to convey the intentions of the Committee.

M. DE LA VALLÉE POUSSIN *(Belgium)*, referring to the Estonian amendment, thought he was right in saying that the Estonian delegation was concerned as to the right of each State to make the export of various national products contingent upon certain guarantees. In the view of the Belgian delegation, the second paragraph in the Protocol contained no clause which was at variance with that right, and there was no ground for the apprehensions of the Estonian delegation. It had been clearly explained that, in regard to export licences, the right held by the State to enact regulations was maintained, provided that no discrimination were made between foreigners and nationals. The wording previously proposed by the Belgian delegation would, he thought, do away with any ambiguity, and was calculated to meet the Estonian delegation's wishes.

M. SERRUYS *(Economic Committee)* was obliged to confess that his fears had not been allayed. In regard to a text which he himself had drafted, he could not accept the Belgian delegate's interpretation, which was at variance with the intentions of the Economic Committee, and which, on the other hand, seemed to correspond to the intentions of the British delegation, the effect of whose amendment was to restrict considerably the scope of Article 1. It was possible to imagine an administrative system of control whereby certain conditions were laid down as to origin or quality which implied the granting of a permit. In that case, the Convention would be very seriously restricted in its field of operations, and he wondered whether M. Schüller was right in saying that the question was merely one of translation.

THE CHAIRMAN asked M. Serruys whether he thought that the sense of Article 1 would be changed if the second sentence were amended to read : " . . . They shall not be subject to any condition or charge *or licence or permit*, other or more burdensome than those . . . "

M. SERRUYS *(Economic Committee)* replied that, if a reference were now to be made to licence formalities, the reference would imply that, instead of there being free commerce, there was a commerce which in certain cases was subject to licensing formalities. The scope of the article would be somewhat less restricted than under the original amendment of the British delegation, but the new text would nevertheless be more restricted than that of the original draft.

THE CHAIRMAN explained that the meaning of the British amendment was that, if a British retail trader, for instance, had to procure a licence, a foreign retail trader would also have to procure a licence.

M. SERRUYS *(Economic Committee)* replied that in this case the scope of the amendment was decidedly restricted and would conform with the intentions of the Economic Committee. If the granting of a licence was subject to a previous condition in the case of nationals, it was clear that the condition should apply to foreigners as well. He wondered whether it was worth while mentioning this point, since the draft already contained the words : " They shall not be subject to any condition or charge other or more burdensome than . . . "

M. PUSTA *(Estonia)*, in reply to the Belgian delegate, read out the provisions of Estonian law, laying down the obligation as to domicile. In the second paragraph of the Protocol, however, it was stated that no obligation as to domicile should be required for the granting of export licences. The Estonian delegation's observation dealt with this question. He might perhaps be authorised to confer on the following morning with the Rapporteur in order to devise a formula which would meet his wishes.

MR. PUGH *(British Empire)* noted that the difficulty to which the British amendment had given rise had been cleared up in consequence of the exchange of observations between the Chairman and M. Serruys.

THE CHAIRMAN said that the Rapporteur would confer on the following morning with the delegates who had moved amendments, including the Estonian delegate, and in his report would take into account the discussion which had been held.

M. POLITIS *(Greece)*, Rapporteur, wished to be quite clear as to the position. He understood that the British amendment would no longer be maintained. Subject to any further explanations, it would be understood that the report should contain a statement that, in referring to conditions, the draft alluded to all local regulations as to commerce or industry which applied both to foreigners and to nationals. If the Committee agreed on this point, Article 1 might be left as it stood, with certain explanations in the report.

THE CHAIRMAN said that the Committee would rely on the Rapporteur as to drafting points. He thought that the relevant words in the British amendment might be retained, but they would be better placed in the second sentence of Article 1 than in the first.

M. POLITIS *(Greece)*, Rapporteur, asked that M. Serruys should attend the meeting of delegates who had moved amendments and who were to confer with himself on the following morning.

THIRD MEETING

Held in Paris on November 9th, 1929, at 10.45 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

4. **Examination of the Articles of the Convention : Article 1** (continuation).

M. POLITIS *(Greece)*, Rapporteur, said that, after consulting the delegates who had submitted amendments to Article 1, he had revised the text of that article which would be submitted to the Committee for a second reading at a later meeting. Account had been taken of all the suggestions which had been made during the first reading of the article, and he hoped that it would not be necessary to re-open the discussion.

5. **Article 2.**

THE CHAIRMAN said that the Committee would now take Article 2, together with the relevant amendments.

MR. PUGH *(British Empire)* said that the British delegation had moved to substitute for the words : "be free to participate", the words : "shall not be prohibited by law from participating". The article referred to matters which were usually regulated by private contract and in respect of which the Government would have no power to intervene. It would suffice if the article provided that Governments should make no law which would prevent foreign traders from participating in the activities mentioned.

DR. MARTIUS *(Germany)* said he had no objection to the British amendment. He doubted, however, whether the expression "prohibited by law" was legally correct and unambiguous. This matter might, however, be left to the Drafting Committee.

M. POLITIS *(Greece)*, Rapporteur, suggested that the Drafting Committee should take the second paragraph of Article 1 in its revised form as a model for the text to be adopted in Article 2.

MR. PUGH *(British Empire)* agreed.

Observation submitted by the Czechoslovak Delegation (Annex A, 11).

THE CHAIRMAN suggested the Committee should now consider an observation submitted by the Czechoslovak delegation.

M. PEROUTKA *(Czechoslovakia)* said that the Czechoslovak delegation merely desired to secure a clear interpretation of what was meant by "a group of neighbouring States". Did this expression refer only to adjacent States or was it capable of a wide interpretation. Would it be possible to include within the meaning of the phrase any group of States, which for geographical, ethnological or technical purposes might desire to be associated for a particular purpose.

DR. MARTIUS *(Germany)* pointed out that, according to the observations contained in the "Brown Book" of the Conference, Article 2 was not intended to deal with the question of exhibitions. He did not think that an amendment in the sense desired by the Czechoslovak delegation was necessary.

The German delegation desired to know whether the reference to territories under mandate in the first paragraph of the comments on the Protocol *ad* Article 2, in the "Brown Book", should be considered immediately, or whether it might not better be discussed when the Committee came to take Article 28, dealing with the question of colonies. The German delegation would desire to present certain observations on this matter.

THE CHAIRMAN thought that the Committee should adjourn a consideration of paragraph 1 of the Protocol *ad* Article 2 until Article 28 came to be examined.

The Committee agreed.

M. PEROUTKA *(Czechoslovakia)* said that his delegation did not wish to press an amendment to Article 2, but would like a reference to be inserted in the report to exhibitions or fairs to the effect that the expression, "a group of neighbouring States", might include any group of nations associated in holding fairs or markets for a special purpose. His delegation really desired to secure a wide interpretation of the expression.

THE CHAIRMAN said that two questions were before the Committee. First, did the article cover the case of exhibitions and should this be stated in the report ? Secondly, should the Rapporteur indicate in his report that the reference to a group of neighbouring States should be interpreted in accordance with the observations made by the Czechoslovak delegation, and should the phrase, perhaps, be revised in order to make the intention less ambiguous ?

M. RIEDL *(International Chamber of Commerce)* urged that there should be no derogation from the principle of Article 2. It should not be possible to constitute arbitrarily groups of States, with a view to the exclusion of certain countries.

THE CHAIRMAN said he thought that the main idea underlying the observations of the Czechoslovak delegation was accepted by the Committee. The question was whether it should be possible for States to form a group in order to achieve some specific purpose. He understood that the Committee desired to answer this question in the affirmative.

M. RIEDL *(International Chamber of Commerce)* said that the International Chamber had desired to interpret the reference to adjacent States in a wide sense. Thus, the Baltic States would be regarded as neighbouring States for the purpose of the article. The article, however, was designed to prevent a group of nations from combining for the purpose of excluding other nations which were less intimately associated with them.

THE CHAIRMAN suggested that a passage should be inserted in the report indicating that the expression used in the article was to be interpreted as M. Riedl and Dr. Martius had suggested.

M. PEROUTKA *(Czechoslovakia)* agreed.

M. NEDERBRAGT *(Netherlands)*, referring to paragraph 3 of the Protocol *ad* Article 2, said he presumed that the reference to " free admission " in that article alluded to the free admission of persons to the market or fair, and not to the admission of goods.

The Committee agreed.

6. **Article 5.**

M. SANDSTROEM *(Sweden)*, referring to the amendment submitted by the Swedish delegation (Annex A, 8), said that Swedish law might seem in contradiction with the present text of Article 5, as in 1908 a special tax on foreign commercial travellers and on Swedish commercial travellers residing abroad had been imposed. The levying of this tax was only the application of a general principle of the Swedish fiscal system and a reservation for its maintenance might have to be inserted in the Protocol. The Swedish delegation had proposed the following text :

> " The levying in respect of the operations referred to in Article 5 of a fee fixed according to the residence of the foreign trader or commercial traveller and taking the place of the tax shall be permitted to those of the High Contracting Parties who at present adopt this system (without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealing with the former). "

The tax levied upon foreign commercial travellers or Swedish travellers living abroad might appear at first sight to constitute a form of discrimination, but the discrimination was more apparent than real. The purpose of the tax was to prevent fiscal evasion. It was imposed on all physical and juridical persons. The application of the measure might in certain cases give rise to double taxation, but these cases were adequately provided against in Swedish legislation. Such taxes were collected, not upon the amount of business done in the country, but in accordance with the period of residence. It did not constitute any real hindrance to trade.

Another important point arose for the Swedish Government in connection with Article 5. At present, no previous authorisation was required for foreign commercial travellers exercising their activities in Sweden. The Swedish Government was, however, revising its legislation and it had been suggested that an authorisation for foreign commercial travellers should be required in the event of such authorisation being also required for travellers of the home country. The question arose whether under the provisions of Article 5 a Government would be prohibited from requiring such an authorisation from foreign commercial travellers in cases where travellers belonging to the home country were expected to apply for such an authorisation. The Economic Committee had represented that, in various commercial treaties, the principle had been accepted that such authorisation should not be required from foreign commercial travellers, but he doubted whether this was an adequate justification for this principle.

THE CHAIRMAN said that two questions had been raised under Article 5. First, there was the question whether foreign commercial travellers should be required to obtain a previous authorisation or licence to trade. Secondly, there was the question of the taxation of foreign commercial travellers. He thought that the question of authorisation was covered by the new draft of Article 1, under which it would be legitimate to require such authorisation from foreign commercial travellers if similar authorisation was required from nationals.

M. POLITIS *(Greece)*, Rapporteur, agreed with the Chairman that the question of authorisation was covered by Article 1 as revised. If authorisation were necessary in the case of nationals it might be required from foreign commercial travellers.

M. SANDSTROEM *(Sweden)* said he was satisfied with that explanation.

M. NEDERBRAGT *(Netherlands)* said he had a general observation to make in regard to the drafting of Article 5. He would propose that the word " they ", at the beginning of paragraph 1, should be replaced by the words " their nationals and commercial travellers ". He did not think that it was quite clear, in the present draft, whether the second sentence referred only to nationals or to nationals and their commercial travellers.

M. POLITIS *(Greece)*, Rapporteur, said that the sentence undoubtedly referred to nationals and their commercial travellers.

M. SCHÜLLER *(Austria)* said he did not quite follow the interpretation given to Article 5 by the Chairman and the Rapporteur. The object of Article 5 was to ensure that no special authorisation should be required for foreign commercial travellers. The Swedish delegation had asked whether such authorisation might be required from foreign commercial travellers if it were similarly required from travellers of the home country. He would point out, however, that, though the requirement of such an authorisation from nationals and foreigners alike would, in law, involve no discrimination, such an arrangement would, in fact, tend to the detriment of the foreign traveller. The national trader might easily obtain an authorisation and hold it for use when necessary. The foreign commercial traveller, however, would find it necessary to obtain such a licence on his visit to the country. This would take time and might constitute a serious impediment to his business.

THE CHAIRMAN thought that the question of the precise text to be used in this article might be left to the Rapporteur. The Committee, however, must decide the question of principle. Should it be possible for Governments under the Convention to require a licence in the case of foreign commercial travellers in cases where such licences were also required in the case of travellers of the home country.

M. SANDSTROEM *(Sweden)* said that he merely desired to have the views of the Committee on the question of principle. The Swedish Government had not yet definitely decided to require the special authorisation to which he had referred. A proposal to that effect had, however, been made and was under consideration.

DR. MARTIUS *(Germany)* thought it had clearly been the intention of those who had drafted the article that no such special authorisation should be required for foreign commercial travellers, even though an authorisation was required for travellers of the home country. The activities of foreign commercial traders would undoubtedly be seriously impeded by the introduction of such a measure. A Government might, for national reasons, feel it desirable to introduce such an arrangement, but an international conference could hardly fail to regard such a modification in the legislation of any country as undesirable and inconsistent with the objects which the present Conference desired to achieve. The contrary principle had been adopted by the Economic Committee and was recommended by the International Chamber of Commerce. That principle should be embodied in the present Convention. The question of the precise terms in which the article should be drafted might be left to the Rapporteur.

M. RIEDL *(International Chamber of Commerce)* said he was speaking on this matter both as a representative of the International Chamber of Commerce and as one who had participated in the work of the Economic Committee. He felt bound to defend the article as it had been submitted to the Conference.

The International Chamber of Commerce had associated itself with the views of the British delegation concerning the question of taxation. The International Chamber felt that taxes might be imposed upon foreign commercial travellers if they were imposed upon travellers of the home country, subject to certain amendments which the International Chamber would suggest for insertion in the Final Protocol.

The question of a special authorisation was, however, on a different footing. To require a foreign commercial traveller entering the country to procure a special licence to trade was contrary to the principle and spirit of the article. Such a licence could not, without involving a flagrant contradiction of the principle embodied in the article, be refused. The principle had been laid down that foreign commercial travellers should be free to trade, and it was therefore impossible to allow any discretion in this matter to the licensing officials. The requirement of such an authorisation would, in practice, constitute a serious impediment to trade, and that impediment would be more formidable than any tax. The necessary formalities would take valuable time and might even render business virtually impossible. Article 5 must be read as a derogation from Article 1, in so far as Article 1 submitted foreign commercial travellers to the same system of authorisation as was required in the case of travellers of the home country.

M. SCHÜLLER *(Austria)* quoted an article from Magna Charta in which the principle of the free admission of foreigners to trade in Great Britain was recognised without exception in 1215.

M. PESCHARDT *(Denmark)* said that all foreign commercial travellers in Denmark were required to secure a certificate which could be obtained immediately upon a declaration made to the Customs officers. He presumed that this regulation was not contrary to the provisions of the article.

THE CHAIRMAN said that if such a certificate could be obtained on demand, its imposition would not appear to be inconsistent with the provisions of the article.

M. PILOTTI *(Italy)* said that in his country no authorisation for foreign commercial travellers was required. There were, however, certain commodities in respect of which it was necessary for traders to obtain an authorisation. No trader, for example, could deal in objects of value without obtaining such an authorisation. He presumed that such a regulation was not incompatible with the provisions of the article. The authorisations were required from foreigners and nationals alike. They applied, not only to commercial travellers, but to all traders and manufacturers dealing with the articles in question. They were not, therefore, special authorisations for travellers.

THE CHAIRMAN asked the Committee to decide the general question whether countries should be entitled to require foreign commercial travellers to obtain a special authorisation. He understood that the Committee was of opinion that special authorisation should not be required.

The Committee agreed.

THE CHAIRMAN asked the Committee to consider the case of special trades for which authorisation might be required and to which the Italian delegation had referred.

M. SCHÜLLER *(Austria)* said that this was quite another question, which was not really relevant to the present article. There were certain trades for which licences were necessary, such as the trade in arms, drugs, etc. In these cases, however, the licences must be obtained by the firms dealing in the commodities and not by commercial travellers as such.

DR. MARTIUS *(Germany)* thought that such cases fell under the provisions of Article 7 in which the question of certain trades subject to licence was reserved. The extent to which such exceptions should be admitted would have to be seriously discussed when that article came to be considered.

M. POLITIS *(Greece)*, Rapporteur, understood that the Italian delegation was not asking for any amendment of the article but only for an interpretation. He thought that the article was clear upon the subject. If it was necessary for firms to obtain licences to trade in certain goods, the firms in question would secure these licences and the commercial travellers representing them would not require any further special authorisation.

M. PILOTTI *(Italy)* said it should in his opinion be understood that no special authorisation would be required for commercial travellers in addition to the licences held by the firms which they represented.

THE CHAIRMAN asked the Committee to consider the question of taxation. The Swedish delegation had presented and explained an amendment on this point (Annex A, 8) and other amendments on the same subject had been distributed.

Amendment submitted by the Delegation of Venezuela (Annex A, 12).

M. MACHADO *(Venezuela)* said that his delegation proposed that the last sentence of paragraph 1 should read as follows :

> " They shall not require a special authorisation for any of these transactions, nor shall they be obliged to pay, in this connection, any taxes or duties other than those levied on nationals engaging in the same activities, provided they only take with them samples and not goods intended for sale. "

The amendment was intended to secure equity as between foreign commercial travellers and travellers of the home country. The article as at present drafted appeared to discriminate in favour of the foreign traveller ; nationals under the article in its present form might be subject to taxes, whereas the foreigner was exempt.

THE CHAIRMAN invited all the delegations which had amendments to move on the question of the taxation of commercial travellers to present and explain them to the Committee.

Estonian Amendment (Annex A, 2).

M. PUSTA *(Estonia)*, referring to the Estonian amendment, said that the laws of Estonia provided that commercial travellers residing abroad should pay certain taxes in Estonia. The Estonian authorities did not think it possible to modify that law, which was intended to guarantee the legitimate interests of traders resident in Estonia. It might, therefore, be necessary for the Estonian Government, in accepting Article 5, to reserve the right to submit foreign commercial travellers to a tax equal to that which was imposed upon Estonians residing abroad. The tax in question was not burdensome, and was in fact inferior to the ordinary fees which were required from Estonian nationals.

M. PARANJPYE *(India)* supported the principle of the amendments which had been submitted. In India there was no general or central tax imposed on commercial travellers, but local bodies might levy taxes or fees in respect of certain trades or professions. These bodies could not discriminate between foreigners and nationals, which in his opinion should be subject to the same burdens.

British Amendment (Annex A, 1).

SIR PERCY THOMPSON *(British Empire)* drew attention to the proposal of the British delegation, which suggested that paragraph 1 of Article 5 should read :

> " They shall not require a special authorisation for any of these transactions nor shall they be obliged to pay special dues or taxes which are not applicable to national firms and their representatives. "

The general intention of the amendment proposed was to limit the operation of the article to the activities of foreign commercial travellers as such, and provided that no special tax should be payable in respect thereof which was not also payable by nationals. It left open the question

of the taxation of the foreign principal on whose behalf he was acting. This would depend on whether or not the commercial traveller's activities were such that the foreign principal was to be regarded as carrying on trade in the country as distinct from carrying on trade with the country.

Suggestions of the International Chamber of Commerce (Annex A, 4).

M. RIEDL *(International Chamber of Commerce)* read the suggestions submitted by the International Chamber of Commerce to Article 5 and the relevant passages of the Protocol.

The purpose of these amendments was to ensure the principle of equality as between foreign commercial travellers and commercial travellers of the home country. Allowance was made for a special but frequent case. It often happened that the heads of firms visited foreign countries in order to meet their clients but without any intention of actually transacting business. It was only reasonable that in such cases such taxes or fees should not be levied.

Further discussion of the amendments to Article 5 was adjourned to the next meeting.

FOURTH MEETING

Held in Paris on November 12th, 1929, at 10.15 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

7. Procedure.

M. POLITIS *(Greece)*, Rapporteur, said that he had distributed to the members of the Committee a preliminary report on the articles which had been discussed at a first reading (Annex A, 13). He was proposing to continue this practice, and to issue reports on the various articles—with the revised texts of those articles—at intervals, as the work of the Committee proceeded. This would enable the delegations to consider the revised texts and to submit any amendments which they might wish to move at the second reading.

He would ask the delegations to submit their amendments in writing before the article to which the amendments referred came to be discussed. This would greatly facilitate the progress of the work.

8. Examination of the Articles of the Convention : Article 5 (continued).

THE CHAIRMAN said he had discussed with the Chairman of Committee B, and with the Rapporteurs, the procedure to be followed in dealing with Article 5. The question of the taxation of commercial travellers, which arose under that article, was one concerning which the fiscal experts of the delegations who were sitting on Committee B desired to express their views. He would suggest that, in these circumstances, it might perhaps be advisable to refer this particular question to Committee B.

M. RIEDL *(International Chamber of Commerce)* thought that there was a certain danger in referring this question to Committee B. The point in regard to the taxation of commercial travellers was not in substance a fiscal, but purely an economic, question. The problem involved was not one of double taxation but of providing facilities to trade and relieving commercial travellers from possible impediments to their activities.

Committee A had already made substantial progress in considering the question, and the results of its discussions might be lost or prejudiced by referring the question elsewhere. He would suggest that Committee A should continue its discussion of the question and submit the results of its deliberations to Committee B, to be put into conformity with the views of the fiscal experts so far as it might be necessary to do so.

DR. MARTIUS *(Germany)* doubted whether anything would be gained by referring the question to Committee B. He would suggest that Committee A should continue the discussion of Article 5, adjourning, however, the discussion of the taxation of commercial travellers until it would be possible for the fiscal experts to attend.

M. SCHÜLLER *(Austria)* represented that in effect the problem had already been settled. If the Committee accepted the principle laid down by the British delegation that commercial travellers should not be obliged to pay any taxes or duties subject to the understanding that such taxes as at present existed were not to be regarded as in conflict with this principle, nothing more remained for discussion.

THE CHAIRMAN suggested that the Committee should follow the procedure proposed by Dr. Martius. The Committee might continue the discussion of Article 5, reserving, however, the question of taxes and dues until the fiscal experts were able to attend.

The Committee agreed.

M. PUGH *(British Empire)* said that Article 5, as revised in accordance with the amendments submitted by the British delegation, would read as follows :

> " Without prejudice to the provisions of Article 1, nationals of the High Contracting Parties engaged in industry or business in the territories of any Party may (subject, when required, to the production of an identity card issued by the competent authorities in the country where the industry or business is carried on), in the territories of any other Party, either in person or by travellers in their employ, purchase from merchants or in places where goods are on sale, as well as from the producers, the goods in which they deal, or take orders from merchants and manufacturers engaged in the trade or making use in their establishment of goods of the same kind as those offered. They shall not require special authorisation for any of these transactions, nor shall they be obliged to pay special dues or taxes which are not applicable to national firms and their representatives. "

The article as drafted might be interpreted as applying to nationals of a high contracting party which had no business in the territories of that party but who were carrying on their activities solely in a country which was not a party to the Convention and were furnished with an identity card by the authorities of such a country. That presumably was not the intention of those who had drafted the article. He presumed that the article was intended to apply only to the nationals of any of the high contracting parties who carried on business in any country which was a party to the Convention.

He would point out, moreover, that identity cards were not required in all countries, and he would therefore urge that, so far as this point was concerned, the article should follow Article 10 of the Convention for the Simplification of Customs Formalities and provide for the production of identity cards only in those countries whose laws required them.

The British delegation also thought that it was desirable to avoid the use of the word " domicile ", which was a legal conception that had a different significance in different countries.

THE CHAIRMAN reminded the Committee that the International Chamber of Commerce had submitted an amendment in the same sense (Annex A, 4).

M. RIEDL *(International Chamber of Commerce)* said that the amendment moved by the British delegation concerning the obtaining of identity cards was in the same sense as the suggestion made by the International Chamber. The other amendments moved by the British delegation involved the question of taxation and were presumably therefore for the moment reserved.

M. DINICHERT *(Switzerland)* emphasised that the real function of the article was to facilitate commercial relations between the parties to the Convention by enabling manufacturers and traders established in the territories of any one of the contracting parties and their commercial travellers to pursue their activities in the territories of the other contracting parties. This question was entirely independent of the question of the nationality of the individual travellers, manufacturers or traders. All that was required was that these persons should prove that they owned or represented firms which were established within the territories of one of the contracting parties. The provision of such proof was in conformity with constant commercial practice, and, in particular, with Article 10 of the Convention for the Simplification of Customs Formalities, which dealt with the question of samples introduced into a given country by commercial travellers or by the firms or traders themselves. In that Convention the nationality of these persons was ignored. The question of nationality should, in his opinion, be equally clearly ignored in the present article ; otherwise two different systems would be created, one applying to the treatment of samples by the Customs and the other to the activities of the persons in question under Article 5 of the draft Convention. The amendment moved by the British delegation did not appear to be in conformity with the thesis which he was urging. The text, as revised in accordance with the British amendment, appeared to be concerned with the nationality of the traders and manufacturers, whereas the important point was whether the firm represented was or was not established within the territories of one of the contracting parties. He would like to see the word "nationals" replaced by another formula which would take into account the considerations which he had put forward. It was only necessary to refer to the corresponding terms of Article 10 of the Convention for the Simplification of Customs Formalities.

M. SCHÜLLER *(Austria)* thought that all the delegates were agreed upon the question of principle. The problem was to remove all ambiguity from the text. He would suggest that the British amendment should be revised in order to bring it into clear conformity with the terms of Article 10 of the Convention for the Simplification of Customs Formalities.

THE CHAIRMAN enquired whether the British delegation would accept M. Dinichert's suggestion.

MR. PUGH *(British Empire)* said he would accept the suggestion provisionally, subject to any reconsideration of the matter which might be necessary.

M. PILOTTI *(Italy)* said that the Convention for the Simplification of Customs Formalities dealt with a different problem from that which was raised by the present Convention. The present Convention was intended to settle the question of the treatment of foreign nationals, and was therefore primarily concerned with the nationality of the traders. The Convention was designed expressly to give guarantees to foreign nationals whose countries accepted it. The amendments under discussion appeared to go further than this, and it was necessary to decide, as a question of principle, whether its scope should in this way be exceeded.

The British delegation feared that Article 5 as originally drafted would be too restrictive, and that the obligation to produce an identity card might prove an impediment to their activities. Possibly it was necessary to amend the text of the original article, but such amendment might be effected by introducing some qualifying expression in defining that obligation, rather than by a radical amendment.

It was necessary for the commercial travellers to prove that they were entitled to benefit from the provisions of the article. They must, in other words, prove their right to trade within the territory of a contracting party.

Such proof might be afforded either by the production of a legitimation card or in some other way. It might be laid down that such proof need only take the form of the production of an identity card if the legislation of the country so required. It might, in other words, be admitted in the article that an identity card was not indispensable, but, on the other hand, it must be recognised that, in practice, it might be necessary foi a commercial traveller or agent to prove that he had the right to trade in countries which were parties to the Convention.

DR. MARTIUS *(Germany)* pointed out that the text of the amendment proposed by the International Chamber of Commerce was virtually identical with the terms of the British amendment. Personally he preferred the draft submitted by the International Chamber of Commerce and he proposed that this text should be accepted as it stood. M. Dinichert had asked whether the word " nationals " should not be replaced by some other formula. M. Pilotti had objected to this proposal and there was a good deal of force in the argument which the Italian delegate had put forward. There was no reason why the benefits of the Convention should be accorded to traders who were nationals of countries which were not parties to the Convention. He thought the final drafting of the article might safely be left to the Rapporteur, but he would urge that the Conference should not approve a text which was not in harmony with the provions relating to commercial travellers usually inserted in commercial treaties.

M. SCHÜLLER *(Austria)* said that the text submitted by the International Chamber of Commerce was based upon a clause which was embodied in many treaties of commerce, but that clause had never been interpreted in the sense which was now being urged. According to that interpretation every commercial traveller would have to prove that he was trading for a firm established in a certain country and that he was also a national of a certain country.

Commercial travellers had never yet been asked to prove their nationality and it was to the interests of all parties to ignore this second qualification.

If a firm were established in a particular country, it was to the interest of that country to obtain facilities for the representatives of the firm to trade in other countries, irrespective of the nationality of the representatives.

M. DINICHERT *(Switzerland)* said he desired to be clear as to the sense of the Conference upon this matter. He felt that, in accepting the text proposed, the Conference would be adopting a provision which was in contradiction with the clause relating to this particular question which was usually embodied in commercial treaties.

In recent treaties of commerce the question of nationality was not raised. The only test applied was whether the firm to which a traveller or agent belonged was or was not established in a particular country and enabled to carry on commercial activities in that country. He would suggest that this should be made clear by substituting for the word " nationals " in the proposed amendment the words " manufacturers or traders established in the territories of one of the High Contracting Parties, etc. ". It was obvious that the country which provided the traveller with an identity card would be the country in which the firm was established, to which the traveller belonged, and on whose behalf he carried on his activities. The country granting the identity card would not necessarily be the country of which the commercial traveller was a national. The amendment which he had proposed corresponded with the terms normally used in treaties of commerce and was in agreement with the corresponding provisions in the Convention for the Simplification of Customs Formalities.

M. Pilotti had urged that the present Convention was exclusively a treaty of establishment and would therefore be dealing with individuals. He did not agree with this view. The problem was to draft a Convention which should deal partly with problems of establishment but should also contain provisions relating to other matters which were normally dealt with in treaties of commerce. If it were objected to his proposal that it was not appropriate to a treaty dealing with questions of establishment, then he would urge that the definition of the Convention should be altered and that there should be a definite recognition of the fact that it had a wider purpose. Article 5, if adopted in the form proposed for the acceptance of the Committee, would be a retrograde provision as compared with the corresponding provisions in the Convention for the Simplification of Customs Formalities and in most commercial treaties.

DR. MARTIUS *(Germany)* said there could be no question of the factor of the nationality of the traveller coming into the present discussion. If a manufacturer or merchant belonged to one of the contracting countries, his traveller or agent might claim the benefits of the article of the Convention from any of the contracting parties, quite irrespective of his nationality. He entirely agreed on this point with M. Dinichert. He would point out, however, that, as regarded the nationality of the trader, there were several phrases in the Convention of 1923 which were capable of an interpretation contrary to that of M. Dinichert. He could only suggest that the question should be left open. It was hardly necessary to define the matter too strictly, as it would, in practice, be determined in accordance with custom.

THE CHAIRMAN enquired whether the Committee was prepared to accept the wording usually embodied in commercial treaties and to adopt accordingly the amendment submitted by the International Chamber of Commerce. If the Committee accepted this proposal, the amendment submitted by the International Chamber of Commerce would be taken as the basis of a draft which would be submitted for discussion at a second reading.

M. DINICHERT *(Switzerland)* said he would not press his point any further. He did not think, however, that the amendment moved by the International Chamber of Commerce was a correct interpretation of the effective provisions embodied in recent commercial treaties. He thought, on the contrary, that the provisions of most commercial treaties were in direct opposition to the amendment.

M. POLITIS *(Greece)*, Rapporteur, said there were two points for the Committee to decide. The first point related to the nationality of the commercial traveller. In no country did the authorities in any way concern themselves with the nationality of the travellers who represented the firms who were entitled to trade within their territories. That point was therefore in substance virtually decided.

Secondly, there was the question what firms or persons had the right to send commercial travellers or agents to trade in the territories of a contracting party. It had been argued that this right should be confined to firms or persons which were not only established in the territory of the contracting party but also nationals of a contracting party. It had, on the contrary, been argued that there was no need to introduce the question of nationality and that any firms duly established in the territories of one of the contracting parties might send its travellers or agents into the territories of another contracting party, irrespective of their nationality. He would suggest that the Committee might agree that the text submitted by the International Chamber of Commerce was not meant to apply in a restrictive sense and that commercial travellers should not be excluded who represented firms established in the territories of one of the contracting parties, even though they were not nationals of one of the contracting parties.

M. POPESCO *(Roumania)* read to the Committee Article 19 of the commercial treaty which had served as a model for conventions between Roumania and several other countries. That article might be interpreted in the sense suggested by the Rapporteur.

THE CHAIRMAN asked the Committee to decide the first question raised by the Rapporteur. Should the nationality of the commercial traveller or agent be disregarded ?

The Committee decided in the affirmative.

THE CHAIRMAN asked the Committee whether it was prepared to adopt the amendment proposed by the International Chamber of Commerce on the understanding that it would not, as the Rapporteur had suggested, be interpreted in a restrictive sense.

M. DINICHERT *(Switzerland)* said he must reserve a final opinion on this question until the article was discussed at a second reading.

The Committee agreed to adopt the amendment of the International Chamber of Commerce on the understanding that it would not be interpreted in a restrictive sense.

M. DE NICKL *(Hungary)* pointed out that, if the British amendment were adopted, the conditions laid down in regard to the introduction of samples would disappear. The article might then be in contradiction with Hungarian legislation and he would therefore ask that the sentence should be restored.

M. SANDSTROEM *(Sweden)* pointed out that the words alluded to by the Hungarian delegate were retained in the amendment submitted by the International Chamber of Commerce.

French Amendment (Annex A, 14).

THE CHAIRMAN said that the French delegation had submitted an amendment the effect of which would be to ensure that samples introduced into a country would remain subject to the same charges and formalities as national products.

M. PILLAUT *(France)* said that the French authorities required that precious metals introduced into the country should be stamped in order to ensure equality of treatment as between national and foreign products.

German Amendment (Annex A, 15).

DR. MARTIUS *(Germany)* said that the German delegation had also raised this question. The legislation in regard to the stamping of precious metals were not the same in all countries and a unification of the existing regulations was barely possible. He would suggest that a new paragraph should be introduced providing for an exception from stamping for samples of objects in precious metals which it was intended to re-export from the country Unless some such exception were provided, it would be necessary for traders to prepare special samples in order to comply with the regulations of the countries into which the goods were taken and this would constitute a serious impediment to their trade.

THE CHAIRMAN asked whether the French and German amendments were really in contradiction.

M. PILLAUT *(France)* said that the French amendment was intended to apply to samples which were introduced, exhibited in a country, and then withdrawn. The national traders were required to comply with certain formalities and it was necessary that foreign traders should be subject to the same conditions.

M. POLITIS *(Greece)*, Rapporteur, suggested that the question of samples should be left on one side. The matter was dealt with in the Convention for the Simplification of Customs Formalities and the future Convention might overlap or even be in contradiction with that Convention if it dealt with this particular problem.

M. SANDSTROEM *(Sweden)* said that his delegation did not think that the question of samples came within the scope of the future Convention.

DR. MARTIUS *(Germany)* said he had also wondered whether the question came within the sphere of the present Conference. He would ask the Conference, however, if it decided not to deal with the matter, to assert that the problem of samples was one which required solution, and further to assert that it fell within the province of Customs formalities. The point had not yet been settled by any International Convention and the present Conference would do well to draw attention to the fact.

M. POLITIS *(Greece)*, Rapporteur, said that a reference might be made to the matter in the report. It would be stated that the question of samples was not one which could be appropriately regulated by the future Convention, but that it was a matter which fell within the province of Customs formalities and one which might with advantage be settled when the Convention for the Simplification of Customs Formalities came to be completed.

M. FLORES DE LEMUS *(Spain)* said that the question of samples was one of special interest to his delegation. He would suggest that the question should be left entirely open. He doubted whether the present Committee was competent to instruct the Economic Committee where and how the point should be considered.

THE CHAIRMAN said that there was no question of instructing the Economic Committee. The Conference would merely be stating that in its opinion the question of samples was one with which it was not competent to deal, but which was necessarily of interest to any body or conference which might consider the question of Customs formalities.

The proposal of the Rapporteur was adopted.

Polish Amendment.

THE CHAIRMAN then asked the Committee to consider the amendment moved by the Polish delegation to the effect that the word " public " should be inserted before the word " sale ", and that the word " producers " should be replaced by the word " manufacturers ", in the first sentence of paragraph 1.

M. POZNANSKI *(Poland)* said that the purpose of these amendments was to place buying and selling on the same footing and to exclude from the scope of the Article merely private transactions.

DR. MARTIUS *(Germany)* said that the two amendments in his opinion constituted a restriction of some importance which would have to be considered at leisure. He would propose that the discussion of this question should be adjourned.

The Committee agreed.

Netherlands Amendment.

THE CHAIRMAN said that the Netherlands delegation had submitted an amendment to the effect that the word " they ", at the beginning of the second sentence of paragraph 1, should be replaced by the words "their nationals and their travellers ". The amendment was purely verbal and account would be taken of it according to the agreed procedure.

FIFTH MEETING

Held in Paris on November 12th, 1929, at 3 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

9. Examination of the Articles of the Convention : Article 5 (continued).

Amendments by the Polish Delegation (continued) *(see Fourth Meeting).*

M. RIEDL *(International Chamber of Commerce)* said that the use of the word " producers " by the Economic Committee was in conformity with the usage followed in the majority of treaties of commerce. Moreover, it was only fair to give agriculturists, who were also producers, the power to make purchases, the Convention not being intended to benefit industrialists only.

Furthermore, the Polish proposal to insert the word " public " before the word " sale " might be interpreted in the sense of bazaars, booths at fairs, etc. What it was desired to say in the Convention was that purchases should be made in the shops of traders or on other premises intended for the sale of goods—agricultural or other products. In the case of an agriculturist, these premises would be his storehouse ; in other cases, they would be a shop open to the public. But the term " places where goods are on sale " could not give rise to any misunderstanding. It was for that reason that the Chamber of Commerce wished to see the proposed addition set aside.

M. POZNANSKI *(Poland)* insisted on his proposal. In regard to public places of sale, he agreed as to the fact that purchases could be made from greengrocers or traders in other products. Article 5 said that orders could be placed with merchants, so that the premises might be private places of sale. Apart from such premises, there was only one class, that of public places of sale. In his opinion, it was desired to exclude from the Convention persons not actually engaged in a trade or industry, and likewise the possibility of regarding a private dwelling-house as a place of sale, or the possibility for a foreign national of visiting clients on business in their homes.

In regard to the substitution of the term " manufacturers " for the term " producers ", he held that there was no reason for treating the two aspects of commerce, namely, purchase and sale, differently. In the matter of sales and the seeking of orders, the authors of the article had thought fit to exclude persons not carrying on either a trade or an industry. There was no reason why the other aspect of commerce, namely, purchase, should not be dealt with in the same way.

In reply to the German delegate's objection, he would urge that the amendment proposed by him did not in any way restrict the freedom of trade. International trade was effected between persons carrying on trade, but the fact of purchasing eggs or other products from peasants did not imply that peasants carried on trade. They should not therefore be included in an article dealing with international trade.

His proposal was, of course, based on fiscal considerations. The question was : Who carried on the trade ? Persons not carrying on trade should not be covered by the article in question.

The Polish delegation would not insist on the word " manufacturers " if the Committee or the Drafting Committee could find another formula to express the idea proposed.

M. RIEDL *(International Chamber of Commerce)* was unable to concur in the Polish delegate's view. Every producer had a fundamental right to sell his products to whom he would. If the term " producers " were replaced by the term " manufacturers " or any other expression, the effect of which would be to prevent the true producer from selling his products, the law thus established would be against the interests of the producers themselves, and a monopoly of sale and purchase would be set up for local merchants, small traders, etc., with injury to international commerce, competition and the producers.

M. NEDERBRAGT *(Netherlands)* said that the question was one of great interest to his country. He was convinced that no one had any intention of prohibiting in principle perfectly legitimate purchases which caused no injury to anyone. It often happened that such purchases

were effected neither on the premises of merchants nor in public places of sale, etc. He was not sure what term could be suggested to indicate in what other premises purchases which were universally agreed to be legitimate could be effected. He would agree to finding another term, but it would be very difficult for him to agree to the formula suggested by the Polish delegate.

M. POLITIS *(Greece)*, Rapporteur, replied that, if the object was to exclude hawking, there was no need to modify the text, since this point was covered by paragraph 3.

M. POZNANSKI *(Poland)* agreed with this observation, but pointed out that paragraph 3 covered only one of the aspects of commerce, namely, the soliciting of orders, which came under the heading of sales, whereas paragraph 1 referred to purchasers. It followed that paragraph 3 could not apply to paragraph 1, that was to say, to purchases. The problem which he had raised could be solved if paragraph 3 were extended so as to cover purchases as well.

THE CHAIRMAN thought that there was no divergence of view as to the first part of the Polish amendment. The Rapporteur might perhaps be requested to introduce into his report the necessary explanations so as to express the idea quite clearly.

DR. MARTIUS *(Germany)* thought that the expression " places where goods are on sale " was perfectly clear. It referred to places open to the public, but did not necessarily cover public sale. The treaty of commerce concluded between Germany and Sweden contained the term " places of sale open to the public ". In his opinion, the French term " locaux de vente " could not give rise to any misunderstanding.

DR. MAYER *(Austria)* thought that the Polish delegate's proposal concerning purchases and sales went beyond the intention of the authors of the article.

M. POLITIS *(Greece)*, Rapporteur, approved what Dr. Martius had said. The term "places where goods are on sale " was meant to cover places accessible to the public. He thought that the Polish delegate would be satisfied if this interpretation were given in the report.

M. POSNANSKI *(Poland)* concurred in the suggestion made by Dr. Martius. His intention had merely been to make it clear that the term " places where goods are on sale " was a description of premises accessible or open to the public. While he fully agreed that the Rapporteur might be left to find an appropriate solution, he wished to say that he did not entirely share M. Riedl's opinion. The latter had said that allowance must be made for the interests of small producers. He agreed, but that was not the business of the Conference. It was for the States whose nationals they were and on whose territory they were established, to defend their interests. The delegates would be exceeding their instructions if they defended the interests of a State's nationals against the State. As to the question of competition, his proposal was intended to establish complete equity and not to make any sort of discrimination.

M. SERRUYS *(Economic Committee)*, interpreting the article, said that, in regard to purchases and orders, the intention of the authors of the article had been to cover both merchants and producers, so that it would be possible to purchase either from merchants—that was to say, middlemen—or from producers, and likewise to sell either to merchants or to producers, in the latter case both for their personal consumption and also for re-sale abroad. In both cases, it should be carefully noted that the article referred to purchasers, sellers or manufacturers, and did not exclude the possibility of the latter selling foreign products along with their own products. The Economic Committee's conception had therefore been the most liberal one possible.

He considered that the Polish proposal to substitute the word " manufacturers " for the word " producers " would have the effect, in the case of purchases, of considerably restricting the Economic Committee's proposals, which covered not only industrial products but the products of agricultural producers, whereas the Polish proposal appeared to exclude the latter.

In regard, however, to selling operations, it might perhaps be advisable to improve the present text, in which the idea of producers was lost to sight owing to the use of the word " manufacturers " in the same sentence. The word might be replaced by the term " producers ".

M. POZNANSKI *(Poland)* opposed this last suggestion of M. Serruys.

THE CHAIRMAN enquired whether the Committee agreed with the Polish delegate's motion to replace the word " producers " by the word " manufacturers ".

The proposal was rejected.

THE CHAIRMAN asked whether the Committee agreed with M. Serruys' suggestion that the word " producers " should be substituted for the word " manufacturers " in the seventh line of the first paragraph.

The amendment was approved.

Amendment by the Yugoslav Delegation (Annex A, 16).

M. POLITIS *(Greece)*, Rapporteur, observed that the amendment by the Yugoslav delegation to insert in the third line the words " or are in fact engaged " was of no great significance.

DR. MARTIUS *(Germany)* wondered whether this proposal would have any very practical result. How could the other country satisfy itself as to the facts ? He thought that the existing wording was adequate and that it was unnecessary to introduce any other condition.

M. CHOUMENKOVITCH *(Yugoslavia)* explained that the object of his delegation was to exclude persons who, on the strength of an old permit, claimed the right to come and carry on transactions in a country, whereas they had for many years discontinued carrying on their trade in actual fact. The article could be made more explicit, unless the Committee thought that the present wording was sufficiently clear.

M. RIEDL *(International Chamber of Commerce)* pointed out that, at the morning meeting, the Committee had adopted a proposal by the International Chamber of Commerce which was in conformity with the British amendment. The sentence would now read : " who engage in industry or business ". This was equivalent to the Yugoslav proposal.

M. CHOUMENKOVITCH *(Yugoslavia)* withdrew his amendment in view of the explanation given by M. Riedl.

Hungarian Amendment.

THE CHAIRMAN said that the Hungarian delegation had presented the following observation and proposal :

> " The reservations regarding itinerant trading, hawking and the soliciting of orders from persons not engaged in trade or in industry should also be applied to Article 1, so as to avoid misunderstanding.
>
> " Accordingly, paragraph 3 of Article 5 should be transferred to the Protocol under the heading '*ad* Articles 1 and 5'. "

M. DE NICKL *(Hungary)* explained that, in the view of his delegation, paragraph 3 should be regarded as an exception to the provisions of Article 1, and that it would be advisable to bring out the relation existing between that exception and Article 1 by putting paragraph 3 in the Protocol, with an indication that it referred to both Article 1 and Article 5.

THE CHAIRMAN suggested that the question should be left to the Rapporteur.

M POLITIS *(Greece)*, Rapporteur, explained that, at its meeting held on the previous day, the General Committee had considered the right place for certain clauses which were contained either in the text of the Convention or in the Protocol. The Committee presided over by M. de Michelis had been instructed to take up this question at once, and to see whether certain clauses in the Protocol should not appear in the Convention. In his opinion, the most practical method would be to state in the Minutes that the question had been raised by the Hungarian delegate, and that it would be for Committee D to take a decision.

M. SERRUYS *(Economic Committee)* pointed out that the problem of hawking was referred to in three places, first in Article 1, line 4, where it was stated that orders might be taken " under the laws of the territory in question ". These laws might include a prohibition of hawking. The other references were in paragraph 3 of Article 5 and in Article 7. It followed that, whenever the authors of the draft had encountered a case of hawking, they had excluded it from the Convention. If the question were referred to the Protocol, it would be necessary to have an allusion to the three articles.

THE CHAIRMAN said that the question would be left to the judgment of the Rapporteur. He noted that the Committee had finished with Article 5 with the exception of the question of commercial travellers, which would be discussed with the fiscal experts, and of an amendment by the Luxemburg delegation (Annex A, 17), which would be examined when a representative of that delegation was present.

SALIH ZEKAI BEY *(Turkey)* said that the Turkish delegation had submitted an amendment to the effect that after the words " permanent residence " in the first paragraph of the Protocol *ad* Article 5 the words " in accordance with the laws and regulations of the country ".

THE CHAIRMAN said that this amendment concerned certain taxation questions and would be discussed later with the fiscal experts.

10. **Article** 6 (continued).

Swedish Amendment (Annex A, 8).

M. SANDSTROEM *(Sweden)* said that, in the opinion of his delegation, Articles 6 and 7 needed to be made clearer, so as to exclude from the right of establishment and the rights provided for in Article 7 persons who were only admitted temporarily and without having to make any previous declaration, as laid down in the latter article, indicating the business which was the object of their sojourn. At the same time, it was advisable to stipulate that persons who had obtained admission to a territory on the basis of a declaration as to the object of their sojourn should not be entitled to take advantage of such admission to get round the law and engage in activities which, although covered by Article 7, were different from those declared at the time of temporary admission.

Article 6 contained the words " nationals . . . admitted into the territory ", whereas Article 7 read : " Nationals . . . allowed to establish themselves therein. " At first sight, these two expressions appeared to describe different matters, but a study of Article 6 would show that among the rights conferred on persons admitted to the territory of a contracting party there was included the right of establishment, and it followed that there was no difference between the two expressions employed in either article. The Swedish delegation held that the expression "admitted into the territory " applied to all persons who had legally obtained entry into a country —for example, tourists. It followed that such a person would obtain the rights of establishment laid down in Article 7, and the Swedish delegation did not think that this had been the intention of the authors of the draft. He had no special preference for any one formula, but thought that the question ought to be settled.

M. SERRUYS *(Economic Committee)* said that this point had not escaped the Economic Committee's notice. In drafting Article 6 in its present form, the Committee's intention had been to leave States free to determine at the time of admission the conditions to which they subjected it. It was possible that at the time of admission the States required the person concerned to indicate the business which he intended to carry on ; and Sweden, for instance, would be entirely free to determine at the time of admission any conditions which it might wish to lay down. Such conditions, however, represented a phase which was previous to the operation of the Convention.

M. SANDSTROEM *(Sweden)* explained that the question was to determine whether the formula employed in Article 7 differed in meaning from that used in Article 6.

M. SERRUYS *(Economic Committee)* explained that Article 6 referred solely to the right of sojourn and to what a person might do if he were permitted to sojourn. The idea of a specified economic activity was contained in that article and this idea was explained in Article 5. As to the question of established business, that fell under Article 7. If Article 6 were limited to persons desirous of engaging in a permanent activity—and this appeared to be the idea of the Swedish delegation—the field of application of that article would be very considerably restricted, but that had nothing to do with the question of application and was connected solely with the conditions which each State laid down for admission. The Convention did not cover the question of tourists, labour, emigration, etc., and if, in order to limit the field of application to purely economic matters, some countries wished to make conditions as to admission, that was a matter which did not concern the Convention, which dealt solely in Article 6 with the right of movement, in Article 5 with commercial activity and in Article 7 with permanent activities.

M. POZNANSKI *(Poland)* thought that it would facilitate the Committee's proceedings if M. Serruys would explain the legal bearing of the various terms used in Article 6 ; in particular, the difference between " travel " and " movement " and between " sojourn " and " establishment " and the meaning of the words " elect their domicile ". These expressions varied in meaning according to the national laws.

M. SERRUYS *(Economic Committee)* explained that it had been desired to ensure the right of travel both for foreigners having no fixed establishment and for foreigners sojourning in the country. For instance, a foreigner allowed to come into France to sojourn at Lille but prevented from going to Besançon would not enjoy freedom of travel. The term " sojourn " implied the idea of remaining in the same place, whether the person concerned had or had not a domicile or a residence. This, for example, was the case of a foreigner coming to Paris to stay eight days or a month. " Travel " designated movement from one place to another and " sojourn " freedom of residence in a place. In regard to " establishment ", when a foreigner who had enjoyed the right to travel and to sojourn established himself, he henceforth engaged in a permanent activity in a specified place. In order to obtain this right, he must reside—unless he was a commercial traveller—or in the majority of cases prove a domicile. If he engaged in any business, he paid a fee instead of taking a domicile. Finally, the word " movement " designated a movement of such permanent activity, that was to say, not the movement of the person but the movement of his domicile.

THE CHAIRMAN asked the Swedish delegate whether, in view of M. Serruys' explanations, he would withdraw his amendment or whether he wished the Rapporteur to give an explanatory paragraph in his report.

M. SANDSTROEM *(Sweden)* said that his delegation did not in any way propose to restrict the status of foreigners, which was very liberal in Sweden, but on the contrary to obviate restrictions. The Chairman's suggestion satisfied him, but he would be glad to know what explanations the Rapporteur intended to include in his report.

M. SAKANE *(Japan)* thought that, apart from police regulations, there should be complete freedom to move within the country in accordance with the sense of the Convention and in conformity with the intentions of the Economic Committee. The Japanese delegation had submitted to Article 7 an amendment which was connected with the question of the freedom of movement, referred to in Article 6. He enquired whether this amendment could not be examined in connection with Article 6.

THE CHAIRMAN observed that no delegation had any intention of limiting the meaning of Article 6 in regard to the freedom of movement. He thought it preferable to examine the Japanese amendment when the Committee came to Article 7, although, of course, it would always be possible to revert to Article 6, if necessary.

M. ROTHMUND *(Switzerland)* observed that M. Serruys had explained the bearing of Article 6 in respect of the term admission and the consequences of admission, but that a foreigner once admitted would enjoy rights of freedom of travel, establishment, etc., as laid down in the draft Convention. It was, however, at the time of admission that such rights might be restricted. Admission was not always the result of a single permit, and it might include either entry to a country alone or entry and temporary sojourn or entry and prolonged sojourn, that was to say, establishment. A country might, for instance, admit a seasonal labourer for a sojourn of three or six months. According to the text of the draft, however, a seasonal worker after he had entered the country would have the right to establish himself. The situation in Switzerland was a special one. Permits for sojourn and establishment were issued by the Cantons within the limits of their jurisdiction, and were valid for each Canton. If a foreigner changed Cantons, he would have to have a fresh permit for sojourn or establishment. In practice, the Cantons raised no difficulties, but from the point of view of form these distinctions existed in the Swiss Constitution and the Swiss delegation would be unable to subscribe on behalf of the Government to obligations which exceeded the provisions of the Constitution. For this reason, the Swiss delegation could not accept Article 6 in its present bearing. M. Rothmund understood that in the view of the Economic Committee a foreigner once admitted to a country in any manner whatsoever should be free to move from the place to which he had been admitted, to travel freely and to carry on business like a national. If a restriction were introduced solely in regard to the complete freedom of travel, the Swiss delegation would be able to adhere to Article 6.

THE CHAIRMAN observed that at the meeting held by the General Committee on the previous day a question of the same kind as that connected with the Swiss Constitution had been raised and a proposal had been made to insert a clause to cover such cases. The point might be postponed pending a decision on the general question.

M. ROTHMUND *(Switzerland)* pointed out that Articles 6 and 7, and more especially Article 8, were connected with Article 29, where it was said : " the provisions of the present Convention shall in no way affect the freedom of the High Contracting Parties as regards the admission of foreigners . . . " It was for that reason that the Swiss delegation thought that the question of Articles 6 and 7, and in particular that of Article 8, should be taken simultaneously with Arttcle 29, so as to bring out quite clearly the fact that the Convention was inoperative in regard to admission. He agreed to the proposal to postpone the discussion and to take it up again in connection with Article 29.

THE CHAIRMAN explained that he had not proposed to hold over the discussion of the article, but only the special question connected with the Swiss Constitution, which would be postponed until after the discussions in Committee D.

DR. MARTIUS *(Germany)* considered that the observations made by a number of delegations, and in particular the explanations furnished by M. Serruys, had shown the great complexity and difficulty of the problem under discussion. He did not think that it would be possible to reach a solution by examining the Swedish amendment alone, nor did he think that the difficulties had disappeared by reason of M. Serruys's explanations. As to the question what constituted admission, the Swedish delegate had replied by saying that a foreigner must have obtained entry legally. The difficulty, however, did not stop there. In regard to passports, certain countries had abolished the visa, while others continued to require one, but in neither case, under the existing legislation, was the bearer of a passport in any way entitled to establish himself or even to sojourn for as long as he wished.

There were permits for sojourn, for establishment, for labour, etc., and these points were the subject of a number of amendments. The Economic Committee had laid stress only on the question of the freedom of travel, and certain delegates had agreed with the Committee's view. He also agreed, but that did not solve the problem.

How could a solution be devised ? It had been suggested that the question of admission in general, taken in its economic aspect, had been reserved for another Conference, but, if the Convention now under discussion was to contain provisions concerning the treatment of foreigners who had been admitted, the present Conference would have to formulate its views as to the solution to be given to the problem of sojourn. Account would have to be had to the emigration laws, the

laws on the labour market, police, passport regulations, etc., but the true problem was an entirely different one, namely : What were the rights of foreigners in regard to sojourn and, in particular, establishment ? The German delegation would submit the following text, not as a definite motion, but merely as a suggestion :

> " *Article* 6.—Nationals of one of the High Contracting Parties may enter the territory of the other High Contracting Parties, provided they comply with their laws and regulations ; they may sojourn and establish themselves therein, and leave the said territory, subject to the right of the State receiving them to refuse admission to, or to expel, foreigners, either on grounds of the internal or external safety of the State, or in consequence of a legal sentence, or in accordance with the laws and regulations on public decency, the sanitary laws or the regulations concerning vagrancy.
>
> " *Protocol* ad *Article* 6.—It is understood that the provisions of these articles do not affect either the formal provisions contained in laws and regulations relative to the control of foreigners (passports, identity cards, permission to remain in the country, etc.) or measures devised for the protection and regulation of the national labour market in regard to foreign labour, or the laws and regulations on immigration and colonisation. "

M. SERRUYS *(Economic Committee)* congratulated Dr. Martius on his observations, which showed that the Conference had reached the point of intersection between the considerations which had been offered as to the question of admission and those which were connected with the treatment of the foreigner establishing himself. What was the significance of Article 6 in the general draft which had, it must be remembered, only been submitted to the Conference as a basis of discussion ? The Economic Committee had started out from the idea that conditions as to admission were a matter for each State, but that these conditions would be specified prior to admission and, if a foreigner had been admitted without restriction at the time of his entry, his rights as to travel or sojourn could not be limited later. It followed that, if admission were conditional, the conditions must be previous to admission. Further, the Economic Committee had not failed to indicate its point of view, not only in the commentaries but again in the Protocol of the third paragraph of Article 7, and in the Final Act.

Once a foreigner had been admitted without restriction, what were his rights ? Article 6 said that the persons concerned were to enjoy the same freedom of travel, etc., " provided they comply with the laws and regulations of the party " to whose territory they were admitted. There was no clause stating that these laws and regulations were to be identical for foreigners and for nationals. It might be that there were different laws for foreigners and nationals in regard, for instance, to the restriction of sojourn to certain areas, but subject to this condition, foreigners should, in principle, be entitled to sojourn, to move, to elect their domicile, etc., and it was stipulated that, for each of these transactions, they should not be subjected to conditions or regulations other than those applied to nationals. Article 6, therefore, was threefold in character : first, the conditions should be specified previously ; secondly, foreigners were to be subject to the laws and regulations of a country, but it was possible that the laws and regulations might not be identical for foreigners and for nationals ; thirdly, if the laws applying to both were identical, foreigners should not be subject to subsequent different conditions.

If the Conference agreed on the system thus set forth, it might adopt any wording it desired. He wished to know whether M. Riedl, who had co-operated in drafting this clause, agreed with this interpretation.

M. DE NICKL *(Hungary)*, although he thought that M. Serruys had to a very large extent allayed the apprehensions to which Article 6 had given rise, said that there was still one question to solve. He ventured to draw M. Serruys's attention to the second observation on page 33 in the "Brown Book", containing the Economic Committee's reply to a suggestion made by the Hungarian Government. It was said in the reply that the whole Convention dealt solely with the treatment of foreigners who are authorised to establish themselves. There was a contradiction if admission must be understood in the sense just defined by M. Serruys.

He would ask whether admission should be taken to mean authorisation to have access to the territory.

M. SERRUYS *(Economic Committee)* replied in the affirmative.

M. RIEDL *(International Chamber of Commerce)* said that the Committee had reached one of the main clauses in the Convention, which was also one of the most difficult. As representative of the International Chamber of Commerce, he would express himself perhaps somewhat more freely than was possible to certain Government representatives. It must be recognised that the various States were still imbued with regard to these different matters with the war mentality, but fortunately more so in theory than in practice. The States must finally free themselves from the spirit of susceptibility and *chicane*. Now that a discussion on the borderline of the two domains in regard to the treatment of foreigners was being taken up, an attempt must be made to discover the road to liberty. In one of its earlier schemes, the International Chamber had also proposed a Convention on Admission. That question, of course, lay outside the proceedings of the present Conference. Nevertheless, the present discussion on the definition of the term "admission" should pave the way for the future Convention on Admission. As representative of the Chamber of Commerce, he ventured to hope that the direction taken by this preparatory work would be towards a freedom which was essential to the future development of trade.

M. PILOTTI *(Italy)* thanked the German delegate who had endeavoured to submit a wording which would make Article 6 more lucid. He was, however, unable to indicate his view upon the German suggestion for the moment. The explanations given by M. Serruys were entirely in accordance with the idea which the Italian delegation had formed as to Article 6. As a practical suggestion, he proposed that the Rapporteurs should meet on the following day with the various delegates who had moved amendments and in particular with Dr. Martius, in order to prepare for the following day a wording on which the Committee could take a decision.

M. NEDERBRAGT *(Netherlands)* regretted that, in the view of the Netherlands delegation, the force of the Convention had been considerably diminished as a result of M. Serruys's explanations. The Netherlands delegation had always thought that by "laws and regulations" were meant general laws and regulations consisting of similar provisions for nationals and foreigners alike. Certain Governments, of course, had difficulties; but the Netherlands delegation had thought that the delegates had met at the present Conference to enter upon the path of liberty. If it were now said that Governments could act at their own discretion in regard to the laws and regulations mentioned in this article, it was difficult to see that the Convention had any longer meaning. In the previous week, he had said that his Government would prefer a Convention which contained really valuable provisions, but which would perhaps obtain only a few signatures, to a Convention which would be almost empty but which would have a large number of adherents. If the interpretation which had been given were adopted by the Conference, the Convention which would be drafted would be virtually of no account.

M. SERRUYS *(Economic Committee)*, replying to the Netherlands representative, said that he could rely on the full assistance of the Economic Committee's representatives for the adoption of a liberal system. He was fully in sympathy with the ideas of M. Riedl. He did not think that the Conference had the necessary powers to deal with the question of admission, but, as the Assembly had declared in 1929, the liberal treatment of foreigners admitted was certainly a step on the road towards more liberal terms as to admission.

The interpretation given by the Netherlands delegate was, however, unnacceptable. If M. Nederbragt would refer to Article 7, he would see that the very inclusion of that article proved that the laws and regulations governing foreigners could not be identical with those governing nationals. The Netherlands delegate might be satisfied by the fact that Article 7 laid down that the differences were those which were specified and no others. It was impossible to argue that the expression "provided they comply with the laws and regulations" signified that such laws and regulations must be identical for foreigners and for nationals, seeing that Article 7 referred to the differences between the former and the latter. The engagements which the States would assume in regard to these differences would furnish foreigners with the necessary guarantees, and that might, perhaps, satisfy the Netherlands delegate. Furthermore, the latter might usefully intervene in the discussion of other articles with regard to the differences restricting the freedom of foreigners and endeavour to obtain as liberal a regime as possible for them.

THE CHAIRMAN emphasised the utility of M. Pilotti's suggestion. He thought, however, that the Committee should first settle a fundamental point; it should come to a decision in a genreal manner as to the principle laid down in Article 29, whereby the provisions of the Convention did not in any way limit the freedom of the States in regard to the admission of foreigners. That, of course, would not prevent any delegation from proposing subsequently amendments to that article, but a general decision seemed essential before examining the various amendments textually.

M. NEDERBRAGT *(Netherlands)* pointed out that, in addition to the fundamental principle to which the Chairman had alluded, there was the principle mentioned by M. Serruys, namely, the question not of admission, but of the conditions of admission. He would therefore request the Chairman to be good enough to ask the Committee's opinion on this second principle which was of very great importance to the Netherlands Government, namely, whether the laws and regulations should be identical for nationals and for foreigners, except in the cases mentioned in the Convention.

THE CHAIRMAN thought that the Committee was, generally speaking, in agreement as to the principle contained in Article 29.

DR. MARTIUS *(Germany)* wished to obviate any misunderstanding. The German delegation was quite prepared to accept any provisions which were formulated in the most liberal manner possible, but in regard to questions of travel and sojourn it failed to see how it would be possible to take a decision if certain rights were stipulated for foreigners conjointly with an affirmation as to the freedom of the States. He understood that the intention was not to handicap the freedom of States in individual cases, and that an attempt was being made to devise more general terms and expressions. In any case, the States could not retain their freedom intact.

THE CHAIRMAN said that the Rapporteu rwould confer on the following morning at 10 o'clock with the various delegates who had moved amendments dealing with the question under discussion.

SIXTH MEETING

Held in Paris on November 13th, 1929, at 11.30 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

11. Procedure.

M. POLITIS *(Greece)*, Rapporteur, said that the Drafting Committee had not yet been able to agree upon a text for Article 6. It had been found difficult to determine the scope and meaning of Article 6 before there had been a discussion of the amendments moved to Article 7, owing to the close connection which existed between the two articles. He would therefore ask the Committee to discuss Article 7 before the Drafting Committee submitted a revised text of Article 6.

The Committee agreed.

12. Examination of the Articles of the Convention : Article 5 (continuation).

Observations of Luxemburg (Annex A, 17).

THE CHAIRMAN asked the Committee to discuss the observations on Article 5 submitted by the delegation of Luxemburg.

M. BASTIN *(Luxemburg)* said that the observations presented by the delegation of Luxemburg respecting Article 5 drew attention to a possible divergence between the provisions of the Convention to be concluded and the legislation of Luxemburg. The delegation of Luxemburg did not intend to suggest any amendment to Article 5 and was prepared to accept any decision of the Committee concerning the point in question.

THE CHAIRMAN thanked the delegate of Luxemburg for his statement. Account would be taken in the report of the Committee of the observations presented by the delegation of Luxemburg.

13. Article 7, Paragraph 1 (continuation).

Swedish Amendment (Annex A, 8).

THE CHAIRMAN asked the Committee to take the amendments moved by the delegation of Sweden.

M. SANDSTROEM *(Sweden)* said that, first, the Swedish delegation considered that the rights provided for in Article 7 should not apply to persons who had only been admitted temporarily without any previous declaration of an activity covered by the article as the purpose of their stay. Persons who had obtained admission to a territory by declaring a certain purpose for their residence, should not be able to take advantage of their admission to engage, in evasion of the law, in other activities covered by Article 7 than those declared at the moment of their temporary admission.

Secondly, a foreigner under Swedish law who desired to establish himself as a trader, or engage in an industry, was required to deposit security for the payment of taxes and fees for a period of three years and also to obtain a special permit.

Thirdly, a foreigner residing in Sweden who desired to organise public performances or meetings or take part in them, was required to make a similar deposit in order to be placed on a footing of equality with Swedes. A special permit must be obtained both by foreigners and by Swedes residing abroad. They were required to pay a special tax of 5 per cent on the gross proceeds of their performances.

The object of these provisions was to prevent tax evasion and they were not directed against foreigners as such. They should not, therefore, in the opinion of the Swedish delegation, be considered as cases of discrimination condemned by the Convention.

M. SERRUYS *(Economic Committee)* thought that the first of the points mentioned by the Swedish delegation referred to the conditions under which foreigners were admitted, and not to conditions which they were required to fulfil subsequent to their admission. The point, therefore, need not be considered by the Conference. The conditions as regards a deposit for the organisation of public performances applied to non-resident Swedes as well as to foreigners, and the point was, in his opinion, covered by the terms of Article 1 of the Convention.

THE CHAIRMAN enquired whether the Committee thought that the Swedish regulations were incompatible with the provisions of the proposed Convention in regard to the first point.

The Swedish delegation represented that the rights provided for in Article 7 should not apply to persons who had only been admitted temporarily without any previous declaration of an activity covered by the article as the purpose of their stay. The delegation further maintained that persons admitted on declaring a certain purpose for their residence should not be able to engage in other activities than those which were declared at the moment of their temporary admission.

DR. MARTIUS *(Germany)* said that he had grave doubts whether these provisions were not in contradiction with those of the Convention. It was laid down in Article 7 *(b)* that occupations permissible under the laws of the high contracting parties, or for which special titles or guarantees were required, might be exercised, subject to the submission of identical titles or guarantees, and should be open to foreign nationals upon the same terms. The Swedish delegation, however, said that, under the Swedish regulations, a special permit was required for foreign nationals. In Germany, the conditions governing the activities of foreign nationals were identical with those required in the case of nationals of the home country. M. Serruys had regarded these provisions as conditions of admission. He could not quite agree with that point of view. The provisions in question were also provisions governing the professional activities of the persons admitted. He thought that the Swedish regulations were not compatible with the Convention.

THE CHAIRMAN asked the Committee to decide first, whether the Swedish regulations relating to temporary admission were contrary to the provisions of the Convention.

DR. MARTIUS *(Germany)* said that he had been referring to the second point raised by the Swedish delegation, namely, the need for a special permit.

M. SANDSTROEM *(Sweden)* thought that the first point on which the Chairman had requested the decision of the Committee should rather be considered under Article 6.

THE CHAIRMAN agreed. He suggested that the point raised by the Swedish delegation concerning the deposit of security for the payment of taxes should be referred to Committee B.

The Committee agreed.

THE CHAIRMAN asked the Committee to consider the point raised in connection with the deposit required for the organisation of public performances or meetings.

M. SANDSTROEM *(Sweden)* explained that this deposit was required from Swedes non-resident in Sweden and from foreigners, whether they resided in Sweden or not, in all cases where such foreigners had not already deposited a guarantee for the payment of taxes and fees.

THE CHAIRMAN pointed out that this appeared to be a case of discrimination against the foreigner and was in contradiction with the provisions of the Convention. If Sweden retained these provisions in its legislation, it would be necessary for a special reservation to be made.

M. SANDSTROEM *(Sweden)* pointed out that, if the foreigner had made a deposit, he was, as a consequence, placed on the same footing as Swedish nationals living in Sweden.

THE CHAIRMAN said that, in that case, there might not be a real incompatibility between the Swedish legislation and the provisions of the Convention. The question of the deposit, however, was a matter for Committee B. The special tax of 5 per cent must be regarded as a financial expedient and the question for the Conference to decide was whether the expedient was reasonable and not likely to constitute an unfair discrimination against the foreigner.

The Committee agreed.

M. SANDSTROEM *(Sweden)* pointed out that, in Sweden, foreigners who had not deposited a security were required to obtain a special permit. The question was not, therefore, entirely of a fiscal character. There were two points to be considered, namely, the deposit itself and the obtaining of the permit. These questions, moreover, could not be regarded as merely relating to conditions of admission. They would need to be settled by the Conference and considered by the present Committee.

THE CHAIRMAN asked the Committee to decide whether it was incompatible with the provisions of the Convention that foreigners once admitted should be required to obtain a special permit to buy and sell. He would ask, in this connection, whether the foreigners in question were required to specify the industry in which they desired to engage, or whether they obtained a general permit which covered any kind of economic activity.

M. SANDSTROEM *(Sweden)* said that the permit in question was of a general character.

M. POLITIS *(Greece)*, Rapporteur, enquired whether Swedish traders were required to have a permit of this character.

M. SANDSTROEM *(Sweden)* replied in the negative. Swedish traders had only to make a declaration.

M. POLITIS *(Greece)*, Rapporteur, said that, in that case, the Swedish trader would only be required to make a declaration, whereas a foreign trader would have to make a declaration and also to obtain a permit which might, in certain circumstances, be refused. This was a clear and certain case of discrimination.

THE CHAIRMAN said that, if such a condition were exacted on the admission of the foreigner, it was not necessarily in conflict with the Convention, but only if it were exacted after the foreigner had been admitted.

DR. MARTIUS *(Germany)* said he would have to make a clear reservation on the question whether the provisions under discussion were compatible with the Convention or not. Was it not in conflict with the Convention to admit the possibility of requiring from foreign traders a special permit to pursue their activities ? If a special permit were required in the case of foreign traders, the Convention in his view would lose all its significance.

The Committee agreed that such provisions were incompatible with the Convention.

British Amendment (Annex A, 1).

THE CHAIRMAN asked the Committee to take an amendment moved by the British delegation. The amendment was to the effect that in paragraph 1 the words "including the provision of communications and transportation " should be inserted after the word " character ".

MR. PUGH *(British Empire)* asked the Committee to accept the amendment on the ground that the commercial activities covered by the article should certainly cover the provision of communications and transportation. The Economic Committee was in agreement with the British delegation on this point.

M. POLITIS *(Greece)*, Rapporteur, enquired whether it was necessary to make a specific reference to these activities in the text of the Convention. Woult it not suffice to state in the report that the expressions used in the article covered these special cases ?

MR. PUGH *(British Empire)* suggested that the reference should be put in the Protocol.

M. PILOTTI *(Italy)* drew attention to the fact that, if a reference were made to these activities, there might be some ambiguity as to the provisions of the Convention so far as they affected State services and monopolies. In many countries the railways were run by the State. If an explicit reference were made to communications it would be necessary also to make some allusion to State services. Was a reference to communications and transportation really necessary ? It was agreed that, in principle, economic activities necessarily covered such services.

DR. MARTIUS *(Germany)* agreed with M. Pilotti. He thought that any reference to communications and transport would be better introduced into the report. If the text of the Convention itself were modified, there might be some doubt as to the exact implications of these specific references.

MR. PUGH *(British Empire)* asked whether the objections raised by M. Pilotti were not adequately met by paragraph 2 *(e)* of Article 7, which referred explicitly to State monopolies.

M. MAYER *(Austria)* said that there could be no doubt that communications and transportation were covered by the general terms of the article. A special reference to these services in the Convention or the Protocol might therefore be interpreted as restrictive. If such a reference were introduced it should be introduced by way of an example. There was, in his view, some danger of ambiguity in referring to specific kinds of activity. There was, for example, the question whether insurance companies should be included under the general heading of economic activities. A specific reference to communications and transportation, if restrictively interpreted, might seem to exclude the activities of insurance companies.

M. DE LA VALLÉE POUSSIN *(Belgium)* also felt that the introduction of the British amendment, either into the text of the Convention or the Protocol, might lead to a misunderstanding as to the general sense of the Convention. Government concessions were excluded from the Convention under Article 1, and in many cases the communication and transport services were run either by Government monopolies or by means of Government concessions.

Paragraph 1 of Article 7 had been intentionally drafted in general terms and the introduction of a reference to specific activities might give rise to some doubt as to whether railways, for example, were regarded as reserved activities or not.

MR. PUGH *(British Empire)* said that his delegation wished to be assured that the services in question might be regarded as included under the general provisions of the article.

DR. MARTIUS *(Germany)* said that, for the reasons which had been given, he felt that it was better to omit any reference to these special forms of activity in the Convention or in the Protocol.

MR. PUGH *(British Empire)* said that, in the circumstances, he would agree provisionally to this matter being dealt with by an appropriate reference in the Rapporteur's report.

Amendment submitted by Venezuela.

M. MACHADO HERNANDEZ *(Venezuela)* said that his delegation desired to add a third paragraph to Article 7 in the following terms :

> " 3. The provisions of the present article shall not preclude the application of the local and legal provisions concerning banks, insurance undertakings, navigation, the ownershid of vessels, and the coasting trade."

His delegation was prepared to accept the provisions of Article 7, subject to the special regulations enforced in Venezuela in regard to the points covered by the amendment. These regulations were enforced in the interests of public order and welfare.

THE CHAIRMAN said that this amendment would be discussed when the Committee came to consider paragraph 2 of Article 7.

Observations submitted by the Latvian Delegation.

M. SCHUMANS *(Latvia)* said that foreign nationals, before engaging in any commercial or industrial activity in Latvia, must obtain a previous authorisation from the municipal or communal authorities. No distinction, however, was made between nationals and foreigners if the foreigners had the necessary permits for residence and for their professional activities. For the conduct in Latvia of commercial or industrial operations by the branches, subsidiary undertakings or agencies of foreign firms, the existing law required only the same authorisation as was necessary for autonomous undertakings, *i.e.*, they must be registered as independent Latvian undertakings in conformity with the laws of the country. Discrimination as between foreign nationals and nationals of Latvia only began with the provisions relating to the management of foreign firms. The directors of banks, insurance companies, etc., must be Latvian citizens and two at least of the founders of limited companies must be of Latvian nationality. One third of the members of the boards of limited industrial companies, including the chairman, must be Latvians. Only Latvian citizens might found insurance companies or act as managers or as members of the board of directors of these companies. Foreign insurance companies and their agents were not allowed to do business in Latvia.

The object of these provisions was to bring foreign enterprises into closer connection with the country in which they desired to work. They did not constitute any real hardship for foreigners, as foreign firms might easily find in the country suitable persons to represent them or to take service in their employment. Such arrangements were to the advantage of the foreign national, who was thereby enabled to comply with the national regulations.

THE CHAIRMAN said that the observations of the Latvian delegation raised several important questions.

The provisions in regard to the previous authorisation which was required before a foreign national might engage in any commercial or industrial activity was not incompatible with the Convention, since there was no discrimination as between Latvians and foreign nationals. He would ask the Committee whether it considered that the provisions in regard to the management of limited companies, etc., were incompatible with the Convention.

M. SCHUMANS *(Latvia)* pointed out that these provisions related only to companies and not to private firms.

THE CHAIRMAN suggested that the point should be referred to Committee C, which would consider Article 16.

M. PEROUTKA *(Czechoslovakia)* said that the provisions relating to the management of companies did not, in his opinion, constitute an economic restriction, but were to be regarded as relating to a legal formality. The case was, therefore, already covered by the reservation in the first paragraph of Article 7 in accordance with which its provisions were declared to be subject to the observance of the laws and regulations of the high contracting parties. He would enquire whether the particular regulations under discussion did not affect physical persons as well as limited companies, and, in that case, was it not necessary for the Committee to deal with the subject ?

DR. MARTIUS *(Germany)* represented that the question also had some connection with Article 8 in so far as it might apply to physical persons. He did not, however, object to the question being discussed under Article 16.

THE CHAIRMAN pointed out that the other points to which the Latvian delegate had drawn attention related to paragraph 2 of Article 8.

Turkish Amendment (Annex A, 18).

THE CHAIRMAN asked the Committee to take the amendments moved by the Turkish delegation.

SALIH ZEKAI BEY *(Turkey)* said that his delegation had submitted that paragraph 1 *(a)* of Article 7 should be accepted without prejudice to the requirements of local laws regarding the nationality of the undertakings in question. If, however, the undertakings mentioned in this paragraph had no connection with companies, organisations and associations, the reservation regarding their nationality would no longer be necessary.

THE CHAIRMAN said that such undoubtedly was the case.

SALIH ZEKAI BEY *(Turkey)* withdrew the amendment to paragraph 1 *(a)*.

SEVENTH MEETING

Held in Paris on November 13th, 1929, at 3.15 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

14. Examination of the Articles of the Convention : Article 7, Paragraph 1 : General Discussion (continuation).

Netherlands Amendment (Annex A, 19).

M. NEDERBRAGT *(Netherlands)* explained that the first amendment of the Netherlands delegation consisted in the deletion of the words "allowed to establish themselves therein". The Netherlands delegation desired by this amendment to show the attitude adopted by its Government in regard to this article. In the Netherlands, almost complete liberty was allowed in respect of the matters covered by the article, not only for those who were officially admitted to her territory, but also to all foreigners crossing the frontier. The few existing restrictions covered certain points mentioned in paragraph 2. The Netherlands delegation wished, at the same time, to emphasise its desire that other countries should follow the attitude of the Netherlands as far as possible. Certain delegations, however, would find it difficult and, if the Committee thought it impossible to delete these words, the Netherlands delegation would not press the point.

It had intended to withdraw the second amendment at the previous meeting, but it had not wished to do so until it had dissipated a number of misunderstandings to which the amendment had given rise. In actual fact, the amendment would secure complete freedom of navigation. It was obvious that, in accordance with the terms of the second paragraph, certain points must be subject to conditions. The first paragraph laid down the general rule, and in regard to navigation the Netherlands delegation agreed with the British delegation, which asked for complete freedom. That freedom was essential for the Netherlands.

M. POLITIS *(Greece)*, Rapporteur, recalled that, at the previous meeting, the British delegation had asked that it should be clearly understood that questions of navigation and transport were included in the list contained in paragraph 1. The Committee had discussed whether an appropriate reference should be made to this point, either in the Protocol or in the report. The British delegation had agreed to accept a reference to the matter to be included in the report. Was the Netherlands delegation prepared to accept this solution ?

M. NEDERBRAGT *(Netherlands)* would prefer a reference to be inserted in the Protocol. He would, however, accept the final decision of the Committee and withdraw his amendment.

The third amendment of the Netherlands delegation raised a point of drafting. It concerned sub-paragraph *(b)* of the first paragraph and proposed that the words "identical with those" in the fourth line should be deleted. The object of this amendment was to emphasise that there were only two categories of titles and guarantees : (1) The same as those which were required from nationals, and (2) guarantees whose official title was recognised by the State concerned.

THE CHAIRMAN asked the Committee to examine the Netherlands delegation's amendments one by one.

As regarded the first amendment, *i.e.*, the deletion of the words "allowed to establish themselves therein ", he thought that the question of the deletion or amendment of these words would be determined by the discussions which would take place in the Rapporteur's Sub-Committee on Article 6.

M. NEDERBRAGT *(Netherlands)* agreed.

THE CHAIRMAN noted that the Netherlands delegation was ready to withdraw the second amendment, it being understood that mention should be made of it in a paragraph in the report, in which the word " navigation " would be introduced ; a proposal which had been accepted by the British delegation.

In so far as the third amendment was concerned, he interpreted the relevant passage in the article 7 as follows. There were two kinds of titles, those which were identical and those which were recognised as being equivalent. The first case covered that of a foreign doctor in the Netherlands who had obtained a Dutch medical degree, and provided that he should be able to exercise his profession in the same way as a national. In the second case, a foreign doctor possessing a title which was recognised in the Netherlands as being the equivalent of a Dutch degree would be allowed to exercise his profession in that country.

After an exchange of views, *the words " subject to the submission of titles or guarantees identical with those . . . " were replaced by the words " subject to the submission of the same titles or guarantees ".*

Finnish Observations (Annex A, 20).

M. HOLMA *(Finland)* read the observations of the Finnish delegation with regard to the provisions of Article 7. The Finnish delegation had made a reservation in view of the fact that the right of foreigners to exercise commercial and industrial activities in Finland was based on a system of concessions.

THE CHAIRMAN asked whether it should be understood that the special permit required under the Finnish law could be refused.

M. HOLMA *(Finland)* replied in the affirmative.

THE CHAIRMAN asked whether the permit would entitle a foreigner to carry on any activity, or whether it was a special permit covering a particular activity.

M. HOLMA *(Finland)* replied that there was no general permit, but that a special permit was required for each form of activity.

THE CHAIRMAN said that, in these circumstances, he must ask the Committee whether, owing to the decision taken at the previous meeting with regard to the Swedish amendment, the Finnish amendments should be considered as contradictory to the spirit of the Convention.

The Committee decided in the affirmative.

THE CHAIRMAN considered that the question of the Finnish amendment should be taken up later and made the subject of a special reservation, if such reservation were allowed by the Conference.

Declaration of the Representative of India.

M. PARANJPYE *(India)* wished to make a statement of a general kind covering Articles 8, 16 and 7. It followed the same lines as the amendments proposed at the previous meeting by the representatives of Spain and Latvia. A number of countries were not in a very advanced condition in so far as their industrial development was concerned. Owing to this fact, they had not the same interests as countries more highly developed industrially. This was the case in India. That country was endeavouring to develop from the industrial point of view and wished to derive profit from activities carried on in her territory by foreigners, whether private persons or companies, who came to the country to establish themselves and created industries under the protection of the Customs barriers of the country. The nationals of India must be given the possibility of learning the conduct of trade and industry, so that the people might be encouraged to develop industrially. The Government had taken the view that foreigners admitted in this way to the territory of India should facilitate the education of the people. For that reason, a clause was inserted in every concession granted to a foreigner placing him under certain obligations or making him liable to certain obligations : for example, the obligation to appoint a certain number of natives as directors of the firm, or the obligation to invest part of the capital in the country, etc.

THE CHAIRMAN thought that the question raised by the Indian delegate might be examined later when the reservations to be allowed to the Convention in the case of certain countries which were not very highly developed from the industrial point of view were under consideration.

M. PARANJPYE *(India)* agreed. He had not submitted an amendment but had merely wished to make a general statement.

15. **Protocol *ad* Article 7, Paragraph 3: General Discussion** (continued).

THE CHAIRMAN asked the Committee to examine paragraph 3 of the Protocol *ad* Article 7 before examining paragraph 2 of that article.

German Amendment (Annex A, 15).

DR. MARTIUS *(Germany)* said that the first amendment of the German delegation was, to a certain degree, connected with the problems discussed that morning by the Sub-Committee. He asked that the discussion of the amendment should be adjourned. The German delegation preferred that the second amendment should be discussed in connection with paragraph 2.

The suggestions of the German delegation were approved.

Czechoslovak Amendment (Annex A, 11).

M. POLITIS *(Greece)*, Rapporteur, noted that this amendment consisted in replacing the words " *ni se prononcer sur* " by the words " *ni statuer sur* " in the French text. What was the difference between those two expressions in the view of the Czechoslovak delegation ?

M. PEROUTKA *(Czechoslovakia)* explained that there were two opposite views regarding the question of the protection of the national labour market. The preparatory documents for the Conference stated that it was not intended to deal with this problem. For that reason the Czechoslovak delegation thought that the words " *ni statuer sur* " were more exact than the words " *ni se prononcer sur* ".

M. POLITIS *(Greece)*, Rapporteur, was prepared to accept the proposal of the Czechoslovak delegation, though in his view the two expressions meant exactly the same thing.

The amendment was adopted.

Italian Amendment (Annex A, 21).

M. PILOTTI *(Italy)* said that the Italian delegation withdrew its request for the suppression of paragraph 2.

The Italian delegation asked that, in the first sub-paragraph of paragraph 3, after the words " wage-earners admitted to their territory ", the following words should be added : " and residing there either temporarily or permanently ". This would establish a closer connection with the second sub-paragraph in which mention was made of the conditions and guarantees attaching to the temporary sojourn or permanent establishment of these persons.

The amendment was adopted.

Japanese Amendment (Annex A, 10).

M. SAKANE *(Japan)* said that the Japanese delegation asked for the insertion in the Protocol of a sentence stating that the provisions of Article 7, paragraph 1, also applied to studies and to education. The Japanese delegation would not propose a formal amendment. It thought, however, that its suggestion should be retained in an appropriate form. Article 7 should cover facilities for the residence or establishment of students, not only in so far as their intellectual education was concerned, but also in regard to the technical and commercial training they received. Such a provision would facilitate commercial and other relations between countries, and would be in conformity with the spirit of the Convention.

THE CHAIRMAN thought that this matter could be mentioned in the report, the Rapporteur being left to decide whether it should be dealt with in connection with Article 7 or with Article 6

M. SAKANE *(Japan)* agreed.

M. VAN WALREE *(Netherlands)* said that the Netherlands delegation agreed with the Japanese delegation's amendment. He proposed, however, that a more definite meaning should be attached to the idea of studies by making it clearly understood that the stipulation applied also to students anxious to visit educational establishments as well as to students wishing to acquire technical training. In the view of the Japanese delegation, it was of considerable importance to make it possible for young persons of all countries to work for a certain time in foreign commercial houses or factories. Periods of training of that kind often formed the subject of arrangements

entered into between the families of the young persons concerned and those who had business relations with those families. The convention should ensure that the activity of these young persons would not be interfered with by laws of which the first object was to exclude foreign labour. For that reason, the Netherlands delegation proposed to add, after the word " studies ", the words " both practical and theoretical ".

M. POLITIS *(Greece)*, Rapporteur, thought that, if the Committee agreed, the reference to this matter should be made in connection with Article 6, either in the Protocol or in the commentary which would be given in the report.

M. MAYER *(Austria)* thought that the Japanese and Netherlands proposals would encourage the development of commercial relations between peoples, but he did not think that there was any intention of obliging the High Contracting Parties to open their schools to all foreigners.

DR. MARTIUS *(Germany)* welcomed the Japanese proposal as amended by the Netherlands delegation. Perhaps it might be made the subject of a recommendation of the Conference, unless the two delegations concerned thought that a reference in the report would be sufficient.

M. DE LA VALLÉE POUSSIN *(Belgium)*, while desiring to encourage the developmens of intellectual relations between States, observed that the intellectual movement towardr internationalism was very active and had no need of the assistance of the present Conference fot its encouragement, whose principal aims were economic. Moreover, there existed in Paris an institute for this very purpose. The problem raised all kinds of questions which had no relation to the subject of the present Conference. The Convention under discussion was already sufficiently complex to make it undesirable that any elements should be introduced into it which were foreign to its main object.

THE CHAIRMAN thought that a reference in the Protocol would perhaps go beyond the framework of the Convention. The delegate for Belgium might perhaps have no objection to a reference being made only in the commentary on Article 6.

M. DE LA VALLÉE POUSSIN *(Belgium)* approved this suggestion.

M. OBREMSKI *(Poland)* said he understood that the Japanese proposal referred not only to facilities for university students, but also to young people who desired to take practical courses. From the point of view of bringing the nations economically into closer contact, this proposal was of considerable importance and entirely in conformity with the spirit of the Convention. The institute in Paris to which the Belgian delegate had alluded dealt only with intellectual co-operation. The present proposal was directed more particularly to the practical aspect of the studies.

THE CHAIRMAN concluded that all the members of the Committee had agreed that a reference should be made to this matter in the report in connection with Article 6.

Estonian Amendment (Annex A, 2).

M. PUSTA *(Estonia)* said that the Estonian delegation was asking for the suppression of the first sub-paragraph of paragraph 3 of the Protocol. There was a contradiction between the first and second sub-paragraph. In the second sub-paragraph, it was said that the High Contracting Parties did not intend to settle the conditions and guarantees relating to foreign labour, whereas the first paragraph stated that the provisions of the Convention applied to foreign labour.

M. PILOTTI *(Italy)* asked the Estonian delegation not to insist on its amendment. He would explain the scope of the two sub-paragraphs under discussion. In the first sub-paragraph it was said that the benefits of the Convention extended to wage-earners admitted to the territory. In other words, when a reference was made to foreigners admitted to the territory, it was understood that there was no desire to exclude wage-earners. In the second sub-paragraph account was taken of the interests of States, and it was laid down that the Convention did not limit the right of a State to attach conditions to the establishment of foreigners and to protect the national labour. The second sub-paragraph, therefore, merely restricted the scope of the first sub-paragraph in order that it might be more clearly defined.

M. STUCKI *(Economic Committee)* alluded to the very keen discussion which had taken place in the Economic Committee on the question of the protection which might be necessary against foreign labour. The Estonian delegate, from the strictly logical and legal point of view, was right, but in accordance with strict logic it would be necessary to strike out the two sub-paragraphs of the third paragraph of the Protocol, since the protection against foreign labour was part of the question of the admission of foreigners and not of their treatment. The Economic Committee, however, as the problem had been raised and was of interest to a large number of delegates, had thought it desirable and useful to devote a few words to this question in the Protocol *ad* Article 7. If the first sub-paragraph only were suppressed, the second sub-paragraph would be incomprehensible.

He associated himself with the observations of the delegate for Italy.

M. LINANT DE BELLEFONDS *(Egypt)* said he was inclined to agree with the delegate of Estonia, as there was a contradiction between the two sub-paragraphs under discussion. If, moreover, the reservation concerning the labour market referred to the question of admission, it would be more appropriately taken in connection with Article 29. If it related to the treatment of the workers admitted, the scope of the first sub-paragraph of paragraph 3 of the Protocol ceased to be intelligible. Was it the intention of the Economic Committee that the reservation should deal with the conditions of admission or treatment ?

M. PUSTA *(Estonia)* thanked the delegate of Egypt. After the explanations which had been given, he would maintain his proposal, but in another sense. The two sub-paragraphs should be transposed. Would the Drafting Committee agree to make this modification so as to establish a more logical relation between the two sub-paragraphs ?

THE CHAIRMAN thought there was a misunderstanding which should be cleared up. The first sub-paragraph was, in his opinion, inserted merely in order to remove all doubts, if such existed. It meant that, if a foreigner were admitted into a country where, for example, the trade in groceries was not reserved, that foreigner might not only open a grocer's shop, but might also be employed in a grocer's shop. Countries, however, reserved their right to protect their labour market and to control admission into the country, and there was no limitation to their discretion in the matter. Did the Committee see any objection to transposing the two sub-paragraphs ?

M. STUCKI *(Economic Committee)* observed that the text of the draft was already the result of a compromise. It had all the advantages and disadvantages of a compromise. The Economic Committee, as it had been unable to achieve unanimity for a clear solution of the question, had been obliged to content itself with the present text. It was certain that countries desired to retain full liberty to protect their labour market. It was, on the contrary, to the clear interest of other countries to open their frontiers to workers and employers, and it was impossible for the Economic Committee not to take this situation into account.

It had therefore been laid down in the first sub-paragraph that it was not the intention of a Convention on the Treatment of Foreigners to exclude out of hand a whole category of foreigners, viz., those who were wage-earners. It was, on the other hand, clear that the Convention would not be signed by a large number of countries if full liberty to protect national labour were not reserved. There was, from this point of view, a certain contradiction between the two sub-paragraphs of the Protocol.

It was not possible to answer clearly the question whether the Economic Committee had desired to deal with the question of admission or treatment. The question of admission was settled by Article 29 and the question of treatment by Article 7. It might happen, however—and provision had been made for the case—that a country might have dealings with a foreigner who desired to penetrate into its territory with the expressed intention of being, for example, a director of a company or simply a visitor, and that after his admission the foreigner in question might desire to take up a salaried position. In that case, the Convention enabled the High Contracting Party concerned to defend itself against the foreigner who had thus been admitted.

To sum up, it was necessary either to keep the two sub-paragraphs or to suppress them both.

M. POLITIS *(Greece)*, Rapporteur, suggested a compromise. The first sub-paragraph might be retained in the Protocol *ad* Article 7, and the second sub-paragraph might be transferred to the Protocol *ad* Article 29. The second sub-paragraph was connected with Article 29, since that article left the States free to settle the question of admission, and the point in regard to foreign labour was a part of that question.

M. PUSTA *(Estonia)* said he had no objection to that proposal.

DR. MARTIUS *(Germany)* accepted the proposal provisionally.

M. DE LA VALLÉE POUSSIN *(Belgium)* said he would venture to express some misgivings which the observations of the Rapporteur had inspired in him. In the view of the Belgian delegation, the point at issue referred to measures of protection which each Government might take and which might be resorted to either before or after admission. To take an example, if a country received habitually a certain number of foreign miners, and if there occurred general unemployment in the mines, it might be of urgent necessity for that country to take measures for the protection of its national market in order to prevent the unemployed foreign miners from coming in to overcrowd other branches of salaried labour.

M. OBREMSKI *(Poland)* thought that the transfer of the second sub-paragraph to Article 29 might present certain disadvantages. Article 29 covered all foreigners of whatever description, whereas the sub-paragraph in question referred only to a category of foreigners, viz., those who were wage-earners. It must therefore be feared that there might result a certain confusion in the interpretation of Article 29.

M. POLITIS *(Greece)*, Rapporteur, pointed out that the paragraph in question would be transferred, not to Article 29, but to the Protocol *ad* Article 29.

M. PUSTA *(Estonia)* recalled that he had accepted the Rapporteur's suggestion. Other delegates, however, had expressed doubts as to the advisability of transferring the paragraph

to the Protocol *ad* Article 29. In these circumstances, he would be completely satisfied if the explanations given by M. Stucki on behalf of the Economic Committee appeared in the Minutes. M. Stucki's comments were calculated to dissipate any doubts on the question. He therefore would not oppose paragraph 3 of the Protocol remaining in its present form.

DR. MARTIUS *(Germany)* wished to make a reservation in regard to the interpretation of the Belgian delegation. In his opinion, M. Stucki's observations were perfectly clear. It seemed that all members agreed that the first paragraph ensured equal treatment for workers who had been admitted, and that the second paragraph made a reservation as to admission. He agreed on the compromise proposed. If, however, any objections were made, it would be possible for the Committee to limit itself to noting the agreement of substance and to reserve the question of drafting in so far as concerned the place to be given to the provisions in question. It should be observed that Article 6 was also affected to a certain degree.

M. PILOTTI *(Italy)* wondered whether it would be possible to follow the German delegate's suggestion, for the Belgian delegation's statement showed that agreement did not by any means exist as to the meaning of the second sub-paragraph. In the view of the Belgian delegation, the second sub-paragraph referred also to measures for the protection of the national labour market, which might be taken subsequent to admission. If that were so, as the Italian delegation believed, the best solution would be that suggested by the Estonian delegate, namely, to leave the two sub-paragraphs as they were, and place the declarations which had been made on the records of the Conference.

M. POLITIS *(Greece)*, Rapporteur, agreed with the Italian delegate.

THE CHAIRMAN noted that the conclusion reached was that the report would contain an explanation in the sense of M. Stucki's observations.

Austrian Amendment.

THE CHAIRMAN explained that the Austrian delegation proposed to make paragraph 3 of the Protocol *ad* Article 7 a special section of the Protocol, to be entitled : " Protocol *ad* Articles 7 and 8 ". He asked the Austrian delegation whether it consented to the question being examined in connection with Article 8.

M. MAYER *(Austria)* accepted this proposal.

16. **Article 7, Paragraph 2** (continued).

Swedish Amendment (Annex A, 8).

M. SANDSTROEM *(Sweden)* explained that, under Swedish law, field sports would have to appear among the reserved activities. There were in Sweden wide districts where field sports were open to Swedish nationals and not to foreigners. The Swedish delegation did not propose to give its reservation a more general bearing, and would accept any form of wording which would meet its views.

DR. MARTIUS *(Germany)* wished to submit at once a general observation. Any amendment which was intended to complete the enumeration in paragraph 2 of Article 7 tended to restrict the scope of the Convention and the freedom granted to foreigners. He had closely studied the Economic Committee's commentary, but he was not convinced of the absolute necessity of the method adopted in drafting paragraph 2 of Article 7, and particularly of the development of that paragraph. Before amending this passage in the Convention, so as to restrict its scope still further, it would be useful to be quite clear as to the intentions of the authors of the draft in regard to paragraph 2. The system of categorically prohibiting foreigners from engaging in certain activities was by no means the rule in bilateral treaties, at any rate between European countries. In the treaties concluded by Germany these reservations formed a rare exception. The reservations appearing in sub-paragraphs *(a)* and *(b)* of paragraph 2 did, of course, correspond to the practice of all States. They related to activities, charges, etc., which, by their very nature, could hardly be accessible except to nationals. The question was whether it was necessary to keep the complete list of exceptions in paragraph 2 or whether there was not some other means of satisfying those States which did not which to open their territories too wide to foreigners. In regard to sub-paragraphs *(e)* and *(f)* there was no difficulty, but the case of sub-paragraphs *(c)* and *(d)* was very different, and the enumeration of this long list of exceptions was not in place in a collective treaty.

In his remarks in the general discussion, the German delegate had said that his Government did not consider that paragraph 2 of Article 7 constituted an improvement. In regard to air navigation, for instance, which formed a very special problem, it might be noted that the Convention did not affect the existing provisions as to that form of activity. For the moment, however, the German delegation did not intend to submit any special amendments. It had submitted an amendment with the object of modifying the article slightly in the sense that, in cases where certain professions or activities were allowed, the most-favoured-nation clause would apply, but those

were questions of detail and he would refrain from mentioning them. He merely wished to raise the question of principle whether the Committee would maintain the system of paragraph 2, together with the wide development given to it in the draft.

THE CHAIRMAN asked the Swedish delegate whether he agreed that the general question raised by the German delegate should be examined together with the Swedish amendment.

M. SANDSTROEM *(Sweden)* accepted this proposal.

THE CHAIRMAN, in conclusion, said that at its next meeting the Committee would open a general discussion on the observations of the German delegation.

EIGHTH MEETING

Held in Paris on November 14th, 1929, at 11 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

17. Examination of the Articles of the Convention : Article 6 : General Discussion (continued) : Interim Report by the Sub-Committee appointed to examine Article 6.

M. POLITIS *(Greece)*, Rapporteur, said that, as the Sub-Committee which had been appointed to examine Article 6 had advanced in its work, it had realised the considerable difficulties which existed both in Article 6 and in other articles of the draft which were closely connected with it. The work was not yet concluded, but was sufficiently advanced to make it possible to hope that at the next meeting the Sub-Committee would produce a text which would solve a number of the difficulties in Article 6 and the other related articles. He trusted, therefore, that the Committee would authorise the Sub-Committee to continue its work.

18. Appointment of the Co-Rapporteur.

THE CHAIRMAN read a letter from the President of the Conference saying that, in agreement with M. Politis, Rapporteur for Committee A, and in the exercise of his powers as President, but subject to the ratification of the Conference, he intended to appoint M. Pilotti, of the Italian delegation, co-Rapporteur with M. Politis for Committee A. He was sure that the Committee would authorise him to thank the President of the Conference for the initiative he had taken, and likewise to thank M. Pilotti in advance.

M. PILOTTI *(Italy)* said that it was for him to thank the Chairman of the Committee. He feared that the task was too heavy for him, but, if the Chairman insisted, he would accept the duty of co-Rapporteur, because he was happy at the prospect of co-operating with M. Politis.

The Committee approved the appointment.

19. Article 7, Paragraph 2 (continued).

German Amendment (Annex A, 15).

THE CHAIRMAN said that the next question for discussion was the general considerations raised by Dr. Martius, delegate of Germany, in regard to paragraph 2 of Article 7. As he understood Dr. Martius' idea, it was that, instead of setting out a list of reserved businesses and occupations, the Conference should try to draft a general clause leaving the countries certain powers to make reservations, but endeavouring to limit those powers so far as possible. It would be helpful if Dr. Martius would express his ideas more specifically.

DR. MARTIUS *(Germany)* said that his delegation had submitted the following text, which was intended to replace paragraph 2 of Article 7 in the Economic Committee's draft :

> " 2. Each of the High Contracting Parties, however, retains the right to reserve to its nationals public functions, charges and offices of a judicial, administrative, military or other similar nature which involve a devolution of the authority of the State, as well

as professions such as those of barrister, solicitor, notary, stockbroker and other similar professions or offices which in the public interest entail special responsibilities.

" The right to reserve these occupations to nationals implies the right to make them subject to differential regulations or conditions as regards foreigners. If, however, the exercise of one of these occupations is open to foreigners, such foreigners shall, in application of paragraph (1) of this article, be placed as regards such occupation on a footing of absolute equality with nationals, and any differential regulations or conditions that may be introduced shall apply equally to all foreigners.

" 3. The High Contracting Parties shall be entirely free to regulate, as they think fit, the industries or trades forming the subject of a State monopoly or monopolies under State control, as well as hawking and peddling and itinerant trades.

" 4. Questions of maritime navigation, air navigation and insurance shall be settled by international conventions and the national laws relative thereto. "

He desired to say a word on the object and general structure of his proposal, without, however, going into details. The question, in the view of the German Government, was whether the collective treaty should prevent the development of a system of restrictions in bilateral treaties. The chief consideration aroused in the mind of the German delegation by the Economic Committee's draft was that it stipulated an express right for States to prohibit certain professions. That proposal appeared to the German delegation to go beyond the scope of the present Convention. While the German delegation agreed that it was impossible to regulate all activities by means of the present Convention, it was quite a different thing to say that States should have the right to prohibit any given activity on the part of foreigners. It would therefore be preferable to say that these questions should be merely reserved. In conclusion, he would repeat that the German delegation was concerned only with the principle and not with the details contained in its resolution.

M. SERRUYS *(Economic Committee)* thought that the time had come for him, as representative of the Economic Committee, to give certain explanations as to the Committee's view of this crucial point in the Convention, where the field of application of the Convention was delimited by exceptions. At the outset of the Conference's proceedings, he had stated that it would be the Conference's task to create a positive law, and the proper delimitation of exceptions was a matter of positive law. An enormous number of exceptions had been received from the various delegations dealing with different aspects of economic life. The Economic Committee had considered that it was necessary to make allowance for certain exceptions, but it did not consider that the list of exceptions which it had itself drawn up was sufficiently narrow to represent an ideal. The exceptions which the Committee had admitted were urgent exceptions, and those which were based on practice. It had been necessary to find a mean, and the exceptions which the Economic Committee had enumerated consisted only of those contained in the majority of existing bilateral Conventions. They represented, in point of fact, the situation as it existed. Sub-paragraph *(a)* of paragraph 2 enumerated the exceptions which resulted from the devolution of the State's authority, while the remaining sub-paragraphs indicated those activities which might be excluded from the Convention on the ground of the public interest. What were the advantages and defects of the system proposed by the Economic Committee ? The advantages would be that States would agree to a common list of exceptions, and that, if they agreed to such a list, the number of agreed exceptions would be as small as possible. There was only one disadvantage in the system, namely, that the exceptions proposed went somewhat farther than the very liberal regime contained in certain bilateral treaties, but, even if the Conference were to adopt the enumeration recommended by the Economic Committee, there was nothing to prevent other States from entering into an agreement for a more liberal regime. The Economic Committee had endeavoured to present a common doctrine which would be acceptable to the generality of States in the present circumstances. The proposal of the German delegation, on the other hand, embodied a different doctrine. It represented a more rigorous system, with a shorter list of exceptions. The doctrine proposed by Dr. Martius was that which had been arrived at in the Convention on Import and Export Prohibitions and Restrictions. Many States would not be prepared to go so far, and, if the Conference were to adopt this very rigorous system, various States would have to present a request for exceptions if they were to adhere to the Convention. The adoption of Dr. Martius' proposal would therefore have two consequences. The exceptions demanded would no longer be free exceptions. States would be obliged to bring their exceptions before the Conference, and this implied that these exceptions would have to form the subject of the general consent of the Conference. It followed that the Conference would have to consider the exceptions presented, and to take a decision on the special situation in which certain countries were placed, *i.e.*, on special cases. This was a very different conception from that of the Economic Committee. It might have an important reaction on the progress of the Conference's work, for it must be remembered that the Conference on Import and Export Prohibitions and Restrictions, which had had to take a decision on special cases, had been obliged to meet twice already, and that a third meeting was contemplated. The two results of the adoption of the German delegation's proposal would therefore be, first, that the States would have to ask for exceptions for special cases, and, secondly, that the Conference would have to come to a decision on these requests. Although the representatives of the Economic Committee had no power to vote, he had thought it his duty to point out that the Conference was in danger of moving in the wrong direction.

M. PEROUTKA *(Czechoslovakia)* said that the object of the German delegation's proposal appeared to be to secure the adoption of more general principles in regard to the exceptions to be

allowed under paragraph 2 of Article 7 of the Convention. It was important to consider what would be the best and most appropriate method of attaining that object, which was of importance to the Convention. The German proposal not only contained general principles, but also referred to exceptions which each State might enforce.

In his opinion, the best method would be a synthetic system consisting of the examination of the exceptions presented by each of the delegations. In this way, it would be possible to arrive at a common opinion and to decide whether the formula proposed by the German delegation could be accepted.

M. DE LA VALLÉE POUSSIN *(Belgium)* hoped that Dr. Martius would permit him in all respect to offer the criticism that in his proposal he had failed to pay due consideration to logic. Dr. Martius had explained that the principle of his amendment was to substitute a general formula for the enumeration contained in the draft. His amendment, however, was not confined to a general statement, but contained also an enumeration. Article 7 contained two categories of exceptions. First, those contained in sub-paragraph *(a)*, involving a devolution of the authority of the State, and those contained in sub-paragraph *(b)*, involving what might be described as the professions. The second category consisted of occupations of a more strictly economic character, and were indicated in sub-paragraphs *(c)*, *(d)*, *(e)* and *(f)*. This latter category appeared to be covered by the third paragraph of the German amendment, which did not stipulate any general principle, but gave an enumeration which was far more limited than that indicated in the Convention. Many delegations would probably require to make additions to that enumeration. Belgium, for instance, would propose the addition of industries producing materials for national defence. In many countries, these industries formed the subject of a State monopoly, but in others they were not, and the latter class of States might be tempted to create a monopoly with a view to bringing the industries in question under the Convention. It would therefore be desirable that the States should be allowed to include such industries among their exceptions.

M. PILLAULT *(France)* said that, while he agreed with much in the German proposal, he supported the considerations which had been advanced by M. Serruys.

M. DE NICKL *(Hungary)* asked whether he would be right in understanding the second sentence of the second paragraph in the German delegation's proposal to imply that, if a State wished to authorise a foreigner to take up on special grounds, or in a special case, one of the reserved professions, it would be possible for the nationals of the other contracting parties to claim the same right by the operation of the most-favoured-nation clause. If that interpretation were correct, it would involve an enormous difference between the Economic Committee's draft and the German amendment, and, on behalf of the Hungarian delegation, he would be obliged to say that he could not support the German amendment.

DR. MARTIUS *(Germany)*, in reply to M. de Nickl, said that it was not his delegation's intention that, in each case in which an exception was made in favour of an individual, other foreigners who were nationals of the High Contracting Parties should have the right to demand the same treatment, but that, if one of the reserved professions was generally open to foreign nationals, the other countries could in that case also claim the same advantages. This, however, was, in his opinion, a point of detail.

The German delegation was in an awkard situation. The Economic Committee's text opened up the possibility of a very large number of restrictions and thus went beyond what the German Government considered desirable, more particularly in regard to the development of bilateral treaties. Indeed, some two or three dozen new amendments had been already moved, and they nearly all tended towards the restriction of the field of application of the Convention. What was the question at issue in Article 7 ? Article 7 was not the only provision of the Convention by which a State could protect its national economy and national markets. There were a number of other provisions to that effect, those, for instance, on labour, immovable property, etc. The question in Article 7 was to what degree could certain activities, if free in some countries, be exercised in all countries. The bilateral treaty system usually laid down either national treatment or most-favoured-nation treatment as the criterion. Article 17 stipulated an exception to most-favoured nation treatment in regard to the reserved professions.

In reply to M. Peroutka, he agreed that it would be possible to make progress by adopting a synthetic method of procedure, but, before examining the amendment in detail, it would be necessary to decide on the system to be followed.

He was glad that the Belgian delegate had drawn attention to the question of State monopolies, because the German delegation would also have to reserve State industries and hawking. It was true that his proposal might tend towards the creation of State monopolies, but that was preferable to an almost unlimited list of exceptions.

The German delegation would be unable to accept the Economic Committee's draft, because under it a German engineer might be prevented by the legislation of any country from engaging in work connected with hydraulic power in the territory of one of the other contracting parties. He must frankly confess that his delegation could not go so far as that in allowing exceptions.

In conclusion, while the German delegation agreed with M. Serruys that it should be the object of the discussion to find a *via media*, it was necessary to repeat that it was impossible for the present Conference to settle all the details of the question, and that the object of the German amendment was merely to lay down a system on which the work could be continued. The German

delegation was concerned not with the fixing of the details but with the principle, and that principle should not be based on the right of the States to prohibit certain professions or occupations. There were not ten bilateral treaties which laid down such a system. Germany had only two, namely, with Turkey and Persia.

M. POZNANSKI *(Poland)*, with reference to the general question of system, agreed with Dr. Martius and considered that the German delegation's proposal to express the ideas contained in paragraph 2 in a more general manner and without any enumeration was the most convenient. In regard to the question of substance, he would ask the German delegation whether it would be correct to understand that, under the first sub-paragraph of paragraph 2 of its amendment, it would be possible to reserve certain professions of public interest, such as those of medicine, pharmacy, etc. As to the second sub-paragraph, he agreed with the Hungarian delegate's view that it would not be just or useful that these activities should be reserved for the special treatment given under the most-favoured-nation clause. While reservations might be made as to State services or professions of public interest, there must be quite special reasons for allowing exceptions to the rule. In Poland, the functions of a university professor, for example, were in principle reserved for nationals, but it might be found desirable to engage a French professor. Would it follow under the German delegation's proposal that all nationals of the other contracting parties would, by reason of the engagement of a French professor, be free to have access to the Polish universities ? It might also be found necessary to invite, as an exception, an English doctor to Poland to carry on his profession in Poland on the ground of his personal qualifications. Would the result be that the doctors of all countries would be entitled to practice in Poland ? It appeared to him that the most-favoured-nation treatment was out of place in paragraph 2.

As to paragraphs 3 and 4, the objection submitted by the Belgian delegate seemed correct. The system recommended by the German delegation became a mixed one, since paragraphs 3 and 4 did not in point of fact contain an enumeration. Therefore, although the Polish delegation felt less interest in the text, at any rate, of the last two paragraphs, it would suggest for the sake of the principle a small modification which would perhaps have the effect of unifying the system recommended by the German delegation. That modification would be to omit the words " monopolies " from the passage referring to State monopoly or monopolies under State control. In this way, the text would cover the category of industries to which the Belgian delegate had referred. If the Committee came to examine the industries referred to in the different amendments, it might be possible to ascertain which were State-controlled industries and the adoption of his proposal would tend to generalise the system.

The remainder of the discussion was postponed to the next meeting.

NINTH MEETING

Held in Paris on November 14th, 1929, at 3.15 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

20. Examination of the Articles of the Convention : Article 7, Paragraph 2 (continuation).

German Amendment (continuation).

M. SANDSTROEM *(Sweden)* agreed in a general manner with the German proposal. He considered the idea expressed in paragraph 4 particularly happy. As Dr. Martius had said, it would be a mistake to lay down a prohibition in regard to matters covered by this paragraph. The reservation which he proposed would suffice. Furthermore, a possible conflict with the numerous international conventions which had been concluded on these subjects would be obviated. He would, however, ask Dr. Martius for explanations of certain activities reserved in this paragraph.

Fishing and field sports might perhaps—and Dr. Martius probably shared this view—form the subject of special reservations in the Protocol if circumstances required it. The draft of the German delegation was not any more exempt from amendment than the text of the Economic Committee. In this connection, he would be obliged to make a reservation in regard to mineral wealth and hydraulic power, and would be glad if his reservation could be included in paragraph 3 of the German amendment. It would be said that this reservation would have the effect of neutralising the advantages proposed by Dr. Martius. That was true to a certain extent, but it was none the less correct that the list of reservations would be far shorter, and that was an advantage.

He added that the last sentence in paragraph 2 seemed to him to be inconsistent with Articles 17 and 18 of the draft Convention. It would perhaps be preferable to postpone the discussion on this question until the examination of Articles 17 and 18.

M. STUCKI *(Economic Committee)* recalled that at the morning meeting M. Serruys had clearly explained the Economic Committee's standpoint, which was shared by all the other members of the Committee.

The basis of the Convention on the Treatment of Foreigners was contained in Article 23 of the Covenant, and it was the conceptions there enunciated that the Economic Committee was especially upholding. It was for that reason that the Convention was rather a commercial Convention than a Convention on establishment, although it was inevitable that it should also contain certain provisions as to establishment.

The Economic Committee thought it essential that the second paragraph of Article 7 should contain no exceptions of a nature to hamper international trade. The question of the professions was, perhaps, of less importance in the Economic Committee's view than that of the facilities granted to commerce under Article 7, paragraph 1 *(a)*. The commercial advantages which the Convention was designed to yield must not be lost to sight.

It had been said that the German proposal was not in conformity with the intentions of the Economic Committee. That opinion appeared to be based on a misunderstanding. Dr. Martius thought, not without reason, that it was dangerous to confer on the States the right to prohibit foreigners from engaging in certain activities. The result might be a tendency to transfer the restrictions contained in a multilateral treaty to bilateral treaties which otherwise would be more liberal in character. In bilateral commercial treaties, it had been usual to introduce certain exceptions concerning freedom to import goods, which were known as "classical exceptions", whereas the multilateral conventions of 1928 contained a more general exception known as the "catastrophic clause", and the introduction of a clause of that kind into bilateral conventions would mark a step backwards. For the formula: "Each of the High Contracting Parties, however, *retains the right to prohibit* foreigners within its territory from engaging in the professions, occupations, industries and trades . . . ", Dr. Martius proposed to substitute the following words: "Each of the High Contracting Parties, however, *retains the right to reserve* to its nationals public functions, charges and offices . . . ". This shade of difference was of importance, but the object of the German delegation was to lay down a general formula, and it must be recognised that it had nevertheless been obliged to fall back on a mixed system, since it cited certain special cases. That being so, it should be possible to reach a compromise by drawing up as short a catalogue as possible, in which would be enumerated the activities left for regulation by bilateral treaties, while the Conference would refrain from explicitly recognising the right of the States to prohibit foreigners from engaging in the professions mentioned.

He asked, therefore, whether it was not possible to extend the last sub-paragraph of paragraph 2 in the German amendment by introducing any activity which the Conference decided to reserve.

In brief, the German delegation agreed with the Economic Committee in regard to sub-paragraphs *(a)*, *(b)*, *(e)* and *(f)*; the only points under discussion were sub-paragraphs *(c)* and *(d)*, and a solution of these points seemed perfectly feasible.

The Polish proposal, on the other hand, was not in accord with the spirit of the Convention as conceived by the Economic Committee. If a general reservation to limit to nationals the right to engage in any activity subject to State control were introduced, the danger might be that foreigners might be prohibited from access to almost all undertakings—for instance, insurance, mining, hydraulic power, etc. He hoped that the Committee would not adopt this point of view.

M. DE LA VALLÉE POUSSIN *(Belgium)* had intended to point out the disadvantages of the Polish proposal, but, as M. Stucki had already mentioned them, he would confine himself to stating that he entirely approved his observations.

M. PILOTTI *(Italy)* had followed the observations of the previous speakers with great interest, but wondered whether anything had been gained by departing from the Economic Committee's text, although he understood, and to a certain extent approved, the object of the German delegation.

The general principle of the Economic Committee was that of liberty. The German amendment began by the words: "Toutefois chacune des Hautes Parties Contractantes a le droit de réserver à ses nationaux les fonctions, charges, etc. . . . ". He would prefer the formula "conserve le droit" (no change required in the English text). The substitution of the words "reserve to its nationals" for the words "prohibit foreigners" would perhaps result in a more polite form of words, but was, at the most, only a minor amendment, and should not entail a remodelling of the whole of paragraph 2. The German text, however, enunciated a new principle in the passage where it said: "if the exercise of one of these occupations is open to foreigners, such foreigners shall, in application of paragraph 1 of this article, be placed as regards such occupation on a footing of absolute equality with nationals and any differential regulations or conditions that may be introduced shall apply equally to all foreigners". He did not approve of this new principle, and even considered this addition detrimental. To take an example: Italy previously had been very liberal in admitting foreigners to her Government departments. Many university professors, in particular, had been of foreign nationality, but Italy had observed that she received no reciprocity in this respect. The practice of medicine was now reserved to Italian doctors and English doctors, because the right to practise medicine for holders of Italian qualifications was recognised in England. He did not think that it would be fair to grant this privilege to all foreigners because it was granted to the English. Reciprocity was essential.

As to paragraph 3 of the German amendment, he had nothing to say. It was identical with paragraphs *(e)* and *(f)* in the draft Convention.

Lastly, the Economic Committee had enumerated a number of reserved industries, such as fishing, the coast trade and mining. The German delegation proposed to substitute for this

enumeration a general formula. Its amendment proposed that questions of maritime and air navigation and insurance should be reserved for international conventions and the national laws relating thereto. Under Italian law, certain industries have to have a State authorisation, but no distinction was made in granting this authorisation between Italians and foreigners. Under the German amendment, Italy would be obliged to enter into an international convention in order to enact less liberal provisions than those existing at present in her national legislation. It should be said that these questions were reserved " to the national legislation ", but that only meant that all regulations in the State were reserved to national legislation.

For these reasons, he would prefer that the basis for the discussion should be the Economic Committee's text, which should be improved sentence by sentence This method would result in a saving of time, and it would be possible in the course of the discussion to consider all suggestions —in particular, those made by the German delegation.

M. NEDERBRAGT *(Netherlands)* agreed that an almost complete change in the system involved serious inconvenience. The examination of the draft Convention did not imply that the text would be taken absolutely strictly as a basis, but that a single system would necessarily be followed and, if in the course of the discussions it were decided to change the system, this would necessitate a special examination. In the Dutch Parliament, if the structure of a bill was changed by an amendment of the Chamber, the bill was referred to the Committee of the Chamber for further preparatory study. He thought that the same method should be followed in this case if it were proposed to adopt a new system. It would first be necessary to take the questions one by one, then to ascertain the relation now existing between the second and first paragraphs, and, finally, to see what relation existed between Article 7 and Articles 17 and 18, which referred to the most-favoured-nation clause.

There were therefore two points of view to be considered. In practice, there were many inconveniences in changing the system, but, from the point of view of principle, the Dutch delegation would gladly fall in with the German amendment, because, although it was not a system of entire freedom, it most nearly approached that ideal. A choice must be made and, needless to say, in the view of the Dutch delegation the question of principle was the most important, on condition, however, that the Committee were given the necessary time to study each point in turn and to decide what should be rejected and what included. In making this suggestion, he was the easier in his mind, as M. Stucki had not condemned the principle of the German amendment.

Sir Peter RYLANDS *(British Empire)* thought that the time had come to indicate the British delegation's point of view. It desired, in the first place, that the list of professions, occupations and industries reserved to nationals should be as restricted as possible, and, secondly, that, if foreigners were permitted to engage in the occupations, etc., reserved by the Convention, they should all receive the same treatment.

The British delegation had no intention of opening a debate on the most-favoured-nation clause, because it proposed to submit later an amendment on the subject conceived in general terms. It would suffice for the moment to say that it held that, if the Convention could not give complete equality of treatment between nationals and foreigners, an endeavour should at least be made to approach such equality by making the application of the most-favoured-nation principle as wide as possible.

M. PESCHARDT *(Denmark)* said that, in principle, the Danish delegation concurred in the German delegation's point of view. In particular, the fourth paragraph of the German proposal appeared to afford a happy solution, and he hoped that the formula expressing it would be preserved. He thought it, however, necessary to introduce into the German amendment a reservation in regard to fishing in territorial waters. That reservation might be introduced in paragraph 3 after the words " itinerant trades ".

M. DINICHERT *(Switzerland)* observed that the question raised by the German delegate was of importance. If agreement had been reached easily in regard to paragraph 1 of Article 7, which prescribed equal treatment in general terms, this was due to the fact that serious exceptions were contemplated for paragraph 2. It was obviously the exceptions proposed by the authors of the draft and the numerous amendments submitted later which had caused the German delegate to endeavour to discover a suitable system for embodying the regime as to exceptions in concrete form in paragraph 2, but the discussion had not yet made it possible for him to decide which was the better system, and he even doubted whether a system was essential. The important point was that the limitations would be formulated in such a manner that the Conference should know in which direction it was tending, and that difficulties and inter-Governmental disputes should be obviated later. It was also of importance that foreigners established in a country should know what their position was.

The Economic Committee had naturally been moved by essentially economic considerations, and had desired by means of the Convention to promote, first and foremost, international economic relations. There was, however, another fundamental consideration for the States, viz., to ensure as stable a legal and economic status as possible for their nationals who lived abroad and who were to be counted by millions. That was a consideration which must always be borne in mind. He therefore was concerned not only with exceptions which might hamper economic activities, but also those which would be made to the freedom of a foreigner's existence, once he had been finally admitted to a foreign country. In his view, the liberal, scientific and other similar professions were in no way a negligible quantity, and, if this question were not solved satisfactorily, there would be ground for wondering whether a Convention on the Treatment of Foreigners would yield as

favourable a system as that contained in the existing bilateral treaties. It was unquestionablo that, if the various exceptions which had been submitted to the Conference were as a whole to become the universal law, the result would be a considerable retrogression as compared with the status now granted to foreigners under existing bilateral conventions.

The Convention would not, of course, prevent the conclusion of special agreements, but he thought that a universal convention more or less defective would not be calculated to promote good complementary bilateral treaties.

As to the practical question, he saw no disadvantage in following the scheme of the draft, although certain explanations or elucidations might be required as to various points, more particularly the question whether the reference to the reserved occupations was meant to allude to an enterprise in itself or also to all those who might be associated with it. In regard to the exceptions contained in the various amendments, the Conference should only admit them if it came to the conclusion that the country concerned was in a really exceptional situation in regard to the occupation in question.

M. OBREMSKI *(Poland)* reminded the representative of the Economic Committee and the Belgian delegate that at the morning meeting he had made no formal proposal with regard to the drafting of paragraph 3 of the German amendment. He had merely made a suggestion in order to indicate the lines which should be followed for the purpose of arriving at a general formula. It would be for the Conference to seek for that formula, more particularly in regard to paragraph 3, in which Poland was not, however, more specially interested than other countries. As the Swiss delegate had said, the States were bound to be concerned in the economic fate and situation of their nationals abroad. That was a concern which was fully understood by the representative of a country which had more than two million subjects abroad. Whereas, however, certain States were more particularly interested in one category or another of their subjects abroad, or of those who might wish to go there, others were interested in another category. It had been said that emigration questions were excluded from the Convention, but this question was bound up with that of the liberal professions no less than with that of labour. In dealing with the question of Article 7, it must not be forgotten that the States had different interests, nor must some of them be expected to sacrifice everything without receiving a countervailing advantage from the point of view of their own interests.

It was for that reason that during the general discussion the Polish delegate had insisted that the Convention, if it were to be effective, must be equitable and must make allowance for the interests not of certain States but of all, so that all might be able to adhere to it.

THE CHAIRMAN thought that the Committee would be unable to succeed in settling the form to be given to paragraph 2 of Article 7 in plenary session, and that it should set up a sub-committee which would include the Rapporteur. The sub-committee must receive precise instructions. The Committee should then, first, take a decision on the two following fundamental points :

1. Should the sub-committee be instructed to find a general formula in the sense indicated by the German delegation with, if necessary, the introduction of a passage in the Protocol covering, so far as possible, the various reservations ?

2. Should the sub-committee be instructed to consider in detail what were the matters which should form the subject of reservations in the text of the article and possibly in the Protocol ?

M. POLITIS *(Greece)*, Rapporteur, thought that the sub-committee's terms of reference might be summed up as follows : Should the system of the Economic Committee or that of the German delegation be taken as a basis for paragraph 2 ?

M. MAYER *(Austria)* thought that it would be impossible to find a solution which would reconcile the two opinions. The Committee should therefore consider carefully before adopting a decision which would give complete satisfaction to neither. There was one group of professions which it was universally agreed should be reserved to nationals, viz., professions of a public or semi-public character. It was impossible, however, to make any exact list of these professions owing to the divergencies in legislations, since certain professions were of a public character in some countries but not in others. If need be, it should be possible to admit reciprocity in the sense that a country would not be obliged to open those professions, which it did not reserve to its nationals, to the subjects of a country which reserved the same professions to its own nationals.

There were, next, the occupations of a strictly economic character, which might be divided into three categories :

(a) Occupations which called for State control on the ground of national defence and public safety. It should be understood that these two considerations should be interpreted in a very restrictive sense, so that the system eventually adopted would not be one of ill-will towards foreigners in general.

(b) Occupations which were not connected with questions of State convenience, but which had for centuries been reserved to nationals. For certain countries this involved a question of national honour, and although it was not the object of the Convention to maintain this archaic regime, it should nevertheless allow States which had that regime to adhere to it. These occupations should be strictly limited in number, and the list of them should be confined to those already enumerated. The sub-committee should examine the list and say whether it thought that these occupations should be reserved to nationals.

(c) Occupations of primary importance which were reserved to nationals, foreigners being excluded ; for instance, one State had proposed to exclude banking. It would, however, be hopelessly inconsistent, in a Convention which was intended to lower the barriers to international relations, to exclude so important and so essentially international a branch of trade. That was a definitely protectionist point of view and one that could not be admitted in the Convention.

These considerations might serve as a basis for the sub-committee's discussions.

Dr. MARTIUS *(Germany)* supported the Chairman's proposal to refer the problem to a sub-committee. In the question which the Chairman had formulated, there was only perhaps one point in which his amendment was incompatible with the Economic Committee's draft, namely, the point whether paragraph 2 should be based on the system of prohibition or whether, on the other hand, the system of prohibition should be restricted. He wished to obviate the impression that he was in fundamental opposition to the Economic Committee, whose work he appreciated as highly as any other delegate. His Italian colleague was under the impression that he, Dr. Martius, had gone somewhat too far, but he wished to say that he had felt it to be necessary to expound the situation as it presented itself to him.

He urged that the sub-committee should be instructed to take as a basis of discussion the German proposal, while full consideration should be paid to the contents of the " Brown Book " and the Economic Committee's draft.

The second question formulated by the Chairman, whether the sub-committee should immediately be given instructions on points of detail, seemed to him somewhat premature. He had alluded that morning to certain questions, such as those of property, most-favoured-nation treatment and so forth, but he believed that, in the course of the sub-committee's proceedings, it would be seen that it would be necessary to have the Committee's decision on certain points. Many delegates had asked the German delegation that afternoon whether it was possible to extend the list. The reply, in principle, was in the affirmative. In practice, he would find it easier to concur in proposals for amendments on the basis of the German conception than on the basis of the Economic Committee's draft. But he must naturally reserve his point of view as to questions of detail, and he urged that for the moment no decision should be taken on them.

M. STUCKI *(Economic Committee)* said that, if the text of the Economic Committee and that of the German amendment were examined closely, there was reason to wonder where the fundamental difference of conception resided. The first sub-paragraph in the German proposal corresponded, except in the wording, with points *(a)* and *(b)* of the draft, and he agreed with the Rapporteur in wondering whether it was worth while, on account of this slight difference of drafting, to open a big debate on the point of principle. The second sub-paragraph of the German amendment raised an entirely new question, that of the most-favoured-nation clause. In his view, that was a question which should be discussed in connection with Article 17. The third sub-paragraph, as admitted by the German delegate himself, corresponded, except in wording, to point *(e)* of the draft. There was only one question remaining, that raised by points *(c)* and *(d)* of the draft and by the fourth paragraph of the German amendment, namely, the exceptions proposed in regard to economic occupations. In this connection, he would observe, as others had done before him, that the German proposal no longer attempted to regulate these exceptions by means of a general formula, but provided for special cases of which it had selected three. The German delegate had said that he agreed in principle as to the possibility of making changes in the enumeration. In any case, the German delegation had not sought for a general formula for the exceptions, and everything depended on a point to which Dr. Martius attached special importance, namely, the formula for the introduction to the second paragraph of Article 7. Instead of saying, as did the draft, that " Each of the High Contracting Parties retains the right to prohibit . . . ", the German delegate said : " Each of the High Contracting Parties retains the right to reserve . . . ". In other terms, the professions and occupations in question would not come under the regime laid down in the first paragraph of Article 7. That was a difference of form—a shade, which might have some importance, more particularly in regard to bilateral treaties. He would put a definite question to the German delegate, since it might perhaps greatly facilitate the decisions of the Committee. Could Dr. Martius accept as a basis the Economic Committee's text if the introduction to the second paragraph were changed to read that the professions and occupations mentioned below " would be reserved "—that was to say, would not come under the regime mentioned in paragraph 1 ? If the reply were in the affirmative, it was hardly worth while taking a decision on the point of principle whether a general formula were required or special reservations. Otherwise, he would request the German delegation to submit a general proposal to cover the exceptions.

M. OBREMSKI *(Poland)* thought that M. Stucki's proposal would greatly facilitate the work of the sub-committee and that it could be taken as a point of departure. It seemed to him that the fundamental difficulty now occupying the Committee was due to the fact that the first and second paragraphs of Article 7 dealt with two very different problems in more or less similar terms : first, economic activity in the strict sense of the term, which formed the principal subject of the Convention, and, secondly, a whole series of professions which were not in the nature of an economic activity. The work of the sub-committee would be greatly simplified if it received instructions to consider separately and by means of different formulæ the case of purely economic occupations and that of professions which were not of an economic character and which were not directly bound up with Article 7.

Dr. MARTIUS *(Germany)* recalled that he had already pointed out that it would not be practical to regulate questions of detail at this point of the proceedings. The Economic Committee's

representative had asked him whether he would accept as a basis the text of the draft subject to a change in the introduction. He thanked M. Stucki for being prepared to change the introduction, but he did not think this simple modification would really exhaust the problem. If the German amendment were compared with the text of the Economic Committee, certain divergencies would become apparent. He had confined himself to stressing the question of the most-favoured-nation clause and the divergencies between the second and fourth paragraphs. The problem was a very complex one, and he had done everything in his power to meet the wishes of the Economic Committee. From the economic point of view, he entirely concurred in the Committee's opinion, since the German delegation had interests identical with those of the Committee. He agreed with the proposal that the Economic Committee's draft and the contents of the "Brown Book" as a whole should be examined by the sub-committee, and he did not see that any advantage would be gained by losing time in searching for the correct shade to be given to the instructions to be issued to the sub-committee. If the Committee took note of the German delegate's statements, he did not see, more particularly after what M. Stucki had said, that there was any insurmountable antagonism between himself and the Economic Committee's representative, and he did not understand why it should not be decided that the German amendment should be submitted to the sub-committee. That was for him the essential point. The actual wording of his amendment was open to textual modifications. The introduction, however, was not the only point at issue, and it would be strange if, after so long a discussion of the German proposal, the whole difficulty were to be solved by a modification in the introduction.

M. POLITIS *(Greece)*, Rapporteur, insisted that, if the Committee wished to avoid the present discussion being repeated in another form in the sub-committee, it must lay down precise terms of reference for the sub-committee. It appeared that the sub-committee had a choice between two methods—it could either take the German draft as a basis, with the option of modifying it in accordance with the Economic Committee's text, or, inversely, it could take the Economic Committee's text as a basis, with the option of modifying it either in the sense indicated by M. Stucki or by means of suggestions borrowed from the German amendment.

M. DINICHERT *(Switzerland)* was not clear whether the sub-committee would also be required to take into consideration the other amendments which had been submitted, if not in regard to their actual object, at any rate in regard to the consequences which acceptance of them might involve for the draft. He proposed that the sub-committee should also take into account the necessity of introducing into the system of Article 7 cases such as those contained in the various amendments which had been distributed, since otherwise its work would be incomplete, and the Committee would have to take up the question again in plenary session.

M. PEROUTKA *(Czechoslovakia)* observed that the sub-committee would have two somewhat different tasks—a detailed examination, first, of the different reservations submitted to the Conference, and, secondly, of the various general questions which had emerged from the examination of paragraph 2.

In regard to questions of detail, it seemed that the reservations submitted to the Conference might be divided into three groups :

1. Devolution of the authority of the State for certain occupations ;
2. Occupations implying a special responsibility for reasons of public interest ;
3. Occupations, having for the most part an economic character, which the different States wished to reserve for their nationals.

It was within these limits that the reservations should be examined in detail and a decision taken as to those which were compatible with the Convention.

Among the general questions there were :

1. The question whether in regard to economic activities the activity should be regarded as that of a firm or also employment in a certain occupation ;
2. The question of the special safeguards for certain occupations, that was to say, the conditions laid down for certain employments ;
3. The question of the scope of the most-favoured-nation clause.

THE CHAIRMAN wished to obviate a misunderstanding. The only question submitted to the sub-committee would be that of finding a formula. In other words, should paragraph 2 be presented in the form of a list, in accordance with the Economic Committee's suggestion, or should an endeavour be made to cover the different reservations in so far as that was possible by means of a general formula ?

The question of the most-favoured-nation clause was a general question and should not come within the terms of reference of the sub-committee. It seemed that the Committee was in general agreement with this view of the instructions to be issued to the sub-committee. As to the drafting of the general formula, the sub-committee would have to take into account the fact that there were a certain number of reservations which had not yet been examined, so that the formula would have to be somewhat elastic.

He would ask the Committee whether it proposed to settle in plenary session the questions of fact, that was to say, to come to a decision on the reservations which should be admitted, or whether it would instruct the sub-committee to seek a general formula, the question of the contents of the formula to be examined later.

M. NEDERBRAGT *(Netherlands)* considered that the points of fact to be referred to the sub-committee should be discussed first. Otherwise, much time would be lost.

M. PEROUTKA *(Czechoslovakia)* also thought that it would be impossible to arrive at a general formula without examining special cases.

THE CHAIRMAN asked the Committee whether it considered that amendments involving additions to paragraph 2 should be examined before the sub-committee met.

Four delegations answered in the affirmative.

21. Appointment of a Sub-Committee to consider Article 7, Paragraph 2.

The Committee decided by a majority to constitute a sub-committee to establish a general formula and that the plenary Committee should next examine the elements to be contained within the formula.

On the proposal of the CHAIRMAN, *it was decided that the Sub-Committee should consist of the following* :

M. POLITIS (Rapporteur), *Chairman,*
M. PILOTTI,
Dr. MARTIUS,
M. DE LA VALLÉE POUSSIN,
M. BENTZON,
M. STUCKI.

It was agreed that the Sub-Committee should meet on the following morning.

TENTH MEETING

Held in Paris on November 15th, 1929, at 3.15 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

22. Examination of the Articles of the Convention : Article 8.

Swedish Amendment (Annex A, 8).

M. SANDSTROEM *(Sweden)* said the Swedish amendment was in effect based upon a suggestion which had been put forward by the British Government with a view to making clearer the provisions of Article 8. The British Government had pointed out that the article as it stood would appear to preclude a country which exercised its right under Article 29 to control the admission of foreigners from imposing conditions generally or in a particular case on their employment, and had urged that the article should be amended or words added to the Protocol so as to make it cleart hat where permission to engage foreigners was required bylaw such conditions might be imposed. The amendment which he desired to move was to the effect that in the French text the word "quelconque" following the word "restrictions" should be deleted and should be replaced by thewords : "autres ou plus rigoureuses que celles autorisées par la présente Convention" (other or stricter than those authorised by the present Convention). The misgivings which the British Government had expressed in regard to the article had, however, been somewhat allayed by the note of the Economic Committee upon Article 8, in which it was pointed out that the provision of the article was subject to the reservation that the foreigners in question had not been debarred from positions similar to those with which it was proposed to entrust them under Article 7, paragraph 2, by the State concerned, and that their admission had not been made conditional on their refraining from engaging in the occupation in question.

M. LAEMMLE *(Germany)* said he was not quite clear as to the scope of the Swedish amendment. It was the intention of Article 8 to guarantee that foreign nationals established in the territory of a High Contracting Partyshould have the right to choose the directors and managers of their companies. It was necessary to decide the scope of this right. Did the Swedish amendment correspond with the intention of the article ? Article 8 referred apparently only to a small number of enterprises and nationals established in foreign territory.

THE CHAIRMAN said he thought that the substance and intention of the Swedish amendment would be approved by the Committee. The only question it raised was whether the amendment

was necessary in order to make the intention of the article clearer. That was a question of form and might be referred to the Rapporteur.

M. SANDSTROEM *(Sweden)* agreed that his amendment was a matter of form and he did not wish to press for its adoption.

THE CHAIRMAN noted that the Committee approved the idea underlying the amendment, but left it to the Rapporteur to decide whether any emendation was necessary in the text.

Czechoslovak Amendment (Annex A, 11, and " Brown Book ").

M. PEROUTKA *(Czechoslovakia)* said that his Government desired to make a reservation in regard to the provisions of Article 8. He had already referred to this matter in the general discussion. The observations presented by the Czechoslovak Government would be found in the note which it had submitted on January 9th, 1929, and the subsequent letter of his Government of February 1st.

The object of the draft Convention was to obtain generally for foreigners a treatment which would be equivalent to the treatment accorded to nationals. Article 8 had provided, in respect of the choice of persons for the management of foreign firms or the transaction of business by foreign nationals, certain very positive guarantees. These provisions did not appear to embody the principle of equal treatment for foreign nationals and nationals of the home country. It would perhaps be difficult to lay down the principle of equality in this matter. It was agreed that, if the nationals of a country were at liberty freely to choose persons for the management of their firms or the transaction of their business, foreigners should enjoy the same liberty. Nationals of the home country, however, were free to choose persons of their own nationality. Did this necessarily mean that foreigners would choose either native or foreign managers—in other words, had foreigners a free choice which could be exercised without regard to the question of nationality ? The provision embodied in Article 8 appeared to go beyond equality of treatment.

Article 8 referred to physical persons as well as to legal entities, namely, companies. It was well known that the laws of the various countries had introduced certain restrictions as regarded the administration and management of companies either explicitly or implicitly. The authors of the draft desired to give free play to economic forces and to allow the firms themselves to decide how they should best serve their own interests, whereas the States had different objects in view. Was such an exception to the rule to be justified ? M. Peroutka did not think so. The problem concerned large industrial, financial and commercial companies. Treaties of every kind recognised exceptions as regarded certain basic industries. Article 7 recognised reservations of the same character. Why should those reservations be here excluded ?

It was necessary that the management of foreign companies should be safeguarded. The amendment approved by the International Chamber of Commerce and German delegation, however, went too far and increased the misgivings which he felt. The meaning to be attached to the expression " administrative or technical employees " was not sufficiently defined. How, moreover, was it possible to decide what exactly was meant by " partners " ? The references to such positions gave room for some misgiving in connection with the problem of the labour market.

Article 8 laid down that the choice by foreigners of persons to fill certain positions should not be subject to any restrictions, whereas nationals might in cases of the same kind be subject to certain regulations. If Article 8 were strictly maintained, there would be a serious limitation of the freedom of action of States and there would be a risk that the application of Article 7 would be prejudiced.

Article 7 enabled States to reserve certain economic enterprises for nationals. A certain State would perhaps admit a foreign enterprise under Article 7 if it were sure that it would be able to apply certain subsequent guarantees. If that possibility were removed, and if a more liberal regime were required for foreigners under Article 8, the system applied under Article 7 might be less favourable.

M. Peroutka did not wish to formulate any particular reservation, but he was hoping for a solution which might be based upon the Italian amendment modified to give it a rather wider sense. The provisions of Article 8 woud thus be read subject to a reservation authorising the imposition of restrictions in the public interest as regarded specific enterprises.

To encourage a policy of isolation would be contrary to the principles of the Convention, the object of which was to ensure equal treatment for foreigners and nationals with a view to an economic interpenetration of the various countries. He had urged during the general discussion that it was undesirable to neglect certain conditions which might enable foreign firms to be brought into closer connection with the life of the country in which they were established.

THE CHAIRMAN said that the Estonian delegation had submitted an amendment to the effect that Article 8 should be deleted. The amendment moved by the Czechoslovak delegation appeared to have the same object.

Estonian Amendment (Annex A, 2).

M. PUSTA *(Estonia)* said he had nothing to add to the arguments which had been advanced by M. Peroutka and desired to move the suppression of the article.

M. LAEMMLE *(Germany)* did not think it was possible to suppress the article. Article 8 was a provision which was, in his opinion, necessary to facilitate the activities of traders established in a foreign country.

M. NEDERBRAGT *(Netherlands)* agreed with the German delegation. The article was of the utmost importance. He felt that, if the article were suppressed, the value of the Convention would be considerably diminished. He understood that the Economic Committee also attached much importance to the article.

M. PEROUTKA *(Czechoslovakia)* said he did not wish to press a motion for the rejection of the article.

M. PUSTA *(Estonia)* maintained his proposal that the article should be struck out.

M. RIEDL *(International Chamber of Commerce)* said that the International Chamber agreed on this point with the Economic Committee. He thought that the guarantees provided by Article 8 were necessary to facilitate the activities of traders established in a foreign country. In his view, the arguments in support of the article given by the Economic Committee in the "Brown Book" of the Conference were decisive.

M. LANDUCCI *(Italy)* represented that under Article 8 as drafted it would be possible for foreign firms established in the country to introduce their nationals into the country in order to take up positions. The article on this point was not altogether clear. Did it refer only to persons who were established in the territory or not ?

M. POLITIS *(Greece)*, Rapporteur, *took the Chair in the absence of Sir Sydney Chapman.*

THE CHAIRMAN drew attention to the note of the Economic Committee on Article 8 on page 40 of the "Brown Book" of the Conference. He felt that that note contained re-assurances upon the points to which allusion had been made during the discussion. The Economic Committee pointed out that the article must be considered in conjunction with other provisions which explained it, such as the provisions of Article 29 and of paragraph 2 of Article 7. Article 8 meant that nationals of the High Contracting Parties, whether established in the territory of another High Contracting party or not, were free to appoint for the management of their establishments and for the transaction of their business such persons as they might judge fit and proper without being subject to any restrictions in their choice. This right, however, was subject to certain conditions. First, the persons selected must have already been admitted to the country. That condition covered the point raised by the Italian delegation. Secondly, the foreigners in question must not have been debarred by the State concerned from posts similar to those with which it was proposed to entrust them under Article 7, paragraph 2. That condition should allay the misgivings of the Czechoslovak delegation. Thirdly, the admission of the foreigners in question must not have been made conditional on their refraining from engaging in the occupation which they desired to take up.

M. NEDERBRAGT *(Netherlands)* thought that in one respect the observations of the Economic Committee were not quite clear. Would the person selected be a person who had already been admitted to the country or might the person be sent into the country in order to take up his position ? The point was of importance, as admission might be refused in certain circumstances under other articles.

M. ROTHMUND *(Switzerland)* represented that a foreigner established in a country lived under the same conditions as the nationals of the country. He should therefore, as regarded the choice of his staff, be subject to the same rules and regulations as nationals. Nationals in Switzerland were in respect of the choice of their foreign staff, both superior and subordinate, subject to provisions for the protection of the national labour market. Under the provisions of Article 8, these foreigners would be free to choose a certain category of their staff abroad, without the authorities of the country being able to refuse admission to this foreign staff with a view to the protection of the national labour market. The consequences would be that a more favourable treatment would be shown to foreign firms than to national firms, a position which could not be justified. For these reasons, the Swiss delegation was compelled to make a reservation in regard to the present text of Article 8. The reservation was designed to ensure complete freedom of action in regard to the admission of foreigners who took service with firms in Switzerland.

THE CHAIRMAN said that the whole question of admission was at present being discussed by the Sub-Committee on Article 6. The question at present before the Committee was whether Article 8 should be suppressed or whether it should be retained and the amendments submitted by the delegations discussed.

M. LANDUCCI *(Italy)* asked whether it was not necessary for the Committee, before deciding whether the article should be suppressed, to determine whether the interpretation of the article given by the Chairman was correct and whether the question of admission could be ignored.

THE CHAIRMAN insisted that the Committee was considering the question of the suppression of the article. Questions relating to its interpretation would be taken subsequently.

M. ITO *(Japan)* said that so far only one delegation had moved that the article should be suppressed. Were any other delegations in favour of that proposal ?

MR. BARRINGTON *(Irish Free State)* said he wished to support the proposal that Article 8 should be deleted. In the Irish Free State, foreign companies and their branches established in the country enjoyed in all respects the same privileges as national concerns. Experience, however, showed that branches of foreign companies established in the Irish Free State had, in the policy and conduct of their business, tended to abuse the freedom which they enjoyed. These abuses might relate either to the selection of persons for the transaction of their business or to the placing of commercial orders. The companies established by foreigners might pursue a policy of exclusion in regard to nationals of the country in which they had settled and might systematically place their orders abroad. These were grave abuses, and the provisions of Article 8 would tie the hands of Governments in dealing with them.

THE CHAIRMAN asked the Committee to vote on the suppression of Article 8.

The proposal to suppress Article 8 was rejected by a majority of the Committee.

THE CHAIRMAN said that the Committee would now take the amendments which had been moved to Article 8. The first amendment was moved by the Egyptian delegation.

Egyptian Amendment (Annex A, 6).

M. LINANT DE BELLEFONDS *(Egypt)* said that the observations presented by the Egyptian delegation on Article 8 were in two parts. First, attention was drawn to the question of interpretation, and, secondly, there was an amendment to suppress a sentence in the article.

He would deal first with the question of interpretation. The Egyptian delegation read the article as not precluding the possibility of requiring foreigners who formed companies in Egypt under Egyptian law to reserve part of their capital for public subscription in Egypt and a certain number of posts on the board of management to Egyptians. If any doubt existed on this point, the Egyptian delegation felt that it should be cleared up by the addition of a suitable observation in the Protocol.

Foreigners were very widely admitted in Egypt and might freely form limited companies. Most companies in Egypt, in fact, were controlled by foreigners and worked with foreign capital. The companies, however, were formed under the laws of Egypt and the Egyptian Government recognised them subject to certain conditions. One of these conditions was that among the founders of a company established in Egypt two at least should be Egyptian nationals and that there should be two posts in the administration of the company reserved for Egyptians. He did not think these provisions were really in conflict with the Convention, but felt that the matter should, if necessary, be clearly explained in the Protocol. Article 8 might seem to go further than Article 7. Article 7 accorded foreigners the same treatment as nationals, and it should be clear that under Article 8 foreigners who wished to form companies would be obliged to conform with the legislation of the country in which they were established in the same way as nationals.

The Egyptian delegation desired, secondly, to move an amendment to the effect that the words " either to employ in an administrative or technical capacity or " should be deleted.

THE CHAIRMAN said that the first point raised by the Egyptian delegation in regard to the interpretation of Article 8 was already settled by the terms of Article 16, which laid down that companies founded in a country were necessarily governed by the laws and regulations of the country.

M. LINANT DE BELLEFONDS *(Egypt)* regretted that he could not agree with the Chairman. In his opinion, Article 16 covered only foreign firms which desired to carry on their activities in a country. It did not cover physical persons established in a country who desired to form a limited company within it.

THE CHAIRMAN pointed out that a company could only be constituted in Egypt under Egyptian law.

Sir Sydney CHAPMAN *resumed the Chair.*

THE CHAIRMAN pointed out that Article 8 referred to persons and not to companies. The observations of the Egyptian delegation, in his view, related to Article 16 and not to Article 8.

M. LINANT DE BELLEFONDS *(Egypt)* said that, if the Committee agreed with the interpretation given to Article 8 by the Rapporteur and the Chairman, he was satisfied.

THE CHAIRMAN insisted that there was nothing in Article 8 which referred to companies. The point whether the questions raised under Article 8 affected companies would be discussed by Committee C.

M. LINANT DE BELLEFONDS *(Egypt)* did not think that Article 16 really covered the point which he had raised. It was possible that Article 8 did not give rise to difficulties of interpretation to which he had alluded. If, however, those difficulties existed, they were not, in his opinion, settled by the provisions of Article 16. All he desired in reference to those difficulties was that there should be inserted a passage in the Protocol or in the report of the Committee stating that the regulations governing the formation of companies established in Egypt were not contrary to the provisions of the article, and that the Government was not precluded from laying down conditions as to the selection of Egyptian nationals for the foundation and administration of the companies.

M. RIEDL *(International Chamber of Commerce)* pointed out that, if a French company were established in Egypt, it must necessarily be established under Egyptian law. Did this condition necessarily apply to branches which were opened in a foreign country ? He would, in this connection, draw attention to paragraph 8 of Article 16. There was in that paragraph a reference to Article 8, and the provisions of that article might accordingly be discussed, so far as they related to companies, when Article 16 come to be considered.

M. PEROUTKA *(Czechoslovakia)* thought that the observations of the Egyptian delegation were well founded. He would point out that, if questions relating to companies were settled by Article 16, it would be advisable to delete from Article 8 the reference to persons who were taken into partnership.

M. POLITIS *(Greece)*, Rapporteur, said that the point raised by the Egyptian delegation in his opinion had really nothing to do either with Article 8 or Article 16. This was a question of ordinary company law. No company could be legally constituted in any country except under the laws of the country. He would refer in this connection to paragraph 2 of Article 16. If Egyptian law required that a certain number of nationals should be associated with the management of a company, no company could exist in Egypt unless it had complied with these regulations.

M. LINANT DE BELLEFONDS *(Egypt)* said he was quite satisfied with the observations of the Rapporteur and of the Chairman, and would ask that they should be placed upon record. He thought, however, that the interpretation given to the article by the Chairman and the Rapporteur logically entailed the suppression of the concluding provisions of the article, and that it would be necessary to delete the stipulation to the effect that nationals of the High Contracting Parties should not be obliged to take into account the nationality of the persons selected or to employ or take into partnership persons of any given nationality. If these provisions were contrary to ordinary company law, there was no need to refer to them in the article.

THE CHAIRMAN said that the Rapporteur would embody in his report, as being the views of the Committee, the observations which had been made.

He would now ask the Committee to consider the proposal of the Egyptian delegation that the concluding words of Article 8 should be deleted.

M. LINANT DE BELLEFONDS *(Egypt)* said that the object of the amendment was as follows : The reservation in the Protocol *ad* Article 7, in reference to the protection of the national market, was not in the view of the Egyptian delegation adequate. The Egyptian Government found it necessary to secure commercial and professional openings for Egyptian nationals. There were many Egyptian nationals who were qualified to assume positions with foreign companies. It was essential that foreign companies should recruit part of their staff from among Egyptian nationals. The Egyptian delegation therefore asked for a suppression of the reference to the employment of persons selected in an administrative or technical capacity.

If this amendment were not accepted, the Egyptian delegation alternatively suggested that a third paragraph should be added to the Protocol *ad* Article 8 as follows :

> " Nor shall the provisions of this article preclude any of the High Contracting Parties from requiring, in virtue of laws or general regulations, that nationals of the other High Contracting Parties established in its territory shall employ in an administrative or technical capacity and as workers a reasonable proportion of nationals of the said territory."

M. POLITIS *(Greece)*, Rapporteur, thought that the explanations given in respect of Article 8 were adequate, particularly if reference were made to the note of the Economic Committee in the "Brown Book" of the Conference to the effect that the provisions of the article were subject to the condition that the admission of the persons selected had not been made contingent upon their refraining from engaging in the occupation in question. Governments might impose upon foreign nationals as a condition of their admission the obligation to refrain from engaging in the occupations covered by Article 8.

M. LINANT DE BELLEFONDS *(Egypt)* objected that the article referred to foreigners who had already been admitted. The Economic Committee had, in fact, represented that it was the object of Article 8 to admit no restrictions of the kind which the Egyptian Government desired to enforce. The Egyptian Government must have clear liberty in the matter, and this was not a question of admission.

There were so many foreign traders in Egypt that foreign companies established in Egypt could always find persons of their own nationality qualified to fill the positions in question.

The Egyptian delegation could withdraw the amendment if the amendment moved by the Italian delegation were adopted in a somewhat less restricted form. That amendment laid down that the provisions of Article 8 should be subject to any temporary derogations or restrictions in regard to certain specified undertakings which might be introduced in the public interest.

M. PEROUTKA *(Czechoslovakia)* thought it was necessary that the provisions of the article should be more clearly defined. He desired to support the Egyptian amendment. The free choice accorded to foreign nationals in the selection of persons should apply only to the management of the companies, and the application of this free choice to persons employed in an administrative or technical capacity, in his opinion, went too far.

M. LAEMMLE *(Germany)* said that the amendment moved by the Egyptian delegate would confine the application of the article to the managers of companies. He doubted whether this was a sufficient guarantee for the commercial freedom of nationals established in a foreign country. It was essential that such nationals should be free not only to appoint managers but certain of their employees.

He would point out that other amendments had been moved dealing with the question of employees. The Egyptian delegate had himself referred to the Italian amendment ; these amendments should be taken together.

M. POZNANSKI *(Poland)* said that the Egyptian amendment seemed to him justified. The provisions embodied in Article 8 were new in the field of international conventions. It must be realised that there were States with different and possibly conflicting interests. There were States which exported and States which imported capital. The former desired to secure for their nationals established in foreign countries persons who might be entrusted with the management of their business. The latter, however, desired to ensure that such posts should not be held exclusively by foreign nationals.

In view of these conflicting interests, it was undesirable to proceed too quickly. It was, in his view, sufficient that certain guarantees should be given to those who were interested in capital invested in foreign countries. Companies using that capital should be controlled by persons of confidence chosen by the capitalists. He would not, however, go further. It would be difficult to convince all the countries concerned that, for the proper conduct of such enterprises, the majority of the staff should be recruited from the foreign country exporting the capital.

This was an important question, moreover, for countries in which there was unemployment and in which commercial conditions and the commercial education of the inhabitants were still inferior as compared with their rivals. Article 8 should embody a compromise and both parties to the compromise should be safeguarded to a certain extent. He did not think the text referring to the recruiting of staff was quite satisfactory. He would prefer a formula to the effect that foreign nationals might select people at their discretion, subject to the regulations which were necessary for the protection of the national labour market.

*Polish Amendment (*Annex A, 22).

M. POZNANSKI would therefore submit that Article 8 should be amended as follows :

> " Without prejudice to the provisions concerning the admission of foreigners, nationals of one of the High Contracting Parties established in the territory of another High Contracting Party, or who, without being established in that territory, do nevertheless conduct their business therein, shall be free on the same footing as nationals to appoint at their discretion for the management of their establishments and for the transaction of their business such persons as they may judge fit and proper.
>
> " Under the same conditions, they may also employ in an administrative and technical capacity in these establishments such persons as they may choose, subject, however, to the provisions in force in the country for the protection and regulation of the home labour market. "

Article 8, as at present drafted, left more liberty to foreigners than to nationals in the selection of their staff. The Polish delegation therefore introduced a stipulation that foreigners should be placed upon the same footing as nationals. It also suggested that the reference to persons taken into partnership should be omitted.

The Polish delegation considered either that the enterprises must be regarded as companies and therefore regulated by Article 16, or that they must be regarded as physical persons who desired to select partners, in which case their position was regulated by Article 7, which accorded to foreign nationals the right to choose their partners.

The Polish delegation offered this text as a compromise and did not think it was possible to go any further.

The further discussion of Article 8 *was adjourned.*

ELEVENTH MEETING

Held in Paris on November 16th, 1929, at 11.45 a.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

23. Examination of the Articles of the Convention : Article 8 (continuation).

THE CHAIRMAN said that, in order to facilitate the discussion, it was intended to submit to the Committee a proposal in regard to Article 8, which was presented purely as a basis of discussion. The object of the proposal was to cover, to a certain extent, the various proposals which had been put forward in amendments. Pending the distribution of the document in question, the Committee would examine the amendments not covered by the foregoing proposal.

Austrian Amendment (Annex A, 5).

M. MAYER *(Austria)* said that the purpose of this amendment was to convert paragraph 3 of the Protocol *ad* Article 7 into a sub section of the Protocol " *ad* Articles 7 and 8 ".

DR. MARTIUS *(Germany)* said that he had been unable to attend the discussion on the previous day. It was his impression that this amendment bore on a fundamental question, and he recalled the request made by the German delegation that the question of retaining the words " employees and other wage-earners " appearing in paragraph 3 of the Protocol *ad* Article 7 should be held over. There would be a certain inconvenience in discussing the Austrian amendment before the wording of Article 7 had been determined. To decide whether a paragraph of the Protocol should be headed so as to refer to Articles 7 and 8 was only a matter of drafting. The important question was that of the actual text of the Protocol.

THE CHAIRMAN recalled that the Rapporteur had been instructed to examine the question of a new wording for paragraph 3 of the Protocol *ad* Article 7, and the point would come up for discussion on the report of the Rapporteur. The Committee could leave the question on one side for the moment, but a provisional decision on the Austrian proposal would have to be taken.

The Chairman read the proposal in regard to Article 8 to which he had alluded. The proposal was that the present Article 8 and the second part of the Protocol should be left as they were, but that the following text should be substituted for paragraph 1 of the Protocol :

> " 1. The High Contracting Parties hereby agree not to avail themselves of the right reserved to them to refuse admission to, or to expel, a foreigner with the intention of rendering inoperative the guarantees laid down in this article, it being understood that the admission of persons to be engaged in the businesses of foreigners, in particular as directors, managers and chief technical officers or persons of like status, may be absolutely essential not merely to the conduct but even to the establishment of such businesses.
>
> " It is, however, agreed that in countries whose commercial or industrial conditions are undeveloped, or in other countries with nascent industries, nothing in Article 8 or in the preceding paragraph of this Protocol shall be regarded as preventing the imposition of regulations, so long as such conditions render them necessary, requiring the employment of a reasonable proportion of nationals in positions other than those referred to above as essential, provided the same rules apply to the businesses of nationals. "

The Chairman requested the Economic Committee's representative to give his opinion on this proposal.

M. STUCKI *(Economic Committee)*, referring to the beginning of the first paragraph, recalled the decision, on which the Sub-Committee on Article 6 had agreed, concerning a declaration to be inserted in the Final Act.

The Economic Committee certainly thought that there should be no restriction whatever as to the employment of foreigners already established in the country. It would be for the Conference to see whether certain exceptions should be made for countries which were less developed industrially.

THE CHAIRMAN explained that, in regard to the question of the right of admission, if the general principle contained in the first paragraph were accepted, it would be a simple question of drafting to bring the text into conformity with the decision to be taken by the Committee when it came to examine the suggestions of the Sub-Committee on Article 6. The question to be settled

at the moment was whether it should be possible to restrict the freedom of foreign enterprises in selecting their higher staff from among people already in the country.

SIR GRANVILLE RYRIE *(Australia)* asked what exactly was meant by the phrases " undeveloped industrial conditions " and " nascent industries " ? Where was the dividing line between such industries and industries which had reached the stage of full development ? It could not, for instance, be said that in Australia the key industries were very highly developed, or that they were undeveloped. The same remark applied to the secondary industries. The wording of the proposal was ambiguous and was liable to cause difficulties. A country would always be able to allege that its industries were not sufficiently developed, and another might say that the same industries could not be developed further.

THE CHAIRMAN agreed that the wording was ambiguous and thought that it would be possible to suppress the phrase " countries whose commercial or industrial conditions are undeveloped ", and to keep merely the reference to the case of undeveloped industries in specified countries.

M. PEROUTKA *(Czechoslovakia)* wished first to examine the question whether Article 8 could be left unamended. He thought that that would be possible if it were quite clear that the provisions referred only to the management of foreign establishments and to the regulation of the business of foreign nationals. He thought, however, that the idea of management was not clearly defined, and the Austrian proposal was therefore of great value.

Secondly, the idea of management was extended in the text which it was proposed to substitute for the first paragraph of the Protocol *ad* Article 8. The Czechoslovak delegation would be in favour of a stricter definition of this idea.

With regard to the second paragraph of the text under discussion, he supported the Australian delegate's observation. He thought there was no need to mention in the text the reasons for which a country might have to apply for exceptions. The fact alone should be recorded and a passage inserted, based on the following proposal, which had already been submitted by the Czechoslovak delegation (Annex A, 11) :

> " The right to make admittance of foreign nationals to the occupations mentioned in Article 8 subject to compliance with certain conditions is reserved to those of the High Contracting Parties whose laws at present adopt this system, without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealings with the former. "

Fourthly, the second paragraph under discussion contained another provision which many delegations would be unable to accept. Under this provision, nationals might be required to be employed in a reasonable proportion in positions other than those referred to in the first paragraph as being essential. M. Peroutka considered, on the contrary, that during the exceptional period of a country's development the employment of nationals even in positions regarded as essential should be allowed.

M. STUCKI *(Economic Committee)* thought that the question arising from the discussion was whether a foreign undertaking should be free to select its higher staff either from among foreigners already admitted to the country or by having recourse to the admittance of new foreigners. Take the case of a purely commercial German undertaking existing in France. The undertaking had need of a manager and wished to have a German. It found one who was established in France. He thought that this case was governed by Article 7. Supposing, however, the case were that of a German not already established in France, and the German undertaking submitted an application for admittance, the question would then arise whether, in order to protect French managers against foreign competition, France could or could not refuse admittance. It seemed evident that only the second alternative came under Article 8.

There was another consideration. The proposal under discussion was very complicated. In the first place, it was laid down that a State was free to admit or to refuse admittance to foreigners, but, in the second place, provision was made for an exception—namely, that this right must not be abused to the point of rendering the Convention inoperative ; in the third place, by an exception to the above exception, countries in certain circumstances regained their entire freedom of action, except, in the fourth place, in so far as concerned essential positions. Certain delegates had referred to the difficulties of interpreting this text, and to the controversies which might be caused by the reference in a contractual undertaking to countries which were undeveloped industrially, and more particularly by the reference to nascent industries. It would be better to make a general recommendation urging countries not to abuse their discretion in regard to admittance to the point of rendering the provisions of Articles 6 and 8 inoperative.

DR. MARTIUS *(Germany)* reserved his opinion on the proposal to retain the second paragraph in the Protocol, since the question was closely connected with those being examined by the Sub-Committee.

He fully realised that the authors of the text under discussion had attempted to find a compromise, but he thought that, if it were desired to reach agreement, it would be necessary first to settle the question of principle raised both in the Austrian proposal and in the Czechoslovak proposal. He recalled incidentally that his delegation had submitted an amendment as to the interpretation of the term " management ", and that the International Chamber of Commerce had proposed that the term " direction " should be replaced by the word " gestion " in the French text.

What in point of fact was the purpose of the Austrian and Czechoslovak proposals ? The purpose was to decide whether it should be lawful to allege considerations as to the protection of the national labour market for the purpose of restricting freedom in the appointment of foreign managers. If the question were merely that of the application of certain measures already in existence, the problem would not be one of vital importance from the point of view of form. It was, however, a different question in regard to the point of substance. The paragraph under discussion would become valueless if the Committee, when adopting it, decided at the same time that the regulations for the labour market applied ; it would be better, in that case, to abandon the entire paragraph. The object of the Conference was to establish a collective treaty which would serve as a basis for the future. The States must not overlook the great economic value represented by certain foreign persons, and a decision such as that desired by certain delegations would be incompatible with the policy of international reconciliation in Europe.

On behalf of the German delegation and Government, he must oppose the proposal for the application of measures for the protection of the national labour market to the problem under discussion. The Committee should first settle this question of principle.

TWELFTH MEETING

Held in Paris on November 16th, 1929, at 3.15 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).

Secretary : M. SMETS.

25. **Examination of the Articles of the Convention : Article 8** (continuation).

THE CHAIRMAN asked the Committee to consider further the proposal in connection with Article 8 which had been submitted at the previous meeting.

M. RIEDL *(International Chamber of Commerce)* reminded the Committee of the principal arguments which had been brought against the maintenance of Article 8 and particularly the anxiety of certain Governments to ensure for their national workers the possibility of finding industrial employment and of developing their competence as skilled employees. He would point out that, in order to learn a trade, it was necessary that teachers should be found, and it was precisely in countries where economic conditions were only slightly developed that a competent directing staff was most necessary. To the arguments based on the contradiction between the provisions of Article 29, which reserved to Governments full discrimination in the matter of admission, and Article 8, he would reply by reminding the Committee of the saying : " *Summum jus, summa injuria* ".

He welcomed the text which had been submitted as a compromise, but he would like to suggest some slight emendations.

The first paragraph of the text referred to persons admitted to be directors, managers and chief technical officers. The second paragraph, on the contrary, referred to subordinate staff. He would suggest that from the first paragraph the words " not merely to the conduct, but even " should be deleted, and that in the second paragraph the words " in countries whose commercial or industrial conditions are undeveloped or in other countries with nascent industries " and the words " so long as such conditions render them necessary " should also be suppressed. He would urge, in reference to the second paragraph, that it was not only in countries where commercial or industrial conditions were undeveloped that it was necessary to protect the national labour market, but that these considerations applied equally to the more advanced countries.

M. DE NICKL *(Hungary)* emphasised the clear distinction that had arisen during the discussion between countries which desired to export capital and labour and countries which needed financial and industrial assistance. He was speaking personally on behalf of a country in the second category.

He thought that Article 8 was essential to the Convention. The Convention should give to foreigners the right to choose for the management of their industries such persons as they considered to be indispensable. Otherwise, the Convention would be incomplete. The foreigners in question should be free to choose indifferently for their staff either persons who resided in the country where they were established or had entered the country in order to take up such employment. This right, however, must not be unlimited and there must be some safeguard for the national labour market. Any draft which reconciled these two series of considerations would be acceptable.

He did not think that the present draft was acceptable in this respect, and, personally, he preferred the text of the article as originally submitted. The new text was both ambiguous and arbitrary. The first paragraph referred to persons engaged in the businesses of foreigners. He would ask why the provision in question should be limited to the businesses of foreigners alone.

There was in the second paragraph a reference to undeveloped countries. The protection of the labour market, however, was often as necessary in developed as in undeveloped countries. The paragraph also required the employment of a reasonable proportion of nationals. Who was to judge whether a given proportion was reasonable or otherwise ?

He was of opinion that the draft submitted by the Economic Committee might well be retained, but agreed with the Austrian delegation to the effect that paragraph 3 of the Protocol *ad* Article 7 should be understood as relating also to the provisions of Article 8. Article 8 was essential, but guarantees for the protection of the home labour market were equally essential and foreign nationals established in a country should not be left free to confine employment in their businesses to their own compatriots.

M. ROTHMUND *(Switzerland)* regretted that he was compelled to refer once again to the question of admission. He had endeavoured to discover some solution of the problem which might enable Switzerland to adhere to Article 8 in the light of the explanations which had been given during the discussion. He felt bound, however, to support the amendment which had been moved by the Polish delegation. That amendment laid down that the provisions of Article 8 would apply without prejudice to the provisions concerning the admission of foreigners and had placed foreigners in respect of those provisions on the same footing as nationals. Moreover, it introduced a reservation relating to the provisions in force in the country for the protection and regulation of the home labour market.

The regulations for the protection of the home market in Switzerland extended over the whole field of industry and it included managers and heads of companies as well as their employees. A company was under the same regulations for the protection of the home labour market whether it was seeking to employ a manager or subordinate staff. If the provisions of Article 8 were restricted in this sense. virtually nothing remained and, if such reservations were necessary, it would, in his opinion, be preferable to suppress the article.

M. MIEZIS *(Latvia)* said that there seemed to be a slight contradiction between the Preamble of the draft Convention and the text of Article 8. The Preamble laid down that the Convention applied to nationals of any contracting party who had been allowed to establish themselves in the territory of another party in order to carry on business. Article 8, on the other hand, provided that nationals of one of the High Contracting Parties, even without being established in the territory of another party, should be free to appoint at their discretion for the management of their business such persons as they might judge fit and proper without being required to take into account the nationality of such persons.

This discrepancy between the Preamble of the Convention and the terms of Article 8 was presumably the reason why several delegates had proposed to suppress the article.

The note of the Economic Committee on Article 8 stated that persons to be appointed in the service of foreign firms must have previously been admitted to the country in which the foreign firms were established. The Latvian delegation, however, was afraid that the provisions of Article 8 might be a serious impediment to the ratification of the Convention unless some specific reservation were inserted.

The Latvian delegation had nevertheless voted at a previous meeting against the suppression of Article 8 in the hope that the amendments proposed by several delegations would remove the discrepancy to which he had alluded. The amendments at present under discussion, however, had not met the objection.

There were several States whose territories were situated on important international trade routes which tended to abolish every unnecessary impediment to the circulation of foreign persons and goods. Latvia had already granted extensive facilities to the nationals of several States, such as Germany, Italy, Japan and Switzerland. To protect its labour market, however, Latvia had introduced certain restrictions in the case of foreigners who established themselves in the country as wage-earners. If Article 8 were accepted in its present form, it would enable every foreign firm to take as technical or administrative workers any persons already admitted to the country. This would mean that the States which had already granted free admission to foreigners would in future have to restrict such admission in order to protect their labour market. Such a course did not seem to be desirable in the interests of the aims to be achieved by the Convention.

He would suggest that there should be inserted in Article 8 after the words " such persons " the words " if the respective persons have the necessary labour permit ". The insertion of these words would remove any apprehensions which might be felt as to the necessity of provisions for the protection of the national labour market.

M. POPESCU *(Roumania)* thought that a very useful attempt had been made in the text before the Committee to reconcile the interests of the countries which exported capital and the interests of countries which received it. He thought, however, that the text might be improved in certain respects. First, he would urge that countries exporting capital had the right to send into the importing countries such persons whom they might select to organise their business and ensure that the capital was suitably expended. He presumed that the High Contracting Parties would not be opposed to the admission of foreign managers and experts sent into the country for this purpose. In the interests of countries whose industries were undeveloped, he would move that the words in the second paragraph : " in positions other than those referred to above as essential ", should be deleted. Countries which did not desire to admit foreigners in order to take up certain positions had an obvious remedy in their own hands. If they did not desire to admit the foreign labour which was essential to the exploitation of foreign capital, they might refuse to admit the capital. It was unreasonable for countries to import capital and then to raise difficulties as to the organisation of the business to which that capital was devoted. He would

also urge that it was to the interests of the importing country to welcome experts from abroad in the interests of the technical and industrial education of its own nationals.

M. PEROUTKA *(Czechoslovakia)* said that there were two aspects of the problems raised by Articles 7 and 8. There was, first, the personal aspect, which related to the question of admission. In the present instance, however, the question at issue related to foreigners who had already been admitted.

The second aspect related to the stage of economic development reached by the country concerned. He would suggest that the reference to the exceptions allowed in the case of these countries should be based on the formula adopted in Article 16, which referred to the existing legislation of the High Contracting Parties. He referred to the observations of the British delegation, to which allusion was made on page 40 of the " Brown Book ", and which recognise the necessity of legal provisions in order to introduce exceptions to this principle.

He would further point out that the definition of management in paragraph 2 was ambiguous.

M. SANDSTROEM *(Sweden)* said he well understood the reasons which had led the Economic Committee to exclude from the draft Convention certain questions relating to the treatment of foreigners, but the difficulties inherent in an endeavour to find a partial solution had become apparent. The Economic Committee was certainly fully aware of these difficulties. One of these difficulties was the problem of fixing the limits between the matters to be regulated and those to be left on one side. That difficulty had already been felt in the discussions on Article 6.

In that case, the Committee had been dealing with the question of admission. In the present instance, the question of admission again came up for consideration, and it was necessary to consider the measures which were regarded as essential for the protection of the national labour market.

In the former case, the question at issue was what facilities should be given to foreigners to establish themselves in a territory with a view to carrying on industrial or commercial activities. The present question was of another order, namely : How should the foreigner be treated who had already been permitted to establish himself and to carry on industrial and commercial activities ?

The two questions were subject to very different considerations. One might differ on the question of the facilities to be accorded to the foreigner in respect of his establishment and the permission accorded to him to engage in business. It was possible to adopt either a more liberal or a more restrictive regime. For the question, however, of determining the treatment to be accorded to the foreigner who had been admitted to establish himself and carry on business, there was, in his opinion, only one possible solution, namely, to give him the greatest possible freedom to organise and to develop his activities.

The object of Article 8 of the draft was to give him guarantees for this purpose. The reason for these guarantees was very clearly explained in the new text which had been submitted to the Committee. The Committee desired a liberal interpretation of Article 8, and he regretted that he could not agree with the opinion expressed by the Economic Committee, which had decided in favour of a recommendation in regard to this question rather than a formal undertaking. A recommendation appeared to give no real guarantee. Fears had been expressed that the protection of the national labour market might be endangered. Evidently the object had been to introduce an exception to the rule that the Convention would not affect the protection of the national labour market, but he could not believe that the exception was so extensive that a national labour market would be in real danger if the exception were limited to the positions alluded to in the text.

The Swedish delegation would accept the text of the original draft, but had no objection in principle to paragraph 1 of the new text.

Paragraph 2 dealt with different questions to which he would return.

M. LANDUCCI *(Italy)* said that he thought it would be very difficult for the Italian delegation to agree to a Convention which made any distinction between developed and undeveloped countries. The Italian delegation thought that Article 8, as drafted by the Economic Committee, was in principle acceptable, subject to such reservations as might be necessary to provide for exceptions on behalf of certain essential industries and the national intellectual workers. The Italian delegation had put forward a proposal which it felt might be accepted by the Conference (Annex A, 21). It accepted the principle of Article 8 and merely made reservations in regard to the application of that principle in special cases. He would ask the Committee to consider the Italian amendment.

M. ITO *(Japan)* said that emphasis had been laid upon the necessity of finding a compromise between the countries which exported and the countries which imported capital. The representatives of the importing countries, however, had tended to attack the representatives of the exporting countries and the compromise embodied in the new draft under consideration reflected this somewhat aggressive tendency on their part. Insistence was laid on the necessity of protecting the national market and undeveloped industries, and exceptions were suggested with this end in view. He wondered whether such an intention was really legitimate. Would the Conference, in accepting such a principle, be making any real progress in the direction of affording greater facilities for international trade ? He felt that the present draft went too far in the direction of protection and that too much emphasis had been laid upon this consideration.

The first paragraph laid down that the High Contracting Parties should not make use of the right to refuse admission or to expel a foreigner so as to render inoperative the guarantees provided in Article 8. This paragraph was supposed to represent a concession to those who desired the utmost liberty of trade. A guarantee, however, which was limited to a few managers, directors and principal technical experts, against the abuse of a right accorded under the article could hardly

be described as a concession. Those who benefited from the rights accorded under the Convention might legitimately expect that those rights would not be abused.

Paragraph 2, on the other hand, represented an important concession to those who desired to safeguard the principle of protection. Under that paragraph, every country would be free to reserve full liberty to impose such restrictions on the employment of foreigners or nationals by enterprises established within its territory as might be necessary. This was an important concession out of all proportion to the alleged concession embodied in paragraph 1. Paragraph 2, in his opinion, went too far. The paragraph virtually annulled the benefits accorded to foreigners under Article 7. It laid down that foreign companies should employ a reasonable proportion of nationals. This provision left the authorities a very wide discretion. They alone, presumably, would be judge of what constituted a reasonable proportion.

He was prepared to accept paragraph 1 of the new draft, but he could only accept paragraph 2 if it were amended in the direction of making its terms less prejudicial to the interests of foreign nationals. The second paragraph virtually withdrew rights which had been granted in previous provisions.

The question was all the more serious as certain delegations desired that paragraph 3 of the Protocol *ad* Article 7 should also apply to Article 8. He regarded this proposal also as going too far in the direction of protection. Paragraph 3 of the Protocol was designed to protect the national labour market and might be defended for that reason. Article 8, however, referred to foreign nationals and would apply for the most part not to manual workers but to intellectual workers. If the Protocol *ad* Article 7 were applied to Article 8, both intellectual and manual workers would come within the sphere of the exceptions which were being provided. Article 8 might in that case as well be entirely suppressed.

M. NEDERBRAGT *(Netherlands)* said that he was prepared to accept the original draft of Article 8. There were three points to which he desired to draw attention.

His first point referred to a financial question. Persons or firms who sent capital into a country must be able to control the organisation and management of the expenditure of that capital. No one could question that principle. He would point out in this connection that both the countries exporting and the countries importing the capital had a common interest. If the importing country allowed no powers of management and direction to experts from the exporting country, the latter would not continue to provide them with the necessary funds. It was, moreover, to the interests of both countries to ensure a competent direction of enterprises carried on by means of imported capital.

The second question related to labour. If a contractor undertook to carry out some undertaking in a foreign country, he must be able to send to the country in which the work had to be carried out representatives in whom he had confidence. If he were obliged to choose workmen in a country other than his own, it would be impossible for him to know in advance whether he could guarantee that the work would be satisfactorily accomplished. Such enterprises would be more costly unless competent workmen were employed and the country in which the works were carried out would be dissatisfied with the result. Here, again, the interests of both the importing and exporting countries were identical.

Thirdly, there was the question of the reputation of the persons or firms undertaking the work. It was necessary to safeguard the interests not only of the workers and the efficiency of the work but the reputation of the firms entering into the contract. International competition was based on the quality of the work and the results achieved, and contractors must be in a position to be able to ensure that their undertakings would be efficiently carried out.

The Swiss delegation had objected that, if such privileges were accorded to foreign nationals and firms, they would be in a superior position to national persons and firms, as the latter were subject to the laws and regulations of the country as regarded the recruiting of staff. He would point out, however, that foreign firms were in quite a different position. National firms were quite well able to recruit a competent staff on the spot, whereas foreign firms would probably have to obtain recruits from their own country.

The principle should be recognised that, if a country sent its capital to another country and founded an industrial undertaking, such undertakings must be permitted to obtain the assistance of their own experts and their own staff.

He would now turn to the amended text under discussion. He was satisfied with paragraph 1 in principle, but the text might yet be improved. He agreed, however, with M. Ito that paragraph 2 should be more liberally conceived.

M. LAEMMLE *(Germany)* said that he did not think that Article 8 really raised the question of the protection of the national labour market. The article applied to managers and technical experts, and there was no real labour market for these occupations. The question of protecting the labour market should therefore be ignored and the whole problem regarded from a purely economic point of view.

It had been said that the article did not provide equal treatment for foreign and for national firms. That was correct, but, as M. Nederbragt had pointed out, the position of the foreign firms and the national firms was not identical. Foreign firms should have a right to choose their directors and experts without regard to any restrictions which might be imposed for the protection of the labour market. He would point out in this connection that the Convention did not always provide for equal treatment as between foreigners and nationals, and that this was the only case in which the treatment accorded to foreigners was more favourable than the treatment accorded to nationals. This privilege, moreover, applied only to a small group of persons and interests.

It was true that there was a real distinction as between the interests of countries which exported and countries which imported capital. He doubted, however, whether it was desirable

to emphasise that distinction in the present case. Too much emphasis should not be laid on the protection of the labour market. It was to the advantage of the national labour market that capital and technical assistance should be obtained from abroad and the import of such capital could not fail in the end to increase employment. In Germany, the rules for the protection of the labour market applied only to certain classes of manual workers, and there were no general restrictions.

If Article 8 were adopted with the amendments which had been suggested, the contracting parties would retain the right to impose restrictions for the protection of the national labour market except in regard to the employment of a few managers and principal experts of foreign companies. Germany might in that case feel obliged to assimilate its legislation to the new provisions, and such assimilation would represent a retrograde step and would restrict the liberties at present accorded to foreign persons and firms at present established in the country.

He would suggest that the Conference should not vote upon the amendments which had been put forward, but on the question of principle whether, in the event of Article 8 being rejected, the provisions for the protection of labour would or would not apply to managers and technical experts. He hoped that this question would be answered in the negative.

M. ROTHMUND *(Switzerland)* approved the observations of the representatives of the Netherlands and Germany as to the necessity of being able to send the staff indispensable for the good conduct of a business established in a foreign country. Switzerland was in the same position as the Netherlands, because she had exporting industries which were extremely well developed. The Swiss Government could not, however, commit itself formally to a policy of free admission. Switzerland was in a very special position owing to her geographical situation and her situation in regard to population. According to the Census of 1910, the population of Switzerland amounted to 3,750,000 inhabitants, of whom 550,000, or 14.7 per cent, were foreigners domiciled in the country. As a result of the war, the number of foreigners domiciled in Switzerland had fallen, but in 1920 they still formed 10.4 per cent of the total population. In other words, one inhabitant in every ten was a foreigner. Since 1920, a new tendency to an increase of the number of foreigners had been noted. Permits to enter and settle in the country had been delivered during recent years at the rate of about 10,000 a year. It had been calculated that, if the foreign population continued to increase in the same proportion as it had increased up to 1910, it would in 1930 account for half of the entire population of Switzerland. That would mean the dissolution of the State. These figures showed that freedom of admission for foreigners was for Switzerland a vital question. In practice, the Swiss authorities would base their policy on the principle laid down in Article 8. They never refused foreigners the right to establish enterprises on Swiss territory, on condition that the foreigners seriously intended to develop their business. He could assure the Committee that, in practice, Switzerland would continue to accord the greatest possible liberty of admission to foreigners, but she could not consent to having her discretion in any way limited in this matter by a formal undertaking.

M. POZNANSKI *(Poland)* urged that the proposal of the Polish delegation submitted at a previous meeting (Annex A, 22) appeared to him to meet the objections raised by the German delegation. It was also, in his opinion, calculated to allay the misgivings of the Swiss delegation. In regard to the management of foreign enterprises there should be a policy of free admission. That point was made clear from the Polish text, which made a definite distinction between managers and their subordinate staff. The Polish amendment, however, recognised that the recruiting of subordinate staff might need to be subject to regulations and restrictions imposed for the protection of the national labour market. The Polish amendment thus safeguarded the fundamental principle of the article which related to management, while it left the subordinate staff subject to the laws of the country.

It was essential to decide the question of principle. The drafting of a precise text would then be a simple matter.

M. Nederbragt had emphasised the necessity of foreign firms being able to ensure that their own technical experts and competent workmen should be employed on their undertakings. Would it not be possible to deal with this matter by recommending in the Final Act that, as far as possible, the restrictions imposed for the protection of the national labour market should be interpreted in the sense that, if the necessary experts and competent workmen could not be found in the country where the enterprise was being carried out, they should be admitted from abroad ?

SALIH ZEKAI Bey *(Turkey)* said he was prepared to accept the draft under discussion, subject to the amendments which had been suggested by M. Riedl.

He desired, however, to refer to a special point of interest to his country. Turkey had passed legislation for the encouragement of industry. Under this legislation, special advantages (such as exemption from taxation, exemption from Customs duties on raw materials, etc.) were accorded to certain firms established in the country, but these special advantages were contingent upon the acceptance of certain obligations. Such firms were, for example, expected to recruit their staff from among Turkish nationals, and firms desiring to profit from the benefits of the preferential legislation in their favour must conform. These arrangements might be regarded as contracts on a basis of mutual compensation, and he did not think that they were inconsistent with Article 8 or with the Convention as a whole.

He would ask that an interpretation to this effect might be inserted in the report.

The legislation to which he had referred provided that either Turkish nationals or foreign firms established in Turkey might, if necessary, introduce experts and managers from abroad.

THE CHAIRMAN said he hoped that the Committee would be able to take a provisional decision for the guidance of the Rapporteur. Further amendments might be moved at a later stage.

He would enquire whether the Committee had any objection to the adoption in substance of the principle of paragraph 1. If the Committee decided to adopt the paragraph in principle, it would then have to decide whether the principle should be embodied in the Protocol or put forward as a recommendation. That question, however, would best be considered after the Committee had also taken a decision in regard to paragraph 2.

The Committee adopted paragraph 1 in substance and principle.

THE CHAIRMAN asked the Committee to decide a preliminary question in regard to paragraph 2. Was it of opinion that there should be anything in the Protocol limiting Article 8, either on the lines of the provisions laid down in paragraph 2 of the draft which was under discussion or upon the lines of the third paragraph of the Protocol *ad* Article 7?

The Committee decided this question in the affirmative.

THE CHAIRMAN said the Committee would now have to decide what should be the basis of the text to be inserted in the Protocol. Did the Committee wish to take paragraph 2 of the draft which was under discussion as a basis, or did it consider that the third paragraph of the Protocol *ad* Article 7 should apply to Article 8?

M. LAEMMLE *(Germany)* proposed that the discussion should be adjourned. There were points in the third paragraph of the Protocol *ad* Article 7 which had not yet been fully considered, and he did not think the Committee was ready to decide between that paragraph and paragraph 2 of the draft under discussion. He would suggest that a sub-committee should be appointed in order to draft a formula based on one or the other text.

THE CHAIRMAN said the Rapporteur must have some further direction as to the formula to be drafted before the matter could be considered by a sub-committee. The Rapporteur would, however, endeavour to present a new text as a basis for the further discussion of the question, and in preparing that text he would carefully consider what should be struck out and what should be retained in the light of the discussion which had taken place that afternoon.

THIRTEENTH MEETING

Held in Paris on November 18th, 1929, at 10 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

25. **Examination of the Articles of the Convention : Article 6** (continuation).

Text submitted by the Sub-Committee (Annex A, 23).

M. POLITIS *(Greece)*, Rapporteur, recalled that the Committee and the Sub-Committee had been confronted in regard to Article 6 with a number of objections which were due to the differences presented by the problem of the admission of foreigners according to the country in question. Certain countries granted a permit of entry only provisionally, others gave the right of entry merely for the purpose of a visit, exclusive of establishment ; others, again, authorised establishment for the purpose of engaging in a profession, trade or industry. To speak merely of a foreigner *admitted* to a territory was to employ an incomplete formula which required explanation. Similarly, if the general rules laid down in Article 6 were to be acceptable, it would be impossible to rest content with so vague and brief an expression as that contained in Article 29. The provision of Article 29 would, moreover, have to be placed in front of Article 6.

The general structure of the text submitted by the Sub-Committee was as follows :

Paragraph 1 would consist of a provision to replace and develop that contained in Article 29.

Paragraph 2 would correspond to the former Article 6, but, as it would follow paragraph 1, it would become perfectly clear.

Paragraph 3 explained and completed the Protocol *ad* Article 6 on the right to leave the territory and the right of expulsion. Finally, paragraph 4 contained a new proposal which seemed to be required at this point in order to make it clear that, once a foreigner had been authorised to establish himself, the country would no longer have the right to lay down to his disadvantage new conditions which would have the effect of diminishing the security on which he was entitled to count.

He would urge that the text submitted should be adopted as a single whole, and that it should be substituted in its entirety for the former Article 6, the relevant Protocol and Article 29. In this way, difficulties of interpretation would be avoided later.

M. ROTHMUND *(Switzerland)* was happy to indicate his agreement with the text of Article 6 but had a small observation to offer. In paragraph 1, in the fourth line, there had originally been introduced the word "notamment" before the words "quant à la liberté de circulation ..." The word "notamment" had been struck out on the proposal of M. Riedl. He proposed that this word should be restored in order to avoid appearing to restrict the scope of the paragraph.

Paragraph 2 represented the old Article 6.

He proposed to add in the Protocol the following suggestion, which M. Riedl had proposed in the Sub-Committee :

> "It is understood that each of the High Contracting Parties reserves its right by legislation to lay down whether admission on entry suffices to confer the rights guaranteed to foreigners by Article 6, or whether foreigners must obtain an express permit of admission either for the purposes of sojourn or for those of establishment."

This passage would define the sense of the words "selon les cas" in the French text of paragraph 2.

In regard to the place of the article in the Convention, he proposed that only the second paragraph and the Protocol mentioned above should be retained as Article 6 and that paragraphs 1, 3 and 4 should take the place of Article 29 in the original draft.

M. ITO *(Japan)* was for the moment unable, for reasons of principle, to adhere to the text submitted by the Sub-Committee. The delegations had come to the Conference on the assumption that they would not have to deal with the question of admission. In the whole draft Convention, that question was touched on in only one article — No. 29 — and it had been the intention of the Japanese delegation to speak during the discussion on that article. The matter, however, had come up in connection with Article 6. The delegation realised that there were certain facts of which no one could be ignorant in the international world. It was a fact that, more especially since the war, an increasing number of countries wished to have powers to regulate this question, but he wondered whether it was appropriate to give a contractual form to the solution of the problem : that was to say, to stipulate in a Convention which was to be signed by a number of countries, and later opened to the signature of other countries, that the States were left free to regulate the question of admission at their own discretion. If paragraph 1 were accepted as it stood, the result would be that, so far from leaving the problem on one side, the Conference would have dealt with it by the adoption of contractual provisions recognising the freedom of all countries in the matter. The Japanese delegation hoped that the Conference would adhere to its first position : that was to say, that it would refuse to touch the question in any way. There were certain difficulties, and this was a point which had not been submitted to the delegations present. It might perhaps be objected that the Convention would prove difficult of application owing to the exclusion of this question. That, however, was a situation which must be accepted.

To sum up, the Japanese delegation would agree to Article 6 on the condition that the first paragraph was omitted.

M. POLITIS *(Greece)*, Rapporteur, replied as follows :

First, if the Committee were to follow the Japanese delegate's suggestion, all the difficulties which the Sub-Committee had attempted to settle would be re-opened and many delegations would be unable to accept the passages in the Convention referring to admission. He could not agree to provisions in which there was no definition of the term "admission" and which took no account of the many shades of difference involved in it.

Secondly, the Japanese delegate, like many others, was against the question of admission being considered as settled once for all and was opposed to the embodiment of an existing situation in a contractual clause. The position, however, would not be in any way changed by putting paragraph 1 in the place of Article 29. It was agreed that the Conference should content itself in this question with recording the existing situation, and he thought that the Japanese delegate would be satisfied if the report to be submitted in explanation of the text stated that the Conference had not intended to settle the question but had merely wished to take account of the facts and that paragraph 1 had only been drawn up in order to explain the existing situation.

He hoped that the Japanese delegate would not insist on his proposal.

M. ITO *(Japan)* asked for time for reflection.

M. PILLAULT *(France)* said that his delegation was perfectly prepared to concur in the new Article 6 which involved the deletion of the old Article 29. He wished, however, to have an assurance that, if Article 6 were in point of fact substituted for Article 29, its scope would, like that of Article 29, be purely general. In other terms, the French delegation thought it absolutely essential that paragraph 2, more particularly in regard to the provisions as to the national labour market, should be applicable to the Convention as a whole and that Articles 7 and 8, whilst giving certain indispensable explanations, should not constitute a derogation to the general stipulations of Article 6. If that were so, it should be clearly stated. Lastly, the Committee should re-examine paragraph 3 of the Protocol *ad* Article 7 which had been adopted on November 13th.

M. CHOUMENKOVITCH *(Yugoslavia)*, on behalf of the Yugoslav delegation, supported the Swiss delegate's proposal to restore the word "notamment" in paragraph 1, as well as the proposal to transfer paragraphs 1, 3 and 4 to Article 29.

M. DE LA VALLÉE POUSSIN *(Belgium)* asked what was the exact bearing of the words "unless individually prevented for reasons of public order" in paragraph 4. The Belgian delegation would agree to paragraph 4 if it were proposed to prohibit a foreigner from leaving the country when he was the subject of proceedings in the courts for an offence committed in the territory of the country in which he found himself. If, however, the proposal went further and would allow the State to prohibit a foreigner from leaving the territory by the use of an administrative measure, the Belgian delegation would be opposed to it, since the result would be an inadmissible restriction of individual liberty. It was just possible to conceive a State reserving to itself a prerogative of that kind in respect of its nationals, although he knew of no law which permitted of such a measure. In Belgium, there were on this subject constitutional provisions to which the country attached vital importance. If he were mistaken as to the meaning of these words, he would propose that they should be defined as follows: "except in the case of legal proceedings instituted for the repression of crime".

M. POLITIS *(Greece)*, Rapporteur, replied that it had certainly not been the intention of the authors of the draft to allow States the right to prevent foreigners from leaving the territory by administrative measures. They had been concerned solely with the administration of justice. The formula proposed by the Belgian delegate, however, was too restricted, since, apart from criminal proceedings, the legal authorities might have legitimate reasons for preventing a foreigner from leaving the country — a foreigner, for instance, whose evidence was necessary, even if he were himself not the subject of legal proceedings. The text might be amended so as to refer to "judicial reasons".

M. DE LA VALLÉE POUSSIN *(Belgium)* could not agree to the text even with this amendment. In his view, the necessity of taking evidence could not be used as a reason for preventing a foreigner from leaving the country. For this it would be essential that the person of the foreigner should form the direct subject of the proceedings.

M. POLITIS *(Greece)*, Rapporteur, said that, if such were the case in Belgian law, it was not the case in the law of other countries.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that the fact of a Belgian subject being detained in a foreign country for any reason other than that of judicial proceedings would give rise to diplomatic representations such as the Belgian Government would be prevented from making under the new wording. The present text, if it came before the Belgian Parliament, would be met with downright opposition.

DR. MARTIUS *(Germany)* said that he fully understood the position of the Japanese delegation. The German delegation had submitted a proposal which was intended to allow of admission in a liberal sense, but it had understood that a system of that kind was not yet feasible in the present draft convention and that the question would have to be postponed. It was for that reason that, after a difficult and complicated discussion, the Sub-Committee had agreed on a single text. Subject to the reservation of the point raised by the Belgian delegation, he urged that the Committee should adopt in its present form the text submitted to it. The text should be left intact. Whether it should constitute Article 6 or Article 29 was a point which might be solved before the end of the Committee's proceedings, but which could be held over for the moment. If it were desired to divide up the present text, there would be a danger of re-opening the entire discussion.

The International Chamber of Commerce had submitted an amendment which went far to clear up the position, but the second sentence in paragraph 1 had made the position still clearer than would the adoption at the present moment of a modification in the sense of the Chamber's amendment.

The omission of the word "notamment" was a real improvement in the first text which the Rapporteur had submitted to the Sub-Committee. It was probable that the Swiss delegation had been prompted by the same considerations as had prompted the French delegation with

regard to the national labour market. He was in entire agreement with the view that the question had not yet been solved and that a solution would have to be found. The problem, however, was not connected solely with Article 6. It was a more general problem, as the French delegation had said.

He was entirely in agreement with the view that the provisions applied likewise to Article 7, but it was possible that this was not the case in regard to Article 8, and the problem was one which would have to be solved in a suitable manner if the discussion on Articles 7 and 8 were resumed. For the moment, there was no obstacle to agreement on Article 6, subject to the solution of the problem raised by the French delegation being held over. He urged his colleagues on the Committee not to insist on their objections. The German delegation had waived many of its proposals. The present solution was a halfway-house, and the best in the present circumstances.

M. RIEDL *(International Chamber of Commerce)* said, as he had already pointed out in the Sub-Committee, that the danger of restoring the word "notamment" would be that the provisions of a large part of the Convention would be rendered inoperative. Article 6 did not deal with the whole matter which formed the subject of the Convention, but only with the right of entry, sojourn and establishment. The only point contained in it was the reservation to the States of full freedom to refuse or grant the right of entry for purposes of sojourn and establishment, and this was comprised under the term "admission". If admission were made contingent on further conditions as to the right to engage in any profession or of other factors dealt with in other articles of the Convention, the scope of Article 6 would be extended to matters which were entirely foreign to it.

He fully concurred in the German delegate's observations, which, in his opinion, had exhausted the subject. In regard to the amendment that he had himself submitted in the Sub-Committee, to which the Swiss delegate had referred, its only object was to restrict the notion of admission, and to ensure to the States full rights to refuse or grant the three different categories of admission ; but if the first paragraph in the Sub-Committee's proposals were accepted, it would appear superfluous to keep the amendment in question.

M. HOU YONG LING *(China)* read the following declaration :

"The Chinese delegation wishes to take the opportunity of the discussion on Article 6 of the draft Convention by Committee A to indicate to the Committee the rights as to residence granted foreigners on Chinese territory. As this question is closely bound up with the question to be dealt with here, the Chinese delegation ventures to call the attention of the members of the Committee to the special system established in China since 1842, which is at the present moment a matter of legitimate concern to the Chinese National Government.

"Article 6 allows the nationals of one of the High Contracting Parties admitted to the territory of another High Contracting Party to enjoy there, provided he conforms with its laws and regulations, the same rights as to travel, sojourn, establishment and choice of domicile (choice of the place of residence according to the British amendment) and movement, etc.

"According to the system which has existed in China in regard to the right to travel ever since the Tientsin Treaties of 1858, foreigners are permitted to travel under practically normal conditions throughout Chinese territory. They are not, however, allowed to reside except in places specified either in agreements between China and the foreign Powers or by a unilateral decision of the Chinese Government.

" There are certain exceptions to this rule :

" 1. Missionaries enjoy special privileges in regard to residence. Diplomatic and consular agents, alien military staff, foreign officers belonging to the Chinese Government, are governed by special regulations.

" 2. The restrictions as to the right of residence concern in theory only the nationals of the so-called "Treaty Powers". This term "Treaty Powers" must be taken-tome an the group of Powers which, more particularly since 1842, have successively obtained from China treaties granting them numerous privileges which are particularly advantageous to them — economic and financial privileges, privileges as to judicial procedure, exterritoriality, garrison rights, etc. The nationals of Powers which have never had, or have lost by withdrawal or renunciation, the privileges of exterritoriality are free to reside at their own discretion on any part of Chinese territory and to engage there in trade or industry or an honourable profession.

"The Chinese Government is now anxious to put an end to the differential system still existing in China to the advantage of certain foreigners, as it has now become incompatible with the dignity of the new China. The conduct of the Chinese Government with this object in view can be easily ascertained from the following documents :

"1. At the Washington Conference in 1921, the Chinese delegation made a number of declarations, among them the following: 'The policy of restricting the right of residence will be maintained until the system of exterritoriality has been abolished or radically changed'.

"2. The preamble to the recommendations which conclude the report of the Exterritoriality Commission of April 26th, 1926, states in particular: 'It is understood that, when exterritoriality is abandoned, the nationals of the Powers concerned will enjoy freedom as to residence and business as well as civil rights in international relations on a just and equitable basis'.

"3. Article III of the Agreement between Germany and China of May 20th, 1921, reads: 'The nationals of either of the two Republics shall have the right, provided that they comply with the laws and regulations of the country, to travel, establish themselves and engage in trade or industry in any places in which nationals of another country are allowed to do so'.

"The treaties recently concluded in the course of last year by China with Belgium and Luxemburg (November 22nd, 1928), Italy (November 27th, 1928), Denmark (December 12th, 1928), Portugal (December 19th, 1928) and Spain (December 27th, 1928) include a clause, drafted in practically identical terms, under which it is stipulated that, when the privileges of exterritoriality are finally abandoned by these Powers, their nationals will have on Chinese territory the same rights as those enjoyed by Chinese citizens on the territory of the said Powers. Among the five Powers which I have mentioned, it should be noted that Belgium has, under the Convention between Belgium and China of August 31st, 1929, definitely renounced the privileges of exterritoriality which she had possessed in China since November 2nd, 1862. We are obviously approaching a time when the status of aliens in China will be standardised, and when, except for the normal restrictions and limitations demanded by reasons of public order or the necessities of national defence, the status of aliens will be at all points in conformity with the requirements of the *comitas gentium*.

"In accordance with the spirit of the Chinese declaration to the Washington Conference in 1921, and with the terms of the Agreements recently signed between China and the other Powers, the Chinese delegation desires to state that the Chinese Government reserves to itself the right to grant foreigners freedom as to residence only after the final cessation of the privileges and special rights possessed by the Treaty Powers in China.

"Aware as we are that it is not the object of the present Conference to consider the question of the abolition or modification of the special system existing in countries where the situation is abnormal, the Chinese delegation nevertheless hopes that the Committee now met will take the case of China into consideration. In view of the special considerations existing in China as to the right of residence granted to the foreign subjects of certain Powers in Chinese territory, the Chinese delegation hopes that the Committee will allow it to make a reservation as to the application of Article 6, paragraph 2, in the text submitted by the Sub-Committee."

M. POLITIS *(Greece)*, Rapporteur, wished to know, for the purposes of his report, what was the connection between the Chinese delegate's declaration and Article 6.

M. HOU YONG LING *(China)* said that his delegation intended to make a reservation with regard to paragraph 2 of Article 6.

Mr. BECKETT *(British Empire)* referred to paragraph 4 with regard to the observations of the Belgian delegate. It seemed to him that the words "reasons of public order" were far too general in scope, and he shared the objections to them of the Belgian delegation. The Rapporteur's new proposal would be an improvement if accepted by the Committee. Nevertheless, the British delegation considered it inadequate and would prefer a formula of the following kind: "Unless individually prevented by order of a *competent court of law*".

He thought, however, there would be great difficulty in finding a formula for this question which would give satisfaction to everyone. If that were so, it would be better not to attempt to give a definition in the Convention, but to state in an appropriate place that the Conference had not attempted to define the conditions in which a foreigner might be prevented from leaving the country. He would draw attention to the Codification Conference which was to be held at The Hague in March 1930 and would deal with certain questions closely bound up with the present point and connected with the responsibility incurred by States in this field. The problem could be left to the Codification Conference, which would consist exclusively of jurists.

THE CHAIRMAN asked whether the British delegation proposed that an explanation should be included in the Rapporteur's report.

MR. BECKETT *(British Empire)* replied that, if it were clearly stated in the report that the Conference had not wished to attempt to define the right of States to refuse permission to foreigners to leave the country, it would suffice if paragraph 4 referred solely to the right of expulsion.

M. DE BERCZELLY *(Hungary)* thought that it was clear that the words "reasons of public order" referred solely to a prohibition which was compatible with the laws of the country. It would be very difficult to attempt to find a detailed definition. The Hungarian delegation wished to say that it was satisfied with Article 6 as submitted by the Sub-Committee.

M. PEROUTKA *(Czechoslovakia)* asked whether the statement of the representative of the International Chamber of Commerce was correct that the new text did not cover the field of application of the Convention, even although it was proposed to replace Articles 6 and 29 by the amalgamated text which had been submitted by the Rapporteur. Further, the Czechoslovak delegation was in favour, like the Swiss and Yugoslav delegations, of the restoration of the word "notamment".

DR. MARTIUS *(Germany)* did not think that it would be possible, as the British delegate had suggested, to leave the question of prohibiting foreigners from leaving the country to the Hague Codification Conference, since this question was bound up closely with the problem dealt with at the present Conference. In his opinion, the Economic Committee's draft offered a solution of the problem. Other suggestions, however, had been presented. The Rapporteur had proposed to use the expression "judicial reasons". It would be possible to go further and to say: "Unless individually prevented *in conformity with the laws of the country*", or "for reasons of public law or for judicial reasons". In any case, it would not be practical to leave the whole problem on one side, and in his opinion the paragraph might be adopted subject to this small question being reserved.

THE CHAIRMAN requested the British delegation to reconsider the question and said that the Committee would revert to it later.

M. POZNANSKI *(Poland)* said that the present wording of Article 6 gave him complete satisfaction. He asked, however, that in the final draft the Swiss amendment might be taken into consideration. In paragraph 4, he proposed to add in the French text, after the words "du droit d'expulsion", the words "ou de refoulement".

M. STUCKI *(Economic Committee)* would confine himself to dealing with the two most important questions which had been raised during the discussion.

First, should Article 6 be retained in the form in which it had been submitted by the Rapporteur? Or should part of it be detached in order to form a new Article 29 as had been urged by the Swiss and Yugoslav delegations, and, in principle at any rate, by the Japanese delegation?

He thought that the question was, as the German delegate had suggested, mainly one of the final wording to be adopted. He felt sure that, in regard to the right of admission, the delegations would endeavour in the end to adopt an article which would cover the entire Convention. That solution was inevitable, as the experience of the Economic Committee had shown. For the moment, he would urge the Committee to accept Article 6 as it stood. It could be seen later whether, instead of a final article, it would not be necessary to have a first article, since the unquestionable advantage of the present wording was, as the Rapporteur had said, that paragraph 2 was preceded by a clause showing the various shades of difference in regard to admission, and paragraph 2 would not be intelligible without this previous clause. The main thing would be to establish at all points a relation between the provisions of paragraph 1 and those of paragraph 2.

The Swiss proposal, if accepted, would go too far. It would not be logical to transfer the provisions of paragraph 3 to Article 29, since paragraph 3 had no connection with admission, and referred solely to the case of foreigners who had already been admitted. Paragraph 3 must imperatively remain in direct connection with paragraph 2.

Secondly, the question whether the word "notamment" should be kept or omitted was not a matter of insignificant importance as might appear at first sight. Those who had proposed the omission of this word wished to make it impossible for a State to subject a foreigner at the time of his admission to conditions which might be at variance with the contents of the Convention. Those in favour of keeping the word wished to preserve the freedom of the State intact in this respect, more particularly in regard to Article 7. If the word were omitted in conformity with the proposals of the International Chamber of Commerce and the German delegation, the Committee would in point of fact arrive at the position at which the British delegation had wished to arrive by means of its amendment, which, in these circumstances, would be much clearer. The Sub-Committee had accepted paragraph 3 which referred to conditions laid down after admission, the original idea being that, once a foreigner had been admitted, he could not be subjected to conditions incompatible with the Convention. *Prior* to admission, however, the States retained their freedom intact. It would be better to accept the British amendment, which was far clearer, than to delete the word "notamment" in this sense.

On behalf of the Economic Committee and on his own behalf, he thought it would be infinitely preferable if the Convention were to refuse States the right to make conditions as to admission which were incompatible with the Convention. Due reflection would show, as the German delegate had pointed out, that the question of the protection of the labour market was reserved, for it was difficult to imagine cases in which, over and above their freedom in this respect, the States would wish to reserve their right to make conditions that were at variance with the Convention. The Swiss delegation itself would apparently be satisfied with the freedom granted by the Convention in respect of the protection of the national labour market, and would accept the present drafting of paragraph 1 without the word "notamment" or, preferably, a formula in the sense of the British proposal.

For the progress of the Committee's work, it seemed indispensable that it should take a decision on this extremely important question, namely, the question whether a State could, after a foreigner's admission, make conditions which were at variance with Articles 7 and 8. Whether the reply were in the affirmative or in the negative, it should be stated in unambiguous terms.

M. POLITIS *(Greece)*, Rapporteur, desired to give his opinion on the principal questions raised, namely: (1) the retention or omission of the word "notamment"; (2) the meaning of the words "reasons of public order" in the fourth paragraph, and (3) the place to be given to the new draft submitted to the Committee.

In regard to the first question, there was obviously a misunderstanding as to the word "notamment". It had only been introduced into the original wording as a precaution and in order to make sure that nothing should be forgotten, but the sense of the first draft had evidently been that the States would be entitled to use their freedom as they thought fit in regard to admission. The misunderstanding had arisen when the omission of the word "notamment" had been proposed. Some speakers had urged this course with the idea that the position reached in this way would be that which was the object of the British amendment, namely, that the States should not be enabled to make admission contingent upon conditions incompatible with the Convention. It appeared, however, that the majority of the members of the Sub-Committee had desired merely to remove the word on the ground that it was useless, since, when it was said that a State could limit the duration or benefits conferred by admission, the addition of the words "freedom to travel, sojourn, establish themselves, elect their domicile and move from place to place" defined the extent of the freedom to be enjoyed by a foreigner who had been admitted to the territory. All ambiguity must be avoided, and he failed to understand the misgivings of the Economic Committee and the International Chamber of Commerce. It had been said that it must be fully understood that the State could not make admission contingent upon conditions incompatible with the Convention, but the power to do more included the power to do less, and, if a State was free purely and simply to refuse or to grant admission, it was, *a fortiori*, free to restrict admission to sojourn without establishment, or to establishment, for the purpose of engaging in a specified occupation. The misgivings to which he had alluded would be comprehensible if the right to refuse admission had not been granted. Like the majority of members of the Sub-Committee, he was in favour of omitting the word "notamment", not, however, in the sense indicated by the representative of the International Chamber of Commerce, but because it was superfluous. The present text without this word gave the States the right to regulate admission as they thought fit in all respects.

Secondly, he agreed that the words "reasons of public order" were too wide and might give rise to difficulty or to abuse in application. The suggestion of the Belgian delegate, who proposed that the only case covered should be that of criminal proceedings, was too narrow, for there were countries which considered that the administration of justice would not be free if the judge could not require the attendance of an indispensable foreign witness and, if need be, prevent him from leaving the territory before he had given his evidence. In countries with this system, diplomatic representations such as those referred to by the Belgian delegate would be useless, since the Government would simply reply that the matter was in the hands of the courts and that it was impossible to interfere. He thought that a formula on the lines of the British proposal, "unless individually prevented by order of a competent court", would avoid any arbitrary interpretations.

The Polish delegate had proposed the addition of the words "ou de refoulement". He thought that, in international common law, expulsion included prohibition of entry, and that a foreigner who had been expelled could not re-enter the country without being liable to criminal proceedings. It would no doubt suffice if it were explained in the report that the right to expel a foreigner was taken to include the right to prevent him from returning.

Thirdly, should Article 6 be kept as a single article or divided in two? Obviously, if the article were split up in the Convention, it would lose in clarity and some of the doubts and difficulties, which the Sub-Committee had endeavoured to settle, would be re-opened. In any case, M. Stucki had been right in saying that paragraph 3 could not be separated from paragraph 2, and the same remark applied to paragraph 4. If a division were to be made, it should be between paragraph 1 and the three other paragraphs, but it would be a mistake for paragraph 1, which was of vital importance, to be relegated to the end of the Convention. It would be possible to read the first paragraph as Article 6, and to make an Article 6 *bis* out of the three other paragraphs.

He would call the Committee's attention to the practical disadvantages in respect of interpretation which would result from splitting up the provisions of the article. He hoped that this long discussion would end in a unanimous decision to accept the present text, subject to the amendments proposed to paragraph 4, and to recommend that, in principle, the text should remain in the place assigned to Article 6, the question whether the article should be divided later being kept open. The answer to the last question would depend on the decision of Committee D as to the best place to be given to the various provisions of the Convention.

M. ROTHMUND *(Switzerland)* said that after the Rapporteur's explanations he would not press for the restoration of the word "notamment" or for the insertion in the Protocol of the proposal made in the Sub-Committee by the representative of the International Chamber of Commerce.

As to the question whether there should be a single article or whether the present article should be split up, he considered that the German delegate was right. This was a point to be settled later, for there were other articles which also referred to admission and he would also withdraw his proposal on this subject.

M. DE LA VALLÉE POUSSIN *(Belgium)* asked the Rapporteur for an explanation of the words "selon les cas" in the French text of paragraph 2.

M. POLITIS *(Greece)*, Rapporteur, replied that these words were indispensable. They were intended to bring paragraph 2 into concordance with paragraph 1, and to make it possible to take into account in paragraph 2 certain shades in the earlier paragraph. They meant that, if a country had restricted admission to, say, sojourn, a foreigner could not demand national

treatment in regard to establishment. National treatment could only be demanded for the points coming within an authorisation granted in respect of admission. This idea recurred in the expression "with regard to each of the said rights" which occurred a little later in the paragraph, and was also intended to bring paragraph 2 into concordance with the sense of paragraph 1.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that he was satisfied with regard to the substance of the question, but not regarding the form. He would prefer a wording in the following sense: " selon les diverses modalités prévues au paragraphe 1". Furthermore, the question whether paragraph 1 should stand where it was or should be relegated to the Convention had not yet been settled. In the second case, the words in question would lose all meaning. In any event, the question of drafting would have to be reconsidered.

M. LANDUCCI *(Italy)* said that the present text of Article 6 satisfied the Italian delegation except for the words "unless individually prevented for reasons of public order". The words "reasons of public order" were of far too wide a scope, and the Rapporteur's amendment to include "judicial reasons" was too restricted. He preferred the German amendment, which he would amend slightly as follows: "by an order given in conformity with the laws and regulations of public law".

M. ITO *(Japan)* inferred from the Rapporteur's explanations that a foreigner who had been admitted for purposes of residence would receive equal treatment with nationals as regards residence, but not, for instance, in regard to the right to move from place to place or sojourn, and that the practical consequence of this interpretation would be to deprive a foreigner of the national treatment granted him under paragraph 2. He had understood the words "selon les cas" as meaning " according to the laws applicable in the different cases ".

M. POLITIS *(Greece)*, Rapporteur, drew the Japanese delegate's attention to the different shades of meaning in the word "admission". A foreigner could be assimilated to nationals to the extent to which he had been admitted to the territory. That was to say, for instance, if he had not been admitted with the right to travel throughout the whole territory, he would not be assimilated to nationals in regard to that right.

As to the words "for reasons of public order", he understood that the Committee agreed that they should be replaced by another formula. The German, Belgian and British delegations had all submitted proposals. The suggestion by M. Landucci had been amended by M. Pilotti and would read as follows: "in accordance with an order given by the competent authority in conformity with the laws and regulations of public law". Provision must be made for the case, for instance, of a foreigner suffering from a contagious disease whose departure from the territory the competent health authorities wished to prevent for reasons of public health.

MR. BECKETT *(British Empire)* said that, at first sight, the Italian amendment as modified appeared to be an improvement.

THE CHAIRMAN thought that the Committee could, in principle, accept the substance of the first three paragraphs. As to the wording of the fourth paragraph, he suggested that the four delegations which had submitted amendments should agree on a text to be submitted to the Committee at the next meeting.

M. NEDERBRAGT *(Netherlands)* said that the misgivings felt by the Netherlands delegation with regard to the words "selon les cas" had been enhanced by the explanations given by the Rapporteur, which showed that the paragraph in question was absolutely contrary in meaning to the explanations which had been given by the representative of the Economic Committee. M. Serruys had said that after admission a foreigner was free to travel, sojourn, elect his domicile, etc.

M. POLITIS *(Greece)*, Rapporteur, laid particular stress on the words "after admission". The question was precisely to determine what form of admission was meant.

M. NEDERBRAGT *(Netherlands)* adhered to his opinion. Everything depended on the retention of the three words in question and, after the explanations which had been given, the second paragraph would be of no great value if those three words were retained.

SALIH ZEKAI BEY *(Turkey)* said that, if it was understood that paragraphs 1 and 2 covered not only admission but also the possibility of restricting the sojourn of foreigners who had been admitted by the application of the laws in force and of the police regulations, his delegation would agree to the draft submitted by the Rapporteur.

M. POZNANSKI *(Poland)* pressed for the retention of the words "selon les cas", which were supported by the great legal knowledge of the Rapporteur. If they were removed, the entire structure that had been built up would be demolished and the whole discussion would be re-opened.

THE CHAIRMAN thought that the text had been adopted in principle subject to the explanations of the Rapporteur and to the introduction of certain amendments in paragraph 4.

M. ITO *(Japan)* said that he adhered to his position.

M. NEDERBRAGT *(Netherlands)* said that the same remark applied to himself.

M. PILLAULT *(France)* accepted the proposed draft, subject to the reservation made by his delegation, as to the scope of the article and the addition to be made with regard to the protection of the national labour market.

THE CHAIRMAN replied that it was understood that a text would be prepared following, in a general manner, the lines of paragraph 3 of the Protocol *ad* Article 7.

26. **Procedure.**

THE CHAIRMAN drew attention to the fact that the time at the disposal of the Conference was limited. It would be necessary to revert to Articles 1 to 8. There remained for discussion Articles 9, 10 and 11. In agreement with the Rapporteur, he thought that the best way of facilitating the examination of these articles would be to refer them to a Sub-Committee consisting of the jurists attached to the various delegations, since the articles referred to legal questions. The jurists would be joined by the various delegates who had proposed amendments. The Sub-Committee would report later to the plenary Committee.

The proposal of the Chairman was approved.

FOURTEENTH MEETING

Held in Paris on November 18th, 1929, at 3 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

27. **Examination of the Articles of the Convention : Article 6** (continuation).

THE CHAIRMAN submitted the following revised text of paragraph 4 of Article 6 :

> "They shall have the right to leave the territory without let or hindrance unless individually prevented by a decision of a competent authority in conformity with the municipal law of the territory in question and with the rules of international law, irrespective of the right of expulsion or refusal of admission the exercise of which each of the High Contracting Parties reserves in the manner sanctioned by ordinary usage according to its legislation and the provisions of international law."

28. **Protocol ad Article 7, Paragraph 3, and Protocol ad Article 8.**

THE CHAIRMAN said that the Committee would now consider the proposal put forward by the French delegation to the effect that paragraph 3 of the Protocol *ad* Article 7 should be taken as a basis of a new article to be embodied in the Convention.

M. PILLAULT *(France)* said that during the first discussions upon Article 7 he had understood that paragraph 3 *ad* Article 7 would also apply to Article 29. It might be left to the Drafting Committee to decide where exactly this paragraph should be inserted. He would ask the Committee, however, to confirm its decision that the paragraph should be of general application.

M. MAYER *(Austria)* said he was prepared to accept the French proposal, provided that the principles embodied in the amendments moved by the Austrian delegation to Articles 7 and 8 (Annex A, 5) were not thereby prejudiced.

DR. MARTIUS *(Germany)* reminded the Committee that the German delegation had moved an amendment to the effect that the words "employees and other wage-earners" should be deleted from paragraph 3 of the Protocol *ad* Article 7. He thought it was generally admitted that measures for the protection of the national labour market should not be applied to the class of wage-earners to which these words referred. It was necessary to draw a very clear distinction between manual workers and the salaried staff who were excepted by the terms of the Protocol. There was no doubt in his mind that the present text was not intended to refer to managers and directors.

M. PILLAULT *(France)* said he would agree to any satisfactory formula. He merely wished to secure the recognition of the general principle.

Mr. PUGH *(British Empire)* thought that the paragraph under discussion had a rather wider application than appeared from its present position. He was in favour of the French proposal in view of the modification of Article 6 which had been adopted at the morning meeting. He now assumed that the provisions of paragraph 3 of the Protocol *ad* Article 7 would cover Articles 6, 7 and 8.

He would draw attention to an amendment submitted by the British delegation to the terms of the Protocol *ad* Article 8 (Annex A, 1). The proposal of the French delegation, however, would cover the first part of the amendment and, if the French proposal were carried, this part of the amendment could be withdrawn.

M. ITO *(Japan)* said that it had been agreed that the question of the admission of workers to the territory of a high contracting party was a question that lay outside the Convention and that Article 7 referred only to persons who had been admitted. He was prepared to accept any amendment which would enable the high contracting parties to regulate the national labour market, but he had pointed out during the discussions of Article 8 that this article dealt with a special case that covered a restricted field of activity. If the terms of the Protocol *ad* Article 7 applied to Article 8, he would find it difficult to accept that article. He would agree to the principle of paragraph 3 of the Protocol *ad* Article 7, namely, that Governments should retain the right to protect the national labour market. But this general principle could not be applied in the special cases covered by Article 8 without some risk of abuse. If the paragraph were accepted, he would therefore find it necessary at a later stage to submit a text which would guarantee the high contracting parties against any abuse of the provisions of the paragraph in its application.

M. PEROUTKA *(Czechoslovakia)* said that the laws of his country for the protection of the labour market covered all classes of employers. This law was elastic and had been often modified by means of bilateral agreements. He could not, however, agree to the suppression of the words to which the German delegation had taken exception, or to any similar formula which might be suggested in respect of Article 8.

M. MAYER *(Austria)* agreed with the delegate of Czechoslovakia. There were laws in his country which covered intellectual as well as manual workers. Those laws could not be modified until the circumstances which they had been designed to meet had changed. It was impossible for any Government to surrender its right to take precautionary measures against unemployment. He did not, however, wish to oppose the formula which applied only to managerial posts.

M. LANDUCCI *(Italy)* said he could not support the proposal to suppress the words to which the German delegation had taken exception. States had found it necessary to protect not only their manual workers but also salaried employees. He had understood that the whole question had been settled in accordance with the observations of the Economic Committee contained in the "Brown Book", and that this matter would not come up for discussion.

The Italian delegation, in the proposals which it had put forward in relation to Article 8, had desired to make reservations in respect of temporary employments and certain important industries. The Italian Government, except in special circumstances, freely admitted foreigners to take up industrial positions, but it could not abandon its right to exercise discretion in this matter. He would find it difficult to approve paragraph 3 unless the words to which the German delegation objected were retained.

THE CHAIRMAN said that the Roumanian delegation had put forward a proposal in the following terms :

> "Article 8 and paragraph 2 of the Protocol *ad* Article 8 to be drafted as printed in the "Brown Book", and the following to be substituted for paragraph 1 of the Protocol *ad* Article 8 :
>
> "1. The High Contracting Parties agree not to avail themselves of the right reserved to them to refuse admission to or to expel a foreigner in such a manner as to render inoperative the guarantees laid down in the present article, *i.e.*, to refuse admission to foreigners engaged to perform certain functions in undertakings belonging to foreigners and particularly those of manager, director, chief technical officer or other functions of similar importance which are essential to the establishment of these undertakings.
>
> "It is understood, however, that neither the provisions of Article 8 nor the foregoing paragraph of the Protocol *ad* Article 8 shall hinder the application of regulations prescribing the assignment to nationals of a certain proportion in each category of functions and posts, it being understood that these same regulations shall also be applied to the undertakings of nationals."

Did the Committee think that a solution of the question might be found on the basis of this text ?

DR. MARTIUS *(Germany)* asked the Committee to take a decision in regard to the deletion of the words to which he had raised objection. He was under the impression that the text suggested by the Roumanian delegation was not sufficiently clear.

The first paragraph of the Roumanian amendment referred to admission, whereas the real question at issue was the protection of the national labour market. There were two points for

decision. The first was whether there were any persons who should be excepted from the scope of the provisions designed to secure the protection of the national labour market. The second point was who those persons should be in the event of the first question being answered in the affirmative.

He would ask the Committee to take a decision upon the proposal of the German delegation to suppress the words "employees and other foreign wage-earners".

M. PILLAULT *(France)* said he had no objection to raise in principle to the views embodied in the Roumanian amendment. The text, however, should, in his opinion, be revised. The essential idea was that the exceptions provided in the text should refer only to persons in positions of importance.

M. POPESCU *(Roumania)* said that two questions were dealt with in the amendment. There was, first, the question of admission, and, secondly, there was the question of the protection of the national labour market. The draft was not intended to be in any sense final. He would suggest the addition of a phrase to the effect that the provisions of the amendment were without prejudice to the provisions of Article 6.

M. STUCKI *(Economic Committee)* said that Article 6, as adopted by the Committee, settled the question of the admission and circulation of foreign nationals. Article 7 regulated the question of the occupations and activities of foreigners admitted to a country ; Article 8 was intended to regulate a special question affecting only superior staff. The question of the protection of the national labour market was no longer open for discussion. The whole problem of admission was settled in the sense that it was left to the discretion of Governments, and the protection of the labour market no longer arose so far as admission was concerned.

It was, accordingly, impossible to lay down special stipulations applying to a certain category of staff without involving a derogation from the principles of Article 6. The question under consideration was whether a foreigner who had been admitted to a country unconditionally and who desired to take up an occupation which was not reserved by paragraph 2 of Article 7 should be prevented from doing so on the ground that it was necessary to protect the national labour market against him. The solution proposed in Article 8 was that such permission might be refused if the posts concerned were those of subordinates. This solution was not logically compatible with the provisions of Article 7, since, if it were adopted, it could not be maintained that the protection of the national labour market was a question wholly reserved for the discretion of Governments.

The question to decide was whether Article 7 covered both subordinate and superior staff. If it were interpreted as covering all categories of staff, there was no necessity whatever for Article 8. If, on the contrary, a distinction were drawn between subordinate and superior staff, it must be assumed that Article 7 covered only subordinate staff.

M. PEROUTKA *(Czechoslovakia)* agreed that Article 8 was unnecessary if the reasoning of M. Stucki concerning its relation with Article 6 were accepted. If the Committee, however, took the text of the Roumanian amendment as a basis, it would, in his opinion, be necessary to introduce into the first paragraph qualifying words to define the functions which the foreigners might be engaged to perform.

He would suggest, after the word "functions", the words "mentioned in Article 8" should be inserted, and that the word "certain" should be deleted. It was also desirable to delete the words "any undertakings belonging to foreigners, and particularly those of manager, director, chief technical officer or other functions of similar importance".

M. LINANT DE BELLEFONDS *(Egypt)* referred to the proposal of the German delegation to delete the words "employees and other foreign wage-earners" from the third paragraph of the Protocol *ad* Article 7. These words were, in his opinion, inconsistent with the words used in Article 8, which referred to persons employed in an administrative or technical capacity. It would be necessary to bring these different descriptions into concordance.

The important question for the Committee to decide was the extent of the discretion to be left to Governments in regard to subordinate staff.

M. STUCKI *(Economic Committee)* admitted that there was a logical contradiction between the expressions to which M. Linant de Bellefonds had drawn attention. He would only plead in extenuation that the Economic Committee had only been able to devote some ten hours' discussion to provisions which the present Conference would be discussing for a month.

M. NEDERBRAGT *(Netherlands)* said that the Netherlands delegation had approved paragraph 3 of the Protocol *ad* Article 7 previous to the present discussion. Phrases, however, which might seem acceptable at first sight might, on closer examination, be seen to give rise to difficulties. The present discussion convinced him that the words which the German delegation desired to suppress ("employees and other foreign wage-earners") were unacceptable if any real emphasis were laid upon them, and he would agree to the deletion of those words.

It was being proposed to apply stipulations, which the Economic Committee had considered in relation to Article 7, to Article 8 of the Convention, and the Netherlands delegation did not think that this was possible.

He was prepared to accept paragraph 1 of the Roumanian amendment. He could not, however, accept paragraph 2, which, in his opinion, deprived Article 8 of any real importance and was in contradiction to the previous paragraph of the Roumanian amendment itself.

M. LANDUCCI *(Italy)* said that he could not accept a text which did not cover the whole field of the national labour market. In Italy the national labour market was taken to mean all persons who, in return for economic services rendered to others, received wages or salary or any other kind of remuneration. No distinction was made between manual workers, employees and other salaried persons.

All categories of workers must be covered by the reservation of the Italian delegation, which could not admit any exception to the principle. He hoped that the Conference would realise the danger of making exceptions of this kind.

He assumed that the question of the admission of foreigners would remain outside the limits of the work of the Conference. The Italian Government had been asked to participate in the Conference with a view to concluding a Convention on the treatment and not on the admission of foreigners, as would be seen from the following passage on page 67 of the "Brown Book": "Article 29 limits the scope of the Convention in accordance with the principle laid down in the Preamble".

Any exception was also contrary to Article 6 of the text of the Convention. For that reason, he asked that the question of admission should not be discussed by the Conference.

M. RIEDL *(International Chamber of Commerce)* agreed with M. Nederbragt in regard to the Roumanian proposal. He desired to put forward a suggestion to which the Roumanian delegation had already agreed. This suggestion consisted in deleting in paragraph 2 the words: "of a certain proportion in each category of functions and posts", and replacing these words by the following:

> ". . . . Of an equitable proportion in the various categories of workers and employees to the extent in which such a provision may be applicable from the point of view of a rational management of the undertakings."

M. DE LA VALLÉE POUSSIN *(Belgium)* said he did not quite agree with M. Stucki, who had drawn attention to an inconsistency between Article 7 and Article 8. In his view, the two articles formed a whole which was entirely logical.

Paragraph 3 of the Protocol *ad* Article 7, which reserved measures for the protection of the national labour market, clearly showed that this reservation should be interpreted in a wide sense; in other words, as applying not only to labour proper by speaking, but to office staff.

Article 8, on the contrary, referred to only an extremely limited class of persons, namely, those who were entrusted with the management of enterprises and who might enter into contracts on behalf of those enterprises. The provision contained in Article 8, though it only affected a small number of persons, was of the greatest importance. It was essential that foreign firms should not be hampered in the choice of their superior staff, who performed duties of trust, by measures intended to protect the labour market. The exception embodied in Article 8 was quite reasonable and of the greatest importance from the economic point of view.

THE CHAIRMAN said he would first ask the Committee to decide whether the proposal of the German delegation to suppress the words "employees and other foreign wage-earners" from paragraph 3 of the Protocol *ad* Article 7 should be accepted.

The German proposal was rejected by a majority of the Committee.

THE CHAIRMAN said that, in view of this decision, he would assume that the Committee accepted the proposal of the French delegation, which was to the effect that an article should be inserted in the Convention based upon paragraph 3 of the Protocol *ad* Article 7, as given in the "Brown Book" of the Conference.

He would suggest that the Committee should next take up the question of the Protocol *ad* Article 8, and he would ask the delegates to decide whether any amendments, suppressions or additions to the text of the Roumanian proposal were necessary.

M. LINANT DE BELLEFONDS *(Egypt)* represented that, in view of the adoption of Article 6 at a previous meeting, it seemed to him that any reference to the question of admission in Article 8 was inappropriate. The question of admission had been settled, but it was now proposed to limit the discretion of Governments in regard to that matter.

M. ITO *(Japan)* said that M. Stucki and M. de Bellefonds were right in theory and in principle. It was necessary, however, to bear in mind a distinction which existed in fact and which could not be ignored.

In most countries there were many difficulties in the way of admitting manual workers. There was, however, another class of workers, namely, intellectual workers, who were in practice quite differently regarded by the countries to which they were admitted, and it was essential that the distinction which was made between these classes in practice should be recognised. He accordingly felt that something in the sense of the Roumanian amendment should be adopted.

M. POZNANSKI *(Poland)* asked whether it was not difficult for the Committee to discuss the Protocol *ad* Article 8 before the text of Article 8 itself had been determined.

THE CHAIRMAN reminded the Committee that at a previous meeting it had decided that it was impossible to discuss the text of Article 8 until the terms of the Protocol had been decided,

and the Committee had resolved that the terms of the Protocol should be debated on the assumption that the text of Article 8 would remain substantially in its present form.

M. PILLAULT *(France)* said he agreed in substance with the Roumanian delegation, but he desired to move an amendment to the text. The question of admission had been settled in Article 6, and it was undesirable that it should be raised again. His amendment was designed to suppress all reference to the question of admission. Paragraph 1 would read as follows :

> "The High Contracting Parties undertake not to apply in their territory the measures which they may take for the protection of the national labour market in so far as the superior staff responsible for the direction and management of undertakings belonging to the nationals of other High Contracting Parties may be concerned."

M. POPESCU *(Roumania)* said he was prepared to accept the amendment proposed by the French delegation. He would ask, however, that a form of words should be introduced making it clear that the paragraph in question was without prejudice to the provisions of Articles 6 and 7 and other articles of the Convention relating to the protection of the national labour market. A reference of this character would make it clear that the paragraph embodied a moral undertaking rather than a formal obligation.

THE CHAIRMAN asked whether the Committee was prepared to accept, in principle, the amendment moved by the French delegation for paragraph 1 of the text under discussion. The precise drafting of the final formula might be left to the authors of the amendments.

M. MAYER *(Austria)* said he would accept the text proposed by the French delegation so long as it was clear that the paragraph did not impose a strict and formal obligation upon the high contracting parties.

M. PILLAULT *(France)* said it would be difficult to make the provision merely optional ; the undertaking should involve an obligation.

THE CHAIRMAN said that the Rapporteur was ready to prepare the final draft in consultation with the delegations who were specially interested.

M. NEDERBRAGT *(Netherlands)* thought it was necessary to decide not only the question of principle, but whether the provision in question would take the form of a recommendation or a formal undertaking.

M. SANDSTROEM *(Sweden)* said he was prepared to adopt the first paragraph of the Roumanian proposal.

THE CHAIRMAN asked the Committee whether it was of opinion that the substance of paragraph 1 should be embodied in a definite obligation or whether it should be merely a moral undertaking.

DR. MARTIUS *(Germany)* said there were two questions for decision. The first related to the French proposal. The German delegation was not opposed to that proposal, since its own proposal had been rejected.

There was, however, another proposal before the Committee, namely, that of the Roumanian delegation, which dealt with certain difficult points. He thought that all these proposals should be referred to a sub-committee consisting of those who had suggested amendments to the Roumanian proposal and any other delegations which might be interested.

He did not think that any vote which could be taken by the Committee at the present moment would be likely to help the Rapporteur to frame a final text.

THE CHAIRMAN agreed.

M. DINICHERT *(Switzerland)* said that, if the various amendments went to a sub-committee, he would ask the sub-committee not only to consider the text to be presented for adoption, but the question whether it was necessary to insert any provisions at all in the Protocol.

Article 6 had reserved full discretion to the Governments in regard to the admission of foreigners. The Protocol *ad* Article 7 had also decided the question of the discretion to be left to the Governments in regard to the protection of the labour market. The delegations were, in view of these provisions, presumably prepared to accept Article 8, which related only to managers and superior staff. He did not, therefore, think that a Protocol *ad* Article 8 was at all necessary, since it would merely confirm the undertaking of the States which accepted Article 8, subject to the reservation contained in Article 6.

Appointment of a Sub-Committee.

THE CHAIRMAN said that a Sub-Committee consisting of the Rapporteur, the authors of the various amendments which had been moved, and any delegations which might be specially interested in the question would consider the texts under discussion and any suggestions which might be raised.

This Sub-Committee would prepare a text of both paragraphs for discussion at a later meeting.

FIFTEENTH MEETING

Held in Paris on November 19th, 1929, at 11 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

29. **Examination of the Articles of the Convention : Article 5** (continuation).

Question of Commercial Travellers.

THE CHAIRMAN reminded the Committee that there were two questions to be examined : (1) the taxation of commercial travellers (Article 5) and (2) the financial question relating to the deposit of security for the collection of taxes (Article 7).

SIR PERCY THOMPSON *(British Empire)* submitted the British amendment (Annex A, 1) to replace the words : " in this connection any taxes or duties, provided they only take with them samples and not goods intended for sale ", by the words "special dues or taxes which are not applicable to national firms and their representatives".

According to the "Brown Book" it seemed that a country could not collect from foreign commercial travellers the taxes levied on its own nationals. It was not possible that the article should have this intention. The problem had two aspects: (1) the taxation of commercial travellers carrying on their occupation as such, and (2) the question, based on the principle of non-residence, of the profits earned by the agents of firms.

This latter question had already been examined by a Sub-Committee which had been unable to agree, because it had not been possible to find the criteria to be taken as a basis for this taxation. For this reason, the British amendment covered the first point, namely, the taxation of commercial travellers as such.

He thought that his amendment rectified a provision which was not in conformity with the spirit of the Convention.

M. RIEDL *(International Chamber of Commerce)* said that it was not without regret that the International Chamber concurred in the British Government's suggestion. The exemption of commercial travellers from taxation was included in many existing treaties of commerce. It would be a pity to introduce into a Convention which was intended to facilitate international trade a restriction regarding the business of commercial travellers. The International Chamber, however, must take into account the British Government's attitude, and the British proposal was justified to a certain degree.

The Committee would realise that the text suggested by the International Chamber for the first paragraph of Article 5 (Annex A, 4) corresponded to the proposal of the British delegation. To this text the International Chamber had added a draft which was to be inserted in the Protocol and which would obviate the injustice of requiring foreign commercial travellers to pay the entire amount exacted in respect of the whole year from national commercial travellers. The International Chamber's draft was as follows :

> " 1. Considering that it would be unfair to require from foreign commercial travellers who stay only a short time in a foreign country the payment of taxes or licence-fees as high as those levied upon national commercial travellers who, in virtue of their licence or the payment of the tax, are entitled to exercise their activities for a whole year, the High Contracting Parties agree that foreign commercial travellers shall be required to pay only an amount corresponding to the number of months which they actually spend in the territory of the country in question. Fractions of months shall be reckoned as full months."

Further, a manufacturer, trader or commercial traveller often had occasion to visit a foreign colleague, not for the purpose of doing business or making offers or concluding contracts, but simply in order to keep up relations or to confer on questions which had only an indirect connection with orders ; for instance, complaints, or desiderata, or details for carrying out an order already placed, etc. It would be unfair to levy from a businessman making a visit for this purpose the same amount of taxation as that levied from commercial travellers who came to the country to do business or conclude contracts. The International Chamber of Commerce accordingly suggested the completion of the Protocol by the following second text :

> " 2. It shall be understood that such a tax or fee may not be levied on travellers who, although they may travel for commercial purposes, do not intend to solicit orders or to make purchases."

In the third place, as he had already pointed out, it would be most regrettable if the adoption of the British proposal were to result in a retrogression as compared with the existing situation, since exemption from taxation was nowadays included in a large number of treaties of commerce. In order to avoid this regrettable result, the International Chamber recommended the adoption of an additional Protocol A which would form an integral part of the Convention and would be

applicable only between the contracting parties which had signed the Additional Protocol A. This Protocol would be worded as follows :

"The undersigned Governments, signatories to the International Convention concerning the Treatment of Foreigners, are agreed that nationals of one of the High Contracting Parties signatories to the present Protocol who, by the possession of an identity card delivered by the authorities of a signatory to this Protocol in whose country they are established, prove that they are legally entitled to engage in industry or business in that country and that they therein pay the lawful taxes and duties shall not require a special authorisation for any of the commercial transactions mentioned in Article 5 of the International Convention concerning the Treatment of Foreigners, nor shall they be obliged to pay in this connection any taxes or duties, provided they only take with them samples and not goods intended for sale."

The wording of this Additional Protocol A was borrowed from the treaties of commerce now in force between a number of European countries. If the Conference accepted Additional Protocol A, it would also be asked to accept an additional Protocol B which would be worded as follows :

"The undersigned Governments, signatories to the International Convention concerning the Treatment of Foreigners, declare explicitly that, except in so far as they themselves grant full and effective reciprocity, they will not claim for their own nationals, in virtue of the most-favoured-nation clause inserted in any bilateral treaty, the benefits accruing under Additional Protocol A to nationals of the countries whose Governments have signed the said Additional Protocol A."

He thought that the solution he had suggested would furnish an acceptable compromise for the Scandinavian countries whose legislation was incompatible with the provisions of the article even when modified in accordance with the British amendment.

M. SANDSTROEM *(Sweden)* commented on the observations submitted by the Swedish delegation (Annex A, 8) with regard to Article 5 and the draft Protocol *ad* Article 5 submitted by the Danish, Finnish, Norwegian and Swedish delegations. The draft Protocol was as follows :

"The levying, inrespect of the operations referred to in Article 5, of a fee fixed according to the residence of the foreign trader or commercial traveller and taking the place of a tax, shall be permitted to those of the High Contracting Parties who at present adopt this system without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealings with the former.

"It is understood that no tax or fee of this kind shall be levied in the case of traders who have no intention of soliciting orders or purchasing goods."

He understood that the International Chamber of Commerce was prepared to accept this reservation in principle. Without wishing to go into details, he stressed the importance attached by Swedish public opinion to this question. Some might find the importance attached to it in Sweden excessive, but the matter must nevertheless be taken into account. It was feared in Sweden that the effect of exempting foreign commercial travellers might be to place Swedish commercial travellers in a situation of inferiority, and that, if Swedish public opinion were not given satisfaction on this point of detail, the rewould be a danger that it would refuse its support in regard to more important questions, and that in the last analysis the ratification of the Convention might be compromised. He ventured to call the serious attention of the other delegations to these considerations. Furthermore, in order to prove the spirit of conciliation by which it was animated, the Swedish delegation had in its texts made allowance for the condition of reciprocity and for the exemption from taxation of traders going abroad, but not for the purpose of soliciting orders or making purchases.

M. ENGELL *(Denmark)* was in entire agreement with the observations of the Swedish delegate. The Danish system was at all points similar to that of the other Scandinavian countries, and had been in force for about a century. If it were alleged that the system was a serious handicap to international trade, he would content himself in reply with mentioning the number of foreign commercial travellers who had visited Denmark in 1913 and 1928. In 1913, there had been 1,250 commercial travellers, and in 1928 3,600.

He also supported his Swedish colleague's observations concerning the attitude of public opinion in the country towards this question. He would add that Denmark had no intention of introducing more burdensome measures than those now existing. This, moreover, followed from the fact that the existing taxes were even now consolidated contractually, and that there was no reason to fear that they would be raised in the near future. His Government could not sign a Convention which did not allow of a reservation permitting the maintenance of the existing legislation in Denmark.

M. PUSTA *(Estonia)* associated himself with the proposal of the Swedish, Danish, Finnish and Norwegian delegations. The Estonian delegation entirely endorsed that proposal. The taxes on foreign commercial travellers in Estonia were accepted by many industrial countries, and had never been regarded as a serious handicap to international trade. The acceptance of this reservation was an essential condition for Estonia's adhesion to the article.

M. HOLMA *(Finland)* said that, for legislative reasons, his delegation entirely concurred in the views of the Swedish and Danish delegations and he vigorously supported the observations of the Swedish delegate.

M. BENTZON *(Norway)* was in entire agreement with the observations of the Swedish delegate.

THE CHAIRMAN asked the Conference to vote on the substance of the amendment submitted by the Danish, Estonian, Finnish, Norwegian and Swedish delegations. He added that, if the amendment were accepted in substance, he would propose a slight modification in the drafting.

The amendment was adopted by fifteen votes to five.

THE CHAIRMAN enquired whether the delegations which had submitted the amendment would consent to substitute for the words " without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealings with the former ", which might be interpreted as an invitation to practise discrimination, the following sentence, which would only improve the wording : " it being understood that the other High Contracting Parties are relieved of their obligations towards the said High Contracting Parties arising out of the present Convention in respect of such taxation ".

M. SANDSTROEM *(Sweden)* said that the delegations concerned had no objection to this wording.

THE CHAIRMAN asked the Committee to take a decision on the proposals of the International Chamber of Commerce.

M. SANDSTROEM *(Sweden)* asked if it was understood that the vote would be taken subject to the reservation of the amendment which had just been adopted.

THE CHAIRMAN replied in the affirmative. If there were any incompatibility between the amendment which had just been adopted and the text now under discussion, the matter would be adjusted.

The Chairman then read the amendment suggested by the International Chamber of Commerce to paragraph 1 of Article 5 (Annex A, 4).

M. CARAVALE *(Italy)* wished to remove any possible misunderstanding. The Committee had just voted an amendment arising out of a special reservation made by certain Governments in regard to the levying of a tax on foreign commercial travellers. It was now asked to discuss a proposal by the International Chamber of Commerce which was appreciably in conformity with the British proposal and dealt with a general question. The Italian delegation would, in principle, be prepared to accept the Economic Committee's text which stipulated the exemption from all taxes or dues of commercial travellers, manufacturers, or traders engaging in the operations mentioned in the paragraph of Article 5. The principle contained in the International Chamber's amendment would, on the other hand, signify a retrogression as compared with the position under bilateral treaties of commerce, which had adopted the principle of the exemption from all taxes or dues of commercial travellers.

He ventured to submit two observations :

First, the proposals by the British delegation and the International Chamber spoke of " special taxes or dues ". What was the exact meaning of this adjective ? Did it mean that commercial travellers were not to be liable to ordinary taxes or that they would be liable to them ?

Secondly, he wondered whether the procedure recommended in the International Chamber's suggestion concerning the adoption of two additional Protocols was practical. Personally, he thought that very few countries would be prepared to sign a protocol under which they would waive the right which they held under existing bilateral treaties of commerce.

THE CHAIRMAN said that the Committee would discuss the proposal by the International Chamber of Commerce concerning the adoption of two additional Protocols in due course. As to the International Chamber's amendment to paragraph 1 of Article 5, he asked M. Riedl what was meant by the words " special dues or taxes ".

M. RIEDL *(International Chamber of Commerce)* said that the meaning of this term would be understood if the whole of the end of the paragraph under discussion were read. The text was as follows : " Nor shall they be obliged in this connection, etc.". " In this connection " meant in connection with the transactions already mentioned. The text was meant to refer to taxes levied solely on foreign commercial travellers and not exacted from national firms and their representatives. He quite agreed that the word " special " was unnecessary and proposed that it should be struck out.

THE CHAIRMAN said that the question of keeping or dropping the word " special " would be left to the Drafting Committee.

M. DINICHERT *(Switzerland)* wished to make a purely formal observation which was, however, of some importance. The Committee had already accepted Article 5, paragraph 1, down to the words " they shall not require a special authorisation for any of these transactions ". The only question reserved was that of taxation, and he urged that the vote to be taken should deal only with this part of the paragraph which had been left over.

THE CHAIRMAN agreed. He would ask the Committee to vote upon the International Chamber's draft amendment to the end of the first paragraph of Article 5 in the following form :

"Nor shall they be obliged in connection with such transactions to pay any tax or duty not imposed on national business firms or their representatives, provided they only carry with them samples and not goods intended for sale."

The amendment was adopted by seventeen votes.

Paragraph 2 of Article 5 as in the "Brown Book" was adopted.

Paragraph 3 as in the "Brown Book" was adopted.

M. SZUMIEL *(Poland)* referred to the discussion which had been held concerning the word "producers" in paragraph 1 of Article 5 and the proposals made by his delegation in this connection. He was obliged to renew the Polish reservation.

THE CHAIRMAN asked the Committee to vote upon the first paragraph of the addition to the Protocol submitted by the International Chamber of Commerce (Annex A, 4). He added that, if this text were adopted, it would be without prejudice to the amendments, already approved, of the Danish, Estonian, Finnish, Norwegian and Swedish delegations.

M. PUSTA *(Estonia)* pointed out that the effect of the International Chamber's proposal was to strengthen the proposals of the Scandinavian delegations.

M. SANDSTROEM *(Sweden)* explained how the tax on foreign commercial travellers was organised in his country. For the first six weeks it amounted to 100 crowns, and to 15 crowns for each period of six weeks following the first six weeks. He asked whether this system was incompatible with the proposed clause, and whether the reservation made on behalf of the Scandinavian legislations excluded altogether the application to the Scandinavian countries of the first paragraph of the addition to the Protocol submitted by the International Chamber. He added that originally the tax of 100 crowns had been collected for the first month, but that in order to reduce the burden the period had been increased to six weeks.

M. RIEDL *(International Chamber of Commerce)* said that the first paragraph of the addition to the Protocol submitted by the International Chamber did not affect the reservations made by the Scandinavian countries, but only the provision contained in Article 5 itself in regard to the extension of taxes levied on national commercial travellers to foreign commercial travellers. The International Chamber had suggested the insertion of a clause in the final Protocol in order to protect commercial travellers from unjustified charges. The system for which the Scandinavian countries had applied for a reservation was an exceptional system which was not affected by the proposal under discussion. The States concerned would, of course, always be able to make provision in their internal legislation for a more favourable method of taxation for foreign commercial travellers, as Sweden had done.

The discussion was adjourned.

SIXTEENTH MEETING

Held at Paris on November 19th, 1929, at 3 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

30. **Examination of the Articles of the Convention : Article 5 and Protocol ad Article 5** (continuation).

THE CHAIRMAN said that the Committee would resume the discussion of the reserved fiscal provisions of Article 5. He asked the Committee to continue its consideration of the proposal put forward by the International Chamber of Commerce (Annex A, 4).

M. BLAU *(Fiscal Committee)* said that the Fiscal Committee and the experts on double taxation and fiscal evasion had, in dealing with the question before the Committee, emphasised two considerations. First, they were of opinion that the temporary residence of a commercial traveller in the territory of a foreign country with the object of visiting his customers and soliciting orders should not justify the levying of a tax on the income of the traveller. Secondly, the fact that a firm or industrial concern sent a traveller to visit its customers in a foreign country should not give that country the right to tax the firm or industrial concern upon the profits resulting from the activities of its traveller.

The opinion of the experts on double taxation and the model conventions which had been framed by them were based on the principle that a country should not have the right to tax a foreign commercial or industrial enterprise unless it had a stable establishment in its territory.

Starting from this double point of view, the Fiscal Committee approved the principle laid down in the first paragraph of Article 5 of the draft Convention framed by the Economic Committee which provided that there should be a complete freedom from taxation and stipulated that commercial travellers should not be subjected to any taxes or dues in respect of the activities mentioned in the article.

That was the correct solution, and he would emphasise that it formed a basis for the majority of existing bilateral conventions for the avoiding of double taxation. The Fiscal Committee would regret any solution which prejudiced in any way the treatment already accorded in this matter by countries which did not impose any form of taxation on commercial travellers. The imposition of such a tax would be a retrograde step and would involve double taxation for which the Governments were endeavouring at present to find a remedy.

M. PARANJPYE *(India)* said that, in India, there was no taxation by the Central Government on commercial travellers, but certain dues were imposed by local bodies. It was impossible for the Central Government to give effect to any detailed rules for the taxation of commercial travellers by these bodies. He understood that an amendment was being proposed to the effect that the Convention generally would only apply to measures adopted by Central Governments. If that proposal were adopted, the Indian delegation would have no difficulty in accepting Article 5. He pointed out, however, that, in the contrary case, it would be impossible for the Central Government to guarantee that the article would be locally carried into effect.

THE CHAIRMAN said that the question of local arrangements, which lay outside the departmental scope of a Central Government, had previously been raised. He would, at a later stage, ask each delegation to state what articles it would be unable to accept on account of local constitutional difficulties. Committee D, or the General Committee of the Conference, would then be able to decide what should be done in order to meet these local divergencies.

It had been represented by several delegations that the text under discussion was rather too precise. He would ask therefore whether M. Riedl would object to the insertion of the word "generally" before the word "corresponding", and the deletion of the last sentence, which implied a mathematical accuracy in the calculations involved. He further proposed that a statement should be inserted in the report to the effect that the clause was intended to lay down a general principle and not to be applied with a strictly mathematical precision.

M. RIEDL *(International Chamber of Commerce)* accepted the suggestions of the Chairman.

M. BOLAFFI *(Italy)* asked whether the taxes or duties alluded to in the text proposed for the Protocol included a tax levied on the income of travellers.

If it were proposed to settle here the question of the levying of income tax, he would observe that such a tax was always levied on the total amount earned by the taxpayer during the year, irrespective of whether the income was earned during any particular month or during the whole year.

He thought, however, that by the expression "taxes or duties" in the text of the Protocol it was intended to refer only to special taxes or duties which a country might levy upon commercial travellers in respect of their licences. He thought that in this case it was necessary to elucidate the scope of the provision and to bring it into correspondence with the text of the article.

THE CHAIRMAN said that the article did not relate to income tax, but only to licence fees or similar dues to which commercial travellers might be specially subjected.

M. RIEDL *(International Chamber of Commerce)* emphasised that any taxation of the income of commercial travellers or of the profits arising from their undertakings would necessarily involve double or even triple taxation. The exclusion of such double taxation was, however, a matter which lay beyond the scope of the present Convention, and must necessarily be regulated by bilateral or international agreements concerning double taxation.

M. BOLAFFI *(Italy)* agreed, but said it was necessary to be quite clear on the point. The text of the Protocol of the Draft Convention 1, *ad* Article 5, paragraph 1, referred to the "*exemptions* provided in Article 5 for foreign commercial travellers" which "might not be claimed if the claimant stayed in the country for a period so long as to be equivalent to permanent residence". This stipulation evidently referred to a tax on the professional or commercial income of the travellers which the Committee did not apparently wish to consider. Any ambiguity as to this point should be avoided. The Italian delegation was ready, if the Conference so desired, to consider the question of income tax and to declare, for example, that foreign commercial travellers should not be regarded as in the same position as the permanent establishments of a foreign firm. If, however, the Committee desired to settle the problem of double taxation which arose in connection with the establishment of certain foreigners, it was necessary to say so clearly and to consider what solution should be adopted.

M. DINICHERT *(Switzerland)* agreed with M. Bolaffi that it was necessary to realise clearly what the Committee had decided or was deciding to do in the matter. When Article 5 was first drawn up, it was intended that any person who visited a foreign country, whether he was the owner of a business or a representative of the owner, should not be in any way laid under contribution by the Government of the country. Since the article was drafted, however, there had been several important changes. It was now laid down that, if a country taxed its own commercial travellers in respect of their licences, it might similarly tax foreign commercial travellers, in order to avoid discrimination in favour of the foreigner. He assumed that this tax was a fixed fee collected in return for a licence to trade, and that it was not, in the real sense of the word, a tax. A further point had since arisen. It appeared that certain northern countries imposed a fee on commercial travellers which took the place of a tax and which was based on a calculation of the profits likely to arise from the activities of the commercial traveller. It had been agreed that an exception should be made in the Convention in order to cover this particular point. M. Blau, however, while recognising the necessity of meeting this special case, had expressed the view that it should not extend to other countries where the practice had not hitherto been followed. It had, indeed, been decided that, in future, no taxes should be imposed on commercial travellers for which no precedent existed.

The question of taxation therefore appeared to be settled. The *status quo* was recognised, but the principle of taxation had been generally condemned.

In view of these considerations, it seemed to him that paragraph 2 of the Protocol, as proposed in the text under discussion, was too complicated, and that it was not altogether clear. Why was it necessary to refer to a payment of the tax, when the whole question of taxation had been finally decided ? The only question remaining to be dealt with in the proposed Protocol was the question of fees in respect of licences. The present proposal was that such fees should be collected *pro rata*, and the traveller should pay only the amount corresponding to the number of months which he actually spent in the territory of the high contracting party.

THE CHAIRMAN agreed that the expression might be amended. The Rapporteur might perhaps find a formula which would make it clear that the paragraph referred only to the payment of taxes in the nature of licensing fees.

The Committee agreed.

M. RIEDL *(International Chamber of Commerce)* said that the Economic Committee, in adopting the expression " taxes or duties " had desired to ensure that the provision should cover all possible cases in which commercial travellers were subjected to the collection of dues. It was not desired that the high contracting parties should misunderstand or evade the provisions of the article owing to the fact that dues which they collected were not described in the precise terms used in the Convention.

Certain northern countries had since pointed out that duties levied upon commercial travellers might take the place of taxation. He would emphasise, in this connection, that any taxes levied on commercial travellers clearly involved double taxation. The British delegation had suggested an amendment which had been incorporated in the text which must be regarded as in the nature of a retrogression. It had been pointed out that in some cases national firms or commercial travellers might be subject to certain dues and it had been argued that foreign commercial travellers and firms should not be placed in a privileged position by being exempted from the payment of such dues. In order to avoid this provision leading to a general restriction of a freedom hitherto enjoyed in countries which imposed no such dues upon their nationals, it was, in his opinion, necessary to add to the Protocol stipulations to the effect that States which did not at the present moment collect such dues should not introduce them in future. The principle of reciprocity as between the States which benefited from the facility accorded under Article 5 should be recognised.

He would suggest that the amendment which had been introduced as a result of the representations of the British Government should be struck out. This would involve the disappearance from paragraph 1 of the words : " not imposed on national firms or their representatives ". The striking out of these words would restore full liberty of circulation for travellers and that was the solution which the International Chamber of Commerce would prefer.

M. DE NICKL *(Hungary)* said that, in Hungary, any traveller who did business in the country was taxed upon the profits of that business. There was no tax upon the commercial traveller as such, but there was, on the other hand, a turnover tax. He felt somewhat confused by the reference in the article and in the Protocol to taxes, dues, fees, etc. He hoped that there was no real ambiguity. It should be clearly understood that a tax on turnover was not precluded by the terms of the Convention.

THE CHAIRMAN said that such a tax was quite outside the scope of the present proposal.

M. SANDSTROEM *(Sweden)* pointed out that, in the amendment moved by the northern delegations, the fee was described as " taking the place of a tax ". He would suggest that the words " taking the place of a tax " should be deleted and that the word " tax ", used in describing the imposition, should be replaced by the words " special taxes ".

The Committee agreed.

M. BOLAFFI *(Italy)* asked that it should be stated in the Minutes that the question of the taxation of the income of commercial travellers was not affected by the provisions of the Protocol under discussion, and that, in this matter, the Governments reserved their full discretion except in cases where the question was determined by means of special conventions on double taxation.

THE CHAIRMAN suggested that, if the texts suggested by the International Chamber of Commerce were adopted, it should be clearly stated in the report that it was not intended to refer to a tax on income.

The Committee agreed.

M. DINICHERT *(Switzerland)* said he was perplexed by the result of the present discussion. Article 5, which had, in substance, been adopted, laid down that commercial travellers should not be liable to taxation on the ground that they had entered a country and transacted business in that country. He did not quite see how a tax on turnover came up for consideration. Such a tax could not concern the commercial traveller who represented a foreign firm, but only a firm which was established in the country. If a commercial traveller were taxed upon turnover, there might be triple taxation. The producing firm might be taxed in the home country ; the commercial traveller might be taxed ; and the firm might also be taxed which gave an order to the producing firm. Surely it was the essential point of Article 5 that a commercial traveller should not be taxed upon his transactions. In his view, if the question of income tax or taxes upon his professional activities were reserved, Article 5 was of no value. If the article did not confer upon the commercial traveller freedom from taxation, it ceased to have any real significance. The Conference would be accepting an article which laid down that the commercial traveller should not be subject to taxation and it would at the same time be leaving him subject to any form of taxation which the high contracting parties might wish to impose.

An exception had been admitted in the case of certain northern countries. Might it not, however, be stated in the report that the principle of non-taxation was the generally accepted rule?

THE CHAIRMAN asked whether it would not be possible to state in the report that the clause under discussion did not refer to income tax, but to a licence fee. The report might, moreover, emphasise that this particular provision merely meant that the fee, in cases where it was collected, should not be the same for foreigners as for nationals, in view of the fact that foreigners might only stay in the country for a short period, whereas nationals might carry on their activities throughout the year. In other words, the provision laid down that the amount of the fee should correspond with the period actually spent in the territory of the country in question.

He would ask the Committee to vote upon paragraph 1 of the proposed addition to the Protocol. The adoption of the paragraph would be subject to the explanations which he had just given.

The vote was indecisive, owing to the abstention of the majority of the delegations.

M. BOLAFFI *(Italy)* thought that, in effect, the Committee was not yet quite clear as to all the questions under discussion. Several kinds of taxation might be covered by the possible provisions of the present Convention. It was possible to consider the question of the levying or not of the tax on the industrial income of the firm to which the traveller belonged, or the levying or not of a tax on the professional income of the foreign traveller. Or it was possible to take only the case of a special licence tax required from commercial travellers, whether foreigners or nationals. Finally, there was the case of a special tax of the same kind levied only upon travellers in the service of foreign firms, the tax being levied directly or as a substitute for income tax.

In order to enable the Committee to vote clearly upon the subject it was necessary either to settle the various problems in succession or to state clearly that it was only intended to deal with the question of the levying of a tax in respect of a licence.

SIR PERCY THOMPSON *(British Empire)* thought there might be some misapprehension as to the precise meaning of the expression "any special tax or duty" in the sentence which had been introduced into the article in order to meet the observations of the British Government. The British Government had meant to limit the operation of the article to taxes on the activities of commercial travellers as such, and it desired to exclude the whole question of the taxation of the profits. Such taxation must be left to the fiscal laws of the country which he visited for the purposes of trade.

There was another question. Special licences might be required not for commercial travellers as such, but for persons engaging in certain trades such as the liquor trade. These licences would be obtained by commercial travellers, not in their professional capacity, but as dealing in certain products. They were required from nationals and therefore should be similarly required from foreigners.

There was also the question of the tax on turnover. This was a matter outside the scope of the present text. The activities of a commercial traveller might or might not render his firm liable to taxation on the turnover of the firm, but this was a matter which must be left to the fiscal legislation of the countries concerned.

The present text dealt with the taxes which might be levied upon the activities of the commercial traveller as such, and he thought that the proposal of the International Chamber of Commerce was entirely reasonable. That proposal merely said that, if a commercial traveller

spent a short time in a foreign country, he should pay only a small tax, and that the tax should, in general, be proportionate to the period of his activities.

THE CHAIRMAN agreed that the proposal before the Committee was extremely simple. It merely laid down that travellers, in so far as they were liable to taxation, should pay according to the period of their stay in the country.

M. DINICHERT *(Switzerland)* said he was prepared to vote in the light of the explanations which had been given, but he would prefer the text on which the vote was being taken to correspond with its interpretation. The text submitted by the International Chamber of Commerce gave rise to ambiguity, since it referred, not only to licence fees, but to the payment of taxes. He did not know what this reference might mean.

THE CHAIRMAN suggested that the reference to a tax should be deleted and that the expression should read : "any special licence fee". The Rapporteur would explain in his report that these words referred only to fees paid by commercial travellers as such.

M. RIEDL *(International Chamber of Commerce)* said that the only real question at issue was whether income tax were included or not. The answer to that question was in the negative. Income tax was a matter to be regulated by a convention on double taxation. All taxes on commercial travellers, however, were included. He would refer, in this connection, to the observations of the Economic Committee in paragraph 1 of Article 5 (page 30 of the "Brown Book").

The Committee adopted by a majority the text of paragraph 1 of the proposed additional Protocol ad *Article 5.*

THE CHAIRMAN said the Committee would now take paragraph 2. In accordance with the decision taken in regard to paragraph 1, the reference to a tax would be deleted and only the word "fee" would be retained.

M. FLORES DE LEMUS *(Spain)* objected to the paragraph in substance. How would it be possible to ascertain the purpose for which a commercial traveller visited a particular country? It would be impossible for the authorities to discover, without investigation, whether a traveller was soliciting orders for his firm or not.

M. PARANJPYE *(India)* agreed that it was impossible to distinguish between the commercial traveller who merely visited a country to keep in touch with his friends and clients and a traveller who visited the country for commercial purposes. A man might, for example, spend six months in a country negotiating for the opening of an agency in that country, without necessarily concluding any business.

M. RIEDL *(International Chamber of Commerce)* represented that it was for the police of any given country to ascertain whether its laws were being infringed. This principle applied to commercial travellers as to every other class of persons.

THE CHAIRMAN said that, juridically, the paragraph might be of no real effect. It might be interpreted, not to refer to commercial travellers, but only to private visitors.

M. RIEDL *(International Chamber of Commerce)* said he attached great importance to the amendment. There was a good deal of complaint to the effect that taxes and dues were collected from traders and industrialists who did not transact any actual business in the country which they visited. The paragraph was intended as a defence for the industrialist who visited his friends and discussed affairs in general. It would apply more particularly to the heads of firms.

The clause was adopted by eight votes to seven.

THE CHAIRMAN said there was one other question which arose in regard to the Protocol *ad* Article 5. Paragraph 1 of the Protocol was as follows :

> "The exemptions provided in Article 5 for foreign commercial travellers may not be claimed if the claimant stays in a foreign country for a period so long as to be equivalent to permanent residence."

He thought that, as a result of the amendments which had been made to Article 5, this paragraph was no longer necessary, as it related only to exemption from taxes which were no longer referred to in the Article.

The Committee agreed provisionally that the paragraph was unnecessary, provided some reference to the matter were made in the report.

THE CHAIRMAN reminded the Committee that M. Riedl had suggested two additional paragraphs to Article 5. The first paragraph proposed was to the effect that the high contracting parties were agreed that the nationals of any one of them who could prove, by the possession of an identity card delivered by the authorities of the country signing the Protocol in which they were

established, that they were legally authorised to carry on business and that they had paid the taxes and dues required by law, would not require, for any of the transactions covered by Article 5, any special authorisation and would not be subject to any taxes or dues in respect of these activities, on condition that they brought with them only samples and not goods which were destined for sale.

The second paragraph was to the effect that the high contracting parties undertook that they would not, except to the extent in which they themselves granted full and effective reciprocity, claim for their own nationals, under the most-favoured-nation clause inserted in any bilateral treaty, the advantages enjoyed under the previous paragraph by nationals of the countries whose Governments had subscribed to the provisions of that paragraph.

M. RIEDL *(International Chamber of Commerce)* said that these additional paragraphs should be regarded as a necessary consequence of the concessions which had been made in the article in order to give satisfaction to the British delegation. The paragraphs were intended to avoid a retrogression from the *status quo* in respect of freedom from taxation of commercial travellers.

THE CHAIRMAN suggested that, as these additional paragraphs raised questions of policy, they should be distributed to the members of the Committee and discussed when the report of the Rapporteur came to be considered.

The Committee agreed.

31. **Article 7 : Fiscal Questions.**

M. SANDSTROEM *(Sweden)* alluded to the observations which he had made at a previous meeting concerning the provisions in regard to the deposit of a guarantee by commercial travellers under Swedish legislation. He had already stated his view that the requirement of such a guarantee might be regarded as a condition of establishment and was not therefore contrary to the provisions of the Convention. Foreigners who came to Sweden in order to engage in industry or commerce were required to deposit security for the taxes to which they might be liable. They were also required to obtain a special permit. It had been decided that the requirement of the special permit was contrary to the Convention, but the Committee had not definitely stated whether the guarantee was contrary to the Convention or not.

THE CHAIRMAN said that a passage to the effect that the guarantee was not contrary to the Convention might be inserted in the report.

M. SANDSTROEM *(Sweden)* said that a reference to the matter in the report would meet his views.

SIR PERCY THOMPSON *(British Empire)* thought that the reference should be in general terms, stating that such a guarantee was not contrary to the spirit of the Convention, provided it was required merely as a precaution with a view to safeguarding the revenue and provided it was administered reasonably and fairly.

M. SANDSTROEM *(Sweden)* said he would willingly accept a statement in general terms.

He had drawn attention at a previous meeting to another question arising under Swedish legislation. Foreigners residing in Sweden, if they desired to engage in public entertainments or performances, were required to make a deposit. They were then placed on a footing of equality with nationals.

THE CHAIRMAN said that a general formula in the sense suggested by Sir Percy Thompson would cover this question. It might be laid down that the arrangement by which deposits were required as a security for taxes to be paid was not contrary to the Convention, provided it was adopted for financial reasons and was not unduly burdensome.

DR. MARTIUS *(Germany)* said he would prefer the reservation not to be expressed in general terms but to refer specifically to the case which arose under Swedish law. It was undesirable that the Conference should seem generally to approve such an arrangement.

M. SANDSTROEM *(Sweden)* agreed.

SIR PERCY THOMPSON *(British Empire)* withdrew his suggestion.

THE CHAIRMAN said that a passage would be inserted in the report specifically referring to the case which arose under Swedish law.

The Committee agreed.

32. **Article 8.**

M. POLITIS *(Greece)*, Rapporteur, said that the Sub-Committee on Article 8 had finished its work and had adopted a text which was not essentially different from that of the original text.

The amended version, however, made the provisions more elastic, more practical and less ambiguous. It would replace the text of Article 8 in the original draft and the Protocol *ad* Article 8. These texts together with the commentary would be distributed.

33. **Article 7, Paragraph 2.**

M. PILOTTI *(Italy)*, Rapporteur for the Sub-Committee on paragraph 2 of Article 7, submitted and commented upon his report (Annex A, 24).

SEVENTEENTH MEETING

Held in Paris on November 20th, 1929, at 11 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

34. **Examination of the Articles of the Convention : Articles 1 and 2 and Protocol ad Articles 1 and 2.**

Draft Report of the Sub-Committee (Annex A, 13).

Paragraphs 1 and 2.
No observations.

Preamble, Paragraphs 3, 4, and 5.
No observations.

Article 1 : Paragraphs 6, 7 and 8.
No observations.

Paragraph 9.
Slight textual amendment.

Paragraphs 10, 11, 12 and 13.
No observations.

Paragraph 14.
Modification of detail at the request of the British delegation.

Paragraph 15.

M. NEDERBRAGT *(Netherlands)* recalled that, during the discussion on the original text of Article 1, he had asked whether insurance was to be regarded as a commercial transaction. The point was that the conditions and charges relative to insurance were not exactly identical for nationals and for foreigners. M. Serruys had replied that the question had been dealt with in Article 7, and accordingly M. Nederbragt had not pressed the matter. Article 7 had now been amended and no longer covered the case to which he had drawn attention. Would he be able to revert to the question during the discussion of Article 7 ?

M. POLITIS *(Greece)*, Rapporteur, said that, according to the report submitted by M. Pilotti on the previous afternoon, the question of insurance, in so far as concerned Article 7, had been reserved for examination by the Committee. He therefore thought that the Netherlands delegate would be satisfied, and there was no necessity to alter Article 1.

M. NEDERBRAGT *(Netherlands)* said that he was satisfied with this explanation.

At the request of MR. PUGH *(British Empire)* a slight amendment was made in the English version of the first sub-paragraph of paragraph 15.

Mr. Pugh wished to make an observation with regard to sub-paragraph 2. The British delegation had just become aware of a somewhat small and obscure statutory provision which was still in force in Great Britain. It was a point of little practical importance, but the British delegation was not sure that it might not constitute a contravention, although a purely technical one, of Articles 1 and 7 of the Draft Convention. It was a provision which imposed certain restrictions in the matter of the choice of names on aliens conducting business in the United Kingdom and these restrictions did not apply to British subjects. The law of the United Kingdom, generally speaking, was somewhat unique in allowing any person to assume and carry on his business in any name which he liked to adopt. The statutory provision which he had mentioned took away this latitude in respect of aliens and did not give them the same freedom of choice in the name which they might adopt for business purposes. To meet this purely technical difficulty the British delegation desired, if the Committee would agree, that a provision should be added to the Protocol and made applicable to Articles 1 and 7, to the effect that nothing in those articles

should prevent the High Contracting Parties from putting into force in their territories provisions with regard to the use by foreigners of assumed names for the purposes of any profession, occupation, business or trade.

Although, as he had said already, the provision on the Statute Book, to which he had referred, might seem to be technically in contradiction with Articles 1 and 7 of the Convention, the situation which resulted from it was of little importance and did not in fact amount to any real discrimination. The reason for the provision was to establish some control over the practice, which had become extremely frequent, of the assumption by foreigners of English names for the purpose of carrying on business in England with the object of causing the English public to think wrongly that they were dealing with British persons and firms and concealing the fact that they were dealing with foreigners. As the Commission would easily see, there would be no such temptation on the part of British subjects to assume names other than their own for this purpose. He therefore hoped that the Committee would have no difficulty in allowing the additional provision in the Protocol which he had suggested. The exact terms of this provision he was ready to leave to the Drafting Committee.

DR. MARTIUS *(Germany)* thought that the point raised by the British delegate was connected with Article 7, and was not incompatible with Article 1. The German delegation would like to study the British delegation's suggestion more closely, and accordingly proposed that the examination of it should be postponed until the discussion of Article 7.

MR. PUGH *(British Empire)* concurred with this proposal.

M. DINICHERT *(Switzerland)* said that the wording of the beginning of paragraph 15, sub-paragraph 1, " Nationals of the High Contracting Parties may, even if not resident in the territory of the other High Contracting Parties, conduct . . ." appeared to create a special situation for the national of a contracting party who lived in his own country. That surely could not be the intention of this provision. He proposed that the paragraph should read " the nationals of the High Contracting Parties may, in the territory of any of the High Contracting Parties, conduct . . .". In so far as concerned Article 1, a national enjoyed in his own territory the same rights as if he were abroad.

M. POLITIS *(Greece)*, Rapporteur, did not think that there was any ambiguity about the text. The object had been to indicate that, when a foreigner had been admitted in order to engage in the occupations in question on the territory of any high contracting party, it was not an indispensable condition that he should reside there. He might live in his own country or in a third country which was not a party to the Convention. In his opinion, the text he had submitted covered the case referred to by M. Dinichert.

M. DINICHERT *(Switzerland)* said that, if the Rapporteur had no misgivings on the subject, he would not insist.

M. DE BERCZELLY *(Hungary)* thought that national questions should not be dealt with in an international convention. A national should not, in his own country, be able to appeal to the provisions of an international convention.

M. POLITIS *(Greece)*, Rapporteur, said that there was no question of this.

M. DE BERCZELLY *(Hungary)* added that the present wording covered all cases which the Conference wished to settle.

Protocol ad *Article* 1, *Paragraphs* 16, 17, 18 *and* 19.

Modification of detail in paragraphs 16 and 17 at the request of the British delegation.

M. FLORES DE LEMUS *(Spain)* was not yet quite clear as to the interpretation of the paragraph in the Protocol and would be glad to have an explanation from the Rapporteur. To take an example ; suppose a local administration wanted to construct water conduits in the city. Under the local law this work had to be put up for public tender, which was only open to nationals. Would the contractor who obtained the order be entitled to choose only nationals as sub-contractors or could foreign sub-contractors be treated as nationals ?

M. POLITIS *(Greeece)*, Rapporteur, replied that this question was not covered by paragraph 1, which referred only to a tender accepted by the public services — that was to say, the original tender. In regard to sub-contractors, foreigners, under Article 1, were on the same footing as nationals.

M. FLORES DE LEMUS *(Spain)* said that, in that case, he would have to make a reservation when signing the Protocol.

M. POLITIS *(Greece)*, Rapporteur, explained that the question which had been raised was connected with paragraphs 16 and 17 of his report. The Committee had examined only the British amendments and the Spanish delegation had not previously raised this special case. The Committee would now have to decide upon its interpretation of paragraph 1 of the Protocol. The question was whether the exception provided for should also cover contracts concluded by contractors with sub-contractors. A distinction must be made. If a contract concluded by the contractor with a sub-contractor was, under the terms of the concession, free from any condition as to the nationality of the sub-contractor, it could be said that implicitly the case was covered by the provision in question. In the reverse case the contractor was free to choose his sub-contractors at his own discretion. Did the Committee agree with this interpretation ?

M. PERASSI *(Italy)* pointed out that there might be two cases — either the tender might be allotted by a public service which managed the work directly, or alternatively there might be a contract concluded by companies which held a concession for the work. Did the provision cover these two cases ?

DR. MARTIUS *(Germany)* was in entire agreement with the Rapporteur's interpretation.

M. POLITIS *(Greece)*, Rapporteur, thought that the Spanish delegate should be satisfied. Further, the Italian delegate had asked whether paragraph 1 covered contracts concluded by the contractor himself. The text, as at present drafted, covered only contracts concluded by the public services and the question now was, what would be the situation in regard to contracts concluded by the contractor? If, under the terms of the public contract, the contractor was entitled to give out contracts at his own discretion, he could apply to foreigners as well as to nationals, but he could apply to none but nationals if the public contract contained a clause to this effect.

M. FLORES DE LEMUS *(Spain)* wished to clear up the point he had in mind. Was the fact that the conditions imposed on the contractor might force him to allot secondary contracts only to nationals in accordance with the intentions of the Convention or not ?

M. POLITIS *(Greece)*, Rapporteur, replied in the affirmative.

M. PERASSI *(Italy)* said that the question raised by him was a somewhat different one. He had taken the case of a company holding a concession from a public service. What was the position of such a company in regard to the contracts which it passed by tender in its capacity as a company holding a concession from a public service ?

M. PILOTTI *(Italy)*, speaking as Rapporteur for Article 7 paragraph 2, explained that, if certain conditions had been laid down for the company, it would have to comply with them.

M. PERASSI *(Italy)* inferred that a concession-holding company would be obliged to comply with the special rules laid down in the concession contract in regard to all contracts which it concluded. If that were so, the Italian delegation agreed.

M. DE NICKL *(Hungary)* asked the Rapporteur for an explanation of the words concluding the first sub-paragraph of paragraph 19 : " in connection with contracts concluded by the public authorities as a result of tenders, these contracts being regarded as equivalent to Government concessions ". Did this mean that the provisions of the first paragraph referred only to those tenders which were regarded as equivalent to concessions or did paragraph 1 make all tenders equivalent to concessions ?

M. POLITIS *(Greece)*, Rapporteur, thought the question perfectly clear if Article 1 in the Convention were combined with paragraph 1 in the Protocol. Article 1 laid down complete liberty and complete assimilation as between foreigners and nationals with an exception in regard to concessions which stipulated preferential treatment for nationals. Paragraph 1 in the Protocol was intended to remove any doubt as to certain transactions carried out by the public services, but it did not mean to say that all contracts concluded by the public services were reserved to nationals. It laid down a condition, namely, that the contracts in question must be equivalent to concessions. The object had been to settle certain definite points and not to adopt a general formula. If the contract was held to be equivalent to a concession, the High Contracting Parties remained entirely free. In the reverse case, the exception would not be operative and there would again be equal treatment.

M. DE NICKL *(Hungary)* thanked the Rapporteur for his explanation.

M. SCHUMANS *(Latvia)* asked whether there was not a contradiction between the words under discussion and the wording which had been adopted by Committee B for Article 4. On the proposal of the Latvian delegation Committee B had decided to insert in the Protocol the following clause which was based on the Protocol *ad* Article 1 :

> " The provisions of Article 4 shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities as a result of tenders."

This clause did not contain a provision that the contracts in question " were equivalent to concessions."

M. POLITIS *(Greece)*, Rapporteur, pointed out that the Drafting Committee would eventually ensure the concordance of the various clauses in the Convention resulting from the discussions of the Conference. As the kernel of the matter was to be found in the point now being discussed by Committee A, the Drafting Committee would have to bring Article 4 into line with Article 1. Committee B had not had to examine Article 1 and had assumed that it was free to draft Article 4 to suit its own views. As to the observations of the Spanish delegate, he proposed to add to his report a new paragraph, 17 *bis*, which would embody the interpretation given to paragraph 1 in the Protocol. He hoped this would meet the wishes of the Spanish delegation.

M. FLORES DE LEMUS *(Spain)* thanked the Rapporteur.

M. LINANT DE BELLEFONDS *(Egypt)* approved the Rapporteur's suggestion. He wondered whether it would not also be possible to include in the report a passage referring to the question which had been raised by the Hungarian delegate and which, in his opinion, was of far greater importance. He had himself interpreted paragraph 1 of the Protocol as meaning that all contracts were regarded as equivalent to concessions. Contracts for the public services by tender and concessions were very different, and, if these contracts were not assimilated to concessions for the purposes of the Convention, they would not be left to the free discretion of the States. He did not think that this could be the intention of the Convention, and he thought that the Economic Committee's comments were in agreement with his interpretation. The Conference would have to take a decision.

M. POLITIS *(Greece)*, Rapporteur, pointed out that, in the passage under discussion, there was no comma after the words " pour les marchés passés par des services publics ". I fthere had been a comma, the sentence would have meant that all the contracts in question were regarded as equivalent to concessions. Without a comma the passage meant that the only contracts referred to were those which were regarded as equivalent to concessions.

The Economic Committee's commentary contained nothing very definite on the subject and did not solve the difficulty, for the unfair discrimination to which it referred was excluded in all cases. The question was whether it was desired that, in all cases, contracts concluded by the public services should be regarded as equivalent to concessions, thereby being excluded from Article 1, or whether they should only be excluded in cases where it could, in fact, be shown that they were regarded as being equivalent by the terms of the concession contract.

DR. MARTIUS *(Germany)* thought — and he believed that it followed from the Economic Committee's comments — that the intention had been to extend the clause in question to all tenders accepted by the public services. In view of the Latvian delegate's observations, the simplest way to eliminate the doubt would be to drop the words "these contracts being regarded as equivalent to Government concessions ".

M. POLITIS *(Greece)*, Rapporteur, said that he would accept the view of the Committee if the latter thought that paragraph 1 of the Protocol should be interpreted in the wider sense.

The Committee agreed to the omission proposed by the German delegate.

Article 2, *Paragraph* 20.

Modification of detail on the request of the British delegation.

Paragraph 21.

No observations.

Protocol ad *Article* 2, *Paragraphs* 22, 23, 24 *and* 25.

No observations.

The Report as a whole on Articles 1 *and* 2 *and the Protocol* ad *Articles* 1 *and* 2 *was ad opted with the various amendments approved during the discussion.*

35. **Article** 8 (continuation).

New Text submitted by the Sub-Committee.

THE CHAIRMAN opened the discussion on the new text of Article 8 adopted by the Sub-Committee appointed to deal with that article. The text was as follows :

> " Nationals of one of the High Contracting Parties who are established in the territory of another High Contracting Party or who, without being established in that territory, carry on business there, are free to appoint at their discretion, for the management of their establishments and for the transaction of their business, such persons as they may judge fit and proper, without being subject to any provisions other than those laid down in the present Convention.
>
> " When applying their laws and regulations on the protection of the home labour market, the High Contracting Parties undertake to permit the choice of nationals of the other High Contracting Parties for the employments referred to in the preceding paragraph."

M. POLITIS *(Greece)*, Rapporteur, asked the Committee to approve in principle the new wording of Article 8 so as to enable him to prepare a report which would take into account the

various observations which had been made in regard to Article 8 both in the Sub-Committee and in the Plenary Committee. When his report came before the Committee, the latter would have a second opportunity of considering the drafting of Article 8.

DR. MARTIUS *(Germany)* recalled that there had been important divergences of view during the discussion as to the persons to whom the system laid down in Article 8 should apply. Some considered that the problem should be settled in somewhat wide terms and others in a more restrictive sense. The decision to adopt the restrictive formula had been taken by a majority of 10 votes to 7. The German delegation would agree if the President ruled that any delegation might submit amendments during the discussion of the report and that the question would not be prejudiced by the decision which was about to be taken. He thought, however, that the question could be better discussed when the report had been placed before the Committee.

M. POLITIS *(Greece)*, Rapporteur, suggested the following procedure. He would prepare a report from the Sub-Committee to the Committee so that the Committee would be in a position to judge the reasons for which the Sub-Committee had decided to submit the text under discussion. It was true that the part of this text which departed from the original wording of the end of Article 8 in regard to subordinate staff had been adopted only by a very small majority. It was possible that the Committee, after hearing the reasons for the decision thus taken by a small majority in the Sub-Committee, would decide to redraft Article 8 after further examination. This further examination would not be profitable unless the Committee was acquainted with the discussions which had already taken place. He proposed accordingly to submit to the Committee a report on the proceedings of the Sub-Committee, and suggested that the question should be discussed on the basis of this report.

The Committee agreed.

EIGHTEENTH MEETING

Held in Paris on November 21st, 1929, at 3.15 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

36. **Examination of the Articles of the Convention : Article 7, Paragraph 2** (continuation).

Report of the Sub-Committee (Annex A, 24).

THE CHAIRMAN explained that the decisions to be taken by the Committee on the various paragraphs of M. Pilotti's report (Annex A, 24) would serve as guidance for the report to be submitted later.

M. PILOTTI *(Italy)*, Rapporteur, drew attention to an omission in his report. No mention was made of the amendments respecting industries of importance to national defence. The Sub-Committee had held that the formula which had been submitted was too general and that, in any case, its scope would have to be restricted. The amendments in question would be examined in due course.

Next, with regard to the conditions, qualifications and guarantees required for engaging in a profession, the report omitted to mention a long discussion which had been held in the Sub-Committee on the medical and cognate professions. It would, perhaps, be necessary to revert to the question and to define the qualifications and guarantees which should be required. The Committee would be asked to consider an amendment indicating that account must be had to the various national legislations which only authorised a foreigner to engage in the medical and cognate professions after a special examination.

Paragraphs 1, 2 and 3 of the Report.

No observations.

Paragraph 4.

M. PILOTTI *(Italy)*, Rapporteur, said that the question in connection with the practice by a foreigner of the medical and cognate professions in certain countries arose upon this paragraph.

An amendment had been submitted by the Egyptian delegation in the following terms :

"*Article 7, Paragraph 1* (b) :

"In the penultimate line, insert after the words 'subject to reciprocity' the words 'or to compliance with certain conditions'.

"*Article 7, Paragraph 2* (b) :

"Modify this paragraph as follows :

"*(b)* Professions such as those of barrister, solicitor, notary, stockbroker as well as the professions or offices which, in the public interest, entail special responsibilities."

M. Pilotti explained that, in Egypt, it was not enough for a doctor who wished to practise in the country to have an equivalent degree, even in case of reciprocity. The Egyptian Government desired an assurance that the doctor in question had special knowledge of tropical diseases, and foreign doctors were required to pass a special examination in certain subjects. If that condition was not imposed upon nationals, it was because the training given them in their country took account of the local necessities of the climate.

He ventured to ask why the Egyptian delegate had, in his amendment, chosen so general a formula as that implied in the words "or to compliance with certain conditions". The result of this wording might be to introduce into legislation restrictive conditions which would be liable to cause misunderstanding.

M. LINANT DE BELLEFONDS *(Egypt)* said that he attached no special importance to the wording he had chosen. He had endeavoured to make as little change as possible in the Sub-Committee's text. The essential thing was that the formula eventually adopted by the Committee should cover the case of Egyptian law.

He wished to observe that the special examination referred to was required of foreign doctors, not because any discrimination was made as to nationality, but because it was thought that such an examination could not be required, for instance, of professors of foreign medical faculties. Furthermore, obviously, it would very rarely occur that professors of faculties would come to practise in Egypt. It was for that reason that the delegate of Egypt had used a formula in which no express mention was made of an examination.

Dr. MARTIUS *(Germany)*, while recognising that the considerations advanced by the delegate of Egypt were well founded, wondered whether the latter would not be satisfied by the introduction of his observation into the report, in which it would be noted that, in the view of the Committee, there was no obstacle to the continuance of the practice in force in Egypt, and that it was not in any way incompatibile with Article 7. This would be a better course than widening the text of the article by a formula, the bearing of which might give rise to doubt.

M. LINANT DE BELLEFONDS *(Egypt)* would leave it to M. Pilotti to find the best formula. He wondered, however, whether a reference in the records would suffice and thought that it would perhaps be necessary to have a somewhat detailed clause in the Protocol.

The CHAIRMAN thought that it would be for the Drafting Committee or the General Committee to examine later whether the various reservations which had been submitted should be embodied in an additional Protocol, to be signed simultaneously with the Convention.

M. PILOTTI *(Italy)*, Rapporteur, proposed that the Committee should, for the moment, decide that it would be mentioned in the Minutes that the Egyptian delegate had raised the question and that the Committee had unanimously agreed that the equivalence of the degrees and guarantees mentioned in the article did not prevent a State which recognised such equivalence from making the said recognition contingent upon a formality such as an examination. It would be seen later whether this provision should be included in the Protocol or whether a reference in the Minutes would suffice.

M. LINANT DE BELLEFONDS *(Egypt)* agreed.

SALIH ZEKAI Bey *(Turkey)* accepted the paragraph under discussion with the addition of the words proposed by the Sub-Committee, viz., "if necessary, subject to reciprocity", but not in the sense given them by the Sub-Committee in paragraph 4 of its report. In Turkey, the medical and cognate professions, that was to say, the professions of doctor, pharmacist, chemist, veterinary surgeon, dentist, responsible director of a hospital, were explicitly reserved to nationals for the same reasons as existed in regard to the professions of barrister, stockbroker, etc.

If the Sub-Committee had recognised the special responsibility involved in these professions, owing to the public interest at stake, it should, for stronger reasons, in his opinion, consider the medical and cognate professions as implying a special responsibility for the public interest of the State, seeing that they involved not only national health and hygiene, but also national defence. Obviously, doctors, pharmacists, veterinary surgeons and the other cognate professions mentioned, formed absolutely indispensable elements in the army.

Suppose, for a moment, that a country was open to doctors and other foreigners ; as they, under Article 11, would not be affected by mobilisation, the security of the country would be seriously impaired. For these reasons, he could not commit his country on this question, nor could he adopt the Sub-Committee's point of view. On the contrary, he would press for the introduction in paragraph 2 *(b)* of the medical and cognate professions which he had enumerated.

He drew the Committee's attention to the very appropriate and clear statement which had been made during the recent meetings by the Economic Committee's representative, M. Stucki. The essential object to be attained by the proposed Convention was to regulate international economic relations and to remove, so far as possible, the barriers that still existed in this field. M. Stucki's observations, which had been unanimously accepted as correct by the Committee, must not be overlooked in the work for standardising the various legislations.

He did not think that any of the countries represented at the Conference would be seriously injured in their interests if certain professions, such as those connected with public health and hygiene, were exclusively reserved to nationals on general grounds of national safety. He therefore pressed for the insertion in the Convention of the reservation made in regard to these provisions in its entirety.

DR. MARTIUS *(Germany)* asked whether the Turkish delegate's observations should be discussed at once or, better, in connection with paragraphs 8 and 9 of the report and paragraph 2 *(b)* of Article 7, since otherwise there would be a danger of having to reopen the discussion.

M. PILOTTI *(Italy)*, Rapporteur, thought that the question should be raised in connection with paragraph 9 of the report. Paragraph 4 had been altered to allay the misgivings of certain delegations. It was, however, clear that this change might appear insufficient to a delegation which, in this case, desired to submit its observations during the examination of the list of reserved occupations, that was to say, of paragraph 9, where it was said that the list must be taken in a restrictive sense. It was also clear that, if the Committee concurred in the Turkish delegate's suggestion and wished to reserve the medical and cognate professions, the example cited of the medical professions would have to be dropped in the last sub-paragraph of paragraph 4.

SALIH ZEKAI BEY *(Turkey)* had no objection to his observations being discussed in connection with Article 9. He had only submitted them in connection with paragraph 4 because that paragraph stated that the Sub-Committee, in adopting the modification in question, had believed that it was satisfying the various delegations, whereas, in point of fact, it was leaving out of account the amendment respecting the practice of the medical professions.

THE CHAIRMAN noted that the question was held over until the discussion of paragraph 9 in the report.

M. VAN WALREE *(Netherlands)*, referring to the word "identical", recalled the observations which had been submitted by his delegation at the seventh meeting and the decision subsequently taken by the Committee to replace the words "submission or titles or guarantees identical" by the words "submission of the same titles or guarantees as".

M. PILOTTI *(Italy)*, Rapporteur, said that the necessary modification would be made in paragraph 4 of the report and the text of Article 7 annexed to the report. This modification, moreover, was entirely in agreement with the Sub-Committee's interpretation in which identical titles or guarantees referred to national titles. A State was allowed to require either the same title as for its nationals or an equivalent title, and it was only in regard to the equivalence of titles that a condition of reciprocity was introduced.

Paragraph 5.

No observations.

Paragraphs 6 *and* 7.

M. NEDERBRAGT *(Netherlands)* wished to refer to the subject of railways in connection with paragraph 2 *(a)* of Article 7, to which this question had a certain relation. In the Netherlands the railways were not a State undertaking, although they were subject to Government supervision to some extent. Nor were there any monopolies. The article in question mentioned only "a State monopoly or monopolies exercised under State control". The Dutch railways belonged to a number of different companies, and their case was not covered by Article 7. His Government retained the right to lay down certain restrictions in regard to the railways. What was the clause in the Convention which would cover this position ?

M. PILOTTI *(Italy)*, Rapporteur, thought that the Netherlands delegate should submit an amendment to be inserted after sub-paragraphs *(a)* and *(b)*. Sub-paragraph *(a)* covered appointments made by the State, and sub-paragraph *(b)* occupations implying a special responsibility, such as those of barrister, solicitor, etc. There were next mentioned a number of industries referred to as industries and not only from the point of view of appointments. This enumeration had, in the Economic Committee's text, been given in sub-paragraphs *(c)*, *(d)*, *(e)*, and *(f)*. The Sub-Committee had arranged the list in another order under sub-paragraphs *(c)* to *(h)* in the draft now under discussion. If it were desired to mention railway undertakings, it would be necessary to insert a sub-paragraph expressly referring to them, and the Netherlands delegate could submit an amendment during the discussion on sub-paragraphs *(c)*, *(d)*, or *(f)*. If, however, the order of the report and the discussion were followed, the most appropriate place to deal with the question raised by M. Nederbragt would be paragraph 15 of the report, in which the Sub-Committee enumerated the industries to which it had decided not to give the privileged position of the industries enumerated by the Economic Committee in paragraph *(b)* of the original draft. The list of amendments mentioned in paragraph 15 of the report did not exclude the possibility of examining further amendments, although, in the minds of the Sub-Committee, the list should not be enlarged.

M. NEDERBRAGT *(Netherlands)* consented to his proposal being considered in connection with paragraph 15 of the report.

SALIH ZEKAI BEY *(Turkey)* agreed to the first amendment made by the Sub-Committee in paragraph 2 *(a)* "public functions . . . *of a judicial, administrative, military or other nature*". He had proposed the addition of the word "political". He understood that this idea was covered by the words "or other".

M. PILOTTI *(Italy)*, Rapporteur, approved this observation. In the minds of the Sub-Committee the words "or other" were to be taken as covering the Turkish delegate's suggestion.

M. POZNANSKI *(Poland)* considered that the formula used in the report "it was sufficient for an office to be conferred by the State . . ." was too wide. There were in Poland, for instance, certain positions which were not conferred by the State, but for which it was necessary to obtain the previous approval of the State. He reserved his right to raise the question during the examination of the text of the article itself. He regretted, moreover, that the report had not taken into consideration the amendment which had been submitted by the Polish delegation.

M. PILOTTI *(Italy)*, Rapporteur, asked the Polish delegate what was the amendment to which he was referring. Which were the posts for which, in Poland, it was necessary to have the previous approval of the State, and by whom were they conferred ?

M. POZNANSKI *(Poland)* explained that there were certain posts not conferred by the State, belonging more or less to the liberal professions, for which it was necessary to have the special approval of the Government ; for instance, the post of official surveyor, special agents dealing with inventors' patents, etc. The Polish amendment had been distributed (Annex A, 22). It was general in character and did not refer to any particular profession.

M. PILOTTI *(Italy)*, Rapporteur, noted that the Polish amendment referred to certain professions, occupations, industries and trades. The question under discussion was only that of professions. If the Polish delegate would refer to the text of the draft Article 7, annexed to the report, he would see that a clear distinction had been made between State offices and the liberal professions. It might easily happen that the exercise of certain professions would remain contingent upon State approval, but that question, in his opinion, came under sub-paragraph *(b)*. The question could be taken up during the examination of the clauses referring to barristers, solicitors, etc. The Austrian delegation had submitted an amendment in more or less the same sense, aiming at assimilating patent agents to barristers, owing to the special provisions of Austrian law.

THE CHAIRMAN said that the Polish amendment would be examined along with paragraph 9 in the report.

M. DE NAVAILLES *(France)* observed that, in the new draft Article 7, paragraph 2 *(a)* referred to officials, and sub-paragraph *(b)* to certain reserved professions. He personally considered that sub-paragraph *(a)* should be omitted entirely, since existing conventions on establishment never referred to public offices, and the possibility of a stranger becoming a State official and of being assimilated to nationals in this respect was never contemplated. This omission would clarify and simplify the text. If, however, sub-paragraph *(a)* were to be kept, he would prefer the text of the Economic Committee. The Sub-Committee had introduced a new idea, namely, appointments made by local administrations, and the question was thereby made far more complicated. A distinction must be made between two cases : either the local administrations had powers delegated to them from the Government to appoint officials — and this case came within the observations which he had just submitted — or, alternatively, there was the case of work allocated by local administrations, without involving the allocation of any share, however insignificant, of public authority. These were the ordinary occupations which local administrations could allocate to foreigners as well as to nationals, for example, the post of chauffeur, scavenger, etc. Obviously these jobs did not come within sub-paragraph *(a)*. There thus arose a subsidiary question. When an administration wished to make an appointment to one of these posts, must it, under the convention, keep an equal balance between a national candidate and a foreign candidate ? It was absolutely certain that in France a mayor, for instance, would, with or without the provisions of the convention, be free to act at his own discretion, that was to say, like a private employer. To sum up, either no reference should be made to public services, which obviously fell outside the convention, or alternatively, the text of the Economic Committee should be retained.

M. MAYER *(Austria)* said that, if he had correctly understood the report and the verbal explanations given two days previously by M. Pilotti, the Sub-Committee had held that the words "devolution of the authority of the State" applied to the various territorial units, and, in a Federal State, to the different Federated States.

He would have been satisfied with this interpretation if the Sub-Committee had not added the words "administrations under the authority of the State and endowed with juridical personality". Some administrations had a juridical personality, while others had not. He believed that the text covered all undertakings of public interest and of a commercial character — railways, electrical industries, water-power concerns — in which cases it was normally required in Austria that appointments should be reserved to nationals. There were also, in Austria, certain religious communities, etc., which were regarded as implying the exercise of functions of a public nature. Their officials must be nationals under the law. The new text did not cover this case. In his opinion the right wording would be "endowed with juridical personality *or not*".

DR. MARTIUS *(Germany)* observed that the French delegate had suggested the omission of sub-paragraph *(a)*. The preparation of a suitable formula had given much trouble, and he would ask his French colleague not to press his proposal. In his opinion, if the Conference

endeavoured to go further than the stipulations contained in existing treaties on establishment, it might perhaps be expedient to do so also in this special matter. As to the substance of the question, it was not certain that the Sub-Committee's formula was narrower than that of the Economic Committee. He thought, on the contrary, that the Sub-Committee had introduced a new element which was not contained in the original text. There remained the question whether the case of communal administrations could be taken into account. There would perhaps be no objection to adding in the second sub-paragraph of paragraph 7 of the report a passage on the following lines : "It is understood that the communes are included in this provision", since the entire communal organisation was obviously governed by the general laws and regulations of the State, and no one could contemplate the possibility of a clause which would force the mayor of Milan, for example, to appoint to the post of scavenger a German instead of an Italian. As against this, he was opposed to adding further details to the existing formula. He thought it impossible to regulate the whole of public life by contractual provisions, and the formula suggested by the Sub-Committee appeared to him elastic enough to meet the point raised by M. de Navailles.

M. PILOTTI *(Italy)*, Rapporteur, said that the Sub-Committee had discussed at length the general formula to be used to indicate the so-called reserved professions and occupations. The Sub-Committee had taken as a starting-point a German amendment and had reached a solution which it considered to be satisfactory. It would be found in the second paragraph of Article 7 which read: "The provisions of the previous paragraph shall not apply to the exercise in the territory of one of the High Contracting Parties of the professions, occupations, industries and trades hereinafter specified". It followed that each sub-paragraph in the Sub-Committee's proposals should be read in connection with this general formula which was intended to cover them all. In regard to the first solution suggested by the French delegate, he did not think that it would be enough if paragraph 1 was struck out. Public offices and employments were of course reserved. It was nevertheless well to say so, as the Economic Committee had done in its draft. As to the special positions mentioned by the French delegate, the State remained free to allocate them at its own discretion, and the Convention did not say that these positions must be reserved to nationals. It was for the national legislation to decide in these cases. If a commune wished to employ foreign workers, it could do so, but no one should be entitled to take advantage of the Convention to impose any conditions whatever in this respect on the local administrations.

As to the enumeration of administrations mentioned in sub-paragraph *(a)*, it must be remembered that the Economic Committee's draft had referred expressly to offices involving "a devolution of the authority of the State or a mission entrusted by the State". This formula had been thought too restricted, owing to various amendments submitted by a number of delegations which aimed at including other public administrations which were not State administrations, as had been said by the Austrian delegate. The Sub-Committee had meant to include in its formula all such administrations. The expression " under the authority of the State " was a very wide one and covered all juridical authorities set up by public or administrative law in all countries. The Sub-Committee had even wished to go further and to cover the case of autonomous administrations, that was to say, administrations endowed by the State with juridical personality but constituting State administrations, such as, for instance, the Post Office in Great Britain and the railways in Italy. The case was particularly clear in regard to the Italian railways, the employees in which were expressly described as officials. It was only for practical and commercial reasons that Italian railways had been endowed with a juridical personality separate from that of the State. Their budget was approved by Parliament. The formula in question comprised all the special cases which had been mentioned, that was to say, both the local territorial administrations referred to by M. Mayer and the local administrations endowed by the State with juridical personality. An administration not possessing juridical personality shared in the juridical personality either of the State or of another unit and consequently was covered by the words "administrations under the authority of the State". In cases in which the appointment of an employee was not due to an act of State, the Sub-Committee had meant to say that the rule was the same, even in the case of an autonomous administration. For still stronger reasons education, for example, was a public matter and under the authority of the State, so that it came within the Sub-Committee's sub-paragraph *(a)*. If the Austrian delegate still felt any doubt, the end of sub-paragraph *(a)* might be amended slightly so as to read " under the authority of the State even in cases where they are endowed with juridical personality".

M. PERASSI *(Italy)* asked what interpretation was to be placed on the words " under the authority of the State".

M. PILOTTI *(Italy)*, Rapporteur, replied that this term was to be interpreted in the widest possible sense.

M. PERASSI *(Italy)* said that in that case it would be necessary to give a clear interpretation. There might be certain public offices which were not covered by the words " administrations under the authority of the State" because their connection with the State was not necessarily one of public administration. The Austrian delegate had pointed out a few cases ; there existed others as well.

M. PILOTTI *(Italy)*, Rapporteur, repeated that the Sub-Committee had wished to interpret the words in question in the widest possible sense. It would be possible to explain what was in the minds of the Sub-Committee or to seek for another formula, but that would, he thought, be very difficult. He did not know whether certain of the administrations which M. Mayer had un mind came under public administrations. M. Mayer had furthermore alluded to administrations of an economic character, which were mentioned in sub-paragraph *(d)* under the words: " State indertakings". These were intended to mean undertakings of a purely commercial character, such as forestry undertakings, porcelain factories, saw-mills, etc.

THE CHAIRMAN asked M. Perassi whether he would be satisfied with the insertion in the report of a paragraph stating that the Sub-Committee had intended to give these words a wide interpretation.

M. PERASSI *(Italy)* replied that he was not upholding any particular argument. His only wish was to have a precise and clear text.

M. PILOTTI *(Italy)*, Rapporteur, said that in that case the Chairman's suggestion might be adopted.

In reply to another observation by the Italian delegate he explained — although the question was not for the moment under discussion — that the Sub-Committee had mentioned State undertakings so as to prevent their being included among the undertakings which were open to foreigners as well as to nationals. In other terms, the State remained free to make regulations for its own undertakings, not because it was said that the provisions of the preceding paragraph did not apply to State undertakings, solely owing to the fact that the State was involved, but because a State was authorised to take measures affecting its own undertakings regardless of the preceding provisions. This rule covered also the case of appointments to vacancies, although in the case of certain undertakings there was ground for wondering whether they were, in point of fact, public undertakings.

M. PERASSI *(Italy)* said that he would be satisfied if the necessary explanation were given in the report.

M. MAYER *(Austria)* concurred in the Rapporteur's proposal. He would prefer, however, to have a passage in the interpretative Protocol of the Convention in which it would be possible to have a clearer and more detailed explanation than in the Convention itself.

M. PILOTTI *(Italy)*, Rapporteur, after an exchange of views with the Austrian delegate, said that, for the moment, the Committee could confine itself to the proposal to insert a passage in the report, the Austrian representative retaining his right to submit later an amendment for insertion in the Protocol. The Drafting Committee would see whether this amendment was necessary in order to define the meaning of the article.

M. MAYER *(Austria)* agreed.

THE CHAIRMAN asked the French delegate whether he was satisfied. The Chairman had himself studied M. Pilotti's report very closely and he admired the ingenious way in which the Rapporteur had drafted his report so as to solve certain difficulties which had been left in abeyance by the original text of the Economic Committee.

M. DE NAVAILLES *(France)* replied that he would not press for the omission of sub-paragraph *(a)*, but he would still urge that sub-paragraph *(a)* in the original text should be retained.

THE CHAIRMAN suggested that it should be left to the Rapporteur to prepare an explanatory passage to be inserted in the report. The question would be raised again, if necessary, during the examination of the report.

M. DE NAVAILLES *(France)* approved this suggestion.

M. NEDERBRAGT *(Netherlands)* wished to make a declaration on a point of principle. The argument had been advanced in the Committee that the communes and provinces were under the authority of the State and were endowed by it with juridical personality. He did not agree with that conception. The question of the State's omnipotence was a highly controversial one in the Netherlands, and it would be very difficult for him to agree to this principle in so far as concerned his country.

M. PILOTTI *(Italy)*, Rapporteur, said that it was precisely on account of M. Nederbragt's misgivings, which were shared by many other delegates and by many writers on public law, that he had preferred the expression "under the authority of the State" to another formula which had been considered by the Sub-Committee and which read "created by the State or endowed by the State with a juridical personality". In the present text the question to which the Netherlands delegate referred remained open.

M. NEDERBRAGT *(Netherlands)* replied that the question of principle was for him important. He would be glad if the Rapporteur could devote a few words in the report to his declaration. A Conference like the present Conference created international law in one way and another, and a reference might be useful for the future.

SALIH ZEKAI BEY *(Turkey)* said that, with reference to the second amendment made by the Sub-Committee in paragraph 2 *(a)*, he wished to propose the insertion of the words "or authorised" after the words "the holders of which are chosen" for the following reasons. The opening of a school was reserved under Turkish law to the Government or to Turkish nationals, but in all cases as a State function or a mission entrusted by the State and, in the latter case, subject to the compulsory submission of the requisite titles and guarantees and compliance with the curricula issued by the competent authorities. It was for this reason that he proposed the insertion of

the words "or authorised" regardless of the question whether or no the holders in question were paid by the State or by local administrations. He hoped that none of the delegates on the Committee would oppose the view that every country was legitimately entitled to regulate national training and education in accordance with its individual situation. The effort now being made in Turkey to settle the question of illiteracy and to enhance the fruits of commercial and industrial secondary education made it necessary for the State to have recourse, apart from free State education, to non-gratuitous education under the direction of private persons authorised by the State. It was, of course, understood that, in this case, the authorisation was strictly reserved to nationals exclusively. Teachers, professors and schoolmasters in general came within the category of State officials and employees and were thus covered by the words "or other" in subparagraph *(a)*.

M. PILOTTI *(Italy)*, Rapporteur, explained the system which had been followed by the Sub-Committee. All the services or positions described as public might be either services involving a devolution of the authority of the State —and this was the simplest case to recognise in practice— or a service implying a mission entrusted by the State. In order to make sure that it had forgotten nothing, the Sub-Committee had appended the case of functions for which the appointments were made by the State or by an administration having, so to speak, a governmental character. In these circumstances, the Turkish delegate's idea seemed to be covered by the words "or a mission entrusted by the State". If he had correctly understood the Turkish delegate's explanations, the question was not that of a State school which would be covered by the first and simplest hypothesis. Even those who agreed that a schoolmaster did not receive a devolution of public authority should be satisfied, for the case was one of an appointment made by the State.

The same remark applied to a school under a provincial or local administration. There remained the case of a non-Government school which a private individual desired to open. The Turkish State required that this school should only be opened by a person who had received a special authorisation for this purpose from the State. In these circumstances it might be possible to say that the person who opened such a school or who taught in it carried out a mission which he had received from the State, and this came under the second hypothesis.

SALIH ZEKAI BEY *(Turkey)* agreed with the interpretation of the Rapporteur. He would be satisfied if the report stated that the observations submitted by him would be covered by the words "mission entrusted by the State", although the holder was not chosen by the State but merely authorised by it."

M. PILOTTI *(Italy)*, Rapporteur, further asked the Turkish delegate whether Turkish law required a State authorisation for nationals or whether teaching was a profession in which nationals could engage without restriction?

SALIH ZEKAI BEY *(Turkey)* replied that the law in question was not one which referred solely to foreigners. The law governed the whole country. It reserved posts in schools to nationals who complied with the necessary conditions and guarantees. If the reservation were not made in this passage in Article 7, paragraph 2, it would come under the first paragraph which referred to the equivalence of titles and guarantees.

M. PERASSI *(Italy)* thought that the point raised by the Turkish delegate could not be taken in connection with paragraph 2 *(a)* of the article. There was no question of a public office but of a profession, and the point should therefore be examined in connection with professions. The masters appointed to teach in a private school were private persons and not persons exercising "public functions, charges or offices" even if the right to open a private school or to teach in one was contingent upon a State authorisation.

THE CHAIRMAN agreed that this question was one of substance which did not come under sub-paragraph *(a)* and that it would be better to raise it in connection with paragraph 9 of the report.

M. PILOTTI *(Italy)*, Rapporteur, said that it would still be possible to solve the difficulty raised by the Turkish delegate. When the Committee came to discuss sub-paragraph *(b)*, it would consider whether the report required amendment and the sub-paragraph would be amplified. For the moment the whole question was held over.

M. DE NICKL *(Hungary)* noted that, according to the Rapporteur's explanations, the question was settled in so far as concerned persons who opened private schools. Was he right in understanding that the Convention also covered the case of a schoolmaster who had been authorised to open a private school employing other persons for the purpose of teaching. Under Hungarian law even the latter posts might be reserved to nationals. An authorisation from the State was required in order to open any kind of private school — a school of dancing or fencing, etc. According to the Rapporteur's explanation, Hungarian law would be in conformity with the Convention in this matter. If, however, the director of such a school employed other persons, the law might force him to appoint Hungarians. Was this case covered as well ?

The same remark applied to religious training ; priests must be only Hungarian nationals. Should this question be raised at the present moment or later ?

M. PILOTTI *(Italy)*, Rapporteur, thought that the examples given by the Hungarian delegate were somewhat more complicated. The decision should accordingly be held over until the

discussion on sub-paragraph *(b)*, that was to say, paragraph 9 of the report. The Committee would then have before it the whole question of the professions and, in considering positions which were not public offices but were controlled by the State, it would discuss whether a better text were not required.

THE CHAIRMAN concluded that the question of education was reserved.

37. **Article 10 : (Procedure). Suggestion of the German Delegation.**

DR. MARTIUS *(Germany)* with reference to Article 10, pointed out that it would be necessary to deal with the problem of the acquisition of immovable property — mines, water-power concerns, ships, etc. This was a wholly economic question. He did not see how the Legal Committee could come to any conclusion in this matter until it had received directions, and in his opinion the problem was one of principle which should be settled by the plenary Committee, since it was connected with other questions — in particular, that dealt with in Article 7 and other Articles. Would it not be possible for the Committee to open a discussion on Article 10 with regard to the point of principle ?

THE CHAIRMAN approved the German delegate's suggestion. He proposed that the Committee should take up Article 10 as a whole, the Legal Committee continuing its examination of Articles 9 and 11.

The Committee agreed.

NINETEENTH MEETING

Held in Paris on November 22nd, 1929, at 3 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).
Secretary : M. SMETS.

38. **Examination of the Articles of the Convention : Article 7, Paragraph 2** (continuation).

Report of the Sub-Committee (Annex A, 24).

Paragraph 8.

M. PILLAULT *(France)* asked whether the modification introduced into sub-paragraph *(b)* was really only an amendment of form. It seemed to him to restrict the scope of the article.

M. PILOTTI *(Italy)*, Rapporteur, explained that this question arose under paragraph 9.

Paragraph 9.

M. PILLAULT *(France)* asked that the second part of paragraph 2 *(b)* of Article 7 should be restored. He thought it was desirable that States should be able to have certain guarantees in regard to certain trades, such as the trade in arms and in regard to industries which were necessary to the national security.

M. PILOTTI *(Italy)*, Rapporteur, said that the text adopted by the Sub-Committee did not exclude the French amendment in regard to national security. That amendment, however, applied, not to professions and occupations, but to industries and should be discussed under that head. Sub-paragraph *(b)* related only to professions and individuals. The Sub-Committee had thought that this paragraph should be interpreted in a limited sense. It should, in fact, be confined to the law and similar professions, and the example given was not to be read as justifying a further extension of the scope of the paragraph.

The Egyptian delegation had desired to increase the scope of the article by deleting the word "similar" before the word "professions".

M. PILLAULT *(France)* also thought that the word "similar" might be omitted, especially as the clause had to be interpreted in a limited sense. He would in that case accept the draft, provided that it was understood that the question of national security could be raised at a later stage.

M. LINANT DE BELLEFONDS *(Egypt)* reminded the Committee that the Egyptian amendment was in the following terms : "Professions such as those of barrister, solicitor, notary, stockbroker, as well as the professions or offices which, in the public interest, entail special responsibilities" (see last meeting). That amendment corresponded with the views of those delegations which desired to reserve certain professions. The Egyptian Government, for example, desired to reserve for Egyptian nationals the proprietorship and editorship of Arab newspapers. Other countries might have similar cases in mind.

M. POZNANSKI *(Poland)* enquired as to the precise meaning of the expression "professions or offices which, in the public interest, entailed special responsibilities"? Would it, for example include educational posts, *agents de brevet*, doctors and chemists? Did such professions entail a special responsibility? If such were the case, an indication to that effect should be inserted in the report. If such professions were not included, and if no reference to the matter were made in the report, he would be obliged to raise the question of principle.

M. PILOTTI *(Italy)*, Rapporteur, said that the intention of the Sub-Committee had been to make the category of professions referred to in this paragraph as limited as possible. By special responsibility was meant a special responsibility incurred by persons who represented third parties before the authorities of a country. Thus, *agents de brevet* would not be included, nor would those who were engaged in the work of education. The Turkish delegation had submitted an amendment desiring to cover those who were employed in hospitals and schools. The Sub-Committee had taken no decision on this matter as it had thought that the question should be discussed by the full Committee. The cases in question were not covered by the present text. The various professions to which reference had been made had been reviewed by the Sub-Committee and the question of their inclusion had been settled provisionally in the negative.

Dr. MARTIUS *(Germany)* emphasised that the original resolution of the Assembly approving the convening of the present Conference had laid down that the International Convention to be drafted should be established upon the most liberal lines ; more particularly was it desirable that all possibility of discrimination against foreigners in the exercise of trade and professions should be excluded. The amendments which had been put forward by various delegations had resulted in the compilation of a long list of professions which certain countries desired to except from the provisions of the Convention. If these amendments and reservations were accepted, the scope of the Convention would be extremely limited.

He would point out that the Sub-Committee, in paragraph 4 of its report, had already dealt with the anxieties of a certain number of delegations which had expressed a desire for an extension of the category of professions or appointments which the contracting States would be free to reserve for their own nationals. He had assumed that this particular question had already been settled.

The Egyptian delegation had referred to the case of the Press. Personally he felt that the greatest possible liberty should be accorded to the profession of journalism. He would vote against the Egyptian amendment as he thought that the present text was quite satisfactory.

M. POZNANSKI *(Poland)* regretted that the interpretation given to the article by the Sub-Committee did not correspond with the views to which the Polish delegation desired to give effect, and he must therefore raise the question of principle. He felt that Article 7, as drafted by the Sub-Committee, would create further opportunities for misgiving and dispute. Paragraph 1 stipulated that all professions should, as a matter of principle, be open to foreigners. Paragraph 2 laid down that States might decide that certain professions should not be accessible to foreigners, and this particular paragraph might be very variously interpreted. He had assumed that the Convention was intended to deal with the economic problem, in other words that it was designed to facilitate international commerce. The question of throwing open certain professions to foreigners was not, therefore, one of the essential aims of the Convention, whose provisions should be limited to commercial, industrial and financial activities. In this field, the Convention should be as liberal as possible. It could, however, only give rise to misunderstanding and difficulty if an endeavour were made to deal with professions which had no relation to the economic life of the country.

M. PILOTTI *(Italy)*, Rapporteur, said that Article 7, as originally drafted by the Economic Committee, was undoubtedly intended to cover all professions. If the Polish delegation desired to raise the question of principle, it should submit an amendment to that effect. Such a proposal would transform the whole article and the system on which it was based. The point raised by M. Poznanski was, moreover, in itself obscure, since it would be very difficult to distinguish between professions which did or did not relate to the economic activities of the country. What, for example, would be the position of engineers, architects, etc.?

The CHAIRMAN asked the Committee to continue the discussion on the basis of the present text. Any amendments of substance might be taken when the report of the Rapporteur came to be discussed.

M. PEROUTKA *(Czechoslovakia)* said that he had some doubt as to the scope of sub-paragraph *(b)* after comparing it with paragraph 9 of the report. What exactly was meant by "other similar professions or offices"?

M. PILOTTI *(Italy)*, Rapporteur, said that these were professions which involved the representation of persons before the public authorities of the country. This interpretation should perhaps be inserted in the report.

M. PEROUTKA *(Czechoslovakia)* enquired whether delegations which desired to reserve certain professions for their own nationals should ask for additions to the text of the article or

for a more extensive interpretation of the article. Personally, he would support the Egyptian proposal which appeared to cover all the occupations which his Government desired to reserve.

THE CHAIRMAN said the issue was simple. The question before the Committee was whether the definition of reserved professions in sub-paragraph *(b)* should be widened. If the definition were not widened, the Committee would have to consider separately the occupations which were excluded by the present limited formula.

M. DINICHERT *(Switzerland)* said that he was opposed on general principle to the views expressed by M. Poznanski. He did not wish, however, to speak on the question of the limited issue which the Chairman was placing before the Committee.

M. POZNANSKI *(Poland)* said that the Polish delegation had already presented an amendment in the following terms :

> " Each of the High Contracting Parties, however, retains the right to prohibit foreigners within its territory from engaging in certain professions, occupations, industries and trades, or to subject their exercise to compliance with differential formalities or conditions if the exercise of the said activities is reserved to nationals under the laws and regulations in force in the country " (Annex A, 22).

He would urge in defence of this amendment that the Economic Committee had, from the first, realised that there were certain professions involving special responsibilities in the public interest. The Polish amendment was based upon the same idea. It assumed that the High Contracting Parties would have the right to exclude foreigners from certain occupations.

THE CHAIRMAN asked whether M. Poznanski regarded his amendment as wider than the Egyptian amendment and therefore covered by it.

M. POZNANSKI *(Poland)* said that the Egyptian amendment covered the Polish amendment only in part.

THE CHAIRMAN agreed. He would therefore ask the Committee to vote first upon the Egyptian amendment. If that amendment were accepted, he would then ask the Committee to vote upon the Polish amendment in order to ascertain whether it desired to go further than the Egyptian proposal.

The Committee adopted the Egyptian amendment by 17 votes to 7.

THE CHAIRMAN then asked the Committee to vote upon the Polish amendment.

M. DINICHERT *(Switzerland)* said he could not conceal his anxiety in realising that the Committee was prepared to vote upon an amendment of this character. The amendment was in general terms and it reserved to Governments the right to reserve for their nationals virtually any profession or occupation whatsoever. The Swiss delegation would have to ask itself very seriously whether it would be possible for Switzerland to sign a Convention in which such a principle was recognised. M. Poznanski had argued that the Convention should be framed in liberal terms so far as economic activities and occupations were concerned but that non-economic professions should be excluded. The Conference, however, had not been called together to establish a commercial treaty or merely to deal with a commercial subject, but to regulate the whole question of the treatment and establishment of foreigners. The Conference was deciding issues affecting the interest of millions of foreigners residing in foreign countries. It was now proposed that the interests of these foreigners should be placed beyond the scope of the Convention. The Conference by accepting such a proposal would, in his opinion, be paying too high a price for a possible agreement. If the Conference felt unable to settle the problem now under discussion, it should make a frank declaration to that effect. The question to be decided was whether it was possible to substitute for the existing bilateral treaties governing the establishment of foreigners a general international treaty.

The question was of special interest to Switzerland. He had already pointed out that ten per cent of the population of Switzerland consisted of foreigners and that there were 400,000 foreigners who had settled in his country who had complete liberty to engage in any occupation or profession whatsoever upon an equal footing with nationals of the country. There was, moreover, a large number of Swiss nationals living abroad for whom a similar privilege was desired, and Switzerland could scarcely sign a treaty which did not guarantee their position upon terms at least as favourable as those which they already enjoyed under existing bilateral treaties.

He was prepared to agree that there were certain professions which might have to be reserved for nationals in the public interest, but he could not agree to a general formula which would leave it to the discretion of the Government to close virtually any profession or occupation to the foreign nationals living on their territory.

SALIH ZEKAI BEY *(Turkey)* suggested that the purpose of the Polish amendment might be served by adding to the text already adopted the words " according to the national law of each of the High Contracting Parties ".

This formula would cover all the amendments which had been submitted and was consistent with the expressions used elsewhere in the Convention.

M. PILOTTI *(Italy)*, Rapporteur, pointed out that the Polish amendment went a good deal further than the amendment which had just been proposed.

DR. MARTIUS *(Germany)* said that he did not oppose a vote being taken on the Polish amendment, as that vote would tend clearly to reveal the attitude of the Conference. He would point out, however, that the Conference had already adopted paragraph 5 of the report of the Sub-Committee, in which the general principle of the Polish amendment had been definitely rejected.

M. POZNANSKI *(Poland)* said that, although the amendment proposed by the Turkish delegation did not go quite so far as the Polish amendment, he was prepared to accept it and withdraw his own.

THE CHAIRMAN suggested that the Committee should accordingly vote upon the Turkish amendment. That amendment was to the effect that there should be inserted in the text the following words : " according to the national law ". The paragraph would therefore read :

> " Professions such as those of barrister, solicitor, notary, stockbroker and other professions or offices which according to the national law entailed special responsibilities."

M. PERASSI *(Italy)* said he could not share the view of the Polish delegation that the Convention should be exclusively concerned with economic activities. The countries which had accepted the invitation to attend the Conference had done so on the understanding that it would deal generally with the whole problem of establishment. He would point out in this connection that the Council, in its first recommendation on the subject, had certainly intended to cover all occupations and professions and not only those which were directly related to commerce, and that the draft submitted by the Economic Committee had a special chapter on the establishment of foreigners as well as a chapter on the guarantees which were necessary for international commerce. Personally, he could not accept a formula which left to every country a free discretion in the control of the exercise of professions and occupations by foreigners.

DR. MARTIUS *(Germany)* agreed with the Italian delegation. There were certain countries in which a considerable number of professions were reserved for nationals under the national law. The scope of the Turkish amendment would therefore be extremely wide and its adoption would be to the serious detriment of the Convention.

SALHI ZEKAI BEY *(Turkey)* said that he was proposing that professions should only be reserved which were already reserved under national law. He would point out, moreover, that the Economic Committee, in its commentary, had laid down that the list of reserved professions was merely given in illustration and was not exclusive. He did not therefore think that his amendment was contrary to the principle laid down by the Economic Committee.

M. LINANT DE BELLEFONDS *(Egypt)* said he thought that most delegates would agree that the Convention was not intended to cover only professions relating to economic activities. There were, however, certain professions which, in the public interest, were to be reserved. Only the States themselves could judge whether or not the public interest was involved and the Conference must trust the High Contracting Parties fairly and reasonably to interpret its provisions.

M. PILOTTI *(Italy)*, Rapporteur, wondered what would be the precise effect of the Turkish amendment. If that amendment were adopted, emphasis would be laid on the idea that the prevailing criterion as to what constituted public interest would be the national legislation of the country concerned. If the Turkish amendment were not adopted, on the other hand, the question whether public interest was or was not involved would be left to the discretion of the Governments themselves, subject to arbitration between the High Contracting Parties when any particular issue came to be disputed between them. The Turkish amendment would accordingly seem to leave the matter more completely to the discretion of the Governments, which, if that amendment were adopted, could always plead their national legislation as justifying them in reserving a particular profession. The High Contracting Parties would, in effect, be saying that they accepted in advance all the provisions of the national legislation.

M. DE LA VALLÉE POUSSIN *(Belgium)* said he would support the Turkish amendment. The sole competent judge of the public interest was necessarily the national authority and, if there were any doubt on this point, the matter should be made quite clear.

M. CHOUMENKOVITCH *(Yugoslavia)* said that his delegation had submitted an amendment in regard to emigration officers, doctors and chemists of which no account appeared to have been taken by the Sub-Committee. Might these professions be regarded as covered by the formula which had been adopted? The Yugoslav delegation had also proposed an amendment to the effect that matters affecting the vital interest of the country should be reserved. Was it the opinion of the Committee that the vital interest and the public interest of a country might be regarded as identical ?

He agreed that only the national authority could judge whether the public or vital interests of the country were involved and that the Conference must have confidence in the Governments. All international conventions were necessarily vague and left a good deal to the discretion of the contracting parties.

M. PILOTTI *(Italy)*, Rapporteur, thought that the discussion was becoming a little diffuse. He would remind the Committee of the precise terms of the formula which had been adopted. This formula had no direct reference to the public interest. It was to the effect that professions or offices should be reserved which, in the public interest, entailed special responsibilities. The public interest was accordingly only mentioned as justifying the ascription of special responsibilities to the members of the professions concerned. There were certain professions which, under the national laws, were, in the public interest, subject to a certain discipline. The essential factor was that the law had laid down that these professions should recognise that their responsibility was of a particular character.

The delegation of Yugoslavia had referred to emigration officers. These officers would not be covered by the formula adopted unless they were, under the legislation of Yugoslavia, subjected to special regulations. In Italy, emigration officers were regarded as having special responsibilities towards the public, but they were not regarded as belonging to a reserved profession, since the authorities took the view that such duties might be as efficiently and impartially performed by a foreigner as by a national.

The insertion of a reference to the national legislation proposed by the Turkish delegation was either useless or it would have the effect of making the text as wide and general in its application as the Polish amendment. If it were interpreted as meaning that only such professions were reserved as were subject to a special discipline under existing legislation, it did not in any way change the purport of the article. If, however, it were interpreted as enabling the Government to reserve a profession merely by introducing a stipulation into its laws to the effect that it entailed special responsibilities in the public interest, the article might be applied in such a way that virtually any profession might be reserved.

M. ITO *(Japan)* agreed with the Egyptian delegation that the national authority alone could judge whether the public or vital interest of a country was concerned. The real question at issue, however, was whether a State, in deciding whether the public interest was involved, acted in a purely arbitrary or subjective manner or endeavoured to take an objective and impartial view of the situation. Personally he would vote against the Turkish amendment, as he felt that its adoption would tend to make the exercise by a State of its discretion in this matter less objective.

THE CHAIRMAN asked the Committee to vote upon the Turkish amendment.

The Turkish amendment was carried by sixteen votes to eight.

M. NEDERBRAGT *(Netherlands)* said that the Economic Committee, in its observations on the reservations, had intimated that they should be interpreted in a restrictive sense. Those words had apparently been ignored by the Sub-Committee.

M. PILOTTI *(Italy)*, Rapporteur, said that the substance of the observations of the Economic Committee would be found in paragraph 9 of the report, in which it was laid down that the exception on the ground of special responsibility in the public interest should not bear a wide interpretation. This passage, however, was now rather beside the point, in view of the amendments which had been adopted. It was now obvious that the provisions in regard to the reservation of certain professions would be extensively interpreted owing to the attitude adopted by the Conference.

Paragraph 10.

M. MAYER *(Austria)* asked whether it would not be better, in sub-paragraph *(d)*, to refer to the exercise of occupations in State enterprises. The article was intended to deal, not with the undertakings, but with the individuals employed.

M. PERASSI *(Italy)* enquired as to the precise meaning of the provision relating to State undertakings in sub-paragraph *(d)*. Suppose that a State industry were established in a country, would the establishment of that industry justify the authorities in refusing to allow foreigners to found similar industries or be employed in such industries ?

M. PILOTTI *(Italy)*, Rapporteur, said that the Sub-Committee had introduced a reference to State undertakings in order to cover cases where there might be a State enterprise which was not necessarily a monopoly. There were instances in which a State might compete with private industrial concerns. The reference to State enterprises had been inserted in addition to the reference to monopolies in order to avoid any misunderstanding.

He did not think that the amendment proposed by M. Mayer was necessary. The intention of the article was to cover, not only individuals engaged in the industries concerned, but any

privileges or advantages which might be enjoyed by State enterprises but which were not enjoyed by private concerns.

M. STUCKI *(Economic Committee)* said that, in the Sub-Committee, it had been urged that in cases where the Government laid down that foreigners might not be engaged in a State industry which was a monopoly it should also be able to prohibit foreigners from being employed in State enterprises which were not monopolies. A wider interpretation, however, had been given to this provision. It had been assumed that, if a State established a factory for the manufacture of porcelain, no foreigner would henceforth have the right to establish a factory for the manufacture of porcelain. That, however, was not the intention of the article, and the text should be revised in order to remove any possibility of doubt.

M. MAYER *(Austria)* represented that the article, read as a whole, might certainly bear the interpretation to which M. Stucki had alluded. He agreed that such an interpretation must be excluded.

THE CHAIRMAN said that the Rapporteur would introduce into his report a paragraph which would remove the possibility of any such misunderstanding.

Paragraph 11.

M. NEDERBRAGT *(Netherlands)* said he desired to make a reference to railways.

M. PILOTTI *(Italy)*, Rapporteur, suggested that the question of railways should be taken on paragraph 15.

The Committee agreed.

M. CARAVALE *(Italy)* drew attention to the fact that it was proposed to include inland waters within the scope of the reservation on the same terms as territorial waters. There were certain international conventions regulating international inland waterways. He presumed there would be a general clause in the Convention to the effect that its provisions did not in any way prejudice existing bilateral or international agreements.

THE CHAIRMAN said that the attention of Committee D would be drawn to this matter.

M. DE NICKL *(Hungary)* referred to the reservation in sub-paragraph *(f)* relating to coasting trade. He thought reference to coasting trade should be deleted or that it should be made applicable only to maritime coasting trade. He desired to exclude the reservation concerning the coasting trade on the Danube.

M. DINICHERT *(Switzerland)* said that the present Convention would obviously not be read as prejudicing existing international conventions. He did not think that any reference to the matter was really necessary. There was, however, the question which arose in this connection. Was it really necessary to make a reservation in regard to fishing in inland waters? Such a provision had never yet figured in any bilateral treaty of establishment. It had always been recognised that foreigners residing in the country might fish in the inland waters of that country, and there was no reason why that privilege should be reserved to nationals.

M. PILOTTI *(Italy)*, Rapporteur, said that this reservation had been introduced owing to the submission of an amendment by the Netherlands delegation. In view of the observations of the Hungarian delegation concerning the coasting trade and of the Netherlands amendment he would ask leave to reconsider the matter.

M. NEDERBRAGT *(Netherlands)* said that the Netherlands delegation, in moving its amendment concerning inland waterways had intended to cover waters which lay between territorial waters and inland waters. His delegation would withdraw his amendment if a formula could be found to cover this special case.

M. PILOTTI *(Italy)*, Rapporteur, said he quite understood the purpose of the Netherlands amendment. There were, for example, the waters of a port which might be regarded as inland waters. He would endeavour to find a formula. Territorial waters in the international legal sense were waters which were not really within the territory of the State but over which the State reserved certain rights. They must be very clearly distinguished from waters which might be described as territorial in the real sense of the word, namely, as belonging to a particular country.

M. MAYER *(Austria)* said he desired to support the observations of the Hungarian delegate regarding the coasting trade on rivers.

DR. MARTIUS *(Germany)* said that the question of the relation of the present treaty to other international bilateral treaties must obviously be left to Committee D. Personally, he had no doubt that the rights enjoyed by contracting parties under the Convention regulating navigation on the Danube were entirely reserved, and that the coasting trade on that river could in no way be affected by the present provision.

M. SANDSTROEM *(Sweden)* said that the question of air navigation had also been dealt with in another Convention and was therefore, presumably, equally reserved.

TWENTIETH MEETING

Held in Paris on November 23rd, 1929, at 10 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

39. **Examination of the Articles of the Convention : Article 7, Paragraph 2** (continuation).

Report of the Sub-Committee (Annex A, 24).

Paragraph 12.

No observations.

Paragraph 13.

M. SANDSTROEM *(Sweden)* proposed that the examination of the question dealt with in this paragraph should be postponed until the consideration of Article 10.

M. PILOTTI *(Italy)*, Rapporteur, proposed that the question dealt with in paragraph 13 should be held in abeyance until the discussion of Article 10. The point to which the Economic Committee had referred had been the exploitation of the mines, which was a separate question from that of their ownership, and it would be possible under the provisions of Article 10 to contemplate national legislation which reserved the ownership of mines without affecting the question of their exploitation. The present formula for Article 10 did not, of course, exhaust the problem.

M. SANDSTROEM *(Sweden)* accepted the Rapporteur's proposal.

Paragraph 14.

Mr. PUGH *(British Empire)* recalled the amendments proposed by his delegation (Annex A, 1). The Sub-Committee had held that these amendments were covered by the modifications which had been made in paragraph 2 of Article 7. He asked that this opinion might be mentioned in the report as being the opinion of the Committee.

M. PILOTTI *(Italy)*, Rapporteur, replied that the report would contain an explicit reference to this point.

SALIH ZEKAI BEY *(Turkey)* proposed to insert the words "roadsteads and coasts" which appeared in commercial conventions, more particularly those signed by Turkey. He urged that these words should be kept.

M. PILOTTI *(Italy)*, Rapporteur, explained that the Sub-Committee had thought it unnecessary to mention roadstead services explicitly, since these words were, in the Committee's opinion, comprised under the conception of internal port services. A roadstead might be held to be a natural port. He was not opposed to the point being explained either in the Convention or in the report.

SALIH ZEKAI BEY *(Turkey)* said he would be satisfied if the matter were mentioned in report.

M. PILOTTI *(Italy)*, Rapporteur, explained that amendments moved by the British, Turkish, Indian and Norwegian delegations were definitely covered by the acceptance of the text as it stood. He recalled further that, on the previous afternoon, he had reserved his right to examine the questions of territorial waters and of fishing in waters other than territorial waters. He maintained that reservation.

Furthermore, the Committee had, on the previous afternoon, begun a discussion on maritime and river coasting, and a reservation had been made in regard to national rivers. No decision had yet been taken in the matter, and he would be glad to have the views of the delegations concerned: The Sub-Committee had held that coasting should be understood in the widest sense, but it was for the Committee to take a decision. The delegations more particularly concerned were those belonging to countries where there were river frontiers or rivers which were regulated by international treaty, that was to say, chiefly Austria, Hungary, Roumania and Yugoslavia. There was an amendment by the Hungarian delegation proposing that the coasting trade mentioned in Article 7 should be understood to cover only maritime coasting, the use of the words "coasting trade" being excluded in regard to river navigation.

THE CHAIRMAN proposed that the Rapporteur should confer on this matter with the delegations concerned and prepare a text in agreement with them.

M. DE NICKL *(Hungary)* and M. PEROUTKA *(Czechoslovakia)* agreed.

M. ITO *(Japan)* also agreed, but wished to submit an observation. There were other countries which were concerned in the question in addition to the countries riparian to international rivers. The problem had been discussed at length in Barcelona and Geneva, and there was an international treaty on the régime of international rivers. It seemed accordingly that the question of river coasting trade had been discussed sufficiently exhaustively, and he urged the Sub-Committee which was to examine the question with the Rapporteur to take into account the provisions of the International Convention on the Régime of International Rivers, and the discussions which had taken place on the subject. If account were had solely of the interests of the riparian States, there would undoubtedly be certain contradictions between the Convention to be concluded and the existing provisions.

M. VAN DER WAALS *(Netherlands)* observed that the question of railways and tramways was not mentioned among the exceptions in Article 7.

THE CHAIRMAN said that this question would be taken up again in connection with paragraph 15 of the report.

Proposal by the Venezuelan Delegation (Annex A, 12).

M. MACHADO *(Venezuela)* referred to the amendment submitted by his delegation for the addition of the following paragraph :

> " These companies shall nevertheless be obliged to observe the provisions and comply with the limitations imposed on foreign nationals by the local laws with regard to banks, insurance, navigation, the ownership of vessels and the coasting trade."

In Venezuela the issue of bank notes was not a State monopoly, nor was it even a privilege held by certain banks. It was a right granted to Venezuelan banks which complied with certain guarantees, for instance, the deposit in gold of the equivalent of two-thirds of the notes issued. The High Contracting Parties which made the issue of bank notes a State monopoly were safeguarded by sub-paragraph *(c)* of paragraph 2 of the new Article 7, or by sub-paragraph *(e)* of the Economic Committee's draft.

In regard to foreign deposit banks with branches in Venezuela, it had been noted that certain of them sent abroad to their principal seat the deposits made by Venezuelans, which often represented their savings, and that these deposits had been used as a guarantee for foreign capital in case of bankruptcy or failure — a practice which involved a total loss for the holders of the deposits. It was for that reason that Venezuelan law demanded certain guarantees before authorising foreign banks to effect deposit transactions. It was for that reason, and precisely with the object of restoring equilibrium or establishing equality of treatment, that the Venezuelan delegation had submitted its amendment. If the amendment were not accepted, the delegation would be obliged to make certain reservations.

THE CHAIRMAN requested the Rapporteur to give the Committee an explanation so as to enable it to decide whether the Venezuelan reservation should be accepted.

M. PILOTTI *(Italy)*, Rapporteur, understood that the question was that of reserving the rules governing foreign banks to the national legislation. The banking industry was not reserved to nationals, so that the case was not altogether covered by that mentioned in the article. The national legislation, however, failed to establish equality between nationals and foreigners, since it prohibited the latter from engaging in certain transactions or obliged them only to do so under conditions specified by the law.

It followed that it would not be easy to incorporate the Venezuelan amendment in Article 7, paragraph 2. It would have been quite impossible to do so with the Economic Committee's formula. With the new formula adopted by the Sub-Committee, however, the latter had thought that it would be going too far if it inserted a reservation on account of banks, since that would be going further than the Venezuelan delegation proposed. Was there any other means of incorporating in the Convention the exceptions made by Venezuelan law in regard to banking transactions ? The Sub-Committee had been unable to find one. It might be possible to contemplate a special reservation for Venezuela in this matter, and Committee D might study this procedure if other States wished to make reservations for other reasons. M. Stucki might perhaps be able to indicate the Economic Committee's opinion.

He would add that amendments on much the same lines as that of the Venezuelan delegation had been presented by other delegations, namely, the Czechoslovak, Portuguese and Finnish. The Sub-Committee had examined all these amendments and had arrived at the same conclusion as for the Venezuelan amendment. It would be useful to have the opinion of these various delegations on the matter. If the Venezuelan delegation and those of the other countries concerned insisted on obtaining satisfaction in the actual text of the article, the point to be covered would not be that of the banking industry but the transactions which national law forbade to foreign banks, since otherwise there would be a danger of introducing into the Convention a limitation which the Sub-Committee regarded as too wide and which did not correspond to the present needs of trade.

THE CHAIRMAN did not think that the Committee would be able to examine this question until it was acquainted with the details of the national regulations in the matter. He suggested that the delegations which had submitted amendments should explain exactly the nature of their regulations. When the members of the Committee had thus received precise information, they would be able to take a decision.

The suggestion of the Chairman was approved.

M. SCHUMANS *(Latvia)* wished to call attention to restrictions of another kind existing in Latvia in regard to banks. Under Latvian law, the founders of a bank and, likewise, the general manager of a bank must be Latvian citizens. It would be very difficult for Latvia to repeal this statutory measure.

M. PILOTTI *(Italy)*, Rapporteur, proposed that each delegation which had amendments or observations to submit should write a note to the Chairman indicating, in precise terms, the restrictions or limitations imposed on foreign banks by their national laws. He would examine these notes and decide whether it would be better to suggest a solution or to convene a new meeting of the Sub-Committee to discuss them.

This proposal was adopted.

M. FLORES DE LEMUS *(Spain)* asked whether only delegations which had submitted amendments were invited to write to the Chairman on this subject or whether all the delegations concerned could do so.

THE CHAIRMAN thought it preferable that only delegations which had submitted amendments should send him a letter. The question would come up later before the Committee and all those who were interested in it would have an opportunity of stating their views.

He asked the Rapporteur whether there would be any modification of paragraph 15 of the report as a result of the amendments made on the previous afternoon in the text of paragraph 2 *(b)* of Article 7. There might be certain passages now in paragraph 15 of the report which would have to be transferred to paragraph 14.

M. PILOTTI *(Italy)* Rapporteur, replied that it would, perhaps, be necessary to add passage to paragraph 14 of his report as the result of the vote which had been taken on the previous afternoon upon the amendment relating to professions and industries which were of vital importance to the nation.

THE CHAIRMAN suggested that the amendments should be taken one by one and that the next question to be examined afterwards should be that raised on the previous afternoon by the Netherlands delegation.

Amendment by the Yugoslav Delegation (Annex A, 16).

M. PILOTTI *(Italy)*, Rapporteur, reminded the Committee that the Yugoslav amendment would have to be examined next in regard to the point concerning industries but not professions, since the question of professions had been settled on the previous afternoon. Further, a proposal had been made verbally in the Sub-Committee by the Belgian delegation. The Belgian delegation, with the support of the Yugoslav delegation, proposed that industries affecting the defence of the State, and more particularly the manufacture of arms and munitions of war, should be excepted. This amendment must be taken into account during the discussion of the Yugoslav amendment. The Sub-Committee had considered that the Yugoslav amendment was drafted in too wide terms, since an industry "involving the vital interests of the nation" might include wheat-growing as well as the manufacture of arms. The Sub-Committee, on the other hand, would have no objection to the addition in the sense of the Belgian amendment, on condition that it was strictly limited to munitions and arms of war, so as not to impose too many handicaps on the explosives industry, which was largely concerned in mining and the manufacture of sporting weapons.

THE CHAIRMAN asked the Yugoslav delegate whether he would consent to his amendment being restricted within the limits indicated by the Rapporteur.

M. CHOUMENKOVITCH *(Yugoslavia)*, in reply to the objections to his proposal, pointed out that the Convention as it stood contained notions as wide and vague as that contained in the Yugoslav proposal — for example, the term "public interest". Further, in order to safeguard itself against an abusive interpretation of these terms the Conference could make a recommendation that the States should not abuse certain wide powers left them under the Convention. He would like to have the opinion of his colleagues on this subject and he hoped that the other delegations would agree to questions bearing on national defence being covered by the clause under discussion.

Following on an exchange of views between the CHAIRMAN, M. CHOUMENKOVITCH and M. PILOTTI (Rapporteur), *the Committee adopted the expression "manufacture of munitions, arms and material of war" to appear among the reserved industries.*

Amendment by the Japanese Delegation (Annex A, 10).

M. ITO *(Japan)* recalled that his delegation had proposed the addition after the words "internal services in ports" of the words "and air navigation". The meaning of air navigation was very simple and comprised *air services* and *air transport.* The Japanese delegation asked that this industry should be excluded because it was not yet fully developed in all countries and because the regulations in regard to it were still undefined even in national law — for instance, in regard to the question of responsibility in the matter of air transport. It would therefore be premature to say what should be the régime governing air navigation. In the second place, there was an International Convention of 1919 on Air Navigation which contained certain provisions whereby

the activity of foreigners could be limited in the matter of air transport. For these two reasons it would be advisable not to introduce any too definite stipulations into the present Convention. The Convention of 1919 governed the question of commercial transport between two points on the same territory, but the question of transport between two points in two different countries was not governed directly, but only indirectly, by the Convention. He was prepared to withdraw his amendment, on condition that the Convention to be concluded did not affect the existing provisions. If there were no objection, he would have pleasure in conferring with the Rapporteur, and, if other delegations were interested in the question, it could be examined by a small sub-committee.

M. PILOTTI *(Italy)*, Rapporteur, explained that the case which the Sub-Committee had examined was exclusively that of engaging in industry but not that of the limitations which might be made thereto.

In regard to services on aircraft carrying the national flag, the local legislation was free to stipulate that such services should be carried on exclusively by nationals. Consequently the question of the crews on national aircraft lay outside the Convention. The question of engaging in industry was different in the sense that a foreigner might possess an aeroplane or run an air line in a country without being a national of it. It had been thought that the Japanese amendment would have the effect of restricting the freedom of trade in an exclusive sense.

In any case the Sub-Committee held that the problem as summari sed by the Rapporteur was not covered by the 1919 Convention. The question was whether a foreigner in Japan, for instance, might possess an aeroplane or run an air line, and whether the Committee wished to introduce a limitation in this respect or no.

There could be absolutely no doubt that the present Convention did not repeal the 1919 Convention, and some means of saying so must be found, since the same remark would have to be made in regard to other previous Conventions. The articles to which the Japanese delegate had alluded were Articles 16 and 26 in the 1919 Convention.

The Rapporteur read Article 16 of the 1919 Convention, and added that the Sub-Committee had held that this article was not in any way incompatible with Article 7 of the draft Convention. The mention of national aircraft did not refer to aircraft possessed by nationals, but to aircraft flying a national flag, quite apart from the nationality of the company or individual owning the aircraft.

If a country did not enforce the limitations prescribed in Article 10 — the subject-matter of which was still reserved — nothing could prevent a foreigner from possessing an aeroplane carrying the flag of the country where he was established. It was laid down that, for such aircraft, restrictions might be established in regard to commercial transport between two points in the same territory. In the view of the Sub-Committee, there was no question of touching that provision, and neither paragraph 1 nor paragraph 2 of Article 7 could be invoked as cancelling it.

As to Article 26 of the 1919 Convention, which the Rapporteur also read, the situation here was the same. Nothing in the present draft could be interpreted as derogatory to that article. To sum up, there could be no question as to the continued application of the 1919 Convention, which dealt specially with the question of aircraft. But means must be found to explain this point in order to meet the wishes of the Japanese delegation.

In regard to the interpretation of Article 7, paragraph 2, all that the Sub-Committee had meant to say was that engagement in the industry of air navigation as such was not included among the reserved industries, but the plenary Committee could, of course, decide otherwise. There were certain amendments which had been submitted with the object of making an exception to Article 7 in regard to engaging in this industry taken as a whole, and the question was exactly the same as in the case of maritime navigation which certain delegations had wished to except as a whole. The Sub-Committee had thought that restrictions of that kind would result in there being almost nothing left of the Convention.

THE CHAIRMAN concluded from the Rapporteur's explanations that the problem would be simplified when the question of Article 10 had been settled. He proposed, therefore, to postpone the examination of the Japanese amendment until Article 10 had been discussed, and then to take, with the Japanese amendment, the question of railways to which the Netherlands delegate had referred.

The question was postponed in conformity with the Chairman's proposal.

Amendment by the Turkish Delegation (Annex A, 7).

SALIH ZEKAI BEY *(Turkey)* noted that there was now no purpose in discussing the Turkish delegation's amendment, but he wished to eliminate any misunderstanding as to the scope of the amendment, which he had not had an opportunity of explaining to the Committee. There was no question of any discrimination between foreigners and nationals, and the Turkish delegation had merely wished to preserve the term "service" in the sense of "personnel", without any distinction as to whether the proprietor of the industry was a foreigner or a national. The question would be settled in connection with Article 8.

The Turkish delegation only wished to give this explanation in order to have it mentioned in the report.

THE CHAIRMAN asked the Rapporteur whether the French and Turkish amendments were not covered by the Protocol to Article 1.

M. PILOTTI *(Italy)*, Rapporteur, replied that the Sub-Committee had considered that this point was not covered by Article 1, which referred to individual contracts, whereas Article 7 referred to engagement in industries in the territory of a contracting party by nationals belonging

to another contracting party. Article 1 referred, for instance, to a contract concluded in Italy by a company established in France, and said that the company was free to conclude such a contract except in the case of contracts relating to a transaction which formed the subject of a concession.

M. PILLAULT *(France)* did not see the question in quite the same light as the Rapporteur. The concession of a public service did not necessarily relate to the carrying-on of an industry. This was the case, for example, of postal transport, where there was no railway line. There was, in the Convention, no limitation to the employer's right to engage his employees at his own discretion. The same right must be granted to States, as he had already observed in regard to sub-paragraph *(a)*. This remark might be extended to sub-paragraphs *(c)* and *(d)* as well. The Government, as employer, might choose its employees, and, consequently, also its agents *(mandataires)* at its own discretion. A person holding a concession for a public service was an agent and he had no need of a special authorisation under the Convention to choose only nationals. He did not, therefore, press his amendment, seeing that the State was completely free to make appointments to the public services at its own discretion and to restrict posts in them to its own nationals.

THE CHAIRMAN asked whether the Rapporteur could make it clear in the final text of the report that the point raised by the French delegate was covered by the clause under discussion.

M. PILOTTI *(Italy)*, Rapporteur, said that the Sub-Committee had evidently not understood the scope of this amendment as it had been explained by M. Pillault. Furthermore, the idea of what was a public service differed according to country. The Sub-Committee had thought that the point to be covered was concessions in general, that was to say, all industries which were subject to some degree of State control and which the State only allowed to be carried on through a concession. In the case of these industries the Sub-Committee, like the Economic Committee, had not thought it necessary to make any limitation, thus conforming with the practice in many legislations which granted concessions indifferently to foreigners and nationals and upon the same conditions. This was the case in principle in Italy. In the more restricted case of a public service recognised as such in all countries — for example, the postal service — a State might be unable to undertake the direct administration of it and might entrust it to an individual or a company. He would, however, call the French delegate's attention to one point. The State might concede the administration of this public service by a law which allowed any persons whatsoever to submit tenders. In that case, if it were desired to reserve the right to submit tenders to nationals, it would be necessary to have a reference in the Convention. Alternatively, the State might be free to choose and would make any appointment at its own discretion without having to give reasons. In this case the State could choose a national or a foreigner, and the Convention did not limit its freedom of choice.

M. PILLAULT *(France)* summed up the question. There were two cases to be considered. First, the State might choose without putting up the service to public tender, and in this case there would be no need to have any reference in the Convention, since the State in question would most probably choose a national. Secondly, if the service were put up to public tender, the question was already settled by the Protocol *ad* Article 1. The State was completely free to any conditions it desired at the time when it put up the service for public tender.

M. PILOTTI *(Italy)*, Rapporteur, replied that the Committee might, if it so desired, explain this point in the Protocol. In any case, the Sub-Committee had started from the idea that the Protocol in question referred only to individual contracts.

THE CHAIRMAN suggested that M. Pillault and the Rapporteur should agree on a text.

This proposal was adopted.

M. DE NICKL *(Hungary)* raised the question of the sale of alcohol, tobacco, etc., which in his country, was subject to a concession. He had understood, according to M. Politis' explanations, that this case was covered by Article 1, and that a foreigner who was admitted to a country was free to engage in any occupation with the exception of those which formed the subject of concessions. Would it not be advisable to mention in Article 7 the case of the sale of alcohol and tobacco in the form in which it occurred in Hungary. He would not press his suggestion if he were assured that the case was covered by the article which referred to concessions.

M. YOUPIS *(Greece)* asked whether the public services were to be taken as comprising only Government services or also public services such as tramways, the post office, the telephone, etc., which might be under the authority of other organisations of a public nature, for example, a department or commune. In his opinion, the exception contemplated should apply equally to this category of public services. In regard to the question of public tender, the Committee must admit that the State or other administrative organisations were free to accept only nationals and to exclude foreigners. The question had been raised in Committee B in regard to contracts by tender, and that Committee had adopted, at any rate provisionally, a Protocol *ad* Article 4. By the terms of this Protocol, Committee B proposed to allow the State full freedom to settle the question at its own discretion, and to discriminate between nationals and foreigners. In his opinion, the same idea might be adopted as the basis for the provision under discussion in Article 7. In conclusion, he supported the proposal of the French delegate.

THE CHAIRMAN noted that the Committee was of opinion that the points raised by the Hungarian, French and Greek delegates were covered by the clause under discussion. He suggested that the delegates in question should confer with the Rapporteur upon a final formula.

Paragraph 16.

Amendment of the Swedish Delegation.

M. SANDSTROEM *(Sweden)* read the following text which he proposed to insert in the Protocol, viz. :

> " Article 7 does not affect the right of the High Contracting Parties to settle the conditions for obtaining the protection of the national flag for vessels, it being understood that these conditions may also relate to the nationality of the managing shipowner."

He added that this clause referred to the conditions laid down in Swedish law for granting the protection of the national flag on the basis of the principle, which, it appeared, was accepted universally, that every State should remain free to determine these conditions. Sweden required, in regard to protection of the national flag, that vessels should be under the effective control of nationals. This was the origin of the provisions in question. The problem was not one of great importance since it only arose in cases where there were several shipowners who were not organised in a company, and it arose in that case because the association of shipowners was not regarded as a legal person. The Swedish delegation considered that this question was one of principle, and it was for that reason that it proposed an addition to the Protocol.

M. ENGELL *(Denmark)* supported the Swedish proposal. Danish law contained certain clauses which were practically similar to those in Swedish law, and Danish nationality was an indispensable condition for shipowners who desired to register a vessel.

M. D'AVILA LIMA *(Portugal)* observed that the Rapporteur had previously suggested that the delegations concerned should send him information on the divergencies existing between the draft Convention and their national law. The question under discussion was one of the most delicate points in Portuguese legislation, which was somewhat restrictive in this matter, and he was disposed to concur in the point of view of the Swedish and Danish delegations.

THE CHAIRMAN said that it must be clearly understood that the Convention was not concerned with the conditions which a country might lay down in regard to the protection of the national flag. That was a purely national matter.

M. PILOTTI *(Italy)*, Rapporteur, said that the Sub-Committee had examined very carefully the amendments on the problem of shipping. It had held that the point should be discussed in plenary committee. It considered that the amendments in question were connected, to a certain degree, with Article 10, since the case covered by the amendment was practically the same as that of the exploitation of minerals. The Sub-Committee had intended to ask the Committee to deal with this question after having finished with Article 10 which, in the Economic Committee's text, was drafted in a somewhat limitative sense, it being understood that the Committee was free to adopt a wider exception. He considered that the questions of mines, shipping, insurance, etc., should all be held over pending the examination of Article 10. It would thus be possible to settle the whole subject of " reserved " ownership in each country.

He added that these observations did not refer to certain amendments dealing, for example, with towing, maritime assistance and salvage, as to which he would be glad to have explanations from the delegations concerned.

THE CHAIRMAN noted that the Committee agreed that the shipping question should be postponed pending the examination of Article 10.

M. FLORES DE LEMUS *(Spain)* asked whether the question would be examined simultaneously with Article 10 or after the decision on Article 10 had been taken.

M. PILOTTI *(Italy)*, Rapporteur, replied that the question would be dealt with at the same time as paragraphs 3 and 4 of Article 10.

Amendment of the Venezuelan Delegation (Annex A, 12).

On the proposal of the Rapporteur, M. MACHADO *(Venezuela)* agreed to adjourn the discussion of his amendment until Article 10 was under examination.

Question of Towing, Salvage and Maritime Assistance.

M. PILLAULT *(France)* recalled that the French delegation had urged that towing should be added to paragraph 2 of Article 7. The explanations of the Rapporteur showed that towing was included in the expression " internal services in ports ". He would therefore not press for the adoption of his amendment.

SALIH ZEKAI BEY *(Turkey)* said that, under Turkish law, the coasting trade, salvage and maritime assistance were reserved for ships flying the Turkish flag.

M. PILOTTI *(Italy)*, Rapporteur, said that the Sub-Committee had been unable to understand whether the Turkish delegation, like the French delegation, had referred to towing in the interior of harbours and roadsteads. In the affirmative, this case would be covered by paragraph 2

and he would state in his report that the terms used should be understood in the widest sense. Perhaps Turkish legislation, however, covered a system of towing different from that which was normally applied in ports.

SALIH ZEKAI BEY *(Turkey)* replied that the towing operations in question took place on the Sea of Marmara which was considered an inland sea. That service was assimilated to the ordinary ports service. This state of things had been recognised in all the conventions signed by Turkey, which also covered salvage, maritime assistance, etc.

The Committee was of opinion that it should be stated in the report that the case referred to by the Turkish delegation was covered by paragraph 2 of Article 7.

Amendment of the Portuguese Delegation on Capital and its Use in Connection with Armaments. (Annex A, 25.)

This amendment was reserved until Article 10 was under discussion.

Paragraph 17.

THE CHAIRMAN said that the various amendments submitted in regard to insurance were being considered by a sub-committee.

Paragraph 18.

Amendment of the Turkish Delegation (Annex A, 7).

THE CHAIRMAN asked whether the amendment of the Turkish delegation, that there should be a reference to schools and hospitals, was covered by the amended text of Article 7, *2(b)*.

M. PILOTTI *(Italy)*, Rapporteur, replied that in so far as the Sub-Committee was concerned, the Turkish amendment, in regard to which an explanation would be useful, should be covered by paragraph 1, sub-paragraph *(b)* and paragraph 2, sub-paragraphs *(a)* and *(b)*. The case concerned either a State or a legal personality recognised by public law. The establishments in question were entirely under the national legislation or they were free schools which could only be opened by the authority of the State. This case was covered by paragraph 1. As far as hospitals were concerned, the amendment did not cover hospitals established by the public authorities, but, for example, nursing homes opened by doctors practising on their own account. He understood that the Turkish law required that authority should be obtained before opening one of these establishments.

SALIH ZEKAI BEY *(Turkey)* said that the question had already been settled in paragraph 2.

Paragraph 19.

Proposals of the Swedish Delegation (Annex A, 8).

THE CHAIRMAN asked whether the Committee thought that the case raised by the Swedish delegation should be covered by a special reservation and, if so, would this satisfy the Swedish delegation.

M. SANDSTROEM *(Sweden)* desired to know where the reservation should be inserted.

THE CHAIRMAN replied that, as in the previous case relating to Sweden, a declaration might be made to the effect that the system in force in Sweden was not in contradiction with the Convention. It would be for the Drafting Committee to decide where that statement should be inserted. It might, for example, find a place in the additional Protocol.

M. SANDSTROEM *(Sweden)* replied that this would satisfy his delegation. The same procedure could be followed with regard to the Swedish reservation concerning the deposit required from foreigners using rivers for floating logs.

THE CHAIRMAN noted that the Committee was of opinion that the provision under discussion covered the case of floating logs in Sweden.

M. SANDSTROEM *(Sweden)* added that this condition was not in reality one of those required for the exercise of an economic activity. The differentiation between nationals and foreigners was due to the fact that the Swedish nationals using rivers for floating logs were usually owners of the land on the river banks, which was not the case with foreigners.

Amendments of the Norwegian Delegation (Annex A, 9).

THE CHAIRMAN said that this amendment would be examined at the same time as Article 10.

New Draft Article 7 annexed to the Sub-Committee's Report.

THE CHAIRMAN explained that the text of Article 7, as drafted by the Sub-Committee and shown as an annex to the report which had just been examined, would have to be amended to take account of the discussion which had taken place. The discussion would serve as a basis for the final report of the Rapporteur.

Addition to the Protocol requested by the British Delegation.

SIR PERCY THOMPSON *(British Empire)* recalled that, when Article 1 had been under discussion, the British delegation had referred to an English law concerning the use by foreigners of assumed names for the purposes of any profession, occupation, business or trade. This provision was not intended to discriminate between nationals and foreigners. Its object was merely to ensure that foreign traders, etc., should not be able to deceive those with whom they were dealing by carrying on their activities under an assumed British name. The British delegation was under the impression that the Committee had agreed that it should be stated in the Protocol that "legislative provisions concerning the use of assumed names by foreigners were not contrary to the provisions of the Convention".

DR. MARTIUS *(Germany)* noted that the British Order in Council in question applied particularly to foreigners. He understood that its object was to prevent unfair competition. In most countries the unfair use of assumed names could be prohibited from these motives. If this was the reason for the provision in British law, no difficulty would arise. If, however, this were not the case, then the German delegate would have to reserve his view.

SIR PERCY THOMPSON *(British Empire)* replied that this was undoubtedly the intention of the British law.

M. PILOTTI *(Italy)*, Rapporteur, had understood the observations of the British delegate to mean somewhat more than what had been stated. The campaign against unfair competition was the main reason for the British law in question, but the British delegate had been right in thinking that discrimination was by this means established between foreigners and nationals in Great Britain. He was under the impression that any British subject was free to adopt any assumed name he liked, but this was not the case with foreigners. From the point of view of pure form, therefore, this was a case of discrimination. Nevertheless, as the object of this measure was perfectly honest and did not prevent the proper working of international trade, means must be found to meet the views of the British delegation. Mention might perhaps be made of the case in the Protocol.

DR. MARTIUS *(Germany)* said that the measure in question had been adopted during the war. He found it difficult to accept a system whereby British subjects, to the exclusion of foreigners established in Great Britain would be free to adopt what names they pleased and, if the provision in question covered only foreigners, he would be unable to agree that it should be mentioned in the Protocol.

SIR PERCY THOMPSON *(British Empire)* explained that British subjects were free to change their name, but that on all commercial papers they must show that they had changed their name and must state their former name.

M. PERASSI *(Italy)* supported the German representative. A reservation of this kind could only be allowed if the measure in question was adopted to prevent unfair competition and within the limits necessary for carrying on the campaign against unfair competition. If, on the other hand, the measure had also an economic object and tended to interfere with free economic competition, the reserve would be too general in character.

THE CHAIRMAN asked whether the British delegation would accept a statement to the effect that the object of the measure in question was to prevent unfair competition.

SIR PERCY THOMPSON *(British Empire)* agreed to this suggestion.

THE CHAIRMAN asked whether the Committee thought that this statement should take the form of a reservation or should be included in the Protocol.

DR. MARTIUS *(Germany)* would prefer that mention should be made of it in the report. The problem was complex and was connected with a large number of other questions, such as, for example, the legal questions arising under Article 9.

The Committee approved the draft proposed by the British delegation as amended by the Chairman.

The Drafting Committee was asked to decide whether this text should be inserted in the report or in a Protocol.

TWENTY-FIRST MEETING

Held in Paris on November 23rd, 1929, at 3 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

40. Sub-Committee on Insurance Questions.

THE CHAIRMAN announced that the Sub-Committee which would examine questions relating to insurance companies which had arisen in Committees A and C, would consist of one representative of each of the delegations of the following countries : Belgium, British Empire, Finland, Greece, Italy, Latvia, Portugal, Turkey, and Venezuela.

41. Examination of the Articles of the Convention : Article 5.

Draft report of the Committee (Annex A, 26).

THE CHAIRMAN proposed that the Committee should take the report on Article 5.

Paragraph 28.
Adopted.

Paragraph 29.
Adopted.

Paragraph 30.
Adopted.

Paragraph 31.
Adopted.

Paragraph 32.
Adopted, subject to an amendment of form.

Paragraph 33.
Adopted.

Paragraph 34.

SIR PERCY THOMPSON *(British Empire)* proposed that the words " and place of settlement " should be inserted after the word " nationality ".

THE CHAIRMAN said it had been agreed that, not only the nationality of the commercial traveller, but also his place of settlement was relevant. He therefore suggested that the words proposed by Sir Percy Thompson should be introduced.

The Committee agreed.

Paragraph 34 *was adopted with this amendment.*

Paragraph 35.

SIR PERCY THOMPSON *(British Empire)* enquired as to the precise meaning of the words " special authorisation ". Would it not be better to refer to a " special " authorisation, *i.e.*, one not required by nationals ?

DR. MARTIUS *(Germany)* thought it would be better to leave the words " special authorisation ", as this expression was used in the article itself.

SIR PERCY THOMPSON *(British Empire)* agreed.

Paragraph 35 *was adopted, subject to a formal amendment.*

Paragraph 36.
Adopted.

Paragraph 37.
Adopted.

Paragraph 38.
Adopted.

Paragraph 39.

M. PEROUTKA *(Czechoslovakia)* said he did not propose an amendment to the text, but he would like it to be understood that the term "producers" excluded persons who worked in their homes on behalf of an establishment on which they were dependent. It might, in his view, constitute a case of unfair competition if commercial travellers were admitted to trade directly with these persons.

THE CHAIRMAN enquired whether it was desired to add at the end of paragraph 39 a sentence to the effect that the term "producers" was not to be regarded as covering home industries.

DR. MARTIUS *(Germany)* enquired why persons who worked at home should be excluded from the provision in question. The insertion of the explanation requested by the Czechoslovak delegation introduced a restriction which the Committee had not yet accepted. He was opposed to that restriction.

THE CHAIRMAN said that the provision referred to in Article 5 was to the effect that commercial travellers should be free to buy from producers. M. Peroutka desired that this provision should not refer to home workers. What was the view of the Committee ?

M. PEROUTKA *(Czechoslovakia)* explained that by home workers he meant persons who, though they did not work in factories, worked for account of factories or for some industrial person or firm. He desired to exclude only those workers who could not be regarded as independent. The goods in the hands of such persons were not in many cases their own property, and they had no right to dispose of them.

M. POZNANSKI *(Poland)* supported the proposal of M. Peroutka. He did not see why there was any reason to treat differently the transactions of sale and purchase. He would suggest as a solution of the difficulty that the words "or the making of purchases" should be inserted after the word "orders" in paragraph 3 of Article 5.

M. PARANJPYE *(India)* said he did not see any reason for introducing the proposed restriction. In India there were a great many small home industries. It was not reasonable that the persons engaged in these industries should be prohibited from dealing directly with possible purchasers.

DR. MARTIUS *(Germany)* said that the amendment proposed by the Polish delegation referred to in paragraph 39 had, in his view, very properly been set aside during the first reading of the Convention. The Polish delegation had finally accepted the word "producers", and had withdrawn its proposal that the word "manufacturers" should be employed. Now, however, it was proposing an amendment which deprived the word "producers" of its real significance. He did not see that there was any necessity for this modification.

M. POZNANSKI *(Poland)* pointed out that States could always facilitate transactions between small industrialists and possible purchasers. They should, however, be able to control such transactions. In particular, he desired to cover the case of small Polish farmers, and would find it necessary to make a reservation in regard to this matter, if his proposal were not accepted.

M. STUCKI *(Economic Committee)*, referring to the Polish amendment, explained the principle which underlay the proposal of the Economic Committee. The Economic Committee desired to base the Convention as far as possible on model treaties of commerce. There were two different sets of considerations in respect of the commercial transactions covered by Article 5 of the Convention ; one aspect was the providing of facilities for purchasing goods abroad, and the other aspect was the securing of the utmost possible freedom for foreign firms and travellers in soliciting orders. These two aspects were very differently regarded by the countries concerned. Most countries were anxious for foreign persons and firms to purchase their goods, but they were less anxious to encourage the soliciting of orders within their territory. It was therefore only natural that the Economic Committee should lay more stress on the necessity for securing the most liberal treatment for foreigners in regard to the soliciting of orders, and from that point of view the Polish amendment was of no very great importance. If a Government should desire to prevent foreigners from purchasing goods within its territory, there was no objection to leaving it complete liberty in the matter, but he did not think it was to the interest of any country to take such a course. There did not seem to be much need for obliging them to refrain from adopting it. The important point to be secured by the present Convention was that difficulties should not be created for foreign firms and persons who were soliciting orders.

He wondered whether the submission of the Polish amendment was not due to a misunderstanding. The amendment, if accepted, would not mean that persons were prohibited from making certain purchases, but that the Government concerned might levy fees from them for doing so.

M. ENGELL *(Denmark)* said he could not quite agree with the interpretation given to the Polish amendment by M. Stucki. In his opinion that amendment would cover not only the levying of fees from commercial travellers, but also fees for the soliciting of orders and for purchases.

M. POZNANSKI *(Poland)* thought, on the other hand, that M. Stucki was probably right in his interpretation of the amendment. The question, however, remained of importance. The amendment was designed to secure for the authorities a possibility of controlling a branch of commerce in which abuses might very easily be encouraged. That was the sole object of the Polish amendment.

THE CHAIRMAN said that the Polish amendment, if accepted, would be more appropriately inserted in paragraph 43 of the report which referred to paragraph 3 of Article 5. He would ask the Committee to vote upon the amendment.

The amendment was rejected by a majority vote.

M. POZNANSKI *(Poland)* said that, in view of the rejection of his amendment, he was obliged to make the following reservation *ad* Article 5, paragraph 1.

> "Poland reserves to herself the right, within her territory and in conformity with her laws and regulations, to prohibit the nationals of the other contracting parties mentioned in Article 5, paragraph 1, as well as their commercial travellers, from making purchases from persons not engaged either in commerce or in industry."

DR. MARTIUS *(Germany)* proposed that the decision whether the Committee could accept that reservation should be postponed until the reservations to Article 7, paragraph 2, could be considered as a whole. He did not think that the time had come to consider the important question to what extent the Conference would be able to admit reservations to the principles embodied in the Convention. The German delegation was definitely not in favour of such reservations. He would suggest that for the moment the Committee should merely note that the Polish delegation had submitted a reservation and that a decision would be taken in regard to it at a later stage.

THE CHAIRMAN agreed. He proposed that the reservation should be noted, but that, in view of the fact that it was intimately connected with reservations which would later have to be considered in connection with Article 7, a decision with regard to it should be postponed.

M. PERASSI *(Italy)* represented that the question of the reservations to be admitted by the Conference should be passed to Committee D.

THE CHAIRMAN enquired whether the decision taken upon the Polish amendment disposed of the point which had been raised by the delegate for Czechoslovakia.

M. PEROUKTA *(Czechoslovakia)* replied in the negative. His amendment had rather a different intention. He merely desired to cover the case of purchases from persons who were not independent workers. He did not desire in any way to interfere with the freedom of independent home industries but merely wished to exclude persons who worked for account of other persons or firms.

THE CHAIRMAN said that, in that case, the Committee would have to consider whether, in paragraph 39 of the report, there should be a statement to the effect that the producers to which reference was made in Article 7 did not include independent workers in home industries.

M. NEDERBRAGT *(Netherlands)* presumed that the object of this amendment was merely to prevent dishonest practices on the part of the workers who frequently had no right to the goods in their possession. Was not this, however, a matter for the national law and police of the country concerned, which would take measures to prevent a breach of the law either by foreigners or by nationals ?

M. PEROUKTA *(Czechoslovakia)* agreed. There were cases in which persons undertook to work according to patterns or designs which were given to them by firms or by the proprietors of those designs. It was obviously unfair competition for a foreign commercial traveller to purchase the work of such persons. He was not asking for an amendment but merely for a few words of interpretation to be inserted in the report.

M. DE NICKL *(Hungary)* said he understood that the proposal of the Czechoslovak delegation was not aimed at home industries as such. There were in some countries industries which were carried on at home, such as the lace industry or the basket industry. Persons working in such industries were, in his view, producers and should not be excluded. Commercial travellers should be able to have access to these persons and to purchase their goods. The amendment under discussion aimed at a different class of workers who took work belonging to their employers to their homes in order to carry out some finishing process.

M. PEROUKTA *(Czechoslovakia)* agreed.

THE CHAIRMAN said that, in that case, reference might be made in the report to persons who worked in their own homes but not on their own account.

The formula proposed by the Chairman was adopted.

Paragraph 39 was adopted.

Paragraph 40 was adopted, subject to a formal amendment.

Paragraphs 41 *and* 42.

THE CHAIRMAN pointed out that it was necessary to insert in paragraph 42 the word "special" before the word "taxes" or "duties" and that this involved the insertion of the word "special" in the same phrase in paragraph 41.

Paragraphs 41 *and* 42 *were adopted with this amendment.*

Paragraph 43.

Adopted.

Paragraph 44.

M. PUSTA *(Estonia)* pointed out that it was necessary to add the name of his delegation to those who had presented an amendment.

M. STUCKI *(Economic Committee)* asked the Chairman whether he might make a general statement in regard to paragraph 44.

THE CHAIRMAN said there had been a long and arduous discussion of the question dealt with in the paragraph, and the present text represented an agreement which had only been reached after a good deal of patience on the part of many delegations.

M. STUCKI *(Economic Committee)* said that, in that case, he would merely state that the Economic Committee deplored the exception which had been introduced. It must regretfully observe that the provisions referred to in paragraph 44 represented a codification of the existing situation instead of representing a progress in the direction of better economic conditions. He would refer to this matter again in a plenary meeting of the Conference.

Paragraph 44 *was adopted.*

Paragraphs 45 *and* 46.

THE CHAIRMAN pointed out that the word "special" had again been omitted before the word "taxes" and that the word "generally" had also been omitted before the word "corresponding". The Committee had decided that these words should be inserted.

M. ENGELL *(Denmark)*, referring to paragraph 46, wondered whether the text of the Protocol was quite clear. There was no doubt on the point of substance involved, but the principle might be less ambiguously expressed.

THE CHAIRMAN said that the Rapporteur would consider the matter. He would also point out that it was necessary to insert the name of Estonia among the northern delegations referred to in paragraph 46.

M. BOLAFFI *(Italy)* wondered whether the expression "fiscal charges" was sufficiently clear.

THE CHAIRMAN proposed to read "taxes on revenue".

SIR PERCY THOMPSON *(British Empire)* considered that this expression would not include excise duties.

M. POLITIS *(Greece)*, Rapporteur, suggested that the reference to fiscal charges should be deleted and that the first sentence should run : "In the Committee's view this provision refers only to the special fees levied on commercial travellers as such". He did not think it was necessary to describe the charges to which the provision did not apply, particularly as this description was giving rise to difficulties. He would also suggest that the beginning of the proposed addition to the Protocol in paragraph 45, should be deleted. The passage in the Protocol would accordingly begin : "The High Contracting Parties agree . . . etc.".

M. FLORES DE LEMUS *(Spain)* said he did not agree to the suppression of the reference to fiscal charges in paragraph 46. That reference was based upon a long and interesting discussion which had taken place in the Committee, and he felt that its suppression would tend rather to obscure than to elucidate the paragraph.

M. POLITIS *(Greece)*, Rapporteur, insisted that the suppression did not in any way change the meaning of the paragraph. He had proposed it merely to avoid an attempt to define the taxes or charges which were not included. The provision itself referred only to one special tax and no other. It should not be necessary therefore to enumerate the taxes to which the provision did not relate.

DR. MARTIUS *(Germany)* said that he also was inclined to doubt whether the reference should be suppressed. He felt that this suppression rather weakened the declaration of principle to the effect that national treatment should be accorded to foreign commercial travellers.

M. POLITIS *(Greece)*, Rapporteur, suggested that the passage in the Protocol which he had proposed to delete from paragraph 45 should be inserted in the report.

The Committee agreed.

THE CHAIRMAN proposed that the reference to fiscal charges in paragraph 46 should be retained, but that the words should be simply "other taxes".

The Committee agreed.

Paragraphs 45 *and* 46, *subject to these amendments, were adopted.*

Paragraph 47.

Adopted.

Paragraph 48.

Adopted.

Paragraph 49.

Adopted.

42. **Article 6.**

Draft Report of the Committee (Annex A, 27).

Paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 54, 57, 58, 59 *and* 60 *were adopted without discussion.*

Paragraph 53.

DR. MARTIUS *(Germany)* suggested that the word "reservations" in the last line should be changed to the word "liberties".

This amendment was adopted.

M. NEDERBRAGT *(Netherlands)* thought that the phrase "these delegations did not insist, however," might be taken to mean that they had not sufficiently urged their point of view upon the Conference. While it was true that the matter had not been pressed to a vote, this had been due to the spirit of conciliation shown by those delegations. He proposed that the words should be deleted.

This proposal was adopted.

The second sub-paragraph of paragraph 53 was altered to begin as follows: "It was explained that these words were essential, etc.".

Paragraph 55.

Adopted, subject to a formal amendment.

Paragraph 56.

DR. MARTIUS *(Germany)* desired to raise the question of the inclusion of the term "*refoulement*" (English text: "refusing admission"). He doubted whether its insertion would be really an improvement. The explanation of the article without the words was quite clear. Obviously, any State had the right, once it had expelled an individual, to refuse admission should he make another attempt to enter the country. The expression "*refoulement*", however, covered other cases. For example, a foreigner discovered to have forgotten his passport might be "refused admission", but this prohibition would be withdrawn as soon as he had placed his papers in order. He suggested, therefore, that the phrase "*refoulement*" should be deleted, and an explanation should be added in the report to the effect that expulsion also covered such cases.

M. POZNANSKI *(Poland)* agreed with Dr. Martius. The question was one of terminology. In Poland, the right of "refusing admission" was exercised when, for example, a foreigner had either failed to register with the police or was discovered to be lacking a visa. Until he had complied with the necessary formalities, he was in danger of "*refoulement*".

Expulsion was a far more severe penalty, and required the consent of the competent authorities.

M. POLITIS *(Greece)*, Rapporteur, was prepared to support the amendment suggested by Dr. Martius. "*Refoulement*" was not a measure of expulsion, but was merely resorted to in cases where the foreigner had not complied with the police regulations.

It was agreed to delete the term "refoulement", *and to insert an explanation of this decision elsewhere in the Rapporteur's report.*

Paragraph 61.

THE CHAIRMAN suggested that, in order to meet the views of a certain delegation, the beginning of Article 6 should read as follows :

"Each of the High Contracting Parties reserves its right to regulate the admission of foreigners to its territory. When they make this admission subject to conditions limiting its duration, or the freedom of foreigners to travel . . . these limitations may be imposed either by means of documents required of foreigners, etc. . . ."

M. ITO *(Japan)* desired warmly to thank the Chairman for the amendment, which had been designed to meet the views of the Japanese delegation. He was, however, prepared to accept the original draft.

M. POLITIS *(Greece)*, Rapporteur, suggested that, in that case, the original text should be maintained.

THE CHAIRMAN, in view of the observations of M. Ito, withdrew his amendment.

It was further decided to delete the phrase "or of refusing admission" ("ou refoulement") in the final paragraph of the article, in accordance with the decision of the Committee with regard to paragraph 56.

M. PERASSI *(Italy)* thought the mention of the right of exit unnecessary in the final paragraph of the article. The right of expulsion should be limited to questions of establishment. Both ideas should, therefore, be included in paragraphs 2 or 3 of the article.

M. POLITIS *(Greece)*, Rapporteur, pointed out that the right of exit and the right of expulsion had been combined in the same article in the Economic Committee's draft.

M. PERASSI *(Italy)* said that paragraph 2 referred to police regulations. It was better to include the right of expulsion in that particular part of the article than in the last paragraph, where it might be taken as limiting the right of establishment.

M. POLITIS *(Greece)*, Rapporteur, in order to meet the views of M. Perassi, suggested the addition of the words " and the right of expulsion" to the paragraph in question.

This addition was adopted.

M. ITO *(Japan)* asked that the Japanese proposal concerning the admission of students for purposes of carrying on their education should be mentioned in the article.

M. POLITIS *(Greece)*, Rapporteur, thought that the general terms of paragraph 2 covered this case. It was impossible, he thought, to make a specific reference. States, if they wished to bar their frontiers to students, could not be compelled not to do so.

THE CHAIRMAN said that the Japanese Government had raised the question of the facilities to be accorded to students proceeding to a foreign country. It had been decided that students should benefit from the terms of Article 6, and mention of this had been made in the Rapporteur's report. He thought that this solution should give satisfaction to M. Ito.

M. ITO *(Japan)* agreed to this suggestion.

M. MAYER *(Austria)* said that it should be clearly understood that Governments must be left free to close or throw open their schools to foreigners as they thought fit.

DR. MARTIUS *(Germany)* recalled that the German delegation had supported the Japanese proposal. The adoption of the suggestion of the Chairman would not in any way prejudge the future question of admission, which was to be discussed at a subsequent Conference. The problem was really one of tactics. While he agreed with the proposal of M. Ito that specific mention should be made of students in the article, it would be better not to press for its adoption now but to accept the suggestion of the Rapporteur and the Chairman.

M. ITO *(Japan)*, while unable to regard the matter from the same point of view as that of M. Politis, was prepared to accept the suggestion of the Chairman, provided that it was recorded in the Minutes that, in his view, the question of the treatment to be accorded to students was not a question of admission at all.

M. POLITIS *(Greece)*, Rapporteur, pointed out that the rule adopted by the Committee had been that, in all cases, the present common law of countries in this respect must be maintained. A country could accept or refuse foreigners as it liked, and this applied equally to students. A country was perfectly free to close its universities to foreign students, for example, because they might be too full or it might open them to certain classes of students and not to others. It was impossible to alter the article in order to restrict this right.

M. ITO *(Japan)*, while still maintaining his view that the question of admission and of the treatment of foreigners were two different matters, was prepared to withdraw his suggestion that specific reference to students should be included in the article.

THE CHAIRMAN thanked M. Ito for the spirit of conciliation which he had shown.

Paragraph 52.

M. LANDUCCI *(Italy)* urged that the words "in particular" *("notamment")* should be reinserted in the article, so that the rights of States should not be limited, in regard to the conditions they imposed for admission, to the list contained in the article.

M. POLITIS *(Greece)*, Rapporteur, said that the phrase "in particular" had been included in the original text. The Sub-Committee had discussed the matter at great length and had finally proposed its deletion. The Committee had again discussed the matter even more fully and had eventually decided to delete the phrase. The majority had taken the view that it added nothing essential to the text but would lead to confusion because it might be thought that there were conditions other than those enumerated in the article which States could require from foreigners before admitting them. It had been pointed out that the phrase in question was superfluous because it did not appear that there could be any restriction which might be applied to the right of admission other than those already enumerated.

M. STUCKI *(Economic Committee)* said that the deletion of the words "in particular" had been proposed by the International Chamber of Commerce which had wanted to limit the conditions which States could require from foreigners before granting them admission. He had warned the Committee when the words had been discussed that their deletion might convey a different impression to that which was desired, and that some States might think their freedom to refuse admission was being attacked by their removal. Purely for the sake of clearness it would therefore be better to maintain the words in the article, though there was not the least doubt that the Economic Committee had desired to limit the freedom of States so far as conditions governing admission were concerned.

DR. MARTIUS *(Germany)* said that the question of the omission of the words "in particular" had been fully discussed. Every effort had been made to meet the views of those who had wanted to preserve the liberty of States in regard to admission. The Conference was, however, drawing up a collective treaty and, if elements were included in the article dealing with the conditions of admission which were quite foreign to its real spirit, then a great many States would, he felt convinced, find it very difficult to accept the Convention. On the pretext of safeguarding the freedom of States in respect of admission it was impossible by the insertion of these words to allow States to impose all kinds of stipulations which were really quite foreign to the question of admission.

The text of the article and the commentary in the Final Act had been the result of mutual concession and compromise. It should not now be destroyed.

M. NEDERBRAGT *(Netherlands)* said that the views of his delegation on this article were similar to those which it held in regard to a number of other articles. The Netherlands delegation was strongly of opinion that articles of this kind were dangerous because, by their terms, the Convention would contain only the very minimum of liberal provisions.

All States, therefore, which wished to adopt a less liberal attitude towards foreigners would be legitimately able to do so, for they would be able to point to the provisions of Article 6 and maintain that they were not breaking any of them. Their position would be further strengthened by the admission of the words "in particular". He thought that it was very dangerous to reserve the full rights of States in respect of admission and, if the Conference were really determined to do so, then the Netherlands delegation would have very seriously to consider whether it was worth while signing a Convention which contained such an article. He was convinced that it was a step backward.

THE CHAIRMAN asked the Rapporteur whether, in his view, the only conditions of entry were those enumerated in the first paragraph of the article ("subject to conditions limiting its duration or the freedom of foreigners to travel, sojourn, establish themselves, elect their domicile and to move from place to place").

M. POLITIS *(Greece)*, Rapporteur, replied that, if the words "in particular" were not inserted in the article, then the enumeration was limitative in scope. He would point out that a State was not under the necessity of imposing all the conditions either as a whole or individually. A State, for example, might allow a foreigner to enter its territory provided that he did not go to a particular place or places in the territory.

THE CHAIRMAN asked whether the article would mean that a country was not free to impose as a condition of entry that a person should only exercise a particular profession or carry out a particular piece of work in the country.

M. POLITIS *(Greece)*, Rapporteur, replied in the affirmative. The right of establishment might be limited.

M. LANDUCCI *(Italy)* concluded that the opposite case was also covered by the article. A country could allow a foreigner to enter its territory provided that he did not exercise certain specified professions.

THE CHAIRMAN said that, if this were the interpretation of the article, it should be stated clearly in the report.

M. POLITIS *(Greece)*, Rapporteur, thought that the explanation contained in paragraph 48 was clear. It was stated that "while Governments could regulate admission as they saw fit, they should not be entitled to impose on foreigners, once they were admitted in their territory, new conditions which were incompatible with the provisions of the Convention".

M. NEDERBRAGT *(Netherlands)* urged that the Committee must be clear as to what it meant by the article. As far as he was concerned, the insertion or omission of the words "in particular" did not greatly affect the views of the Netherlands delegation which was convinced that the article was dangerous for the reasons he had already stated.

DR. MARTIUS *(Germany)* reminded the Committee of the interpretation to be inserted in the Final Act which had formed an integral part of the agreement reached regarding the terms of the article. That interpretation was to the following effect :

> "Notwithstanding the right reserved to States under Article 6 regarding admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings assumed under the terms of the present Convention."

It was quite clear therefore that States would break the spirit of the Convention if they imposed too arbitrary restrictions on the admission of foreigners, and it was therefore quite superfluous to insert the words "in particular". This had been pointed out in the report, and it had been on this understanding that agreement on the terms of Article 6 had been reached. If it were now contended that the words "in particular" were no longer superfluous but, on the contrary, essential to safeguard the freedom of States, then the agreement achieved between the opposing views on the question ceased to exist.

M. ITO *(Japan)* noted that, on the principle propounded by M. Politis, a State which had the right to impose a full restriction could also impose a lesser. For example, it could prohibit the entry of a foreigner to certain parts of its territory. If this were so, then it should be clearly stated in the report. It was very important to leave no doubt as to the exact meaning of the article. If Article 6 was really to be interpreted in this sense, then the entire discussion by Committee C of Articles 7, 8 and 10 was quite unnecessary, for the provisions of those articles would be entirely nullified by the effect of Article 6. It was useless to discuss the manner in which foreigners should carry on their business in a country if that matter could be settled before ever the foreigner were admitted at all.

THE CHAIRMAN proposed that the article should be left unchanged, without the addition of the words "in particular", but that the second paragraph of paragraph 52 of the Rapporteur's report should read as follows :

> "They withdrew the proposal, however, after it had been stated that these words had been omitted as superfluous, as the conditions which could be imposed on admission were not limited by the article as it stood, the rights of the High Contracting Parties in this respect being reserved."

M. PERASSI *(Italy)* said that, if this formula were adopted, the explanation of the article contained in the Rapporteur's report would contradict the terms of the article itself, which was clearly limitative. In his view it was better to omit entirely the phrase in the article enumerating the conditions of admission if the words "in particular" were not to be included.

M. STUCKI *(Economic Committee)* said that the Committee would have to decide whether those who desired to limit the freedom of States in respect of admission should or should not gain their point. At all costs the meaning of the article must be made clear and in this respect he agreed with the Italian delegation. It was impossible for the wording of the article to mean one thing and the explanation of it in the Rapporteur's report another. To take an example ; in Switzerland there was a well-known clock-making school at Chaux-de-Fonds. A number of States desired to establish that industry within their own territories, for at the moment it was a virtual monopoly of Switzerland. Those States sent workmen to Switzerland to learn clock and watch making at the school in question. By the terms of Article 6, could Switzerland allow those persons to enter her territory but refuse them permission to be instructed at Chaux-de-Fonds? Dr. Martius thought not, but others thought that Switzerland would be within her rights in doing so. The interpretation was therefore ambiguous and must be definitely settled one way or another. By the recommendation contained in the Final Act, a country could inform Switzerland that, while she might have the strict right to limit in this way the entrance of foreigners into her territory, she was, by doing so, breaking the spirit of the Convention as clearly expressed in that provision of the Final Act. That the Committee was prepared to agree not to restrict the liberty of States in regard to admission was, he thought, clear from the fact that a number of limitations had been imposed upon them in respect of their action towards foreigners once they had been admitted.

DR. MARTIUS *(Germany)* did not quite agree with M. Stucki in regard to the details. In view of the fact, however, that the matter was fundamental and must be decided, he suggested

that a number of delegations which were deeply interested in the question should consult with the Rapporteur in order, if possible, to achieve some kind of agreement. The German delegation had the same feelings as those of the Netherlands. Therefore, before any irrevocable step was taken, every means of obtaining an agreement should be exhausted. He did not think that it would be possible to achieve an agreement at the present juncture.

M. POLITIS *(Greece)*, Rapporteur, replied that, in his view, the proposal of Dr. Martius would be of no avail. Every means had been tried. The article had been discussed at great length in the Sub-Committee and in the full Committee, and a considerable majority of the States had decided in favour of the *status quo* in so far as the freedom of States regarding admission was concerned. To try and find any form of reasonable compromise between the two opposing views would be, in his opinion, mere waste of time. He suggested, therefore, that a vote should now be taken, first whether the words "in particular" should or should not be retained in the article, and secondly, if they were not retained, whether the article was to be given a restrictive interpretation in regard to the conditions required by States for the entry of foreigners into their territories.

THE CHAIRMAN thought that the views of the Committee should first be obtained as to the limitation of the freedom of States to impose restrictions on admission. If the Committee decided that that freedom was to be restricted, this would involve the deletion of the words "in particular" from the article. If the deletion of those words were adopted, an explanation of the reason for this could be inserted in the report. He would propose to ask the Committee merely to show the general trend of opinion prevalent among its members by means of a vote, but he did not think it was necessary to vote on a final or definite proposition at the present stage. A vote such as the one he had in mind would show the current opinion in the Committee and might enable the delegations which were strongly in favour of retaining the words "in particular" to agree upon a common text. He would therefore propose that a vote should be taken to show the feelings of the Committee in regard to the insertion of the words, but without prejudice to the discovery of a possible solution at a subsequent meeting.

M. NEDERBRAGT *(Netherlands)* said that he would abstain from voting because he was unable to estimate the value of the Convention after the discussion which had just taken place. He felt, that, if the words "in particular" were inserted, the whole meaning of the Convention would be altered

Nine delegations voted in favour of inserting the words "in particular" and nine delegations voted against that insertion.

M. POLITIS *(Greece)*, Rapporteur, said that to adopt the text proposed by the Chairman for paragraph 52 would be to annul the whole meaning of the article, because the freedom of States in regard to admission would not in any way be limited. He could not agree with the form of words proposed by the Chairman for paragraph 52.

M. ITO *(Japan)* agreed with M. Politis. Such an explanation would be worse than including the words "in particular" in the body of the article.

THE CHAIRMAN said that the matter was very simple. Did the Committee wish Article 6 to limit the powers of States in regard to admission, or did it not ?

DR. MARTIUS *(Germany)* said that the text as at present drafted met the views of the German delegation. He was prepared to adopt it, though unwillingly, for it was not so liberal as he had hoped. The question, however, of the interpretation of Article 6 had now arisen, and the Rapporteur's explanations were not satisfactory to a number of delegations. He suggested that, in view of the fact that a preliminary agreement had been achieved in regard to the text of the article, the text of the interpretation should be drafted by a Sub-Committee. It might perhaps be better to delete paragraph 52 altogether from the report, and to rely solely on the recommendations expressed in the Final Act. He would emphasise the fact that the Committee had now reached a very critical stage, and that a great deal depended upon the exact meaning of Article 6. He suggested that a vote should be taken on the text as it stood, and, if that text were rejected, some other solution should be attempted, but that no vote should yet be taken on the interpretation of Article 6, which was the point at present under dispute.

M. MAYER *(Austria)* proposed that the article should be left as it stood, but that a paragraph should be inserted in the text of the Convention, saying that the Conference regarded Article 6 to be only a temporary and a transitory solution of the matter.

M. POLITIS *(Greece)*, Rapporteur. said that this observation was already to be found in the preamble and applied to the Convention in general. It might, however, perhaps be amplified and a special reference made to Article 6.

If a majority of the Committee were not in favour of Article 6 as at present drafted, the whole article should be deleted, for this was a better course than to seek for amendments.

DR. MARTIUS *(Germany)* agreed.

THE CHAIRMAN pointed out that this was not a solution. Certain delegations were not prepared to vote on the article as it stood unless they could be sure of the interpretation. Did the Committee desire to vote upon the article ?

The Committee decided that a vote should be taken.

The Committee decided that a vote should be taken.

THE CHAIRMAN asked the Committee to vote upon Article 6 without the addition of the words " in particular ", together with the original text of the commentary in paragraph 52 of the Rapporteur's report.

The Article and commentary were adopted by 16 *votes to* 7.

TWENTY-SECOND MEETING

Held in Paris on November 25th, 1929, at 10 *a.m.*

Chairman: Sir Sydney CHAPMAN (British Empire).

Secretary: M. SMETS.

43. Reservation concerning Capital to be held exclusively by Nationals.

THE CHAIRMAN asked the Committee whether the question of capital held exclusively by nationals should be examined by Committee A or Committee C. He thought that the question was connected with that of companies and should be discussed by Committee C.

The Committee agreed.

44. Examination of the Articles of the Convention : Article 8.

Report of the Sub-Committee on Article 8.

Paragraph 1.

No observations.

Paragraph 2.

M. PEROUTKA *(Czechoslovakia)* proposed an addition in the first sub-paragraph to the effect that the article also affected the action of States in regard to fundamental industries. This was one of the reasons which had determined the attitude of various States towards this article.

M. POLITIS *(Greece)*, Rapporteur, thought that he had made sufficient allowance for the observations of M. Peroutka and other delegates in the formula " would hamper the protection of the home labour market ". The Czechoslovak delegate had specially brought out the fact that, in many countries, certain industries needed special protection which they could only obtain by means of the special protection of the labour market. He had, however, no objection to an amendment in the report on this point.

M. PEROUTKA *(Czechoslovakia)* thought it was necessary to emphasise more clearly the importance of the higher positions ; measures for the protection of the industries in question might affect, not only the labour employed, but also the management.

The suggestion of M. Peroutka was approved.

Paragraphs 3, 4, 5, 6 *and* 7.

No observations.

Paragraph 8.

M. PEROUTKA *(Czechoslovakia)* thought that, in point 3 of this paragraph, the idea which had been expressed, more particularly by the French delegation, that the question was one of freedom as to the choice of the higher staff responsible for administration, might be more clearly brought out. He proposed accordingly to add after the words " higher personnel " the words " responsible for the direction of foreign undertakings ".

M. POLITIS *(Greece)*, Rapporteur, said that he had not omitted these words without due reason. It followed from the discussions, both in the Committee and the Sub-Committee, that, in the view of the majority of delegates, the word " responsible " was likely to give rise to error. The point at issue concerned the managing personnel and it had been rightly said that all posts held by such personnel involved responsibility, so that the adjective " responsible " added nothing to the notion of " higher personnel ".

DR. MARTIUS *(Germany)* concurred in the Rapporteur's observations from the point of view of drafting. In regard to the point of substance, he thought that the amendment which had been submitted might be discussed again in connection with paragraph 11.

THE CHAIRMAN asked what was the Czechoslovak delegate's opinion on this point.

M. PEROUTKA *(Czechoslovakia)* explained that the question involved, on the one hand, the direction of a concern and, on the other hand, the higher staff. But there was an intermediate notion between these two, and it was to express this intermediate notion that he had submitted his amendment.

M. POLITIS *(Greece)*, Rapporteur, replied that paragraph 8 gave a general indication of the trend of opinion in the Committee. The different shades were explained further on. In point 3 of paragraph 8, he had attempted to describe the wish of the majority of the Committee to differentiate between two categories of the staff, namely, the higher personnel, which some delegations described as the responsible staff, and the more numerous category described by certain delegates as subordinate staff. It would be remembered that the word " subordinate " had not been unanimously accepted, but, speaking generally, the passage in the report was a correct interpretation of the Committee's view, while the various shades of difference were explained later on.

M. PEROUTKA *(Czechoslovakia)* thought that the exchange of views which had been held had cleared up the question, and he would not press his amendment to paragraph 8.

M. ITO *(Japan)* considered that the Rapporteur had correctly brought out the wishes of the majority of the Committee as to the three points mentioned in paragraph 8 of the report ; the details of the discussions were dealt with from paragraph 9 onwards. It might, however, be well to add a few words as to the views of the minority. The report appeared to give the impression that the Committee had only discussed the problem from the point of view of restrictions.

M. POLITIS *(Greece)*, Rapporteur, replied that it might be easily inferred, from the fact that the report mentioned the opinion of the majority, that the minority had held a different opinion.

M. ITO *(Japan)* explained that he was considering the matter from the general point of view. He thought that it should be said that, notwithstanding the opinion of the majority, a certain number of delegations had suggested the desirability of preserving the original text with a view to the protection of foreign undertakings in a general sense and not merely in regard to the three points mentioned in paragraph 8.

M. POLITIS *(Greece)*, Rapporteur, requested the Japanese delegate to prepare a draft amendment to paragraph 8.

M. ITO *(Japan)* said that he would confer with the Rapporteur on the text of paragraph 8.

M. NEDERBRAGT *(Netherlands)* stated, on behalf of his delegation, that he had exactly the same impression as M. Ito. Furthermore, speaking generally, the report mentioned the arguments of the majority but not those of the minority. The Netherlands delegate would submit an amendment which would certainly provoke a discussion, and which he would ask the Chairman to put to the vote by roll-call.

Paragraph 9.

M. POLITIS *(Greece)*, Rapporteur, thought that, in the first sentence, instead of saying " the Committee reserved the right to settle the first point in the third paragraph of the Protocol *ad* Article 7 ", it would be more correct to say " the Committee reserved the right to settle the first point by inserting in the Convention a special article on the same lines as those of the third paragraph in the Protocol *ad* Article 7 ".

M. VALIMARESCO *(Roumania)* wished to know what would be the wording of the new article to which the Rapporteur had referred, seeing that Article 7 had already been adopted and would not be discussed again.

M. SMETS *(Secretary of the Committee)* explained that, while it was true that Article 7 had been discussed, the Sub-Committee's report — taken, at any rate, as a whole — had still to be submitted to the Committee. In regard to paragraph 3 of the Protocol *ad* Article 7, it had been understood that the paragraph would not be considered during the examination of Article 7, but that its contents would form the subject of a special article to be inserted in the Convention. This decision had been communicated to Committee D, and it was the latter Committee which would decide on the place and final drafting of the paragraph.

The amendment proposed by the Rapporteur was adopted.

Paragraph 10.

DR. MARTIUS *(Germany)* referred to the following passage in the second sub-paragraph : " the Sub-Committee thought that it would be sufficient to *extend* to this case the application of . . . ". He did not agree that there was any question of an *extension*. It would be possible either to make a simple reference to the recommendation or, alternatively, to say that the Sub-Committee had considered that the recommendation, which had been proposed during the discussion on Article 6, should be incorporated in the Final Act of the Conference. The text of the recommendation would follow. This was a simple question of drafting, but it was impossible to speak of an extension of the recommendation.

M. POLITIS *(Greece)*, Rapporteur, approved the German delegate's suggestion subject to the final wording.

Paragraph 11.

M. NEDERBRAGT *(Netherlands)* asked permission to defend, in connection with paragraph 11, the following amendment which had been submitted by the German, Danish and Netherlands delegations :

"Replace the words 'for the management of their establishments or for the transaction of their business' in the new text of Article 8 adopted by Sub-Committee A by the following words : 'for the management of their establishments, *for any position of personal trust* or for the transaction of their business'."

He wished to submit two preliminary observations. First, he had, on one occasion, said that he was defending his country's interests, but that he was sure that he was, at the same time, defending the interests of the other countries. He wished now to say, after due reflection, that the interests of his country were only to a very small extent involved. Facts were stronger than any convention. His country had such good relations with the other States, and the facilities which the Netherlands found in other countries were so firmly established, that there was nothing to fear in this respect from an erroneous stipulation in a convention. He had, therefore, no anxiety on this point, and this fact was calculated to facilitate his task.

Secondly, the Rapporteur had pointed out the futility of the general speeches which had taken up so much of the Committee's time. He wished to explain that he had felt obliged to recall on a number of occasions the principles which he had laid down at the beginning of the proceedings. There was therefore no need to revert once again to this subject.

As to the substance of the question, he wondered whether the present Conference was not playing, not a "comedy of errors", but a tragedy of errors. The situation was very serious, and he would venture to point out three mistakes which were being committed at the moment. He would take as an example Article 8, but similar mistakes were being committed in connection with many other Articles.

First mistake : The Committee had, for whole days, discussed the question whether a foreign undertaking should be permitted to send one, two or three people to the territory of any other of the contracting parties. Was, however, the economic position of the world still such that there was any need to discuss a question of that sort ? The question was of importance only for an undertaking which applied for the admission of the few persons involved, but their admission could not in any way injure the labour market which the contracting party concerned wished to safeguard. Two or three centuries ago there had occurred the period of the building of great empires. What had the builders done then ? Far from thinking that they should close their gates to specialised workers or to engineers, they had, on the contrary, allowed them to come in or even invited them. That had been the attitude of France and of other countries as well. In Holland, even, the man who was later to become Tsar Peter the Great, had set himself up in the country as a workman and on his departure had chosen experts and invited them to accompany him back to Russia and work there. The mistake consisted in thinking that it was only the concern established in a foreign country which needed experts. It was the country itself where the concern was established which would benefit by the work of these experts, who would, moreover be so few in number that they could not injure the home labour market.

There was another mistake which was even more serious, not only for the Netherlands, but still more for other countries. It involved the problem of the financial market. One of his colleagues on the Netherlands delegation, who was highly versed in financial matters, had shown him very clearly that the decisions taken would have the effect of stopping the export of capital. What were the three delegations proposing in their amendment? It was to allow persons to be sent abroad for "any position of personal trust". There was no question of workmen. If the admission of the persons in question were not allowed, there would be a cessation to the export of capital. This was not all. If the gates of the country were closed to this small number of people in positions of trust, not only would foreign capital cease to be exported, but the foreign exchanges as well would be closed to borrowing. The question was not of special concern to the Netherlands, and he was convinced that he was defending the economic situation of all countries in all parts of the world. He proposed a vote on his amendment by nominal roll-call because it would not suffice if it were merely indicated in the report that the amendment had been rejected. There must be no secret as to what went on at the present Conference — as to which were the countries that were prepared to allow people holding positions of trust to enter their territory to manage businesses, and which were the countries that alleged that they were in a position to exclude the few people involved, to exclude foreign capital and to close the foreign exchanges to, their loans.

The third mistake related to the labour market. Basing himself on the experience of important undertakings in his country, he would urge that the engagement of a small number of engineers would result in additional employment for thousands of workmen. He would cite the case in his country of concerns which were constantly increasing the number of their workers because they had well chosen their engineers. It was not the admission of three or four duly qualified people that would injure a country, but, on the contrary, a refusal to admit them.

M. POLITIS *(Greece)*, Rapporteur, asked the Netherlands delegate whether the words "any position of personal trust" implied a new idea or was it intended to define what was meant by "management"?

M. NEDERBRAGT *(Netherlands)* replied that his point was to secure a slight amplification of the text before the Committee. Mention had been made in regard to the management of establishments of a general manager, or at the most of two or three managers, but, in addition to these, there might be other persons in a position of trust. There would be very few of them, and the concern in question might apply for their admission.

M. POLITIS *(Greece)*, Rapporteur, asked whether M. Nederbragt's point related to persons in positions of trust coming within the category both of higher and subordinate staff ?

M. NEDERBRAGT *(Netherlands)* replied in the affirmative. The essential point in his motion was to designate staff which might come within the category of ordinary staff, but who were in a position of trust.

THE CHAIRMAN wondered whether a vote by roll-call should be taken in Committee when all the delegates might not perhaps be present, or whether it would not be better to hold over the vote for a plenary session of the Conference.

M. NEDERBRAGT *(Netherlands)* wished to have a vote by roll-call, but would concur if the Chairman desired that the vote should be held over for the Plenary Conference. He pointed out, however, that there had already been a vote by roll-call taken in Committee.

M. POLITIS *(Greece)*, Rapporteur, confirmed M. Nederbragt's last observation and added that the Committee was governed by the rules of the League which allowed of a vote by roll-call in Committee whenever the demand was made for one. It would be advantageous to vote by roll-call at once, since, if the amendment of the three delegations was rejected, the Netherlands delegate, if he wished to obtain a vote by roll-call in a plenary session of the Conference, would have to submit his amendment again, and this would involve a fresh discussion.

M. STUCKI *(Economic Committee)* noted the importance of the questions raised. Their importance resided less in the amendment under discussion than in the considerations developed by the Netherlands delegate. He was very much tempted to follow M. Nederbragt in this matter, for the latter had raised the whole question of the Economic Committee's policy in this respect, and, generally speaking, that of the League of Nations. It was the right and the duty of the representatives of the Economic Committee, who had been sent to the Conference by the Council, to expound from time to time the main lines of the League's policy, but the present occasion, on which a small amendment to Article 8 was under discussion, was not perhaps appropriate, and he would hold over his observations for another time.

He would confine himself to explaining briefly the Economic Committee's intentions. When the latter had drafted Article 8, it had wished to afford as wide guarantees as possible to foreign companies and foreigners engaged in business in a country as to the choice of their higher and lower personnel. By a majority of one or two votes the Sub-Committee had, with a single stroke of the pen, diminished by 80 per cent those guarantees which the Economic Committee considered feasible and necessary for the foreigners in question. The Sub-Committee had said that the States remained entirely free in regard to admission. It should be pointed out that in the Protocol the Economic Committee had anticipated the objection which had been raised by saying that the States would undertake not to avail themselves of their rights in such a way as to render the guarantees prescribed in Article 8 inoperative. That clause had now disappeared. Even with the Netherlands amendment, the States would remain completely free with regard to admission, and the whole question involved in Article 8 was confined to employees who had already been admitted to the country. The scope of this clause had consequently been considerably restricted. That was a highly regrettable fact from the Economic Committee's point of view, but it could only accept the situation.

The position, however, being as it was, there was another question which arose. Among the whole body of foreigners who had already been admitted to the country, was it still necessary to make a distinction between the managing staff and the rest of the staff ? Would it not be possible to go a little further ? Even the Netherlands amendment did not go so far as the Economic Committee had done.

He thought that it would be possible, even for the country to which he belonged — but which he did not, of course, represent on the Conference, and with whose delegation he did not always completely agree — to make this small advance. Some sacrifice perhaps would have to be made ; a law or ordinance or a point of view would perhaps have to be changed. The essential thing in the economic work undertaken by the present Conference was that a country should make a concession because in other matters other countries had made a concession, so that, all things being taken into account, the balance was still on the right side. Such was the meaning of all the Economic Committee's work, and such was the fundamental idea of the Convention which it had submitted to the Conference.

On behalf of the Economic Committee, he warmly urged the Committee to adopt the amendment of the German, Danish and Netherlands delegations.

45. **Tribute to the Memory of M. Clemenceau.**

M. DEVÈZE *(President of the Conference)* spoke as follows :

" France has lost one of her great citizens, M. Georges Clemenceau. Our Conference will certainly desire to offer its most profound condolences to the French people, and I beg you, as a mark of our heartfelt sympathy, to suspend the meeting for a few minutes. "

The meeting was suspended for a few minutes.

46. **Article 8** (continuation).

M. DE LA VALLÉE POUSSIN *(Belgium)* supported the Netherlands amendment. Although in the Sub-Committee he had voted for this text, he considered, after reflection, that it was somewhat narrow. He nevertheless endorsed every one of the observations developed

by M. Nederbragt, which justified a considerable enlargement of Article 8. In support of M. Nederbragt's arguments he would content himself with citing a case which fairly frequently arose — that of an industry which was established in a foreign country and which had need of technical experts from another country who had specialised in the industry in question. The parent firm might wish to found a branch abroad and might have need, in order to get its workshops in running order, of specialised experts who could not be found in the country. In such a case it seemed very desirable that the choice of the head of the concern should remain entirely free. The directors of a firm exploiting an industry which required special technical knowledge would abandon the idea of setting up a branch abroad unless they were sure of being able to send to the country in question such men as were indispensable to its efficient working.

He thought that an attempt might be made to improve the wording of the Netherlands amendment. The word "trust" was somewhat wide and might cause hesitations. In the event of the Netherlands amendment not being adopted as it stood, he would suggest a formula in the following sense :

> "The same shall apply in respect of the members of the administrative and technical personnel who are essential to the efficient working of the concern."

M. POLITIS *(Greece)*, Rapporteur, who took the chair in the absence of the Chairman, observed that there was still a number of speakers on the list. In view of the shortness of the time at the Conference's disposal he would venture to urge delegates who wished to speak to be as brief as possible.

M. POZNANSKI *(Poland)* regretted the necessity, after so many days' discussion, of reverting to the arguments he had already submitted. As had already been pointed out, Article 8 was of a very special character in the Convention, in the sense that all States derived some advantage from the other articles, but not from Article 8. It might be said that Article 8 was a unilateral stipulation. There were two points of view — that of the States which exported capital and that of the States which imported it. As he had already pointed out, the States, which had in point of fact no interest in keeping Article 8 in the Convention, nevertheless were prepared, in view of the Economic Committee's suggestion, to take a step forward, but they must not be asked to make a giant's stride. The Netherlands delegate had, with great candour, indicated the advantage which the States that exported capital would derive from certain guarantees for their capital, and he thought it fair that they should be granted this essential guarantee. It was for that reason that, in the Sub-Committee, he had said that freedom as to the choice of the managing personnel should be allowed in Article 8, but, if the Conference went further, it would cease to be fair to the other countries which had different interests, and the problem of labour would be affected. The Netherlands delegate had said that it was a matter of no importance to allow three or four technical experts to come into a country. That was perhaps correct from his point of view, but it was for the States for whom the problem of the protection of the home labour market arose to judge of the importance of the question, and these States held that it was impossible to go further. On behalf of the Polish Government he must state that it was impossible for him to go further than the Sub-Committee. The Netherlands delegate's proposal had already been discussed in Sub-Committee in one form or another, and the words "for any position of personal trust" were entirely vague. In the Sub-Committee, he had cited the case of a concern with foreign capital which was established in Poland and which regarded the concierge as a man in a position of trust. This had given rise to a voluminous diplomatic correspondence. He did not wish to have in the text of the Convention any formula which might give rise to ambiguity. The object of an international convention was to eliminate difficulties and not to create a new source of disputes. For this a clear and definite text was essential. The Netherlands proposal, even as amended in accordance with the Belgian delegate's suggestion, would be an inexhaustible source of controversy and would do nothing to improve international economic relations.

Alluding to the case mentioned by the Belgian delegate he would point out that, if a factory set up in a country had need, for its proper working, of specialists who were not to be found in the home labour market, obviously the State in which the factory was established would find it to its advantage to import such specialists from abroad so as to support an industry which provided employment for national workers.

Furthermore, the question was not the same for all States in regard to the problem raised by the Economic Committee's representative. The point did not refer solely to foreigners who had already been admitted to the country, and he fully understood that, notwithstanding Article 8, it might be possible to import specialists from abroad when necessary and to introduce from abroad a manager, in accordance with Article 8 as adopted by the Sub-Committee.

M. PEROUTKA *(Czechoslovakia)* wished to explain his Government's attitude in regard to Article 8. The Czechoslovak Government had adopted a negative attitude for the following reasons. In Article 7, the Economic Committee's draft laid down the general principle of the protection of the national labour market, questions of admission being dealt with in Articles 6 and 29. Under those circumstances the Czechoslovak Government had considered that the provisions of Article 8 did not rightly come within the framework of the Convention. The vote which had been taken on the previous afternoon had confirmed the principle of the protection of the home labour market and had been taken after a discussion dealing with the category of the wage-earning staff as apart from the higher staff. He agreed with the principle which M. Nederbragt had developed so eloquently, but it would be necessary to examine the application of that principle in the present situation. The question had not changed. Was it possible to extend the idea of management in Article 8 ? He thought it impossible to lay down in Article 7 the principle of the protection of the home labour market while considerably restricting that principle in Article 8.

For the moment, and subject to the view which his Government might take, he could at first sight concur in the Belgian proposal, that was to say, in the limitation of the idea of management and transaction of business to the persons indispensable for the efficient conduct of foreign firms. If, however, the Committee preferred the text submitted by the three delegations, he could not accept it unless in the following terms : " For the management of their establishment or the transaction of their business *in a position of personal trust*". These latter words would thus apply to the management and to the transaction of business.

M. ROTHMUND *(Switzerland)* thought that the same fundamental error had occurred throughout the whole discussion of Article 8, both in the Sub-Committee and in the Plenary Committee. Article 8 was governed by the provisions of Article 6 in the sense that admission was reserved as was stipulated in the second point of paragraph 8 of the report. Article 8 referred only to foreigners, managers or workers who had already been admitted to a country. In his opinion every delegation should examine its legislation concerning foreigners who had already been definitely admitted. This meant that there was no question of covering foreigners who had been admitted either merely for the purpose of entering the country or for a short visit, and so on. On the other hand, when a foreigner had been definitely admitted, should he still be subject to restrictions under regulations for the protection of the home labour market ? In Switzerland, a foreigner who had been definitely admitted was completely free to act at his own discretion and in particular, to take employment in a foreign concern. Consequently the Swiss delegation accepted the amendment to Article 8 and could even go a good deal further. If the other delegations viewed the question from this angle, the problem of admission being left on one side, many of them would undoubtedly be able to concur in the amendment and even be ready to widen it further.

M. MUNDT *(Free City of Danzig)* said that the provisions of Article 8 were of very great importance from the point of view of Danzig, where there was considerable unemployment. It should be pointed out that Danzig was in a quite particular situation, since it was the only country in Europe which did not demand a visa. For this reason, the Free City could not adhere to a Convention which would allow foreigners and foreign companies not only the free choice of their higher, but also of their working, staff, and he was in complete agreement with the observations of M. Poznanski.

M. PARANJPYE *(India)* also supported the considerations offered by the Polish delegate as to the unduly wide character of the Netherlands amendment. If the principle were laid down that, in the case of people in positions of trust, every foreigner would have to be admitted, it was absolutely certain that, in the last analysis, no foreigner could be excluded, and that, if the country wished to refuse admission to persons described as being engaged for positions of trust on the basis of a convention containing a provision in these terms, the only result would be international complications. Further, he was sure that no country would be so stupid as to ruin itself from the economic point of view and would grant every facility for the admission of people who were indispensable for the working of foreign industries established in its territory with the object of developing commerce and industry in the country. With a provision, however, like that suggested by the three delegations, the only consequence would be abuses, since all foreigners would avail themselves of the provision to enter a country and engage there in work which the country concerned legitimately wished to reserve to its nationals. In this way the protection of the home labour market would become an empty phrase.

He would draw attention to the fact that the labour market did not consist only of manual labourers but also to a certain extent of intellectual workers. The latter also required protection in India, where the problem of finding situations for intellectual workers was a very serious one. With an amendment such as that moved by the Netherlands delegate, India would never be able to find a permanent solution for this problem, since foreigners would come and establish themselves in the country and occupy the places which it might be desired to reserve to Indian intellectual workers. When a country had an educated body of workers in its territory — and this was the case of India — some occupation must necessarily be found for them.

To sum up, he considered the scope of the Netherlands amendment too wide and he would be unable to accept it.

M. POLITIS *(Greece)*, Rapporteur, said that the discussion must now be brought back to its point of departure. The Netherlands proposal, and more particularly the Belgian amendment, would not have the effect of opening the gate very wide to employees or persons in positions of trust who, by reason of their entering a foreign country, might give rise to serious competition on the national labour market. Without taking too literally the very small figures to which M. Nederbragt had referred, it was nevertheless certain that, in any case, the number of personnel in question would be very low indeed. The spirit of the Netherlands and Belgian proposals must therefore be fully realised if the discussion was to be kept within bounds.

M. LANDUCCI *(Italy)* said that he was opposed to any enlargement of the text of Article 8 in favour of persons other than those mentioned in the article. Such an enlarger ent would prevent a State in whose territory the foreign concerns were established from exercising control.

The enlargement of the text of Article 8, amended by the Committee, would limit unduly the right of the State to control the national labour market. Furthermore, a wider text could not fail to provoke disputes as to the character of the posts regarding which a free choice might be made of the staff appointed to fill them.

The Italian delegation did not by this declaration imply that its Government would refuse to examine any requests which might be addressed to it by firms established on its territory, but it considered that supervision was necessary in order to ensure that the professional activities of the persons whose admission was requested was essential and could not be exercised by nationals of the State in question.

M. PUSTA *(Estonia)* observed that the proposal which he had intended to make during the first discussion on Article 8 had not been received with any great warmth. Without desiring to press his proposal he wished to explain his intentions. He thought it essential that allowance should be made for the laws in force in Estonia, namely, the Laws of 1921 and 1927, some of which had a very close bearing on the question and which he quoted. He had suggested to his Government that it should consider whether it would not be possible to bring the spirit underlying these laws into conformity with the Sub-Committee's text, but he could not go further, nor could he support the amendment under discussion. He was against the extension of the Sub-Committee's draft.

M. MAYER *(Austria)* said that his delegation was not opposed either to the Netherlands amendment or to the Belgian amendment, provided that the words " for any position of personal trust " were interpreted so as entirely to exclude the employment of persons belonging to the category known in English as " clerks ".

Dr. MARTIUS *(Germany)* said that the Sub-Committee had been unable to agree on a generally acceptable definition. The problem was, in point of fact, quite clear, but it became complicated if an endeavour were made to solve it in a legal manner. The formula proposed by the German, Danish and Netherlands delegations was, as M. Stucki had pointed out, narrower than that of the Economic Committee which had served as a basis for the instructions received from the Governments concerned. The formula proposed by the Belgian delegate on the other hand was far wider. Was it, nevertheless, possible to agree that the adoption of this amendment, proposed with a view to a collective treaty which was to be framed in liberal terms, would be equivalent, as the Polish delegate had contended, to a giant's stride ? The particular case mentioned by the Polish delegate could not be used as an argument for rejecting a reasonable formula. He preferred the formula which he had submitted conjointly with the two other delegations to any other formula which had been submitted either at the present meeting or previously. He wished, moreover, to offer an observation of a somewhat more serious nature. If the Committee decided to restrict the scope of this provision in a collective treaty, and to protect it by formal stipulations as to admission and the protection of the labour market, it would be better to delete the provision in question altogether. In his opinion, the formula adopted by a very small majority of the Sub-Committee did not provide a genuine solution. He would prefer to admit that the problem was not yet ripe for solution and that it would be necessary to await a more propitious occasion.

Mr. BARRINGTON *(Irish Free State)* had thought during the discussion held two days previously, that the question at issue was that of foreigners to be admitted for a clearly specified object, and that, if such a foreigner desired to change his occupation, he would be exposed to the loss of the permit granted him. The amendment by the three delegations would not apply in the case of countries which did not impose restrictions of this kind, so that the question was reduced to the case which he had raised. The problem being thus defined, the adoption of the Netherlands amendment would do more evil than good, and he supported the considerations offered by the Polish delegate. A country would always be able to call in foreigners for the management of an undertaking established in its territory if their presence was absolutely necessary to the concern in question. It was obvious that no country would wish to damage its economic position by refusing to admit indispensable people.

One speaker had, at a previous meeting, taken the case of the construction of docks by foreign firms and had said that, if the country refused to admit the necessary engineers, it would probably injure the work that had been begun. He did not think that there was any need to fear any such danger. His country had expended millions on hydro-electric works and had granted certain foreign firms facilities for the admission of engineers and other necessary employees, since, if it had refused to allow them to come into the country, it would have done great damage to itself and compromised the expenditure incurred.

M. NEDERBRAGT *(Netherlands)* wished, before the Committee proceeded to vote, to explain that he had never intended to reopen the debate on the question of admission, seeing that the debate on this subject had been concluded. He therefore remained within the limits of what had been done to date, although he reserved his attitude in the Plenary Conference, and it was within these limits that he had proposed the enlargement of the article. As the Rapporteur had said, the number of persons involved was very small and there was no question of applying for the admission of an army of foreigners.

M. POZNANSKI *(Poland)* thought that the question of admission still arose in connection with Article 8. He wondered whether the question of admission arose or not in the case of an engineer who had received a visa which was valid for a few weeks in order to make certain visits and who was, during his travels, given employment in a factory in a position of trust. Further, it might perhaps be of little importance for some countries that five, ten or one hundred persons from abroad entered its territory with a view to occupying salaried positions. But it was for the country which was concerned with the problem of protecting the home labour market to judge

in the matter. There were certain countries where a number of employees, engineers, accountants, etc., were unemployed and the interests of these countries must be safeguarded. It had been affirmed that the problem of emigration would not be dealt with by this Conference and he had taken note of that statement, it being understood that the problem would nevertheless be taken up one day. If, however, Poland had admitted this point of view—which was that of the Economic Committee—the problem must not be taken up now in any way whatever. For certain countries, the important question was that of engineers, accountants, etc., while for others it was that of wage-earners. The problem was a complicated one. In the case of Poland it affected, not a few dozen people, but millions.

M. POLITIS *(Greece)*, Rapporteur, disagreed with the Polish delegate. He thought that the question as regarded admission was perfectly clear. Full satisfaction on this point would be obtained by referring to the first sub-paragraph in paragraph 10 of the report, which was quite categorical. In the case of an engineer going to a foreign country for a visit and wishing later to take a post as manager or as a technical employee, the situation would be perfectly simple. As the engineer had not been admitted definitely, he could not be engaged unless he received a definite authorisation for admission.

In regard to the vote which was to be taken, he considered that the Committee, in conformity with parliamentary procedure, should first take the Netherlands amendment, which was the furthest removed from the Sub-Committee's draft, the Belgian amendment being more restricted.

The vote on the amendment by the German, Danish and Netherlands delegations was taken by roll-call.

The result of the voting was as follows:

For: Austria, Canada, Denmark, France, Germany, British Empire, Japan, Netherlands, Roumania, Spain, Sweden, Switzerland.

Against: Belgium, China, Czechoslovakia, Egypt, Estonia, Finland, Greece, Hungary, India, Irish Free State, Italy, Lithuania, Norway, Poland, Turkey, Venezuela, Yugoslavia.

Abstained: Free City of Danzig.

The amendment was therefore rejected by seventeen votes to twelve.

DR. MARTIUS *(Germany)* wished to say, before the Committee voted on the Belgian amendment, that he would vote in favour of it, while nevertheless remaining entirely free as to proposals made in the Plenary Conference.

M. NEDERBRAGT *(Netherlands)* made a declaration in the same sense.

M. POZNANSKI *(Poland)* would be obliged to vote against the Belgian amendment, which, in substance, came to the same thing as the Netherlands amendment.

M. PEROUTKA *(Czechoslovakia)* would be able to vote for the Belgian amendment if it referred only to the management of establishments and if its effect was not to create a category of personnel coming within the rules laid down in Article 8.

M. POLITIS *(Greece)*, Rapporteur, stressed the importance of this declaration. The Czechoslovak delegate would accept the Belgian amendment if it were confined to the idea of management, that was to say, if it had an even more restricted scope than the present text. In fact, however, the object of the amendment was slightly to amplify the Sub-Committee's text.

M. PEROUTKA *(Czechoslovakia)* had understood that the Belgian amendment was connected with an idea that had been developed in the Sub-Committee by the Rapporteur himself, namely, a category of personnel intermediate between the management and the group described as higher personnel.

M. POLITIS *(Greece)*, Rapporteur, wished to deal first with a question of form. From the point of view of wording, the Belgian amendment would not fit in with the Sub-Committee's text and would have to be modified accordingly. He wished, moreover, to make a second observation which might perhaps secure the approval, if not of all members, at any rate, of the great majority of the Committee. The Belgian amendment contained a limitative idea owing to the use of the word "indispensable" which implied that only a small number of persons was involved. In order to allay any apprehensions which might still exist in certain delegations, the Belgian amendment might be modified as follows : At the end of the first sub-paragraph of the Sub-Committee's text, after the words "for the management of their establishments and the transaction of their business", add the words "and also a limited number of administrative and technical assistants in fact essential to the efficient working of their concern". This wording would not only indicate that the number of persons involved was small, but would also emphasise that the qualifications which were indispensable in the persons concerned would result not from a theoretical and unilateral declaration but from an examination of points of fact in each case.

M. DE LA VALLÉE POUSSIN *(Belgium)* accepted the Rapporteur's wording.

M. LINANT DE BELLEFONDS *(Egypt)* proposed the further addition of the words "and who cannot be found among the nationals of the country in question".

M. POLITIS *(Greece)*, Rapporteur, pointed out that, if the persons in question could be found among nationals, they could not be described as indispensable.

M. MAYER *(Austria)* suggested that the words "a limited number" should be replaced by the words "a *strictly* limited number".

DR. MARTIUS *(Germany)* was not sure whether the Belgian proposal bore the construction placed on it by the Egyptian delegate. If it did so, the German delegation would have to vote against it.

M. NEDERBRAGT *(Netherlands)* could, if necessary, agree to the Belgian amendment which, although limited in scope, nevertheless tended in the right direction. If, however, it were to be limited still further by additional restrictions, he would vote against it.

M. POZNANSKI *(Poland)* said he had intended to suggest the following wording, which was on the same lines as the text submitted by the Rapporteur : "if experts of this kind are not available on the local labour market". With the addition suggested by the Egyptian delegate, the wording of which might be revised, he thought that the most appropriate place would be the Final Act rather than the text of the Convention.

M. PEROUTKA *(Czechoslovakia)* said that he would vote in favour of the Belgian proposal as amended by the Rapporteur if it related to persons who were indispensable to the working of the management of an establishment. He could not vote in favour of a wider amendment.

M. DE LA VALLÉE POUSSIN *(Belgium)* pointed out that this wording would entail not an extension but a restriction of the Sub-Committee's text.

DR. MARTIUS *(Germany)* urged that the Committee should take a vote on the Polish delegate's amendment to which he attached great importance.

M. POLITIS *(Greece)*, Rapporteur, thought that in order to keep the discussion clear it would be better first to vote on the Belgian amendment as modified by himself ; the Committee would then vote on the proposed additions to this amendment.

A vote was taken by roll-call on the Belgian amendment, as amended by the Rapporteur, the result of which was as follows :

For : Austria, Belgium, British Empire, Canada, Denmark, Egypt, France, Germany, Greece, Irish Free State, Japan, Netherlands, Norway, Roumania, Spain, Sweden, Switzerland, Venezuela.

Against : Czechoslovakia, Free City of Danzig, Estonia, Hungary, India, Italy, Latvia, Poland, Turkey, Yugoslavia.

The amendment was adopted by 18 *votes to* 10.

THE CHAIRMAN then put to the vote the addition suggested by the Polish delegate.

For : Austria, Canada, Czechoslovakia, Free City of Danzig, Egypt, Estonia, Hungary, India, Irish Free State, Italy, Latvia, Poland, Roumania, Turkey, Yugoslavia.

Against : Belgium, British Empire, Denmark, France, Germany, Greece, Egypt, Netherlands, Norway, Spain, Sweden, Switzerland, Venezuela.

The addition was adopted by 15 *votes to* 13.

Paragraphs 11, 12, 13.

M. YOUPIS *(Greece)*, referring to an amendment by the Greek delegation concerning insurance, observed that insurance questions had been sent to another Committee. He wondered whether he should present his amendment or await the decision to be taken in the other Committee. In his opinion the amendment was connected rather with Article 8 than with Article 7.

THE CHAIRMAN replied that, if a decision were taken in a restrictive sense, the restriction would appear in Article 7.

DR. MARTIUS *(Germany)* said that he would have withdrawn an amendment to the Protocol *ad* Article 8 proposed by the German delegation if the Belgian amendment had been adopted without modification. He must, however, press for a vote on this amendment which consisted in the addition to the Protocol of a third paragraph in the following terms :

> "3. The term 'for the management of their establishments' shall include the management of each of the various technical or commercial departments of these establishments".

M. POLITIS *(Greece)*, Rapporteur, pointed out that this question was dealt with in paragraph 15 of the report.

Paragraph 14.

M. POLITIS *(Greece)*, Rapporteur, proposed that the words "in fact" should be added after the words "the Sub-Committee therefore proposes that the derogation regarding the protection of the home labour market should be limited", so as to show that there would be no need to make any formal change in the legislation of the various countries but that the law should be applied in the sense indicated.

M. ITO *(Japan)* asked what would be the position if the law was at variance with the sense indicated.

THE CHAIRMAN replied that it would be the business of the Governments concerned to see whether any change was required in their law or not.

Paragraph 15.

M. POLITIS *(Greece)*, Rapporteur, referring to the German amendment, explained that he had attempted to base the wording of paragraph 15 of this amendment while taking account of what had been said in the Sub-Committee.

If there were in an establishment only one person who was entirely responsible for its management, he would be the only person covered, but if there were no general management and if there were several managers with separate responsibilities (commercial department, financial department, scientific department, etc.), all these various heads of departments would be covered by the Convention. If that were the meaning of the German amendment, he agreed. If not, the Committee would have to choose between the two interpretations.

DR. MARTIUS *(Germany)* said that he would agree to the interpretation of his amendment if, in paragraph 15, the words "or failing such post" were struck out. He would for the moment content himself with a vote on the omission of these words.

The proposal to omit the words "or failing such post" was rejected.

Paragraph 16.

SALIH ZEKAI BEY *(Turkey)* asked the Rapporteur to mention in this paragraph that Turkish legislation for the encouragement of national industries was not affected by the text of the Convention.

M. POLITIS *(Greece)*, Rapporteur, replied that this question had been held over for the discussion on Article 7, along with a proposal by the Spanish delegate.

SALIH ZEKAI BEY *(Turkey)* pointed out that, during the discussion on Article 7, he had not pressed his point, since he had been given an assurance that it would be examined in connection with Article 8. He explained that in Turkish law there was no question of any discrimination between nationals and foreigners.

M. POLITIS *(Greece)*, Rapporteur, requested the Turkish delegate to send him an amendment to this paragraph in the report.

Paragraph 17.

No observations.

Paragraph 18.

M. PEROUTKA *(Czechoslovakia)* submitted an observation on a point of wording. In this paragraph the word "protection" had no definite meaning.

THE CHAIRMAN said that the Committee would leave it to the Rapporteur to reconsider this passage.

Paragraph 19.

M. NEDERBRAGT *(Netherlands)* asked that a vote might be taken on Article 8 as a whole, in view of the complexity of the successive votes which had been taken.

M. POLITIS *(Greece)*, Rapporteur, pointed out that any member of the Committee had, of course, the right to ask for a vote on the article as a whole but, in view of the successive votes which had been held, as a result of which different delegations had voted for different parts of the text, there was reason for fearing that a vote on the whole would only result in a rejection of the entire article. This did not appear to be in conformity with the Committee's intention.

M. NEDERBRAGT *(Netherlands)* would not press his suggestion. He had complete confidence in the Rapporteur for the amendment of the wording of the report in accordance with the discussions which had taken place.

M. PEROUTKA *(Czechoslovakia)* noted that the end of the first paragraph of Article 8 read : "without being subject to regulations *other* than those provided for in the present Convention". What were these *other* regulations ? It might perhaps be better to say : "without being subject to regulations incompatible with the provisions of the present Convention".

THE CHAIRMAN said that this point of drafting would be left to the Rapporteur.

The remainder of the discussion was postponed till the next meeting.

TWENTY-THIRD MEETING

Held in Paris on November 26th, 1929, at 10 a.m.

Chairman : M. POLITIS (Greece) (in the absence of Sir Sydney Chapman).
Secretary : M. SMETS.

47. **Examination of the Articles of the Convention : Article 8** (continuation).

Report of the Sub-Committee (Annex A, 28).

THE CHAIRMAN said that there was some doubt as to the result of the vote which had been taken on the Polish amendment at the previous meeting. The officers of the Committee had considered the matter and had decided that the Polish amendment must be regarded as accepted by the Committee. The Netherlands delegation had asked that a further vote should be taken on the text of the article as amended by the acceptance of both the Polish and the Netherlands amendments. The text of the article, as the result of the acceptance of these two amendments, would read as follows :

> "Nationals of one of the High Contracting Parties . . . are free to appoint at their discretion for the management of their establishments or for the transaction of their business, *together with a limited number of administrative and technical assistants in practice indispensable to the satisfactory working of their undertakings*, such persons as they may judge fit and proper, without being subject to regulations other than those provided for in the present Convention, *provided these persons are not to be found in the national labour market.*"

The Committee had taken a vote on the Polish and Netherlands amendments separately, but had not yet voted on the text as a whole.

M. LAEMMLE *(Germany)* said that he would be obliged to vote against the adoption of Article 8 in its amended form and that he would be unable to recommend his Government to sign a Convention containing such an article. The inclusion of such an article in the Convention was not, in his opinion, consistent with a reasonable development of economic freedom, and would constitute a hindrance to the development of commerce.

The Committee adopted Article 8 in its amended form by eighteen votes to eight, with two abstentions.

M. NEDERBRAGT *(Netherlands)* said that he would propose in the plenary conference that the original text submitted by the Economic Committee should be restored. If that proposal were rejected, the Netherlands delegation would find it difficult to sign the Convention. He would be obliged to request his Government for further instructions, and he had little doubt as to their tenor.

M. POZNANSKI *(Poland)* said he was glad the Committee had accepted the Polish amendment. He desired to say, however, that, if the Committee had rejected that amendment, he would nevertheless have signed the Convention.

THE CHAIRMAN considered that Article 8, subject to the amendments adopted, was now accepted as a whole by the Committee.

48. **Article 7** (continuation).

M. NEDERBRAGT *(Netherlands)* said that two questions arising out of Article 7 had been reserved during his absence. One was the question of railways and the other was the question of air navigation.

He would like to know what precisely was the position in regard to railways. He was under the impression that the Committee had agreed that railways were reserved or that the possibility of reservations on the part of individual delegations would be admitted. This understanding, however, was nowhere explicitly expressed. He would ask the Rapporteur whether the Netherlands Government would, under the Convention, have a right to lay down conditions in regard to the construction and exploitation of railways.

In regard to aircraft, there had been inserted in the list of reserved activities services relating to aircraft. He would ask whether this exception covered : (1) air transport ; (2) work undertaken in connection with aircraft, such as photography ; and (3) the construction and management of landing-grounds.

M. PILOTTI *(Italy)*, Rapporteur, said that an endeavour had been made to establish a liberal text. During the discussion in the Committee, however, it had been represented by many delegations that a liberal tendency might be premature, and a number of limiting amendments had been put forward. There was, in particular, an amendment of the Netherlands delegation.

It had been explained that railways were not always subject to concessions, but that the companies exploiting them might be the proprietors of the railways, which were, nevertheless, subject to State control. The Netherlands Government desired to reserve work on the railways for their nationals.

The Chairman had asked him to discuss this matter with the Netherlands delegation and other delegations who were interested in the question, with a view to finding a formula which would meet their wishes. He had presented a text in which account was taken of the limiting views which had been put before the Committee. It was suggested that there should be inserted in the list of reserved industries following the reference to State enterprises or at the end of the list a reference to "the exploitation of public services and of industries subject to concession". That formula appeared to cover all the restrictions which were desired.

M. NEDERBRAGT *(Netherlands)* said that his delegation had merely raised the question and had not asked for any limitation. The views of the Netherlands delegation were clearly met in the text submitted. The present wording, which referred both to concessions and public services, appeared to cover every possible case.

M. SAKANE *(Japan)* said, in regard to the reservation of air services, that he desired to associate himself with the Netherlands delegation. Air navigation was still undeveloped and there were many uncertain problems yet to be settled in regard to it. Air transport was in a different position from other forms of transport, and it was therefore preferable to reserve the matter.

THE CHAIRMAN said the Committee would note the declaration of the Japanese delegation. For the moment, however, it was dealing with the question of railways. Did the Committee accept the formula which had been proposed ?

The Committee adopted the formula proposed by the Rapporteur.

THE CHAIRMAN asked the Committee to consider the question of air navigation and transport.

M. PILOTTI *(Italy)*, Rapporteur, said that the Netherlands amendment appeared to go beyond the proposal of the Japanese delegation. The Netherlands Government desired to reserve for its nationals all activities in connection with air navigation. He did not think, however, that the question of the transport of persons and goods by air was now of much importance, in view of the fact that the Committee had already adopted a general formula in regard to public services and concessions which appeared to cover such activities as those connected with air transport and mining.

Generally, he would urge that the question of navigation should be reserved for discussion under Article 10, which referred to the possibility of foreigners being admitted to purchase such commodities as vessels and aircraft.

M. NEDERBRAGT *(Netherlands)* thanked the Rapporteur for his explanation. He would point out that there was already an international convention regulating transport by air. Considerable latitude, therefore, must be left in the present Convention. It would be difficult at present to adopt stipulations which went further than those contained in the existing Convention on Air Navigation.

M. PILOTTI *(Italy)*, Rapporteur, said he had already proposed to the Japanese delegation that a reference should be made to the Air Convention of 1919, reserving its provisions. No final decision in the matter, however, had been taken, owing to the absence of the Netherlands delegate from the meeting in question. The Sub-Committee had thought that it would be a satisfactory solution of all difficulties if it were expressly stated that the provisions of the Air Convention remained unaffected by those of the present Convention.

THE CHAIRMAN understood that the proposal before the Committee was that a statement should be made in the report to the effect that the present Conference had not dealt with the question of air navigation, but had left that matter to be regulated by the Convention of 1919.

M. NEDERBRAGT *(Netherlands)* said he was entirely satisfied with that solution.

The Committee accepted the proposal of the Chairman.

M. DE NICKL *(Hungary)*, referring to sub-paragraph *(f)* of Article 7, recalled the observations which he had already made in the Committee on the coasting trade. He had proposed either that the reference in the article should be to maritime coasting trade or that a passage should be inserted in the Protocol to the effect that river coasting trade was excepted. No decision on that matter had been taken.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that another point arising under Article 7 had not been determined ; namely, the question of reserving for nationals the manufacture of arms and munitions of war.

M. PEROUTKA *(Czechoslovakia)* asked that no decision should be taken in regard to river coasting trade in view of the absence of M. Choumenkovitch (Yugoslavia), who desired to express his views on the subject.

M. PILOTTI *(Italy)*, Rapporteur, said that, if the text of the article were amended as suggested by the Hungarian delegate, foreigners would be admitted to the coasting trade on the same footing as nationals. Many countries, however, desired to reserve this trade to their own nationals and this right was accorded to them under many treaties of commerce.

The delegations interested in this question had been asked to meet and decide upon a formula. Those delegations had met on the previous day and had decided to leave a reference to the coasting trade in the text of the article, but to insert in the Protocol a paragraph in the terms suggested by M. de Nickl. That decision, however, had been taken in the absence of the delegate of Yugoslavia. He could only request the delegations concerned to meet again and produce a formula which would meet with the approval of the delegate of Yugoslavia. Meanwhile, he proposed to leave the text of the article as it stood ; the formula to be adopted for the Protocol being for the moment reserved. That formula would be drafted by the delegations concerned.

In regard to the question raised by the Belgian delegation, it had been decided to insert a reference to arms and munitions. It had been proposed that a reference to material of war should also be included, but that suggestion had been rejected owing to the difficulty of defining and limiting material of war. The reference in the final text of the report was to the manufacture of arms and munitions of war.

He would draw attention to a passage in his report in which it was stated that public services did not always necessarily imply a devolution of the powers of the State or a mission undertaken on behalf of the State in the strict sense of the term, but that any employment under the State must necessarily fall within the provisions of the article. An explanation had been introduced in which it was stated that the formula adopted included any administration which might have a legal personality distinct from that of the State, whether it held its powers from the State or was itself invested with public rights. The Austrian delegation had, in this connection, asked that the words "legal or special" should be inserted after the reference to missions which might be undertaken on behalf of the State. He did not think that this addition was necessary.

M. MAYER *(Austria)* said he was satisfied with the interpretation given by the Rapporteur.

He would enquire, however, what exactly was meant by the word "State" which was used in this passage of the report. Did the conception underlying this paragraph mean that the word "State" might include semi-public bodies ?

THE CHAIRMAN said that the report would deal with the points which had been raised. He presumed that the Committee was in agreement with the suggestion of the Belgian delegation that the reference to the manufacture of arms should be limited to the manufacture of arms and munitions of war.

He further presumed that the reference in the text to the coasting trade would be left as it stood and that a formula would be submitted by the delegation concerned for insertion in the Protocol.

M. PEROUTKA *(Czechoslovakia)* reminded the Committee that the Chairman had asked the delegations to submit their suggestions in writing in regard to the banks. Had any memoranda been received or any conclusions reached on the subject ?

M. PILOTTI *(Italy)*, Rapporteur, said he had received memoranda from three delegations. The question for the moment was reserved. He desired to know more precisely what were the difficulties arising for the various countries in this matter.

THE CHAIRMAN said that several delegations had raised the question of insurance. The Sub-Committee had considered various amendments relating to the subject, but no agreement had yet been reached. Was the Committee of opinion that the question should be settled by the present Convention or be left aside as being beyond the scope of the Convention, to be dealt with, if necessary, by reservation ?

M. LANDUCCI *(Italy)* said that the Sub-Committee on insurance questions would meet on the following day in the hope that an agreement would be reached.

49. **Article 9.**

Report of the Sub-Committee (Annex A, 29).

M. PILOTTI *(Italy)*, Rapporteur, explained that the Committee of Jurists which had discussed Article 9 had appointed a Sub-Committee of five persons, under the chairmanship of M. de la Vallée Poussin. This Sub-Committee had presented a report, which was now before the Committee.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that the reference to the Economic Committee in paragraph 1 should be deleted.

The Committee agreed.

M. POZNANSKI *(Poland)* enquired whether the right of foreigners to have access to the courts included a right to appear before the semi-administrative tribunals such as were frequently constituted in certain countries. He felt that some statement should be made in the report to the effect that such a right was included.

M. DE LA VALLÉE POUSSIN *(Belgium)* thought that this point was met in the paragraph which laid down that foreigners might have recourse to the courts and appear before the administrative authorities in all cases in which the laws of the country allowed such recourse to nationals.

M. PILOTTI *(Italy)*, Rapporteur, suggested that the text should be amended in order to cover resort to administrative jurisdictions.

The Committee agreed.

SALIH ZEKAI BEY *(Turkey)* enquired as to the precise significance of the term " patrimonial rights " mentioned in the paragraph to which M. de la Vallée Poussin had alluded.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that the question of patrimonial rights was settled, not by Article 9, but by Article 10 of the draft. He was glad of the opportunity afforded him by the Turkish delegate to explain the connection between the two articles and the essential difference of the subjects with which they dealt.

Article 10 dealt with the existence and extent of the material rights which foreigners were recognised to enjoy. Article 9 dealt with the means afforded to foreigners to secure their rights and with the obligation of each State to ensure them the same legal protection as was enjoyed by its own nationals.

In order to give a better idea of the substance and relationship of Articles 9 and 10, he would quote as an example a matter to which the provisions of both articles equally applied, but in each case from a different point of view. The distinction would be easily appreciated. He would take the case of patents. In all countries, the laws determined for nationals the nature and extent of the rights which the grant of a patent conferred on an inventor. The inventor had an exclusive right to dispose of his invention : there was a period during which the invention did not become public property, etc.

Article 10 guaranteed that foreigners in this respect should enjoy the same rights as nationals. Before, however, it was possible to secure an exclusive right to dispose of an invention, it was necessary to prove its existence or, in other words, to obtain delivery of a patent.

Here, again, the laws of all countries provided that nationals should have recourse to the competent authorities and laid down the formalities to be fulfilled, the evidence to be furnished, the costs to be defrayed, etc.

Under Article 9, foreigners might, under the same conditions, make use of all the legal provisions which secured to nationals the means of profiting from their inventions and which enabled them, if necessary, to prosecute for violations of their rights.

M. PARANJPYE *(India)* enquired whether any reference was intended to rights of inheritance or succession.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that obviously a foreigner must have access to the courts of the country concerned in order to claim any right which he was recognised to possess.

M. DE BEREZELLY *(Hungary)* said that he preferred the minority proposal referred to in the report of the Sub-Committee to the proposal which had actually been adopted. The text adopted by the Sub-Committee did not make it clear whether material rights were protected or not. Moreover, the provision in the paragraph must necessarily be considered in relation to Article 17, which introduced the problem of most-favoured-nation treatment.

THE CHAIRMAN said that the Committee would have to decide whether it wished to accept the minority or the majority text contained in the report of the Sub-Committee.

M. LINANT DE BELLEFONDS *(Egypt)* agreed with the Hungarian delegate. He felt that the minority text was clearer and more precise than the text proposed by the majority.

DR. MARTIUS *(Germany)* disagreed. In his opinion, the text proposed by the Sub-Committee corresponded better with the terms and spirit of most existing treaties of establishment. He felt it was desirable, with a view to facilitating the practice of the courts, that the new collective treaty should, as far as possible, follow the lines of the existing conventions.

M. PEROUTKA *(Czechoslovakia)* agreed with Dr. Martius.

M. DE BEREZELLY *(Hungary)* asked whether the text proposed by the Sub-Committee did or did not exclude the protection of material rights. If such were the case, he was prepared to agree to the text. He was afraid, however, that the proposed text did not exclude material rights. There was also the question of Article 17.

THE CHAIRMAN pointed out that it was definitely stated in the report that there was no intention of covering material rights. The question of the possible relation of the provisions of Article 17 might be taken when that article came to be discussed.

M. DE BEREZELLY *(Hungary)* thought that a decision should be taken in regard to the text of Article 9 before Article 17 came to be considered, otherwise progress would be impossible.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that the reasonable course would be to suspend the present discussion until Article 17 had been determined. The point at issue, however, was not sufficiently important to justify impeding the progress of the proceedings of the Conference to this extent. He felt that a general formula might easily be found for Article 9.

M. PEROUTKA *(Czechoslovakia)* thought the proposal to reserve the consideration of Article 9 until Article 17 had been discussed was justified. Article 9 dealt with the relations between nationals and foreigners, and those relations must necessarily be considered in connection with the results of the application of the most-favoured-nation clause.

DR. MARTIUS *(Germany)* urged that the Committee should vote upon Article 9. It would otherwise be impossible for Committee D to proceed with its work, and it would be for that Committee to consider the relations which might exist between the various articles of the Convention.

THE CHAIRMAN asked the Committee whether it wished to postpone the decision on Article 9 until Article 17 had been considered. He would point out that the considerations which had been urged in favour of postponement might apply to all the articles of the Convention. If the Committee adopted any article which was inconsistent with another article, a final decision in regard to the articles concerned could only be taken at a plenary meeting of the Conference.

The Committee decided to take a decision in respect of Article 9.

THE CHAIRMAN said there were two texts before the Committee. There was a minority text which several delegations desired to adopt and there was the text proposed by the Sub-Committee.

The Committee decided to reject the minority text.

The text proposed by the Sub-Committee was adopted.

M. NEDERBRAGT *(Netherlands)* said he had desired the insertion of a reference to the enforcement of judgments, and he had understood that a reference to this matter would be made in the report. No such reference was included.

M. DE LA VALLÉE POUSSIN *(Belgium)* suggested that a reference to the matter should be inserted in the passage of the report referring to the list of proposed reservations. The reference in question would thus read :

> "This makes it possible to delete from the list of reservations the majority of those proposed in the amendments, as, for example, the plea of *lite pendente*, the probative value of commercial books, literary and artistic property, questions concerning the capacity of individuals, questions which relate to the execution of judgments, arbitral awards or extradition, etc.".

The Committee agreed.

M. POZNANSKI *(Poland)* suggested that in paragraph 2 of Article 9, which referred to the defence of interests of foreigners brought before the courts, a reference should be made to administrative jurisdictions.

The Committee agreed.

DR. MARTIUS *(Germany)* enquired whether fiscal tribunals, which were neither strictly administrative nor judicial, would be included under this formula ? He feared that, if such detailed descriptions were introduced, they might lead to misunderstanding.

M. PILOTTI *(Italy)* Rapporteur, said that fiscal tribunals would certainly be included under administrative jurisdictions. It would be made clear that all such jurisdictions would be included.

The text of paragraph 2 of Article 9, as proposed by the Sub-Committee, was adopted, subject to the above amendment.

The proposal of the Sub-Committee that paragraph 3 should be deleted was adopted.

M. PILOTTI *(Italy)*, Rapporteur, said that the Committee of Jurists had decided that the whole of the Protocol, as given in the "Brown Book" of the Conference (page 41), should be retained, with the addition of the paragraph given at the end of the report of the Sub-Committee.

DR. MARTIUS *(Germany)* enquired whether the additional paragraph, as suggested by the Sub-Committee, did not overlap with the reference to the Hague Convention in paragraph 2 of the Protocol given in the "Brown Book" ? The Hague Convention regulated various relevant matters, including the *cautio judicatum solvi*. If the additional paragraph proposed by the Sub-Committee were adopted, the second paragraph in the "Brown Book" might be suppressed.

M. DE LA VALLÉE POUSSIN *(Belgium)* did not agree. He pointed out that States might sign the Convention on establishment which had not ratified the Hague Convention on procedure. The two paragraphs did not therefore necessarily overlap and both appeared to him to be necessary.

M. DE BEREZELLY *(Hungary)* agreed with Dr. Martius. He felt that the second paragraph in the "Brown Book" was quite unnecessary. There was no need for any reference to be made to the Hague Convention.

M. PERASSI *(Italy)* said that, in substance, he was unable to accept the reservation made in respect of the *cautio judicatum solvi* and gratuitous legal assistance. Such reservations were not in conformity with general legal practice. On the matter of form, he agreed that, if the reservation were adopted, there was no need for any reference to be made to the Hague Convention.

M DE LA VALLÉE POUSSIN *(Belgium)* asked the Committee to retain both the paragraphs in question. The Hague Convention of 1905 covered a considerable number of questions. It was necessary in the present Convention to insist particularly on the two points to which reference was made.

He would add that, from a point of view which deserved the attention of the Conference, namely, the interests of persons requiring legal assistance, the best solution was to refer to the Hague Conventions. One of the Hague Conventions quite recently dealt solely with legal assistance and settled the whole matter in great detail and in the most liberal spirit.

States which desired to procure for their nationals abroad the benefit of such assistance had only to agree that they would adhere to the Convention. Moreover, the Convention on raocedure, one of whose chapters dealt with gratuitous legal assistance, was already in force over a plrge part of Western Europe.

M. DE BEREZELLY *(Hungary)* said that the real question at issue was the effect of one general international convention upon another. It was generally recognised that, if a State had signed two international conventions, the provisions of the convention which was most favourable to the objects aimed at by the two conventions should be regarded as overriding the provisions of the convention which was less liberal in its terms, and that any additional provisions included in one of the conventions should be added to the general sum. The question of the relationship between two international conventions often arose in other fields and was regulated according to general international law. He would move that paragraph 2 in the "Brown Book" draft should be suppressed.

THE CHAIRMAN asked the Committee to vote on the question whether paragraph 2 of the "Brown Book" should be suppressed or retained ?

The Committee decided by a majority vote to maintain the paragraph.

M. PERASSI *(Italy)* represented that, if reference were made, as in paragraph 2 of the "Brown Book", to one particular convention, it would appear to be necessary to compile a whole list of such conventions which might be affected.

M. PILOTTI *(Italy)*, Rapporteur, suggested that this difficulty might be met by adding to paragraph 2 a reference to " or any other relevant convention."

M. DE BEREZELLY *(Hungary)* insisted that it was extremely dangerous to introduce references of this kind. Such a practice affected the whole system of international conventions.

DR. MARTIUS *(Germany)* said that he hoped that the Conference in plenary meeting would decide to delete the paragraph in question. For the moment, however, he hoped that the Committee would not discuss the matter any further, but would adopt the suggestion of the Rapporteur.

THE CHAIRMAN asked the Committee to decide whether the words "or any other relevant convention" should be added to the paragraph under discussion, on the understandingt hat those who desired to delete the whole paragraph might move an amendment to that effect in plenary session.

The Committee decided to adopt the addition proposed by the Rapporteur.

M. PILOTTI *(Italy)*, Rapporteur, said that the Committee had decided to present a rather simpler draft of the proposed addition to the Protocol than that which was given in the report. The paragraph in the report was as follows :

> "The rule laid down in paragraph 1 of Article 9 is subject to the provisions concerning security for costs and free legal assistance, which shall continue to be governed by the local laws or special conventions concerning these questions."

He would suggest, however, that the Committee should vote upon the following text :

> "The provisions of Article 9, paragraph 1, do not in any way affect the provisions concerning security for costs and free legal assistance."

The Committee adopted the formula proposed by the Rapporteur and decided that it should be inserted between paragraphs 1 and 3 of the Protocol.

TWENTY-FOURTH MEETING

Held in Paris on November 26th, 1929, at 4 p.m.

Chairman : Sir Sydney CHAPMAN (British Empire).
Secretary : M. SMETS.

50. Examination of the Articles of the Convention : Article 10.

Amendments to Articles 10 and 11 and the Protocol ad *Articles 10 and 11* (Annex A, 30).
Amendments with a View to modifying the Regime of Complete Equality.

M. GRONMEIYER *(Netherlands)* recalled that the Netherlands delegation had maintained that the provisions of Article 9 were incompatible with international law. The same difficulty arose in connection with Article 10, paragraph 1.

The Netherlands Government had no intention of introducing into the latter article any restriction which would prejudice foreigners. The adoption of the formula " nationals . . . shall be placed in a situation *not less favourable* " (Annex A, 19), would, it was thought, eliminate any incompatibility with international law, without affecting the principle of the Convention.

M. ALTSTOETTER *(Germany)* said that, in the view of the German delegation, the same question arose in respect of Article 10 as in respect of Article 9, namely : What was the law applicable to a sale concluded by a foreigner ? In the view of the German delegation, this was a question of private international law which was entirely outside the terms of the Convention. The formula proposed by the Netherlands delegation seemed to restrict the Economic Committee's idea as expressed in paragraph 1. It would amount to adopting a different system from that which had been adopted in the other clauses of the Convention, namely, that of equal treatment for foreigners. If the Netherlands delegation feared that the interpretation of this provision might go beyond the explanation which he had just offered, it might perhaps be possible to repeat the wording which had been adopted for Article 9 and which read as follows (Annex A, 29) :

> " Nationals of each of the High Contracting Parties in the territory of the other High Contracting Party shall be accorded legal and judicial protection of their persons, property, rights and interests on a footing of equality with nationals."

M. CARAVALE *(Italy)* did not fully comprehend the reasons for the Netherlands amendment, which, except in regard to the question of the law governing patrimonial rights, seemed to differ only in its wording from the Economic Committee's text. Was the Netherlands delegation proposing that there should be certain limitations to the rights of foreigners to acquire, possess and lease property, or did it wish to stipulate limitations other than those which applied to nationals as well ? In the latter case, there would be a substantial divergence between the new text and that of the Economic Committee.

M. GRONEMEIYER *(Netherlands)* replied that the Netherlands Government held that there was certainly a difference between the Economic Committee's draft and international law as laid down in existing conventions or as might later be laid down in other conventions which at present existed only as projects. There were, of course, differences of treatment between foreigners and nationals according to whether the *lex loci* or the *lex personae* applied. So vast a problem as this, which had been studied by authorities on international law and settled in certain very wide conventions, could not be regulated in a single article of the present draft. It was to be feared that an attempt to do so would only produce confusion in the future in the event of discrepancies arising between Article 10 and existing private international law.

M. PEROUKTA *(Czechoslovakia)* observed that the subject dealt with in Article 10, paragraph 1, had been discussed in a number of conferences which had been held at The Hague on questions of private international law. Care must be taken not to prejudice the results of those conferences. The Economic Committee's draft regulated the right to acquire, possess and lease movable and immovable goods on the single principle of nationality and of the national law of the person in question. If the draft laid down that foreigners, in regard to the property mentioned above, were to be placed on a footing of complete equality with nationals, it took account only of restrictions to the right to acquire property or of certain provisions contained in domestic legislation for reasons of public order connected with internal conditions, etc. For this reason, the Czechoslovak delegation proposed that Article 10, paragraph 1, should be completed as follows :

> " In regard to the right to acquire and dispose of movable and immovable property, the nationals of the High Contracting Parties may not in any way be subjected to restrictions which do not at the same time apply to nationals."

It was obvious that the provisions of Article 10, paragraph 3, applied to the whole territory of the contracting parties and not only to the territory situated on the frontier or in any other specified district.

THE CHAIRMAN understood that the whole of this problem had been discussed at the morning meeting in connection with Article 9 and that the words " on a footing of equality with nationals " had been adopted as a compromise. Would the Netherlands delegation accept this formula instead of the words " not less favourable ", since in either case the words " on a footing of equality " would be replaced ? This text might be adopted provisionally, subject to the reservation that the Committee would revert to the question during the examination of the report.

M. GRONEMEIYER *(Netherlands)* wondered whether, even if the wording suggested by the Chairman were accepted, the article would not still be incompatible with existing private international law. He would confer on this matter with the first Netherlands delegate.

The Committee decided that the words in question should be explained in the report.

THE CHAIRMAN added that owing to the insertion of the words " on a footing of equality with nationals ", it would now be unnecessary to change the end of the paragraph of the Economic Committee's draft as had been proposed in the Netherlands amendment. Further, he understood that the point raised by the Czechoslovak delegate was now settled.

M. PEROUTKA *(Czechoslovakia)* agreed.

Amendments with a View to restricting the Right of Acquisition (rural property).

M. VALIMARESCO *(Roumania)* submitted the following amendment :

> Add at the end of paragraph 1 the following words :
> " 'The provisions of this paragraph shall not apply to immovable property in rural districts' " (unless paragraph 3 is held to be sufficient to cover the case of States whose constitution contains a provision of this kind).

He added that the question was of great importance to his country, since under the Roumanian Constitution the provisions of paragraph 1 could not apply to immovable property in villages.

M. ENGELL *(Denmark)*, referring to the Danish delegation's observations (Annex A, 30 *bis*), explained that the situation in Denmark was a peculiar one. The Danish Constitution gave powers to fix by law detailed regulations as to the rights of foreigners to become owners of proporties in Denmark. No law of this kind had yet been passed, but the Danish delegation was obliged to reserve its Government's right to make use of this constitutional provision. For the moment, the Danish delegation thought it better to await the results of the discussion. It was sure that means would be found to enable Denmark to adhere to the Convention, either with a reservation or by some other procedure, which would leave intact the Danish Government's power in this matter.

M. MAYER *(Austria)*, referring to the Austrian amendment (Annex A, 5), explained that in Austria there were no restrictions as to the acquisition or possession of immovable property by foreigners on condition that they belonged to a country which applied to Austrians established n it a regime of reciprocity. This condition was formally required under Article 33 of the Civil ode. Many countries, however, made exceptions in regard to the acquisition or possession either

of immovable property in general or certain kinds of immovable property, and the systems in force in the other countries were so diverse that, in point of fact, it was impossible to apply reciprocity in Austria. In practice, it might be said that a foreigner was allowed in Austria to register a purchase of immovable property in many cases even when there was no reciprocity in the foreigner's own country. From a desire to come to a compromise and in order to enable the Convention to be put into force, the Austrian delegation proposed that the right of foreigners to acquire or possess immovable property should be limited to property situated in towns or used for industrial establishments.

M. FEHR *(Sweden)* did not propose to discuss the value of the arguments advanced in support of the liberal policy on which the Economic Committee's draft had been based. Sweden was one of those countries which enforced certain restrictions upon foreigners in regard to immovable property, and he would explain briefly the reasons for which the legislature in his country had adopted this policy. A foreigner could not acquire immovable property or acquire and exploit mines without a special authorisation. He would refer especially to the mines. It had been held that it was necessary to reserve to nationals the national resources which were the natural field of their activity, and it had been feared that foreigners might not have the same interest as nationals in exploiting these resources with the same feeling of care for the future. In regard to mines in particular, it might be feared that, if they passed to a considerable extent into foreign hands, certain minerals of great importance to the Swedish iron industry might be quickly exhausted. He was prepared to agree, for the sake of argument, that the Economic Committee's theory of liberalism was justified in its main lines. That, however, did not solve the problem. Another question, and one of the most important, was whether public opinion would also accept this theory. The position in regard to Customs duties and admission was well known. The point of view changed according to whether problems of general interest were under consideration, as in the Economic Committee, where an attempt was being made to regulate commercial conditions throughout the world, or whether, as in the case of a particular country, special conditions and the individual interests of the country were under examination.

Furthermore, at one time the acquisition of agricultural properties by forestry companies for the purpose of developing their concerns had increased to such a degree that Swedish agriculture had appeared to be endangered and legislation had been adopted whereby the acquisition of rural immovable property had been made contingent on a system of authorisation in cases of acquisition by companies, including Swedish companies. It would accordingly be seen that this system of restrictions was applicable to Swedish companies as well as to foreign companies, and it would be inadmissible that a foreigner should be able to acquire property which was forbidden to Swedish companies.

When he referred to prohibition as to acquisition, he did not mean to say that the door was completely closed. There was a system of authorisation, and everything depended upon the way in which permits were granted, so that a liberal application of a law of this kind might have the same results as the application of a system of complete liberty in another country.

In substance, the Swedish system of authorisation in regard to foreigners amounted only to an effective application of the guarantee provided in paragraph 4 of Article 10, which in the text as it stood was of only small value, since it did not give any right of prohibition until there was an imminent danger of monopolisation.

To sum up, he was unable to share the Economic Committee's optimism, at any rate so far as concerned his own country. He believed that Swedish public opinion was not prepared to accept so radical a solution as that embodied in the present text of Article 10. He did not mean to say that Sweden would not consent to any change in her system of restrictions as regarded foreigners. The reasons adduced for these restrictions were obviously not equally applicable in the case of property situated in the built-over parts of towns or to similar property outside towns ; that was to say, in the case of building sites and buildings. For the moment, he would make no proposal. He would content himself with pointing out that Sweden, which placed no restrictions on the acquisition of property of the kind he had mentioned, would be on much the same footing as States which imposed restrictions solely with regard to rural property.

M. PARANJPYE *(India)* supported the observations of the Roumanian delegate. India was in a very special situation. There were certain districts where the population was entirely agricultural and would oppose any measure that was calculated to dispossess it of its lands. There was one province in which the law forbade non-agriculturists and non-agricultural communities to acquire rural property. The chief object of this measure had been to resist money-lending concerns which might have succeded in making themselves masters of the land owned by agriculturists ; a measure applied in this way to nationals must on even stronger grounds apply to foreigners and it was possible that the law would be made even yet stricter. For this reason, the delegation of India could not agree to a text which would be at variance with measures that were indispensable to India.

M. CARAVALE *(Italy)*, considering the great number of amendments which had been submitted on the subject of the acquisition of immovable property, wished to examine the problem from a general point of view. He would leave on one side for the moment the question whether and to what extent the Convention could allow reservations prompted by special conditions in certain countries. The Italian delegation regarded a general limitation of the kind requested at the present moment as very dangerous. A limitation of that sort would result in an undue restriction of the scope and value of the guarantees to be ensured to the High Contracting Parties under Article 10. It was nowadays commonly agreed that the notion of equality of treatment

as between foreigners and nationals in respect of the enjoyment of civil rights involved equality of treatment in particular as to the acquisition and use of immovable property. This provided a fundamental guarantee that foreigners who had been admitted to the country would be able to exercise and develop their economic operations there in conformity with the spirit of the Convention. It should be added that almost all treaties of commerce contained provisions similar to those of the Economic Committee's draft making no restriction as to the acquisition of immovable property. The acceptance of a limitation of that sort in a general convention would be a step backward as compared with the present state of affairs, and the consequence would be that many countries would eventually descend to the same level as countries which applied the greatest number of restrictions. The Italian delegation, therefore, could not accept the introduction of a limitation in Article 10. The question whether certain reservations should be accepted for countries in a special situation should, in the view of the Italian delegation, be submitted for decision to the Conference.

M. BENTZON *(Norway)* said that Norwegian legislation was on the essential point similar to Swedish legislation with regard to the acquisition of immovable property. The restrictions in force applied both to nationals and to foreigners, but the same law which required an authorisation in the case of foreigners stipulated that this authorisation must be granted if there were no special reasons to the contrary.

M. HOLMA *(Finland)* read the observation submitted by his delegation on Article 10 (Annex A, 20).

THE CHAIRMAN put to the vote the amendment for a reservation on behalf of countries which did not allow foreigners to acquire land in rural districts.

The reservation was adopted by 10 *votes to* 9.

THE CHAIRMAN held that the question of mines was covered both by paragraphs 4 of Article 10 and by Article 7.

M. SAKANE *(Japan)* said that his delegation had intended to raise in this connection a question of reciprocity, but would accept the Chairman's opinion if he thought that this question should be raised later.

THE CHAIRMAN recalled that in considering the reservation concerning commercial travellers' licence fees, the Committee had decided to add to the reservation a statement that the other High Contracting Parties should be released from their obligations in regard to the parties which made use of the reservation. It might perhaps be necessary to make a similar provision in regard to the reservation concerning rural property.

M. POZNANSKI *(Poland)* asked for an explanation on this point. What would be the practical application of the reciprocity clause in the case of Poland, where the acquisition of immovable property, whether rural or urban, was not prohibited to foreigners, but where there was a law which made it compulsory to obtain such authorisation from the Government in every case? There was therefore no prohibition, and authorisations were generally granted ; but he did not see how the formula suggested by the Chairman would be applied in this particular case.

M. SMETS *(Secretary of the Committee)* thought that the other countries would apply to Polish nationals established in their territory the system of authorisation imposed by Poland on foreigners admitted to her territory.

M. ENGELL *(Denmark)* explained that in her treaties Denmark had introduced the most-favoured-nation clause in regard to the acquisition of immovable property, and the same remark applied to other countries. In his opinion, it would be dangerous now to introduce the principle of reciprocity in this matter. There was no material interest at stake for Denmark, since every foreigner was free to acquire immovable property, but, owing to the fact that conditions varied according to country, the formula of the most-favoured-nation clause would be preferable to that of reciprocal treatment.

THE CHAIRMAN said that he personally shared the opinion of the Danish delegate. If a reservation were granted, it should be granted liberally without asking anything in exchange. This would facilitate the adhesion of States to the Convention. The point raised by the Polish delegate would be examined later.

He wished now to consult the Committee on the addition to the reservation already adopted of a provision stipulating that countries making use of the reservation would not be entitled to claim for their nationals established abroad the right to acquire rural property.

M. PEROUTKA *(Czechoslovakia)* asked whether the addition suggested by the Chairman would also apply to reservations made in respect of the third paragraph concerning prohibitions based on grounds of security or national defence.

THE CHAIRMAN replied that for the moment the Committee was dealing with the reservation concerning the acquisition of rural property.

M. CARAVALE *(Italy)* thought that the question of the treatment to be applied in the case of countries making a reservation was different from that of the most-favoured-nation clause and from that of reciprocity. In cases where a reservation was made, the most that could be said was that the provisions in the Convention did not apply as between the countries benefiting by the reservation and the other contracting parties, but neither the most-favoured nation clause nor reciprocity were involved.

THE CHAIRMAN replied that it was precisely for this reason that he saw not the least difficulty in the matter. If certain countries asked for a reservation, that meant to say that they would be released from the obligations laid down in the Convention in regard to rural property, and the other countries would have no obligation towards them in respect of this part of the Convention.

M. KAO LOU *(China)* put the case of countries to which a foreigner might under special agreements go in order to acquire rural property. In such cases, would it be within the spirit of the Convention to add a passage such as that which it was proposed to insert ? Would it not, on the contrary, be a step backward ?

M. LINANT DE BELLEFONDS *(Egypt)* thought that everything depended on the drafting of the reservation in question. If a provision were embodied in the Convention or, in other terms, if the question of rural property were excluded from the Convention, the scope of the Convention would thereby be restricted, but there would be no other difficulty. If it were proposed to leave the States free by virtue of a special reservation, the problem was another one, and there would then arise the question of the most-favoured-nation clause or of reciprocity ; that was to say, the right of the other States to retaliate.

THE CHAIRMAN replied that the Committee had adopted the reservation in principle, but not the actual text. The question now was whether the reservation should be completed by a clause similar to that which had been adopted in the case of commercial travellers' licence fees.

M. PEROUTKA *(Czechoslovakia)* suggested that this new provision should be completed by a statement that the application, as a measure of reciprocity, of restrictions to the right to acquire immovable property should only be enforced on grounds of security or national defence if, in the countries making use of the reservation, the same restriction was applied only on the said grounds.

THE CHAIRMAN observed that this was another question.

M. OBREMSKI *(Poland)* understood that the Chairman's suggestion was that the reciprocity clause should be formulated in the case of reservations concerning prohibitions as to the acquisition of rural property. The Egyptian delegate had indicated an interpretation which might cause difficulties. It might, perhaps, be possible to attain the object proposed by the Chairman if the prohibition as to the acquisition of rural property were formulated in less categorical terms, and if the contracting parties were given the right to make the acquisition of rural property contingent upon previous authorisation. A formula of that kind would always allow of reciprocity *de facto* without giving it the consecration of a special legal stipulation.

The Committee decided, by fifteen votes to two, that the exact wording of the addition should be determined later but that the principle was adopted.

Cases in which Countries make the Acquisition of Rural Property contingent on a Previous Authorisation.

THE CHAIRMAN said that, in this connection, there were two conceivable cases. First, the case in which the authorisation demanded by the Government prior to any acquisition of rural property by foreigners was not in the nature of a restriction equivalent to a prohibition on acquisition. In this case, it would be possible to add to the report a passage on the matter. In the other case, that was to say, when authorisation was really in the nature of a restriction, the matter would have to be dealt with in the same way as a prohibition on the acquisition of rural property.

M. OBREMSKI *(Poland)* explained that the system of authorisation in force in his country applied both to urban and to rural property. In Poland there were many more foreigners possessing rural or urban property, mines, etc., than there were Poles in the same position abroad. The Chairman's proposal raised the question who would decide whether this system was of a restrictive nature or not.

M. FLORES DE LEMUS *(Spain)* regretted that he would have to oppose the Chairman's proposal for a mere reference in the report. The Committee must have the courage to recognise that there had been a retrogression, and a very important one, in the field of law. To the question : who would decide on the character of the restriction in question, he would reply that it would be the courts which had jurisdiction to decide the problems of reciprocity. In Spain, at the present time, foreigners were allowed the right of acquisition without any restriction.

According to the Polish delegate, a Spaniard in Poland who wished to acquire a property would be subjected to the authorisation system, and an authorisation might not be granted. Reciprocally, when a Pole wished to acquire a property in Spain, a court would consider his application and study the question from the point of view of law and of fact, and thus decide whether the foreigner in question could or could not acquire the property. The problem was so important that it should not be dealt with in the report, but in the Convention or the Protocol.

M. MAYER *(Austria)* noted that certain delegations felt some hesitation as to what was to be considered as a restriction. The Polish delegate, in particular, had asked whether the provisions of Polish law were or were not regarded as restrictive in this matter.

M. OBREMSKI *(Poland)* said that he was quite sure that the Polish regulations were not restrictive.

M. MAYER *(Austria)* disagreed. He held that any regulation which prevented free acquisition was restrictive ; more particularly the regulation in force in Poland with which he was well acquainted. He urged that the Committee should continue the discussion on this subject, since it would be unable to come to a clear decision unless it had full information on the point.

THE CHAIRMAN wished to know whether applications for authorisation were sometimes rejected in Poland or whether the application was simply a matter of form.

M. OBREMSKI *(Poland)* replied that obviously, if a Government was entitled to grant an authorisation, it could also refuse it, but the number of refusals was very small in comparison with that of the authorisations.

THE CHAIRMAN thought that there could be no doubt that the regulations in Poland were incompatible with paragraph 1 of Article 10, where it was said that foreigners would be placed on a footing of equality with nationals in regard to the right to acquire, etc.

M. DE LA VALLÉE POUSSIN *(Belgium)* asked the Polish delegate whether the obligation to obtain previous authorisation was imposed on nationals as well as on foreigners.

M. OBREMSKI *(Poland)* replied that in a certain part of Polish territory even a Pole was in certain cases obliged to apply for authorisation. He wished to bring out the point that even the Economic Committee's text, more particularly in paragraphs 3 and 4, laid down certain restrictions which far exceeded in importance the provisions of the Polish law. Foreigners in Poland had never been prevented from acquiring movable property. He was quite sure in his own mind that the provisions of paragraphs 3 and 4 were, if regarded in the spirit of Article 10, far more restrictive than the Polish system, which was based on geographical considerations. The system was possibly only a temporary one, but it existed and was obviously based on important considerations.

THE CHAIRMAN considered in this case that it was for the Polish Government to decide whether its legislation was covered by the provision in the article, or whether it should make a reservation. It was impossible for the Committee to examine the position of all the different countries and decide whether it was in conformity with the Convention.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that his delegation was strongly in favour of the original provision of Article 10, which stipulated that freedom to acquire property should be allowed to foreigners upon the same terms as nationals. The Committee had wrecked this principle when it had decided that every State would be free to make the acquisition of a certain class of property, namely, rural property, contingent upon authorisation. The Polish delegate in his remarks had apparently referred to all property and not only to rural property. If that were so, paragraphs 3 and 4 were obviously useless, but, even if only rural property were referred to, it would often be very difficult to define this expression, since the idea of what was rural property varied widely according to countries. For this reason, he concurred in the Italian delegate's objections to the reservations which had been made.

THE CHAIRMAN thought that it might be left to the Rapporteur to suggest a definition of rural property. He added that no application for a reservation had yet been made to the Committee by the Polish delegation.

M. CARAVALE *(Italy)* agreed with the Belgian delegate in thinking that the Committee had greatly weakened the force of Article 10 in accepting the reservations which had been submitted. The present situation, however, should be cleared up. The Committee had retained paragraph 1 in the Economic Committee's draft, while deciding to insert somewhere, for instance in the Final Act, a declaration under which certain countries would adhere to the Convention except in so far as concerned parity of treatment with nationals in regard to the right to acquire rural property, it being understood that the High Contracting Parties would be relieved of any obligations towards contracting parties which made use of the reservation. Nevertheless, Article 10 taken as a whole had not been radically changed in its main lines, and perhaps this fact might mitigate the consequences of the Committee's decision.

M. OBREMSKI *(Poland)*, in reply to the Chairman's last observation, pointed out that the amendment proposed by the Polish delegation was in the list of amendments before the Committee (Annex A, 30).

THE CHAIRMAN observed that this amendment referred to paragraph 3, which was not yet under discussion.

Amendment by the Danish Delegation (Annex A, 30bis)

THE CHAIRMAN said that the question of the ownership of the vessels mentioned in the last paragraph of the Danish delegation's observations concerning Article 10 would be examined later.

Amendments by the Italian Delegation (Annex A, 21).

M. CARAVALE *(Italy)* said that his delegation proposed that the Protocol *ad* Article 10, paragraph 1, should be completed as follows :

" It should be made clear that the provision beginning with the words 'the said property, however, etc.', shall not prevent the levying, if necessary, of Customs duties on the exportation of certain goods."

The Italian delegation was convinced that it was in substance in agreement with the Economic Committee, and it was only in order to obviate a misunderstanding that it asked for the insertion of this explanation in the Protocol. The Economic Committee obviously had not meant to say that, in cases where goods or property in general were subject to export duties, the duties should not be levied. This indispensable explanation might appear merely in the report.

M. SANDSTROEM *(Sweden)* asked whether this provision in Italian law applied to nationals as well as to foreigners. If it did so, he did not think any explanation necessary.

M. CARAVALE *(Italy)* replied that, if a foreigner exported any property, he had to pay Customs duties in the same way as nationals exporting the same property.

M. OBREMSKI *(Poland)* agreed with the Swedish delegate.

M. PEROUTKA *(Czechoslovakia)* thought it obvious that, if the export of works of art or other objects were subject to restrictions in so far as concerned nationals, these restrictions applied to foreigners, and he thought that case was covered in the present text by the words " under the same conditions as nationals ".

THE CHAIRMAN thought that this case was covered by paragraph 2. He did not think an amendment necessary, and hoped that the Italian delegation would be satisfied with a passage in the report.

M. CARAVALE *(Italy)* agreed to this suggestion.

He recalled, further, that the Italian delegation had proposed the omission of paragraph 2 in the Protocol. It had not, at that time, received certain instructions from the competent Italian administration. It was now in a position to withdraw its amendment and to accept paragraph 2 of the Protocol.

TWENTY-FIFTH MEETING

Held in Paris on November 27th, 1929, at 10 a.m.

Chairman: M. PILOTTI *(Italy).*
Secretary: M. SMETS.

51. **Examination of the Articles of the Convention : Article 10** (continuation).

Latvian Amendment (Annex A, 30).

THE CHAIRMAN invited the delegate for Latvia to speak on the amendment which had been submitted by his delegation. The amendment was to the effect that the Protocol *ad* Article 10, paragraph 3, should be amended, so that the prohibition for foreigners to acquire and possess immovable property should be extended to include the whole of the frontier zone.

M. SCHUMANS *(Latvia)* represented that the provision relating to the frontier zone had been included for political reasons, and it must be assumed that States would not abuse this prohibition for economic purposes. There might be States whose relations with their neighbours were generally excellent, but whose relations with some particular State might at any given moment be unsatisfactory. Such a State, for the purposes of its national security, might desire to retain entire discretion in regard to certain frontier zones.

He therefore desired to move that the prohibition of the acquisition by foreigners of property referred to in paragraph 3 of Article 10 might be extended to include the whole frontier zone. This amendment involved the suppression of paragraph 3 of the Protocol *ad* Article 10.

M. YOUPIS *(Greece)* desired to support the amendment moved by the Latvian delegation. The question at issue was of a political character, whereas the Convention was only intended to deal with economic questions. He did not think there would be any danger of Governments abusing their rights if the paragraph of the Protocol in question were suppressed. No Government was likely to prohibit foreigners from acquiring property within their territory except for serious political reasons.

M. PARANJPYE *(India)* asked what were the reasons for which the Economic Committee had desired to make an exception in respect of the frontier zones.

THE CHAIRMAN said that according to the statement which appeared in the "Brown Book", the Economic Committee had inserted this paragraph merely in order to prevent too wide an application of paragraph 3 of Article 10.

M. MAYER *(Austria)* said he could not quite understand the reason for this provision and desired to support the Latvian amendment.

The Committee decided to suppress paragraph 3 of the Protocol ad Article 10 by twelve votes to four.

Mexican Amendment (Annex A, 30).

THE CHAIRMAN pointed out that the delegation of Mexico had moved an amendment which would have the effect of enabling Governments to prohibit foreigners from acquiring ownership over land or water in a zone over one hundred kilometres broad along the frontier and fifty kilometres broad along the shore. That amendment, however, no longer needed consideration as the paragraph of the Protocol to which it referred had been deleted.

Venezuelan Amendment (Annex A, 12).

THE CHAIRMAN said that the Committee would now take the amendment moved by the delegation of Venezuela, to the effect that, in paragraph 3 of Article 10, the words " or simply of general interest " should be added after the words " national defence ". This would enable the High Contracting Parties to prohibit the acquisition by foreigners of certain immovable property or undertakings, not only for reasons of security or national defence, but for motives of general interest.

M. ROMERO SÁNCHEZ *(Venezuela)* said that, in his country, foreigners might acquire property upon exactly the same terms as nationals and were permitted to trade, either in person or through companies, in the same way as nationals. As the result of the war, however, certain exceptions had been made in the interests of national defence and of public security. The Government of Venezuela desired to restore liberal conditions but did not think that the time had yet come to dispense with certain necessary exceptions. His delegation accordingly desired to move an amendment which would have the effect of leaving the Governments a certain discretion in the matter.

THE CHAIRMAN said that the formula suggested by the delegation of Venezuela was so vague that Governments would virtually be free to prohibit foreigners from acquiring any property whatsoever. A Government would itself be sole judge when the general interests of the country were involved, and its interpretation of the clause would not be subject to any discussion or dispute.

If the proposed amendment were accepted, the provisions of paragraph 3 of Article 10 would, in effect, be of very little consequence.

M. BOLAFFI *(Italy)* said that the acquisition of property by foreigners might be subject to previous authorisation by the authorities, but such authorisation should be necessary both in the case of foreigners and nationals. He was opposed to any discrimination between foreigners and nationals in respect to the acquisition of property. The only exceptions which he would admit were those essential in the interests of national security.

SIR PERCY THOMPSON *(British Empire)* agreed with the Italian delegate. He thought that the formula proposed by the delegation of Venezuela was too elastic and virtually annulled the provisions of paragraph 3 of Article 10.

The Committee rejected the amendment.

French Amendment (Annex A, 30).

THE CHAIRMAN proposed that the Committee should now take an amendment moved by the French delegation.

The French delegation proposed that the words " or for the protection of artistic or natural beauties " should be inserted after the words " national defence ".

M. PILLAULT *(France)* said that the object which the French Government desired to secure by this amendment was the possibility of being able to protect national or historic monuments which might be purchased by foreigners and perhaps demolished. The French Government also

desired to protect natural or historic sites which were of interest to the world. Such sites or monuments might be purchased by the State, and the Government desired to prohibit their acquisition by foreign purchasers.

THE CHAIRMAN enquired whether such a stipulation was appropriate to paragraph 3 of Article 10. Was this really a case which concerned the treatment of foreigners? A foreigner who desired to purchase a monument with a view to its demolition and transport could easily procure a French agent to act for him, and such laws as might be necessary to protect historic monuments or sites would presumably apply to nationals and foreigners alike. Other Governments had introduced a similar system of protection which was enforced indiscriminately against their own subjects and foreign nationals. No one, for example, in Italy could purchase an historic site or monument with a view to its destruction without becoming liable to a very severe penalty. He did not quite see how the position of the French authorities could be improved by the adoption of the amendment which it proposed.

M. PILLAULT *(France)* said that the French laws applied to nationals and foreigners alike. Historic monuments in France were classified and could not be demolished without a breach of the existing regulations. If he was assured that such prohibitions as existed might be applied to foreigners as well as to nationals without prejudice to the proposed Convention, he was prepared to withdraw his amendment. He thought, however, the position should be made clear in the report.

THE CHAIRMAN suggested that a passage should be inserted in the report to the effect that any restrictions which might apply to nationals in regard to the purchase of historic sites or monuments applied also to foreigners and that these regulations were in no way prejudiced by the Convention.

M. NEDERBRAGT *(Netherlands)* asked whether it was not dangerous to make an express reference to the matter in view of the fact that the same principle of non-discrimination applied to all other matters dealt with in the Convention.

THE CHAIRMAN said that it would be made clear in the report that the present instance was merely a recognition of a general principle which governed all the provisions of the Convention.

Amendment proposed by the Delegation of Panama (Annex A, 30).

He would ask the Committee to take the amendment moved by the delegation of Panama. The amendment was to the effect that the word " culture " should be inserted after the word " security ".

M. NEMOURS *(Haiti)*, speaking for the delegate of Panama, said that the object of the amendment submitted by the delegation of Panama was precisely similar to that of the French amendment which had just been discussed. It was merely designed to enable a Government to protect property which was of national importance.

THE CHAIRMAN said that he would refer to the amendment moved by the delegation of Panama in the passage in which allusion was made to the French amendment.

Polish Amendment (Annex A, 30).

THE CHAIRMAN asked the Committee to take the Polish amendment. The amendment was to the effect that the text of paragraph 3 of Article 10 should read as follows :

> " The provisions of the present Article shall not preclude the right which the High Contracting Parties reserve to themselves to prohibit or subject to the obtaining of previous authorisation the acquisition, possession or renting by foreigners of certain immovable property."

M. POZNANSKI *(Poland)* explained that in Poland there was no general prohibition against the acquisition of immovable property by foreigners. There was not even any such prohibition in the frontier zones. The system in force in Poland was one whereby the person acquiring the property was required to obtain a previous authorisation. Foreigners might be authorised to acquire property, but throughout the territory they were required to apply for permission to do so. This provision was enforced also in the case of nationals in certain portions of the territory of Poland which were affected by the agrarian reforms. In other parts of Poland, however, previous authorisation was enforced in the case of foreigners alone.

No authorisation was necessary for the acquisition of undertakings in any part of Poland. The authorisation to acquire landed property was in most cases only a formality, but the authorities might, of course, refuse such authorisation in their discretion.

The provisions of paragraph 3 of Article 10 were accordingly, from the point of view of Poland, too restrictive in view of the fact that they covered cases of actual prohibition. From another point of view, however, the paragraph was not sufficiently liberal in that it made no allowance for any system of authorisation.

He did not wish to press his amendment, but would ask the Rapporteur to find a formula which, without imposing restrictions more severe than those laid down in the paragraph, would nevertheless cover the system of authorisation as practised in Poland.

THE CHAIRMAN said that the Polish amendment involved two modifications in the original text. First, it included the possession or renting of property by foreigners in addition to the acquisition of property. Secondly, it suppressed all reference to national security as a motive for making the exception.

In those parts of Poland where previous authorisation was enforced, both in the case of nationals and foreigners, there would appear to be no discrimination to the detriment of foreigners, and the Convention was therefore not in any way prejudiced by the legislation in question. The enforcement of the provisions in regard to previous authorisation for foreigners in portions of the territories where no such authorisation was required by nationals was, however, a clear case of discrimination.

He would point out that if, in accordance with the Polish amendment, the reference to national security were deleted, the proposed modification would, in effect, go even further than the amendment moved by the delegation of Venezuela, which had already been rejected by the Committee.

He would first ask the Committee to decide as to the suppression of the reference to national security.

M. POZNANSKI *(Poland)* said that the Polish amendment might quite easily be formulated without suppressing the reference to national security. A reference might perhaps be made to the public interest.

THE CHAIRMAN said that the introduction of a general phrase of this character would have the same effect as the acceptance of the amendment moved by the delegation of Venezuela.

M. POZNANSKI *(Poland)* represented that reference to the public interest had already been admitted in other parts of the Convention. He would again point out that the Polish amendment merely subjected the acquisition of property by foreigners to previous authorisation and did not prohibit such acquisition. The Polish amendment was therefore less restrictive than the original text. He would further draw attention to the restrictive character of the prohibitions laid down in paragraph 4, which were contrary to the liberty of commerce.

THE CHAIRMAN said that the Polish delegation, in view of these observations, should formulate its amendment somewhat differently. He would suggest that the case raised by the Polish delegation would be met by the addition of a paragraph covering the practice of requiring a previous authorisation for the acquisition of property and incidentally excluding the case of prohibition. He would suggest a formula to the effect that a previous authorisation might be required from foreigners for reasons of public interest. The Committee would have to consider later whether this paragraph should apply to the possession and renting of property as well as to its acquisition.

M. POZNANSKI *(Poland)* said that such a formula would satisfy him.

THE CHAIRMAN asked the Committee for its views.

SIR PERCY THOMPSON *(British Empire)* suggested that, in order to make the formula less arbitrary, a sentence should be added to the affect that authorisation should not be unreasonably withheld.

M. POZNANSKI *(Poland)* pointed out that the Committee had already decided that there should be inserted in the Final Act a statement to the effect that certain provisions of the Convention should not be arbitrarily or abusively interpreted.

M. LINANT DE BELLEFONDS *(Egypt)* thought that the reservation proposed would be less liable to abusive interpretation if it were laid down that it should be an authorisation subject to general conditions embodied in the administrative regulations of the country. A merely arbitrary decision of the authorities in individual cases would be against the spirit of the Convention.

M. BOLAFFI *(Italy)* agreed. If it were understood that a Government were applying a general system of regulations, the risk of an arbitrary enforcement of the provision would be considerably diminished.

THE CHAIRMAN proposed that there should be added to the formula which he had previously described words to the effect that the conditions of the authorisation required from foreigners should be embodied in the laws and regulations of the country.

He would, however, ask the Committee to vote first upon the formula which he had originally proposed, without this additional proviso. He would, in other words, ask the Committee to decide whether a previous authorisation might be required from foreigners for reasons of public interest.

A vote was taken by roll-call.

Eleven delegations voted for the formula proposed by the Chairman, and eleven delegations voted against it.

M. PARANJPYE *(India)* proposed that the formula should be again put to the vote with the additional proviso suggested by the Chairman.

The combined formula was adopted by the Committee by twelve votes to nine, with eight abstentions.

THE CHAIRMAN said he would now ask the Committee to decide whether the provision should apply to the possession and letting of property as well as to its acquisition.

The addition of the words " letting or possession " was rejected by nine votes to seven, with eleven abstentions.

THE CHAIRMAN, summarising the result of the voting, said that foreigners desiring to acquire property might be required to obtain previous authorisation from the authorities in so far as regulations to that effect were embodied in the national legislation.

M. BOLAFFI *(Italy)* said he desired to refer to the expression " security or national defence ". He proposed that the reference should be to national security only. Otherwise the exception might be too wide in scope. Almost any industry might be regarded as of importance to national defence, such, for example, as the chemical industry.

THE CHAIRMAN said that this point would more appropriately be raised upon Article 7, which contained a list of reserved industries. In that article the reference was to arms, ammunition and implements of war, and care had been taken to limit very precisely the idea of national defence. The Economic Committee had made use in its drafts of both phrases, but had not defined their scope. It was not clear whether the Economic Committee, referring both to security and national defence, had meant to include two different ideas.

The Committee decided that the text did not require amendment.

THE CHAIRMAN said the Committee would now take paragraph 4 of Article 10. Did any delegation desire to move the suppression of paragraph 4 ?

No motion for the suppression of paragraph 4 was submitted.

British Amendment (Annex A, 1).

THE CHAIRMAN asked the Committee to take the amendment moved by the British delegation to paragraph 4 of Article 10. The amendment was to the effect that the words " including systems of communications " should be inserted after the word " country ".

SIR PERCY THOMPSON *(British Empire)* said that the object of the amendment was to ensure that systems of communication by telephone, cable or wireless should be covered by the terms of paragraph 4. He did not think there was any difference of opinion as to the necessity of including these services within the scope of the paragraph. It was not clear, however, whether they were covered by the expression " vital economic resources of the country ".

M. MAYER *(Austria)* said that the question raised by the British amendment was really one of interpretation. He certainly agreed that means of communication were covered by the provisions of the paragraph, but he thought that a statement to this effect should be inserted in the report.

THE CHAIRMAN enquired whether the British delegation would be content with a reference to the matter in the report.

SIR PERCY THOMPSON *(British Empire)* said he would prefer that a reference should be made to the matter in the Protocol. He felt that some authoritative interpretation was necessary, in view of the fact that the expression " vital economic resources " might seem to refer to something physical and tangible.

The Committee agreed that a paragraph should be inserted in the Protocol to the effect that the expression " vital economic resources " comprised, inter alia, *means of communication.*

Japanese Amendment (Annex A, 10).

THE CHAIRMAN said the Committee would now take the Japanese amendment to paragraph 4. The amendment was to the effect that the words " or to menace the vital interest of the State " should be inserted after the words " currency crisis ".

M. SAKANE *(Japan)* said that the reference to a currency crisis in paragraph 4 would appear to limit unduly the scope of the reservation embodied in the paragraph. The Japanese delegation desired to cover cases in which the vital interest of the State might be concerned in the acquisition of immovable property or transferable securities by foreign nationals. It wished to provide against a special case. There were certain companies in Japan, including the Central Bank of Issue, and one or two other banks, together with a wireless company, whose statutes contained stipulations that the shares of the company should not be transferred to foreigners. The statutes of these companies had been approved by the Japanese Government and Parliament. It was doubtful whether the prohibition of the transfer of such shares would come within the exception provided by the paragraph.

M. LINANT DE BELLEFONDS *(Egypt)* enquired whether the question raised by the Japanese delegate was not more relevant to paragraph 1 than to paragraph 4 of Article 10. Paragraph 4 referred only to exceptional circumstances, such as a currency crisis. The statutes of the companies to which the Japanese delegate had referred dealt with a general and permanent position.

M. SAKANE *(Japan)* said that the provisions to which he had alluded were of a very special character. They referred only to the Central Bank, one or two other banks and a wireless company. The object of the statutes was to secure for the Government certain guarantees in regard to the banking system of the country and its means of communication.

He considered that the point which he had raised might be satisfactorily settled by the insertion of a passage in the report in the sense of his observations, provided it was understood that the Committee accepted the interpretation embodied in the report.

THE CHAIRMAN enquired whether there was a general law in Japan which precluded Japanese banks from transferring shares to foreign nationals. He would point out that, if the statutes containing such provisions were drafted by the banks themselves, there was no need for any reference to be made to the matter in the Convention, since the banks, as private companies, were free to regulate their own affairs. If the banks, however, were prohibited by law from transferring shares to foreigners, some allusion to the matter appeared to be necessary in Article 10.

M. SAKANE *(Japan)* said that the statutes of the banks to which he had referred were approved by the Government in accordance with an Act entitled " The Japanese Central Bank Act ". There was no general rule, however, to the effect that the shares of certain companies could not be transferred to foreigners.

THE CHAIRMAN said that the case in point appeared to be one of indirect prohibition. The prohibition was not proclaimed by the State but was approved by it. In so far as the bank itself was responsible for the prohibition, the provisions in question were not contrary to the terms of the Convention.

M. MAYER *(Austria)* said that, if the statutes of the bank were published in the form of a law, they must be regarded as forming part of the banking law of the country. In that case these provisions came within the scope of the present Convention, and some reference to the matter appeared to be necessary.

THE CHAIRMAN proposed that a passage should be inserted in the report to the effect that the provisions of Article 10 did not preclude the statutes of a bank of issue prohibiting the transfer of the shares of the bank to foreign nationals.

M. SAKANE *(Japan)* said he would like the wording of the passage in the report to follow as closely as possible the words used in the Japanese amendment.

THE CHAIRMAN pointed out that the Japanese amendment was expressed in general terms, whereas the Japanese delegate had merely referred to a special case, namely, the transfer of the shares of certain banks and of a wireless company.

He would ask the Committee first to decide whether a reference to the matter should be inserted in the report, or whether the text of the Article should be amended.

The Committee decided that a reference should be made to the matter in the report.

THE CHAIRMAN enquired whether this reference should be specifically limited to banks of issue.

M. ITO *(Japan)* suggested that the reference in the report should mention banks of issue as an example only and that the reservation should be limited to companies whose statutes already prohibited the transfer of their shares to foreign nationals. It might also be mentioned that the undertakings in question were under the special control of the State.

THE CHAIRMAN asked the Committee whether it was prepared to adopt a formula in the sense suggested by the Japanese delegate.

The Committee replied in the affirmative.

TWENTY-SIXTH MEETING

Held in Paris on November 27th, 1929, at 3.15 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

52. **Examination of the Articles of the Convention : Article 10** (continuation).

Latvian Amendment (Annex A, 30).

M. SCHUMANS *(Latvia)* said that, in consequence of the amendment adopted at the morning meeting, his delegation would withdraw its amendment.

Swedish Amendment (Annex A, 8).

M. SANDSTROEM *(Sweden)* thought that, before submitting his amendment, it would be well to explain the reservation made by his delegation in regard to the acquisition of immovable property. As had been said on the previous afternoon, Sweden had a special provision for the acquisition of immovable property and mines, which, under Swedish law, were classified as movable property. It did not seem that the reservations adopted on the previous afternoon and at the morning meeting covered the Swedish system of authorisation. The Swedish reservations related to a system of authorisation based on the interests of the country, and one amendment had stipulated that the conditions laid down by this system must be embodied in the existing laws and regulations. The Swedish system did not entirely relate to the public interest as defined in paragraph 3, but the system was rather based on economic grounds.

The Swedish legislature had wished to prevent the monopolisation by foreigners of the national economic resources. As this reservation had been allowed, he thought that the best solution in regard to the Swedish system of authorisation would be to insert in paragraph 4 a reservation similar to that which had been made for paragraph 3. He asked the Chairman's permission to prepare a formula which would be examined later.

The Committee agreed.

British Amendment (Annex A, 1).

SIR PERCY THOMPSON *(British Empire)* proposed the insertion in the Protocol of the following provision :

Ad Article 10, paragraph 1, and Article 16, paragraph 7 :

> " Notwithstanding the provisions of Articles 10 and 16, it is agreed that the High Contracting Parties may impose such restrictions as they think fit in regard to the acquisition of ships and shares in ships."

The British delegation did not think that this text was incompatible with the provisions of the Convention.

THE CHAIRMAN asked whether it would suffice to say in the Protocol that the High Contracting Parties could impose such restrictions as they thought fit in regard to the acquisition and ownership of ships?

SIR PERCY THOMPSON *(British Empire)* replied that this was the object of the proposal.

DR. MARTIUS *(Germany)* wondered what, from the practical point of view, was the object aimed at by the British proposal. The right to use the national flag existed in almost all countries, and it was clear that no ship could carry the national flag unless it satisfied certain provisions in national law. There was no proposal to change this position. There was ground, therefore, for wondering what was the new notion implied in the reservation of the entire question in so far as concerned ships. The German delegation wished to reserve its opinion until the question had been cleared up. Would it suffice if flag rights were reserved, or should the entire question of ownership of ships be reserved? It was a fact that vessels were movable property.

SIR PERCY THOMPSON *(British Empire)* considered that a country should have complete freedom to determine the conditions under which a ship which was transferred from a national to a foreigner could continue to fly the national flag.

M. YOUPIS *(Greece)* warmly supported the British proposal, which did not contain any new bdea. Many legislations, in particular Greek legislation, laid down that a vessel could only fly ihe national flag if more than half its owners were Greek nationals. This brought out the relation tetween the flag and the ownership of, or shares in, a vessel.

The British proposal was entirely justified, seeing that a country's merchant fleet was an essential factor of its economy, and that the State should be entitled to exercise a certain influence and supervision over this factor.

DR. MARTIUS *(Germany)* agreed that, of course, the only question was that of protecting flag rights, and that the amendment submitted did not imply any new restriction.

THE CHAIRMAN requested the movers of the amendment on this question to confer with the Secretary of the Committee with a view to the introduction of a formula which could be examined together with the report.

He added that the Italian delegation had made a similar proposal in regard to aircraft. He enquired whether, subject to the question of drafting, the Committee agreed that the proposed provision should be extended to aircraft ?

The Committee agreed.

Japanese Amendment (Annex A, 10).

M. SAKANE *(Japan)* said that his delegation withdrew its amendment for a passage in the Protocol owing to the fact that the Committee had, on the previous afternoon, adopted a provision whereby High Contracting Parties which prohibited foreigners from acquiring immovable property could not claim on behalf of their nationals established in the territory of other High Contracting Parties the right to acquire immovable property without restriction.

THE CHAIRMAN pointed out that the decision taken on the previous afternoon applied only to rural property.

M. SAKANE *(Japan)* observed that, according to Japanese law, foreigners could acquire immovable property of all kinds. The Japanese delegation, however, wished to reserve its Government's right to take reciprocal measures in regard to countries which refused to authorise Japanese established in their territories to acquire immovable property.

THE CHAIRMAN wondered whether the proposal which had been adopted on the previous afternoon on the motion of the Polish delegate did not cover the case of Japan.

M. SAKANE *(Japan)* pointed out that there was no question for Japan of a system of authorisation, since foreigners were entirely free to acquire immovable property.

THE CHAIRMAN suggested that the Japanese delegation should consult the Rapporteur on this point. He thought that the provision which had been adopted met the Japanese delegation's point.

M. SAKANE *(Japan)* inferred that the Japanese delegation had the right to return to the question when it had examined the report.

The Japanese delegation had also proposed to add in the first paragraph of Article 10 after the words " patrimonial rights " the words " that is to say ", since the term " patrimonial rights " seemed somewhat obscure.

M. SMETS *(Secretary of the Committee)* pointed out that the adoption of this amendment would have the effect of defining patrimonial rights as being the points enumerated later in the article. That, however, was not the case.

M. DE BEREZELLY *(Hungary)* thought that the field of patrimonial rights was a very vast one. It would be dangerous to state in general terms that the foreign nationals of the High Contracting Parties would be placed in this respect on a footing of complete equality with nationals, whereas it was a matter of general knowledge that in this question there were great differences and between one State another. It had already been agreed that complete equality would not be stipulated in regard to the acquisition of rural property. In these circumstances, what was the object of keeping this term, since equality would apply only to patrimonial rights ?

M. SMETS *(Secretary of the Committee)* pointed out that in regard to rural property the exception was only a partial one which did not cover all States.

Hungarian Amendment.

M. DE BEREZELLY *(Hungary)* suggested that it would be possible to meet the Japanese delegate by making it clear that the question of patrimonial property would in many cases be considered according to the *lex personæ* of the foreigner. The words " the nationals of all the High Contracting Parties shall be placed on terms of complete equality with the citizens or subjects of any one of the parties as regards patrimonial rights, the right of acquiring. . . " might be replaced by " the nationals of the High Contracting Parties shall have the right of acquisition. . . ". In this way no mention would be made of complete equality with regard to the acquisition of immovable property, and reference to patrimonial rights would be avoided. Such avoidance was desirable, as in this subject the field of private law, which varied greatly according to country, was involved.

M. SAKANE *(Japan)* fully concurred in the observations of the Hungarian delegate. In Japanese law there was nothing like the expression " patrimonial rights ", and the Japanese delegation did not fully comprehend what was implied in this expression. The Japanese delegation proposed accordingly that these two words should be struck out. The only result would be to make the text of Article 10, paragraph 1, clearer.

Furthermore, the Japanese delegation had felt on the previous afternoon that the wording of this paragraph had been reserved *in toto*. Not only would it be better to strike out the words " patrimonial rights ", but it was also necessary to leave on one side the enumeration given in brackets, since it was not complete and might be incorrect in the case of many countries. It would be better to keep to a general formula covering movable and immovable property and stipulating the right to dispose thereof in accordance with the laws of the country.

M. SMETS *(Secretary of the Committee)* explained that the Committee had agreed to the substance of paragraph 1 while holding over its final wording, more particularly in view of the Netherlands amendment. Further, the Japanese amendment had not yet been discussed, so that in point of fact, the question had not yet been exhausted, and there would be no obstacle to reconsidering the text which had already been adopted.

M. OBREMSKI *(Poland)* frankly agreed that the provision in paragraph 1 was not clear. Either the right to acquire, possess, lease or dispose of property came within patrimonial rights, and in this case there was no need to enumerate them, or, alternatively, there was something in addition to the right to acquire, possess, lease, or dispose of property, and in this case the paragraph should be worded otherwise from the legal point of view. In his opinion, the term " patrimonial rights " should rather be understood as including everything concerned with real rights *(droits réels)* and rights resulting from obligations *(droits d'obligation)*, that is to say, the two categories recognised by civil law. This, however, was not formulated in paragraph 1. If the words " patrimonial rights " were struck out, what would happen to real rights, such as rights of usufruct, assignment, loan ? Did these rights come within paragraph 1 or no ? To sum up, the paragraph should be drafted in another manner in order to conform to legal exigencies, but only after the meaning of the term " patrimonial rights " had been explained.

SALIH ZEKAI Bey *(Turkey)* fully concurred in the Hungarian delegate's proposal. If the term " patrimonial rights " were taken as meaning something more than the right to acquire, posses, lease and dispose of property, these rights should be based on the *lex personæ ;* for instance, the rights as to literary and artistic property which had been Article 9 left aside when was considered. The words in question should therefore be deleted so as to bring Article 10 into line with Article 9. Further, if it were decided to keep these words in so far as concerned, for instance, patrimonial rights deriving from the *lex personæ*, it would be necessary to introduce the formula " in conformity with the national system ". The only system which would be applicable in regard to the right to acquire, possess or lease property was that of the country in which such property was situated.

Egyptian Amendment.

M. LINANT DE BELLEFONDS *(Egypt)* informed the representative of Turkey that the commentary of the Economic Committee on paragraph 1 was sufficiently clear. The Economic Committee had desired to cover the acquisition or lease of movable or immovable property, but not to cover the vast field of patrimonial rights, for it was impossible to deal in a convention with so wide a matter as that now under discussion. In his view, the reason why the two words had been inserted in the text of the scheme was in order to reproduce a form of clause to be found in all commercial treaties and treaties on establishment. It would be better to delete these words, which could only confuse the meaning of the article.

Hungarian Amendment.

The CHAIRMAN asked the Committee to vote on the Hungarian proposal.

M. OBREMSKI *(Poland)*, while being in agreement, wished to point out that the Committee was taking a step backward, for there were bilateral conventions going far further than the proposed provision.

M. VALIMARESCO *(Roumania)* was under the impression that the Hungarian proposal was to delete not only a reference to "patrimonial rights", but also any reference to the principle of equality of treatment. This seemed to him to be an essential principle of Article 1.

The CHAIRMAN asked whether the representative of Hungary agreed to maintaining the words " in the same conditions as nationals ".

M. de BEREZELLY *(Hungary)* agreed. The reason why he had asked for the deletion of the words " would be placed on a footing of complete equality " was because it had been agreed that any State could prohibit the acquisition of rural property by foreigners. The result of this was that it was impossible any longer to speak of complete equality between foreigners and nationals. In addition to the amendment already submitted, the Hungarian delegation asked that the words " in this regime of equality " at the end of the paragraph should be replaced by the words " in this respect ".

M. MEYERS *(Belgium)* asked the meaning of the word " transfer ". In general civil law, the word had a general and not a special meaning. In his view, " transfer " in paragraph 1 should have the general meaning of exchange, which was the term used in most commercial treaties. He thought that the Economic Committee had used this word in order to express this meaning. Any contract dealing with the change of ownership of a property implied a transfer.

THE CHAIRMAN said that this point of detail would be examined later.

M. LINANT DE BELLEFONDS *(Egypt)*, alluding to the observations of the representative of Poland, asked his colleague whether he thought it possible to settle in one short article of the present Convention the whole question of patrimonial rights. In Egypt, patrimonial rights were governed by two codes : the first was a mixed code applicable to foreigners and the other was the Egyptian code applicable to Egyptians. These two codes were simultaneously in force and applied by different courts.

M. MAYER *(Austria)* proposed the following wording " and the right of disposal by every means provided for in civil law ", and to delete the words in brackets.

M. SMETS *(Secretary of the Committee)* pointed out that it was impossible to use the word " dispose " without stating to what the word applied.

M. MAYER *(Austria)* replied that in legal parlance the word " disposal " might be used without an object. In the original text, the words " of the same " referred to movable or immovable property. There were many legal provisions, however, which covered not movable or immovable property, but obligations. The present text, for example, did not cover the case of loans.

THE CHAIRMAN proposed to examine the Austrian amendment after the Hungarian amendment.

He explained that the decision of the Committee in regard to the amendment would not affect such other amendments as were not contradictory to it.

The Hungarian amendment was rejected by twelve votes to eleven.

Egyptian Amendment.

THE CHAIRMAN put to the vote the Egyptian delegation's amendment that the words between brackets should be deleted.

This proposal was adopted by ten votes to six.

Austrian Amendment (Annex A, 5).

THE CHAIRMAN asked the Committee to take the Austrian amendment.

M. MAYER *(Austria)* explained that his amendment dealt with the right of possession in general, without making any special mention of movable or immovable property.

M. OBREMSKI *(Poland)* said that he had abstained from voting on the two previous occasions, not because he wished to support those States which had a number of interests to safeguard, but because he was under the impression that Article 10 had become incoherent from the legal point of view. In paragraph 1, the Convention now authorised a foreigner to acquire, for example, immovable property in a town, but he would not be allowed to let such property on lease. In French legal parlance, the expression "*disposer*" meant to transfer the right of property. The use, lease and other actual rights were not covered by Article 10.

He reserved the right to ask at a plenary meeting that Article 10 should be still further restricted and should not any longer deal with the right to acquire immovable property. It was necessary for the Conference to be logical. If it were impossible for a foreigner to let immovable property on lease, there was no reason why he should be allowed to acquire it.

M. MAYER *(Austria)* explained that he had not intended to use the word " *disposer* " in a restrictive sense in so far as immovable property was concerned.

M. OBREMSKI *(Poland)* pointed out that leasing was only one form of renting.

M. MEYERS *(Belgium)* understood the word "leasing" to bear the general meaning and not to be restricted to the term " renting ".

M. OBREMSKI *(Poland)* recalled that in civil law the two ideas were different. When questions of interpretation arose, what meaning should be given to this word ?

M. MEYERS *(Belgium)* recalled that this word was to be found in many conventions.

M. MAYER *(Austria)* replied that by " disposal " was meant any legal operation in civil law. His amendment was designed to change the end of the sentence, " and the right of disposal by every means provided for in civil law ".

M. MEYERS *(Belgium)* said that, after reflection, he preferred the text of the Economic Committee, which reproduced the details stipulated in regard to this matter in most treaties.

M. NEDERBRAGT *(Netherlands)* recalled that the Netherlands delegation had proposed that the beginning of the article should read : " shall be placed on terms not less favourable ".

M. SMETS *(Secretary of the Committee)* recalled that the drafting of the article had not yet been settled. Only the principle had been agreed on.

M. CARAVALE *(Italy)* did not understand why the representative of Austria was against the use of the words " and the right of disposal ". Did the right of disposal refer or not to movable property as well as to immovable property ? It had been said that the article referred to any operation covered by civil law. Did this expression apply only to movable and immovable property, or to something else ?

M. MAYER *(Austria)* replied that if the article contained the words " dispose of the same ", only the words " movable or immovable property " immediately preceding this expression would be covered. If, however, only the word " disposal " were used, the formula would be general. He would remind the Committee that the distinction to which the Italian delegate had alluded was an old one based on Roman law.

M. LINANT DE BELLEFONDS *(Egypt)* asked that the Austrian amendment should be divided into two parts. The formula " by every means provided for in the civil law " could with advantage replace the words which had been deleted on the suggestion of the Japanese delegation. On the other hand, if the word " disposal " were maintained instead of " to dispose of the same ", the word " disposal " would apply both to patrimonial rights and to movable or immovable property. The sentence would therefore no longer be comprehensible.

M. NEDERBRAGT *(Netherlands)*, in order to throw light on the discussion, asked whether the present text did or did not cover the right to rent, make use of, etc., and whether the Committee intended or not to make a reference to these rights in paragraph 1.

He would be unable to vote without being clear on this point.

THE CHAIRMAN said that the present English text was perfectly clear.

M. LINANT DE BELLEFONDS *(Egypt)*, in reply to the Netherlands representative, said that the present French text also was quite clear. If the words " *en disposer* " were used the word " *en* " might refer to patrimonial rights. It was obvious that these patrimonial rights included the right to lease or to hold on lease, to mortgage or contract a mortgage, etc. The English text might or might not be amended according to the decision of the Committee.

The Austrian amendment was rejected.

Japanese Amendment (Annex A, 10).

M. SAKANE *(Japan)* asked what decision had been taken on the Japanese amendment urging either the deletion of the words, " patrimonial rights " or the addition immediately after them of the words " that is to say ".

THE CHAIRMAN replied that this amendment had been rejected because it was covered by the Hungarian amendment, which had not been adopted.

M. SAKANE *(Japan)* said that he reserved his right to return to the question at a plenary meeting.

The Japanese delegation wondered whether the words " movable property ", in paragraph 1 and in the second paragraph of Article 10, covered obligations, shares and banks.

THE RAPPORTEUR said that the expression " movable property " covered bonds, shares and debentures.

THE CHAIRMAN asked the representative of Japan whether he would be satisfied with a mention of this point in the report.

M. SAKANE replied in the affirmative.

Turkish Amendment (Annex A, 18).

SALIH ZEKAI BEY *(Turkey)* explained that the only object of the first amendment of the Turkish delegation was to throw more light on the meaning of the paragraph. He would be satisfied with a mention in the report explaining that the national system governed the system of the country in which the immovable property was situated. Further, the Turkish delegation withdrew its amendment concerning rural property, which was to be made the object of a special protocol. This solution satisfied the Turkish delegation.

Swedish Amendment (Annex A, 8).

M. SANDSTROEM *(Sweden)* recalled that at the previous meeting the Committee had decided to add a new paragraph to paragraph 3 of Article 10 to cover the question of authorisations. The Committee was aware that Sweden possessed a system of authorisations for foreigners with regard to movable property based on considerations similar to those explained in paragraph 4 of Article 10. The object of the system was to prevent the seizure by foreigners of the vital economic resources of the country. If the Committee inserted the new paragraph where reference was made to considerations of public interest after paragraph 3 which mentioned reasons of security and national defence, he wondered whether the Swedish system would be covered by the provisions of the new paragraph. It was not to be disputed that the seizure of the vital resources of the country by foreigners came within the scope of public interest. The Swedish delegation would be content with the reserve which had been made, on two conditions. First, it should be expressly understood that the reservation would cover the case of the Swedish mines, which were considered to be movable property in that country. Secondly—and this was in the nature of a recommendation — the new paragraph should take the form of paragraph 5 of Article 10 in order that it should be made quite clear that the considerations set out in the paragraph applied both to paragraphs 4 and 3.

THE CHAIRMAN wondered whether the question raised by the Swedish delegate in regard to the Swedish mines was not already covered by paragraph 2 of Article 7.

M. SANDSTROEM *(Sweden)* recalled that he had asked that the question of mines should be reserved until after the examination of Article 10. The question had not therefore yet been raised.

DR. MARTIUS *(Germany)* attached a certain degree of importance to the question of mines from the point of view of foreign labour and the protection of the national labour market. The question was whether this matter was connected with the acquisition of property or whether it did not also touch the exercise of professions. The German delegation was fully of opinion that it would be sufficient to provide a certain degree of protection against foreign capital and to stipulate that the protection should be mentioned, not in Article 7, but in Article 10.

As far as the suggestion of the Chairman was concerned, he thought that, according to the legal view of certain countries, the question of the ownership of mines was quite different from that of the ownership of immovable property. The question was to what extent could the Committee grant the protection demanded by Sweden and several other delegations.

It should be observed that it was always possible for a State to declare that its mines were national property and to make a monopoly of them, etc. It was perhaps to this possibility that the Chairman had referred. Whatever might be the case, account might be taken of the apprehensions of certain delegations, provided that they referred only to existing legislation and provided it was not possible for States subsequently to introduce new restrictions.

To sum up, he agreed with the proposal to insert a measure of protection in Article 10, provided that it went no further than the reservations included in Article 7 and that protection should be limited to existing legislation.

M. DE BEREZELLY *(Hungary)* asked the representative of Sweden whether the amendment in question meant that previous authorisation was necessary only in the case of acquisition or also for the lease of certain immovable property.

M. SANDSTROEM *(Sweden)* reminded the Committee that he had asked that the word " mines " should be added after the words " immovable property ". According to the present form of the text, the reservation covered acquisition only.

THE CHAIRMAN asked the representative of Sweden whether he would be satisfied with the proposal of the delegate of Germany that the reservation should be allowed only in respect of existing legislation.

M. SANDSTROEM *(Sweden)* agreed.

The last suggestion of the Swedish delegate was adopted.

Turkish Amendment (Annex A, 18).

M. CARAVALE *(Italy)* wished to return to the question raised in the Turkish amendment, which consisted in the insertion of the words " in conformity with the system of the country in which the said property is situated " instead of the words " in conformity with the national system.". He thought that the Committee had already accepted the principle of the Netherlands amendment, the object of which had been to delete the words " in conformity with the national system ", in order to eliminate a question of private international law, namely, what was the law which should govern the right to possess, acquire or lease property or its disposal. If his view were correct, the Committee could not once more take up questions of private international law with which it had refused to deal, unless its two decisions were to contradict each other. If no mention were made either of personal status or of the *lex loci*, the question was clear and every delegation would be able to accept the text. If the contrary were the case, many difficulties would be encountered. As far as Italy was concerned, the right of succession was settled by the *lex personæ de cujus*, which meant that it was impossible to apply the system in force in the country in which the property was situated.

SALIH ZEKAI BEY *(Turkey)* still did not quite understand what action the Committee wished to take on the Netherlands amendment. In regard to the special case referred to by the Italian delegate, the situation was the same in Turkey, where the personal status of the person concerned was the criterion. That, however, was not the case in so far as the right to acquire and possess property was concerned. Here the law of the country in which the property was situated was applied.

The Turkish delegation had therefore pointed out that the question of patrimonial rights and other questions could not be dealt with in the same sentence or under the same system, because in a number of States the law of the country, for example in dealing with immovable property, was valid, while in others the *lex personæ*, for example in dealing with civil status, was applied.

M. DE BEREZELLY *(Hungary)* thought that the difficulty referred to by the Turkish delegation was due solely to the fact that the text of Article 10 did not express the views of the Economic Committee. In using the words " laws of the country ", the Economic Committee did not mean to refer to the laws governing persons. He did not think that this difficulty arose in the English text.

M. SANDSTROEM *(Sweden)* considered that the expression " laws of the country " might give rise to a misunderstanding. The question of the law which should govern the right to acquire, possess and lease movable and immovable property was a question of private international law, and the law applicable was not always the national law. It might be of advantage to delete the words " in accordance with the laws of the country ", or to replace them by the phrase " in accordance with the laws which were applicable ".

SALIH ZEKAI BEY *(Turkey)* also proposed that the words " in accordance with the laws of the country " should be deleted.

DR. MARTIUS *(Germany)* noted that the words " under the same conditions as nationals " remained and, in these circumstances, he would not oppose the request for deletion.

The Committee decided to delete the words " in accordance wich the laws of the country ".

TWENTY-SEVENTH MEETING

Held in Paris on November 27th, 1929, at 10 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

53. Examination of the Articles of the Convention : Article 7.

Question of Insurance Companies: Text proposed by the Insurance Sub-Committee as a Supplementary Provision in the Protocol ad *Article 7.*

THE CHAIRMAN asked the Committee to take as a basis of discussion the text proposed by the Insurance Sub-Committee. This text did not constitute a definite proposal, and had only been prepared in order to facilitate the discussion. The text was as follows :

> " Nothing in the present article shall prevent the High Contracting Parties :
>
> " *(a)* From applying in their territory, in regard to foreign insurance undertakings established in the territory of one of the other High Contracting Parties, whatever system of conditions, guarantees and control they may consider necessary with a view to safeguarding national interests and the interest of insured persons ; it is understood that this system shall not be such as to prevent foreign undertakings from carrying on their activities in the territory of the said High Contracting Parties ;
>
> " *(b)* From reserving to national undertakings so-called social insurance, more particularly life insurance, the premiums for which are payable to collectors and at short intervals, and also industrial accident insurance."

DR. MARTIUS *(Germany)* observed that it would be somewhat difficult for his delegation to give its opinion in a general manner on the proposed clause owing to the extremely technical character of the question. He asked that the discussion should be confined to general grounds and that information should be given as to the status of insurance companies. This would enable the delegations to form an exact idea before making up their minds, and the final decision might be taken at a later meeting.

THE CHAIRMAN said that the discussion of the question of insurance would be purely general, and that the decision would be taken at a later meeting.

M. YOUPIS *(Greece)*, as member of the Insurance Sub-Committee, reported on the Sub-Committee's proceedings. He laid stress on the difficulties which would occur if an attempt were made to place foreign insurance companies on the same footing as foreign commercial companies.

The latter had no contractual relations except with traders, and their contracts came to an end within a comparatively short period. Insurance companies, on the other hand, had dealings with the big public, and the contracts they made were of long duration. Their operations were therefore bound up with the national interests, and the failure of an insurance company might have an appreciable repercussion on the population. For this reason the Governments were obliged to take precautionary measures in regard to foreign insurance companies, to regulate their admission carefully and to subject them to control. These measures, however, must not have the effect of preventing a foreign insurance company from carrying on business. The draft submitted by the Sub-Committee was an amalgamation of the three drafts that had been submitted.

In the second paragraph, the Sub-Committee, following the proposal by the British delegation, had suggested that every country should be entitled to reserve insurance contracts of a social character to national companies, and likewise, in accordance with the Italian proposal, workers' accident insurance. Finally, the Sub-Committee had thought it impossible to adopt the Latvian proposal that insurance companies wishing to carry on business in a country should be compelled to become naturalised.

MR. GRIFFITHS *(British Empire)* laid stress on the importance of the question, and drew attention to the wide latitude which would be granted to the High Contracting Parties in regard to insurance operations. It was likely, however, that few countries would wish to take advantage of this latitude, and he wondered whether it would not be better to substitute for a general formula a number of reservations covering the case of the special legislations in the different countries concerned.

DR. MARTIUS *(Germany)* wished to put a certain number of questions. First, did the Committee intend to add insurance to the list of exceptions contained in Article 7, paragraph 2 ?

Paragraph *(a)* in the Sub-Committee's text referred to foreign insurance concerns established in the territory. This allusion appeared to review the question of admission, and all questions connected with admission had been reserved, the Committee confining itself to dealing with the treatment of companies. Finally, if insurance were classified among the exceptions, why, in paragraph *(b)*, were certain categories of insurance again regarded as reserved ?

THE CHAIRMAN reminded the Committee that during the discussion on Article 7, it had been decided, owing to the difficulties which had been encountered, to refer the question of insurance to a Sub-Committee. Three solutions were offered : first, that insurance should come under Article 7, paragraph 2 ; secondly, that insurance should be brought under the same paragraph, but that the scope of the regulations to be made in respect of it should be limited, as was suggested in the draft submitted by the Sub-Committee. Finally, insurance might be excluded from paragraph 2 of Article 7, but a number of special reservations made in regard to it. That was the proposal of the British delegation.

M. PILLAULT *(France)* regretted that the French delegation was unable to agree to the Sub-Committee's text, because it was opposed to any restriction to the operations of insurance companies.

Technically, it was impossible in modern times to imagine insurance without reinsurance, and reinsurance was necessarily international. When an insurer took the responsibility for an important risk he shared it with the reinsurers, who divided it in their turn by reinsuring themselves in the second degree and so on, sometimes up to the tenth or twelfth degree. In this way major risks, wherever undertaken, were split up among all the insurers in the world. From the point of view of the interpenetration of interests, that was to say, of international economic policy, which was the very basis of the Convention, there was here something which was of value. Insurance was an industry which was organised in accordance with principles that were in complete conformity with those which were the source of the Convention. To exclude insurance from the Convention would therefore be the reverse of progress. It would be a serious step backwards.

It was, of course, perfectly legitimate for foreign insurance companies to be subjected to the same form of control as national companies, but this was in no way incompatible with the Convention and did not require any special mention.

There was only one point which was peculiar to the insurance question and this, no doubt, had been the reason for the proposals of various delegations. It was a perfectly legitimate desire to preserve the right of national legislation to require from foreign insurance companies the deposit of a security.

The French delegation therefore proposed that this point should be examined in the light of Article 16. If it could be clearly inferred from Article 16 that a security of this kind was not incompatible with the terms of the article, there was nothing to add. If it were not sufficiently clear, it would suffice if the report stated that " the provisions of Article 16 did not affect the right of any of the High Contracting Parties to require a security from foreign insurance companies before authorising them to carry on their operations in its territory."

M. PEROUTKA *(Czechoslovakia)* thought that workers' accident insurance should be completed by the addition of sickness insurance. He also thought that paragraph *(b)* of the Sub-Committee's text might be taken to cover the system of workers' accident insurance and sickness insurance when organised by the State as a public service.

DR. MARTIUS *(Germany)* thought that the French delegate's declarations would tend towards a decision which would be somewhat different in sense from that of the Sub-Committee's proposal. Committee C had, on the previous afternoon, adopted for Article 16, paragraph 5, the following text (the question of the admission of companies being still reserved) :

> " The High Contracting Parties, who make the installation in their territory of permanent establishments of foreign companies subject to authorisation, hereby declare that they will not, in granting such authorisations, hinder the establishment of companies engaging in business which it allows companies of any other country to conduct under similar conditions."

He personally agreed with the French delegate and thought it better not to mention insurance companies in Article 7 but to include them in Article 16, paragraph 1, which referred to the recognition of companies, and to reserve the question of admission. All points relative to the deposit of a security and other conditions should be comprised among the conditions of admission. It would appear sufficient if the report stated that the Committee had adopted the views of the French delegation and had decided against the Sub-Committee's draft.

THE CHAIRMAN noted that the Committee had before it a new proposal submitted jointly by the French and German delegations. The proposal was that insurance companies should be dealt with in Article 16 and that a special passage should be included in the report. He thought that it would be advisable to continue the discussion pending a decision and he asked Dr. Martius if the German delegation would oppose this procedure.

DR. MARTIUS *(Germany)* said that he would agree to this procedure.

M. SCHUMANS *(Latvia)* drew attention to a difficulty due to the fact that insurance was not necessarily carried on by companies. There were cases of insurance contracts concluded by individuals. If therefore the question of insurance companies were included in Article 16, part of the question would remain outside the rules laid down.

M. DE LA VALLÉE POUSSIN *(Belgium)* thought that the consequences of mentioning insurance, either in Article 7 or in Article 16, should be very clearly realised. It had been proposed that no mention should be made of foreign insurance companies and that, consequently, they should be allowed to benefit by the same treatment as national companies; it was, however, impossible to give identical treatment to foreign insurance companies and to national companies. They might be required to furnish equivalent guarantees but they could not enjoy identical treatment. For the sake of example he quoted the Belgian draft law which stipulated that foreign companies were authorised, on the same footing as Belgian companies, to carry on insurance transactions in Belgium, but were obliged to establish in Belgium a seat of operations at which they would (1) elect their domicile, (2) appoint an individual with power of attorney who would represent them both in dealings with the administration and with private persons and who would have his domicile and residence in Belgium, (3) set up a separate management and accountancy for all contracts signed in Belgium, and (4) deposit and keep in Belgium, under conditions specified by the supervisory regulations, the equivalent of the face value of the mathematical reserves relative to all contracts signed in Belgium and in the Congo Colony either before or after the coming into force of the law.

He would add that these conditions were implicitly required of national companies but it was difficult to demand an equivalent security from foreign companies in exactly the same form as from national companies.

M. SANDSTROEM *(Sweden)* said that the law in his country was similar to Belgian law, as explained by M. de la Vallée Poussin. The only difference consisted in the system of guarantees and control as regarded foreign companies. The Swedish delegation would agree to any wording which safeguarded the existing law in Sweden.

The text proposed by the Sub-Committee, on the other hand, made no allusion to the transactions of foreign companies not established in the country. They would, therefore, be placed in a more advantageous situation than companies established in the country and national companies.

M. PILLAULT *(France)*, in reply to the Belgian delegate, thought that the conditions which he had mentioned were in actual fact conditions of admission, and that there would be no difficulty in allowing them, since they were not incompatible with the Convention.

M. NEDERBRAGT *(Netherlands)* was not yet acquainted with the contents of Article 16 as revised by Committee C, but, after the explanations which had been given, he thought he would be right in concluding that the new article would satisfy the Netherlands delegation. He wished, however, to make a reservation in regard to insurance effected not by companies, but by private persons, a position to which the Latvian delegation had already drawn attention. There were cases in which this kind of private insurance was sheer swindling, but the police and judicial authorities in the Netherlands were ill-equipped for proceeding against this kind of swindling, which was extremely damaging to the interests of nationals and foreigners. A security might be demanded. If the text was confined to mentioning companies alone, it would be difficult to demand a deposit from private persons. It might perhaps suffice to say that the provisions laid down in regard to companies, more particularly the deposit of a security, were applicable to private persons as well.

THE CHAIRMAN thought that the objections which had been raised might be satisfied if it were said that insurance companies were covered by Article 16 and if the Protocol *ad* Article 7 were completed by a statement that all points concerning insurance business carried on by individuals were regulated by the provisions of Article 16, *mutatis mutandis*.

M. LANDUCCI *(Italy)* observed that, in almost all treaties of commerce, there were particular provisions for insurance companies in view of their special character. He thought it difficult to include insurance companies under Article 16, seeing that the national laws almost always demanded special guarantees and that their transactions were, in particular, generally subject to a State guarantee. He proposed in consequence that there should be a special text for insurance companies and that they should not be included in Article 16.

MR. BARRINGTON *(Irish Free State)* did not think that the Conference would have time to make a thorough study of so complex a question as that of the establishment of, and the carrying on of business by, foreign insurance companies. No discrimination was made in Ireland in regard to foreign companies. Equality of right, if granted to foreign companies, might result in inequality in fact, since, in the event of liquidation, the situation of a foreign company would not be the same as that of a national company. The national company would be liquidated in accordance with Irish law, while a foreign company would be liquidated under the law of the country in which it had its seat. Furthermore, it would be easier for a foreign company to resist any regulative legislation or other requirement which might be devised in the interests of the policy-holders and of good government. True, the Government might demand the deposit of security, but that was not always practicable in application. In conclusion, he urged that countries should be left free in regard to legislation as to insurance companies.

M. YOUPIS *(Greece)* observed that the various objections which had been raised pointed to the inadequacy of Article 16 failing to cover insurance by private firms, the existence of foreign companies carrying on their transactions in the country without being established there and the special British reservation with regard to social insurance. He concluded that it would be necessary to have a special text to cover insurance. He thought that the various considerations which had been expressed would be met if paragraph *(a)* of the Insurance Sub-Committee's draft were worded as follows :

> " *(a)* From applying in their territory, in regard to foreign insurance undertakings, whether established or not in the territory of one of the other High Contracting Parties, and in regard to nationals of the High Contracting Parties engaged in insurance transactions, whatever system of conditions as to admission, guarantees and control etc. . . "

M. PILOTTI *(Italy)*, Rapporteur, thought that, if the provision for foreign companies was to be extended to foreign nationals, it would be well in the Protocol *ad* Article 7 to begin with the provisions concerning individuals. He did not share M. Youpis' opinion as to the insertion of the word " admission " after the word " condition " in paragraph *(a)* as proposed by the Sub-Committee. He did not see, in particular, how the insertion of this word would meet the French delegation's point, which seemed to be that the question of guarantee and control amounted in point of fact to a question of admission. The insertion of this word would, he thought, introduce a third limitation. He, therefore, was in favour of keeping the text proposed by the Sub-Committee, at any rate in so far as regarded the words " conditions, guarantees and control ".

M. YOUPIS *(Greece)* explained that, when the Sub-Committee had drafted the Protocol *ad* Article 7, it had not been acquainted with the results of the discussion in Committee C on Article 16, and had not, in particular, known how that Committee would deal with the question of the admission of foreign insurance companies. He agreed that the conditions laid down in the Sub-Committee's text overlapped with those contained in Article 16. He thought that this was only a question of drafting and of the concordance of texts. The admission of foreign companies was regulated in Article 16, but not the question of private insurance. This was a point which would have to be properly cleared up.

Speaking on behalf of the Sub-Committee, he pointed out that all members of the Sub-Committee had unanimously agreed that it was to the interest of every State to welcome respectable foreign insurance companies, but at the same time to keep out less reputable foreign companies, which did great damage, particularly in small countries. It was against companies of this kind that Governments must be allowed to arm themselves.

DR. MARTIUS *(Germany)* wondered whether it was really necessary to have a special text for insurance companies as had been proposed by the Sub-Committee. Insurance companies were, in fact, already mentioned in Article 16, paragraph 1. The question of foreign nationals engaged in insurance transactions was governed by the Chairman's proposal for an explanation in the Protocol *ad* Article 7 that the provisions of Article 16 concerning insurance companies applied to physical persons as well. The question of insurance companies not having a definite seat had been discussed in Committee C and the conclusion reached had been that an authorisation was necessary in all cases whether the company was established or not in the country.

Finally, Dr. Martius fully comprehended the considerations which had been developed as to social insurance. Needless to say, companies dealing in social insurance would also have to be admitted into the country, but they would have to obtain authorisation and admission.

He therefore supported the proposal of the Chairman, the French delegation and the Netherlands delegation to introduce the necessary explanations in the Protocol. On the other hand he was against the Sub-Committee's proposal to have a special text in regard to which, he must say at once, he would have certain reservations to make.

M. PILLAULT *(France)* said that his delegation entirely agreed with Dr. Martius. In regard to the question of private insurance the Chairman's proposal completely satisfied him. In this connection he reminded the Committee that it had already voted an article which would make it possible to reserve to nationals certain professions and occupations which were of public interest. It should be possible, he thought, to include private insurance under this heading.

M. PILOTTI *(Italy)*, Rapporteur, doubted whether it would be possible to extend to the case under discussion the provisions of the article reserving special professions to nationals. Further, the discussion had somewhat strayed from the point by taking up Article 16, whereas the Committee had not yet had before it the new text of Article 16 resulting from the discussions in Committee C. The question of private insurers could be easily solved, once agreement had been obtained on the provisions concerning insurance companies.

M. DINICHERT *(Switzerland)*, Rapporteur for Committee C, said that Committee C had confined itself to adding a clause on insurance in vague terms, since it had not yet had before it the decision of the special Insurance Sub-Committee.

It had been observed that the question of insurance was complicated by the fact that account must be had to the transaction of insurance by private persons. Hitherto there had been grounds for holding that such transactions were purely theoretical. It was impossible to detach Article 16 from Article 7, to which it referred. The two articles, taken together, provided that a foreign insurance company could carry on its business in the territory of the High Contracting Parties on the same conditions as nationals. There thus arose the question of the authorisation required for the admission of companies to the territory in question.

The Chairman, however, had pointed out that a country could include among the conditions for admission any conditions it thought necessary. It was, however, inadvisable to go too far and to say, for instance, that a country would be entitled to impose conditions which were incompatible with the customary law of the country concerned. It would be better to be content with saying that a foreign company, once admitted, would be subject to the same law as national companies. Nevertheless a provision in the Protocol, referring both to Article 16 and to Article 7, would indicate that the provisions of those articles did not affect the right of Governments to impose certain conditions and guarantees on insurance companies, provided they did not prejudice normal business of the company.

THE CHAIRMAN noted that the Committee had before it two proposals. First, to insert in the Convention a provision relating to insurance companies which would follow, in principle, the provision proposed by the Sub-Committee. If this solution were not adopted, the Committee would confine itself to saying in the Protocol that the provisions taken in regard to companies should be applied equally to private persons under the same conditions.

The Sub-Committee's text would require certain changes as a result of the discussions of the present meeting. He therefore invited a Sub-Committee consisting of M. DINICHERT, M. YOUPIS, M. DE LA VALLÉE POUSSIN and either M. PILLAULT or Dr. MARTIUS to confer with the Rapporteur on a revised text before the next meeting. This text could be inserted in the Protocol *ad* Articles 7 and 16. The Committee would then be invited to take a decision by a vote.

TWENTY-EIGHTH MEETING

Held in Paris on November 28th, 1929, at 3 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).

Secretary: M. SMETS.

54. Examination of the Articles of the Convention : Article 11 : Report of the Legal Sub-Committee.

THE CHAIRMAN said that the Legal Sub-Committee had been asked to examine Article 11 in order to submit recommendations to the Committee which, without binding anyone for the moment, might facilitate the discussion. The text proposed by the Sub-Committee was before the Committee (Annex A, 31).

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, said that he had not had time to make a written report on the amendments submitted by the Sub-Committee. He would therefore make a verbal report. He would read each of the five paragraphs composing the original text of Article 11, one by one. He would indicate the amendments which had been introduced into them, stating at the same time, in regard to the main amendments which had not been adopted, why the Sub-Committee had decided to reject them. He would provisionally leave aside amendments of pure form.

The text of paragraph 1 contained a preliminary amendment which consisted in the deletion of the words " charge or " in the sentence " every kind of judicial or administrative charge or duty ".

The reason why the Sub-Committee had deleted the words " charge or " was because the words " judicial or administrative duty " were sufficiently explicit. The words suppressed might obscure the meaning of the word " duty ".

The second amendment consisted in the introduction of a protocol *ad* paragraph 1. This protocol was not in the original text and it reproduced a proposal of the British delegation.

The British delegation had thought it desirable to state that the exemption covered in Article 11 did not extend to duties imposed by laws governing service on a jury.

The Sub-Committee had taken the view that there would be no objection to inserting such a limitation of the principle of exemption in the protocol, all the more so as that exemption was frequently reproduced in existing commercial treaties and treaties of establishment. It was therefore more or less of a traditional nature and was usually admitted without difficulty. The text of the protocol *ad* paragraph 1 would be as follows :

> " The exemption referred to in paragraph 1 of Article 11 shall not extend to duties imposed by the laws relating to juries."

DR. MARTIUS *(Germany)* wondered whether it would not be possible to delete the proposed protocol *ad* paragraph 1. Generally speaking, it was better in a collective treaty to draft a single law than to allow exceptions. The new provision was drafted in very general terms. Certain countries, Germany for example, had no commercial treaties with this exemption clause, and the legal notion of a " jury " in Germany was not very clear. The legal constitution of the countries was so diverse that it would be impossible to use an exact formula in this case. If certain countries possessed interests which must be safeguarded, it would be better to make provision for a reservation to be made in their favour.

M. SANDSTROEM *(Sweden)* recalled that the Swedish delegation had explained (Annex A, 8) that the Swedish legislation laid on foreigners, as well as on nationals, the obligation to act as a guardian, and that a reservation must be made in regard to this matter. Was it because the Sub-Committee had thought that guardianship was not covered by paragraph 1 that it had rejected this amendment ?

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, replied that the Sub-Committee had rejected the amendment concerning guardians as well as an amendment proposed by another delegation covering the appearances of witnesses in a Court of Justice which provided that foreigners, though exempted from all judicial duties, must not be prevented from being able to act as witnesses. The Sub-Committee had desired to keep Article 11 as clear as possible and to avoid raising doubts as to its exact scope by adding new provisions more or less foreign to the matters which it covered. The various provisions contained not only in paragraph 1, but also in the other paragraphs, were of so clearly definite a character that their object could not be confused with other objects.

The first paragraph concerned judicial and administrative duties, a clearly defined notion which would bear more or less the same meaning in all countries.

In the second paragraph, a reference was made to obligations and payments connected with military services. This was again a clearly-defined field.

The third paragraph referred to any Kindof requisition in respect of national defence. This was also perfectly clear and understood in the same sense in all countries.

The fourth paragraph dealt with expropriation, of which the scope and limits had been clearly defined.

It had, therefore, been very desirable not to introduce into the new draft of Article 11, in the form of an exception, any notion which might throw doubt on the real meaning of the various objects dealt with successively. The fact that mention was made of judicial or administrative duties excluded everything directly connected with the organisation of the family. To mention guardianship would be to enter a delicate field, raising a problem of private international law. Nowhere was it considered that the functions of a guardian were of a judicial or administrative nature.

In regard to the amendment covering appearance as a witness in a Court of Justice, he thought no legislation had ever exempted foreigners from acting as witnesses when requested to do so by the legal authorities.

Replying personally to the German delegation, he agreed with Dr. Martius. In his opinion, the British reserve regarding duties involved by the jury system was superfluous.

The Sub-Committee had not taken that view. The British delegation had maintained its point, saying that in Great Britain the foreigner might be called upon to serve on a jury. This provision was not an innovation, for it was usually found in the treaties of Great Britain with other countries.

M. ENGELL *(Denmark)* said that his country had the same regulation as Sweden. It might perhaps be useful to indicate in the report that the reason why no reference had been made to guardianship was because that notion was not covered by the expression " judicial or administrative duties ".

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, said that a reference to this matter would be included in the report together with his reply to the Swedish delegate.

The CHAIRMAN *left the meeting and* M. POLITIS (Greece) *took the Chair.*

M. NEDERBRAGT *(Netherlands)* asked whether the article excluded both guardianship, trusteeship and appearing as a witness.

THE CHAIRMAN replied in the affirmative.

M. SAKANE *(Japan)* thought that the explanations of the Rapporteur had thrown considerable light on the discussion of paragraph 1. According to Japanese legislation, however, foreigners might be required to appear in the courts either as witnesses or experts or even as interpreters. He asked that a reference to this fact should be introduced into the report.

SALIH ZEKAI BEY *(Turkey)* asked the Rapporteur whether expert committees of enquiry were also covered by the term " juries ". Turkish law required foreigners to fulfil the same obligations as nationals in regard to taking part in expert committees of enquiry, for example, in regard to matters of expropriation.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, thought that, in the view of the British delegation, which had been followed in drafting the protocol, the exemption referred strictly to juries but did not go beyond this. He would refer to the danger which might arise from following the suggestion of the Turkish delegate. Paragraph 1 laid down that foreigners were exempted from all judicial duties. If a protocol were inserted stating what were the duties which might be regarded as non-judicial, there would be no end to the list. That was one of the reasons why he was not personally in favour of the addition of a protocol.

THE CHAIRMAN asked the representative of Turkey whether he wished to submit an amendment.

SALIH ZEKAI BEY *(Turkey)* reserved his right to do so when the Committee had taken a decision regarding the protocol *ad* paragraph 1.

Amendment proposed by the Delegation of Panama.

M. NEMOURS *(Haiti)* said that the representative of Panama had asked him to move an amendment to the effect that in paragraph 1 the words " shall be exempt " should be replaced by the words " shall not be compelled ". As the present text stood, foreigners might think themselves obliged to refuse judicial or administrative duties, while, in Latin America, they frequently agreed to accept such duties. For example, the Mayor of Lima was an Italian.

THE CHAIRMAN replied that, if it were stated in the article that a foreigner was exempt, this did not in the least degree mean that he was obliged to refuse a duty offered to him. This interpretation might be put in the report.

M. NEMOURS *(Haiti)* pointed out that the Egyptian delegation had submitted an amendment (Annex A, 6) with the same object as the amendment proposed by the delegation of Panama. It would seem, therefore, that the matter was one of special interest not only to Latin America but to other countries.

The text of paragraph 1, *proposed by the Sub-Committee, was adopted.*

THE CHAIRMAN asked the Committee to decide on the proposal to delete the protocol.

The Committee decided to inser the protocol by ten votes to four.

SALIH ZEKAI BEY *(Turkey)* said that he would not propose an amendment as he was satisfied by the explanations given by M. Politis.

THE CHAIRMAN said that the explanations with regard to the meaning of the word " exempt " and to the scope of paragraph 1 would be inserted in the report.

55. **Article 10 : Draft Report of Committee A to the Conference, submitted by M. Pilotti.** (Annex A, 32).

THE CHAIRMAN asked the Committee to take the draft report on Article 10.

M. DE BEREZELLY *(Hungary)*, referring to the question of patrimonial rights, reserved his right to submit observations when the Committee was examining the text of paragraph 1 of Article 10.

M. CARAVALE *(Italy)*, referring to the paragraph concerning the request made by the Austrian delegation (question of the disposal of movable and immovable property and of the rights resulting from bonds), noted that the wording of the present paragraph gave the impression that the reason why the Committee had not adopted the Austrian proposal was that it had not been agreed on the substance of the question. The Committee had, however, recognised that Article 10 granted to foreigners the same rights as to nationals in regard to all rights arising out of bonds. The reason why it had not thought it necessary to read " disposal " instead of " disposing of the same " was because the article already stipulated equality of treatment in regard to patrimonial rights, etc.

M. MAYER *(Austria)* pointed out that the objects of the Austrian amendment were other than those which appeared in the paragraph under discussion. He added that Austrian legislation was based on reciprocity and not upon a system of exemptions. The exceptions provided for in the legislation of other countries were so diverse that they made the judicial application of the Austrian law very complicated.

THE CHAIRMAN said that the passage of the report in question would be amended in order to satisfy the representative of Austria. The representative of Italy had been right in emphasising that the words " of the same " in the expression " disposing of the same " referred not only to movable and immovable property but to all the preceding sentence, that was to say, to patrimonial rights, the right of acquiring, possessing or leasing, etc.

M. SANDSTROEM *(Sweden)*, referring to the paragraph concerning rural property, said that the case of Sweden was somewhat different from that of Roumania, Turkey, etc., which were referred to at the same time as Sweden in the paragraph.

In his view the case of Sweden should be dealt with later in the paragraph dealing with the Polish proposal concerning authorisations. Other delegations seemed to be in the same position as Sweden in this respect.

THE CHAIRMAN said that, in the paragraph to which the Swedish delegate had just referred, the words " Polish delegation " should be replaced by " Polish and Swedish delegations ".

M. PUSTA *(Estonia)* noted that the report made no mention of the observations of the Estonian Government concerning regulations imposed by the Estonian law in certain parts of the frontier zone for reason of national security. He wondered whether a mere reference to rural property in the report would satisfy his country.

THE CHAIRMAN recalled that the third paragraph of the Protocol *ad* Article 10 of the original draft prevented the prohibition to acquire property from being extended to the entire frontier zone. As the Committee had agreed to delete this paragraph, he thought that the Estonian delegation should be satisfied.

M. PUSTA *(Estonia)* doubted whether the provisions of Article 10 were really in conformity with Estonian law which stipulated a number of restrictions either in regard to inheritance or to the purchase of immovable property.

THE CHAIRMAN said that the name of the Estonian delegation would be added to those of other delegations which had asked for exceptions in regard to rural property.

M. BENTZON *(Norway)* asked that the name of the Norwegian delegation should be added to those of the Polish and Swedish delegations.

M. DE BEREZELLY *(Hungary)* asked that Hungary should be included among the countries which had asked for an exception in regard to rural immovable property.

M. PUSTA *(Estonia)* proposed to delete the word " rural ". Not only rural immovable property was concerned but all immovable property in the frontier zone.

THE CHAIRMAN said that the Estonian delegation might propose a formal amendment to this effect. The text under discussion had been read a first time at a moment when the Estonian delegate had been in another Committee.

M. SCHUMANS *(Latvia)* asked that the name of Latvia should be added to the paragraph concerning exemptions in regard to rural property.

M. ENGELL *(Denmark)*, referring to the form of words adopted for the reservation concerning rural property, noted that a reference was made to High Contracting Parties "now adopting" the system in question. In Denmark the Constitution allowed the adoption of this system, but no use had yet been made of this permission.

THE CHAIRMAN said that the name of Denmark would be included in the report among the names of countries to which this reserve might apply.

M. CHOUMENKOVITCH *(Yugoslavia)* said that, according to Czechoslovak law, the acquisition of immovable property within a frontier zone of 50 kilometres required a special authorisation. Was this system in conformity with Article 10 as at present drafted? Paragraph 3 of Article 10 referred to the acquisition by foreigners " of *certain* property ". What meaning was to be attached to the word " certain "?

THE CHAIRMAN explained that the draft of the Economic Committee was based on the principle of freedom. Paragraph 3 laid down an exception for reasons of security or national defence. The paragraph was not meant to refer to all kinds of property of whatever nature but merely to certain immovable property and this for reasons of security or national defence. Paragraph 3 of the original Protocol prohibited the extension of this restriction to the whole frontier zone, but this paragraph had been deleted, which meant that the reservation might now apply to the whole frontier zone.

M. CHOUMENKOVITCH *(Yugoslavia)* would prefer the suppression of the word " certain ". The word was vague. Should a dispute arise as to its meaning, it would be necessary to have recourse to the Permanent Court of International Justice to decide whether a particular piece of immovable property affected the security or national defence of a country. He was opposed to a system whereby the Permanent Court of International Justice at The Hague would be called upon to decide something which affected the security or national defence of his country.

THE CHAIRMAN replied that, if the prohibition to acquire property was to be at the discretion of Governments and to escape all control, it would be better to draft the present Protocol in the opposite sense and to say that States would be free in every case to impose this prohibition.

M. CHOUMENKOVITCH *(Yugoslavia)* said that the reason why such freedom had been granted to States had been because confidence had been shown in them and it had been thought that they would not abuse this freedom. For this reason the Committee had decided to adopt a provision in this sense. When it was decided that a State should have the right to prohibit the acquisition of immovable property by foreigners for reasons of security or national defence, reliance must be placed on the good faith of those States and it must not be thought that they would use this prohibition except for a good reason.

THE CHAIRMAN concluded that the question could be raised again by the delegate of Yugoslavia when the provision in question was before the Committee.

M. OBREMSKI *(Poland)* considered that the fears of the Yugoslav delegate were justified. In his opinion the words " acquisition by foreigners of certain immovable property or undertakings " should be replaced in paragraph 3 of Article 10 by the words " acquisition by foreigners of immovable property or of certain undertakings ".

M. PUSTA *(Estonia)* agreed with the proposal of the Yugoslav delegate.

THE CHAIRMAN asked that the decision should be reserved until the Committee had begun its discussion on paragraph 3 of Article 10. Did the Committee provisionally accept the approximate wording of the reservation, adopted at a first reading, which covered the case of the numerous countries referred to in the paragraph of the report under discussion?

The text of that paragraph was adopted.

THE CHAIRMAN explained that the following paragraph of the report, which dealt with the question of reciprocity, had been drafted in order to satisfy, in a certain degree, those delegations which had not been ready to accept the reservation mentioned earlier in the document.

M. OBREMSKI *(Poland)*, referring to the paragraph of the report dealing with the necessity for a previous authorisation for reasons of public interest when foreigners acquired *certain* immovable property, recalled that the Polish system applied to immovable property whether situated in a town or in the country, which meant that the word "certain" did not cover his case.

THE CHAIRMAN said that this word would be deleted.

M. OBREMSKI *(Poland)* added that the end of this paragraph " so that, in practice, the administrations concerned would merely have to ascertain whether these conditions did in fact exist " did not correspond to the explanations which he had given. Though the Polish Government might grant an authorisation, it was obvious that it could refuse to do so and it could not be

maintained that this was a mere formality. It was an official Government act. He could not accept a formula the result of which would be that a decision of the Polish Cabinet would be regarded as a mere statement that certain conditions had been fulfilled. He proposed to delete the words to which he had alluded.

M. PARANJPYE *(India)* agreed with the observations of the Polish delegate. A number of delegates had alluded to the possibility of having direct recourse to the Permanent Court of International Justice at The Hague. It was indispensable, he thought, to insert a provision in the article which would prevent the abuse of this permission. A regulation might quite possibly be introduced in a country whereby a foreigner belonging to a particular creed would be prevented from acquiring property in that country. This would be equivalent to an act of discrimination. The text must be definitely restricted in this respect.

M. LINANT DE BELLEFONDS *(Egypt)* recalled that, when the Polish delegate had explained the system of authorisation in force in his country, several delegations had pointed out that this amounted in actual fact to a restriction which was not in conformity with the spirit of the article. The British delegate had said that, if it could be explained that this authorisation must not be arbitrarily refused, it would be possible to contemplate accepting such a condition. The Egyptian delegation had then expressed the view that, if authorisations were submitted to certain conditions and if those conditions were fulfilled, they should be automatically granted. This would mean that no arbitrary system would be created and that the spirit of the Convention would be respected. The Egyptian delegation had therefore voted in favour of the Polish amendment. It was evident, however, that, if the fulfilment of the required conditions was not sufficient automatically to obtain the authorisation, a return would be made to an arbitrary system.

M. DE BEREZELLY *(Hungary)* asked whether the permission to use the system laid down in paragraph 5 of Article 10 was extended to all countries or only to those mentioned in the report.

M. SMETS *(Secretary of the Committee)* replied that it referred only to countries in which such legislation existed at the moment.

M. DE BEREZELLY *(Hungary)* asked whether countries which might later on find themselves obliged to introduce such a measure into their legislation would be covered by this provision.

M. SMETS *(Secretary of the Committee)* replied in the negative. He drew the attention of the representative of Hungary to the last words of paragraph 5 : " provided that the national laws of the High Contracting Parties who desire to avail themselves of the reservation contained this restriction at the time of the signature of the present Convention ".

M. SANDSTROEM *(Sweden)* added that this covered the existing legislation on mines.

Sir Sydney CHAPMAN *resumed the Chair.*

THE CHAIRMAN asked the Committee to vote on the deletion requested by the Polish delegation of the following passage in the report : " so that, in practice, the administrations concerned would merely have to ascertain whether these conditions did in fact exist ".

The passage was deleted by fifteen votes to seven.

SIR PERCY THOMPSON *(British Empire)*, referring to the passage in the report which alluded to the " vital economic resources of the country " and to the question of means of communication, said that he would propose a text on this subject when the text of the Protocol was under examination.

M. SAKANE *(Japan)*, referring to the paragraph concerning the protection of the national flag, said that the name of his country should be removed from the list of delegations which had supported the arguments recorded.

M. SANDSTROEM *(Sweden)* desired to know when the Committee would examine the Swedish delegation's amendment concerning the acquisition of vessels and the question of the nationality of the managing owners.

THE CHAIRMAN replied that this question would be examined in connection with the report on Article 7.

M. YOUPIS *(Greece)*, M. LINANT DE BELLEFONDS *(Egypt)* and M. BENTZON *(Norway)* asked that the names of their respective countries should be added to those contained in the paragraph concerning the protection of national flags.

Article 10 : *Discussion of the Text proposed by the Sub-Committee.*

Paragraph 1.

M. DE BEREZELLY *(Hungary)* agreed with the Netherlands delegation that all questions of the application of the rules of private international law should be exclusively reserved of the Hague Conference. On the other hand, he still maintained that it would be preferable to keep

to the former wording submitted by the Hungarian delegation, which was to the following effect : " The nationals of each of the High Contracting Parties shall have the right of acquiring, possessing or leasing . . . no modification or restriction of any sort being permitted in this respect ".

M. POLITIS *(Greece)* recalled that this amendment had been rejected at the first reading. Did the Committee intend to reverse its previous decision ?

M. OBREMSKI *(Poland)*, while agreeing with the representative of Hungary, on the substance of the matter, did not think that the objection to which he had alluded would be eliminated by the adoption of the text which he had just suggested. He believed that the French delegation was about to submit a suitable form of words.

M. PILLAULT *(France)* said that the text to which the Polish delegate alluded was at the moment in the hands of the Drafting Committee.

M. PEROUTKA *(Czechoslovakia)* proposed that the text adopted by the Committee on the previous day should be maintained.

The amendment of the Hungarian delegation was rejected by fifteen votes to eight.

M. DE NICKL *(Hungary)* said that another question arose in connection with the text of paragraph 1. It had been decided to delete Article 18 of the draft of the Economic Committee. It had been maintained that, as Article 18 was of general application, it would be necessary to examine, when each article came up for discussion, whether some special provision should not be introduced into the text of the Convention. In view of the fact that Article 10, as adopted, referred to questions of private international law, it would be necessary, he thought, to return to the former provisions of Article 18. He therefore proposed an amendment consisting in the addition to Article 10 of the following paragraph :

> " It is understood that the present Convention in no way affects existing conventional obligations guaranteeing more favourable treatment than that provided for in the Articles of this Convention."

M. POLITIS *(Greece)* feared that the Committee might be drawn into a long discussion if it considered Article 18 in connection with Article 10. It would be sufficient to state in the report that the question had been raised in order that the attention of Committee D might be drawn to it.

M. PUSTA *(Estonia)*, without wishing to open a new discussion, said that Article 18 had been definitely deleted. Whether Committee A or another Committee examined it, he thought it indispensable to discuss the usefulness of a clause of the nature of that proposed by the Hungarian delegate.

THE CHAIRMAN pointed out that Committee A had received no authority from Committee D to examine the question. Any delegation was, however, free to present an amendment.

M. POLITIS *(Greece)* said that it would be difficult to come to a decision on the question raised by the Hungarian delegate without at the same time dealing with the problem of the most-favoured-nation clause, which, in paragraph 2 of Article 18, had formed the complement of the provision of paragraph 1 of the same article.

The amendment of the Hungarian delegation was rejected by fourteen votes to seven.

Paragraph 2.

No observations.

Paragraph 3.

M. POLITIS *(Greece)* recalled that a number of delegations had asked for the deletion of the word " certain " in the passage " the acquisition by foreigners of certain immovable property or undertakings ".

Estonian Amendment.

M. PUSTA *(Estonia)* proposed to complete the phrase as follows : " the acquisition, *enjoyment and possession* by foreigners . . . ".

M. CHOUMENKOVITCH *(Yugoslavia)* insisted upon his request that the word " certain " should be deleted. He referred to the passage in the report where allusion was made to the request put forward by the Mexican delegation. This request referred to an extension of the right of prohibition to cover " a zone 100 kilometres in length along the frontier and 50 kilometres along the seashore " and it had been rejected. The Committee was faced with two systems : the Mexican system, which might be called territorial and according to which all property situated in a certain district might be regarded as affecting the security or national defence of the country, and the system adopted by the Committee, which had regard to the *nature* of the property. The

result of this system had been the use of the adjective " certain " in connection with the word " property ". In Yugoslavia a territorial zone of 50 kilometres along the frontier existed in which all property was considered as of interest to the security and national defence of the territory and in regard to which a number of reservations was applied. The delegation of Yugoslavia wished to know whether paragraph 3 of Article 10 covered the legislation of his country in this respect. The system adopted by the Committee was more restrictive in this sense in that it allowed a country to prohibit the acquisition of immovable property which might be 200 or 300 kilometres away from the frontier, but situated near a fortress or a munitions factory. The system was wider, however, in the sense that it did not authorise the prohibition to acquire certain immovable property which might be situated quite close to the frontier. In proposing the deletion of the word " certain ", the intention of the Yugoslav delegation had been to make sure that States could require a previous authorisation for allowing a foreigner to acquire any immovable property affecting the security or national defence of the territory — either owing to its territorial situation or for other reasons — if the security or national defence of the territory was at Stake. He asked that the report should contain an interpretation according to which the State itself should be the sole judge as to what concerned the security or national defence of the country.

M. PUSTA *(Estonia)* agreed with the representative of Yugoslavia that it was inadvisable to retain the word " certain ". He had proposed the addition of the words " enjoyment and possession ", because the provisions of paragraph 3 must conform with Estonian legislation, according to which a number of districts were considered to be prohibited to foreigners for reasons of national security.

M. POLITIS *(Greece)* thought that the case referred to by the Yugoslav delegate would be covered by the wording of paragraph 3, whether or not the word " certain " were maintained. What was essential was that countries must have a reasonable motive for imposing this prohibition. This was the crux of the matter. A State must not be allowed to prohibit a foreigner from acquiring any immovable property situated in any part of its territory. On the other hand, the prohibition was justified from motives of security or national defence. In regard to the question as to how far States should be left free to use their own judgment in this matter, the Conference must show itself to possess very definite views. The representative of Yugoslavia had said that States should be relied upon not to apply such measures of prohibition capriciously and without serious reason. It was indeed to be hoped that no cases of abuse would occur, but, if they did, provision must be made for the question to be examined by some authority ; otherwise, if no form of control were accepted, the result would be a general measure authorising prohibition, and it would therefore be better, as the Rapporteur had already pointed out, to adopt the opposite proposal to the one under discussion.

M. CHOUMENKOVITCH *(Yugoslavia)* was satisfied with the interpretation which M. Politis, with his distinguished authority, had given to the rights which a State possessed to require a foreigner to obtain authorisation before acquiring immovable property. The difficulty arose in regard to possible abuses. According to the Rapporteur, some authority must decide in regard to questions of abuses and that authority must certainly be the Permanent Court at The Hague or a court of arbitration. A country with such restrictions in its legislation would therefore find itself faced with a situation in which it would have to submit its internal laws to examination by a court of arbitration. The Committee would remember that, in the case of rural property, the Committee had agreed to allow a prohibition upon its acquisition by foreigners to be imposed for the reason that a number of countries had stated that this measure was part of their constitution. If the legislation of a country laid down restrictions touching, for example, the frontier zones, would not this be sufficient to prevent that country from being called before a court of arbitration ? If a phrase were added to this paragraph of the report referring to the legislation of the country, the necessary guarantees would be obtained, for it was obvious that a country would not go so far as to make laws to satisfy its own caprices. Should it do so, the matter would be much more serious.

M. POLITIS *(Greece)* noted that, according to the Yugoslav delegate, a State deciding upon prohibition would not need to give its reasons and that the prohibition against a foreigner acquiring property would be allowed whenever a provision of this kind was contained in the legislation of the country. In such circumstances the article became unilateral. This was a possibility, but, if the Committee agreed with this view, it must say so quite clearly.

M. CHOUMENKOVITCH *(Yugoslavia)* said that such was not his intention.

M. POLITIS *(Greece)* asked the Yugoslav delegate to submit a formula which would embody his view. If it was desired to avoid all control and say that it was sufficient to refer to the legislation of a country, the door was opened to the imposition of a general prohibition. It was for the Committee to take a decision in the matter.

The Estonian amendment was adopted by twelve votes to ten.

Paragraph 3 was adopted with this amendment.

Paragraph 4.

M. OBREMSKI *(Poland)* asked what authority would be called upon to decide whether the acquisition was likely to result in the " obtaining of undue command of the vital economic resources of the country ".

M. POLITIS *(Greece)* said that this observation was connected with those of the Yugoslav representative. There was an increasing tendency to regularise international relations, but, if the rules adopted with this object were to have any value, their application or interpretation in

cases of difficulty must be submitted to some determining authority. If the regulations were left to the free decision of each of the parties concerned, they became useless. Such difficulties occurred in connection with all international problems. To the question who was to be the determining judge in the matter, it was possible to reply that, if a country imposed a prohibition for obviously justifiable reasons, no difficulty would occur. If the contrary were the case and the prohibition were called in question, the matter would be settled by a judge, and the arbitration clause would be applied in this as in other conventions.

THE CHAIRMAN concluded that, if a question were raised in this matter, it should be in connection with Article 22 of the present draft.

SIR GRANVILLE DE LAUNE RYRIE *(Australia)* submitted an amendment on behalf of the Australian delegation to the following effect (Annex A, 30) :

> " The High Contracting Parties also reserve the right to prohibit foreign nationals acquiring public lands from the State either by direct or indirect purchase or lease."

He added that it was merely a question of providing a measure of protection for the High Contracting Parties which possessed certain State lands or Crown property. There was a generally admitted principle in this connection to the effect that participation in the profits derived from property belonging to the community could be limited to the members of the community. The fact that Governments limited these profits to a certain category of persons was not in the nature of a discrimination against persons excepted from those profits. The amendment meant that the right to dispose of the land in question must be left to the State in which the territory was situated. He considered that the insertion of a paragraph to this effect was of vital necessity to many countries, especially those which were in the first stages of their development.

M. POLITIS *(Greece)* asked the representative of Australia whether he would be satisfied by an interpretation inserted in the report in the sense of his amendment. He thought it useless to add such a provision to the text of the Convention, for, as a State was the owner of its own lands, it was free to dispose of its property as it pleased.

SIR GRANVILLE DE LAUNE RYRIE *(Australia)* was satisfied with the proposal that this interpretation should be included in the report.

Paragraph 5.

In reply to M. de la Vallée Poussin, M. POLITIS *(Greece)* explained that the conditions required to authorise the acquisition by foreigners of immovable property, mines and undertakings must be defined by the laws or regulations of the country. It was only in connection with mines that it was laid down that these laws and regulations must have already existed at the date of the signature of the present Convention. The text might perhaps be changed in order to make it clearer by dividing it, if necessary, into two parts.

M. DE LA VALLÉE POUSSIN *(Belgium)* proposed an amendment to the effect that, after the words " by the laws or regulations of the country" another phrase should be inserted to the following effect : " in cases where the reservation applies to mines, the High Contracting Parties must, etc. . . ".

M. POLITIS *(Greece)* accepted this formula.

Amendment proposed by the Delegation of Salvador.

M. GUERRERO *(Salvador)* asked that the end of paragraph 5 following the words " laws and regulations of the country " should be deleted. The present text seemed to penalise countries whose present legislation was liberal and there would be two classes of States, one class whose legislation already contained the prohibition imposed on foreigners to acquire property. This class would find themselves in a position of advantage as compared with countries which had a more liberal legislation, and which had not yet contemplated imposing such restrictions.

M. DE NICKL *(Hungary)* suggested that the words " at the date of the signature of the present Convention " should be replaced by the words " at the date of the ratification of the present Convention ".

M. POLITIS *(Greece)* pointed out that, with this amendment, countries would wait before ratifying the Convention to see what would be the system adopted by the other contracting parties. This would mean that the Convention might never be ratified. Under the present text, however, when the bill for ratification was submitted to a Parliament, it would know in what position it would be in relation to other countries which had signed the Convention.

The Committee should stop at the proposal of the delegate of Salvador. There were countries whose mining legislation was still in embryo owing to the fact that their economic and industrial development was not very far advanced. Those countries might, however, adopt a more developed mining legislation later, and they would therefore be in a position of inferiority if they accepted the regulations contained in paragraph 5. The Committee, however, was free to admit such regulations.

The CHAIRMAN put to the vote M. Guerrero's amendment which was to delete the end of paragraph 5 following the words " laws or regulations of the country ".

This amendment was adopted by twelve votes to five.

Protocol ad *Article* 10, *Paragraphs* 1 *and* 2.

No observations.

Paragraph 3.

M. MAYER *(Austria)* thought that the draft proposed in this paragraph of the Protocol went further than the suggestions made on the previous day to the Committee. There was no question of granting countries the right to prohibit the acquisition of vessels flying the national flag, but of authorising them to lay down the conditions in which a vessel, acquired by a foreigner, could continue to fly the national flag.

M. POLITIS *(Greece)* replied that there were countries in which the legislation, temporarily adopted, prevented the sale of national vessels. This was not the question dealt with in paragraph 3 of the Protocol, which aimed at a more generally admitted regulation in accordance with which a vessel flying the national flag must entirely or partly belong to nationals. The present Convention, which laid down in principle equality of treatment, must not allow a foreigner to contravene this regulation. It could be explained in the report that this paragraph did not make it possible to denationalise a vessel, but allowed States the right to prohibit such denationalisation.

M. SAKANE *(Japan)* recalled that the Japanese delegation had submitted a proposal involving reciprocity. According to that proposal Japan, for example, would have the right to prohibit the acquisition of vessels by foreigners whose countries prohibited Japanese subjects from acquiring their vessels. The report alluded to the question, but the text of Article 10 itself contained nothing on the matter.

M. ALTSTOETTER *(Germany)* noted that the provision concerning the question of the national flag had been the result of a British proposal which had been amended after explanations by Dr. Martius. He was under the impression that these explanations had followed the observations of the delegate for Austria, and he reserved the right of the German delegation to submit an amendment at the Plenary Conference.

THE CHAIRMAN said that the Rapporteur would add a passage to the report in order to prevent a misunderstanding. If this passage did not give satisfaction to the German delegation, it would be free to raise the matter at the Plenary Conference.

M. DE NICKL *(Hungary)* wished to make a statement in regard to Article 10. The Hungarian delegation had serious misgivings as to the wording of that article. As the amendment submitted by the Hungarian delegation had been rejected, it asked the Chairman to submit this amendment to the Committee dealing with Article 18 or to any other appropriate Committee, for it was under the impression that the provisions for which it pressed were indispensable in the interests of the Convention itself. If such a provision was not to be included in the Convention, the Hungarian delegation could not recommend its Government to sign it, for the Convention would be gravely defective.

THE CHAIRMAN said that he would submit this amendment to Committee D.

M. SANDSTROEM *(Sweden)* noted that paragraph 3 of the Protocol might be interpreted to mean that foreigners were prohibited from acquiring vessels and aircraft. This was going too far. The objection might be removed by adopting for paragraph 3 a provision similar to the Swedish proposal concerning Article 7. This proposal had consisted in stating that Article 7 in no way affected the right of the High Contracting Parties to regulate the protection afforded by their national flag, it being understood that the conditions imposed would apply to the nationality of the owner.

THE CHAIRMAN thought that it would be preferable to raise the question at the Plenary Conference if the new draft of the report did not satisfy the Swedish delegation.

M. SANDSTROEM *(Sweden)* pointed out that paragraph 3 of the Protocol *ad* Article 10 did not allude to the question of the nationality of the shipowner.

SIR PERCY THOMPSON *(British Empire)* proposed, in conformity with the observation contained in the report, to add the following paragraph to the Protocol :

> " The expression ' vital economic resources of the country ' used in paragraph 4 of Article 10, includes systems of communication, such as the telephone, telegraph and wireless telegraphy systems."

This proposal was adopted.

M. OBREMSKI *(Poland)* suggested that the Chairman, if he thought well, should draw the Drafting Committee's attention to the fact that it was somewhat curious from the legal point of view to state in the first paragraph of Article 10 that the nationals of the High Contracting Parties would be placed on a footing of equality with nationals without any restrictions of any kind, while restrictions were stipulated in paragraphs 2, 3, 4 and 5 of the same article.

THE CHAIRMAN replied that he would refer this question to the Drafting Committee.

56. **Article 7 and Protocol ad Article 16. Question of Insurances.**

THE CHAIRMAN recalled that, at the morning meeting, it had been decided, in regard to the question of insurances, that a provision should be inserted both in Article 7 and in the Protocol *ad* Article 16. He had asked a number of delegations to agree on a common text. In this text it was proposed to add to the list of reserved occupations contained in the second paragraph of Article 7 " insurance business conducted by individual contractors ", and to add to the Protocol *ad* Article 16 a provision to the following effect :

" It is understood that the High Contracting Parties remain free :

" *(a)* To make the activities of foreign insurance undertakings in the territory subject to previous authorisation involving conditions and guarantees other than those required of national undertakings, provided that these conditions and guarantees shall in no case be such as to prevent the said insurance undertakings from carrying on their business in normal economic circumstances."

SIR PERCY THOMPSON *(British Empire)* thought that as Article 16 would apply the provisions of Article 7 to companies, the effect of the proposal would be that foreign companies could be excluded from all insurance business.

M. CARAVALE *(Italy)* thought that the two provisions could be combined in one Protocol. The provisions in question would be called " Protocol *ad* Articles 7 and 16 " and would stipulate in paragraph *(a)* that it was clearly understood that the carrying on of insurance business conducted by individual contractors was reserved. The other provisions would be placed in paragraph *(b)*. In this way it would be possible to avoid any uncertainty as to interpretation which might arise from the fact that Committee C had decided that the provisions of several articles, including Article 7, should be applicable to companies, provided they covered the activities allowed to foreign nationals considered as physical persons.

M. SANDSTROEM *(Sweden)* agreed with the observations of the British delegate. He proposed to accept only an addition to the Protocol *ad* Article 16. The insertion of the proposed phrase in Article 7 was useless, for the State prohibiting the carrying on of an insurance business conducted by foreign individual contractors might also impose this prohibition on national individual contractors. The case was therefore covered by Article 7 which laid down national treatment for foreigners.

M. YOUPIS *(Greece)* explained that the delegations, meeting in committee, which had drawn up the present text, after having taken into consideration the discussions at the morning meeting, had reached the conclusion that it would be useful to draw a distinction between insurance business carried on by individual contractors and insurance business carried on by companies. The former kind of insurance was fairly rare, and its exercise would be a secondary consideration. Each State might either allow foreigners to carry on individual insurance business, or else impose any conditions which they might think fit. For that reason the matter could be referred to in Article 7, which dealt with the question of reserved occupations and professions.

The question was different in regard to companies, that was to say, in the most frequent case met with as far as insurance business was concerned. He thought that there would be no conflict between Article 7 and the Protocol *ad* Article 16. The adoption of the proposal of the small committee would not give rise to any difficulties in future.

M. SCHUMANS *(Latvia)*, in view of the legislation in his own country, proposed to add to the list of reserved occupations in Article 7 " the carrying on of direct insurance business of any kind ". Indirect insurance, reinsurance, etc., were for the moment allowed to foreigners in Latvia, but not direct insurance. If the Committee adopted this proposal, the addition proposed to the Protocol *ad* Article 16 might be abandoned.

DR. MARTIUS *(Germany)* said that, from what he knew of the work of Committee C in regard to Article 16, an addition proposed to the Protocol of that article might not be very clear. He could not, therefore, vote in its favour. In his view, the present text would satisfy all delegations.

THE CHAIRMAN noted that there were two opposite views. Either the principle contained in the addition proposed to the Protocol *ad* Article 16 could be adopted — if the Committee adopted this principle, it could leave the Drafting Committee to make the application of Article 7 and of Article 16 possible simultaneously — or a provision could be inserted in Article 7 as suggested by the German delegation. No addition should be made to Article 16, for the wording adopted by Committee C in regard to that article appeared sufficient.

M. SCHUMANS *(Latvia)* considered that there were three solutions :

(1) To reserve the question of insurance business conducted by individual contractors ;
(2) To admit the transaction of this kind of business ;
(3) To reserve the transaction of direct insurance business of all kinds.

This was the Latvian proposal.

If the Committee would first examine the Latvian proposal and adopt it, the problem of settling the question of insurance business conducted by individual contractors would no longer arise.

M. YOUPIS *(Greece)* proposed to decide first on the insertion in Article 7 of the words covering the less important case — that was to say, the case of individual contractors. The vote on this point would in no way prejudice the decision in regard to insurance by companies which might have to be discussed at greater length.

M. BALLI *(Switzerland)* said that he could not accept the Latvian proposal owing to the present legislation in force in Switzerland.

M. DE LA VALLÉE POUSSIN *(Belgium)* urged that the transaction of insurance business by individuals should be the subject of an express and distinct provision in Article 7. The provision related to a question distinct from that of insurance business carried on by companies whose case would be dealt with in the Protocol *ad* Article 16. Insurance business transacted by individual contractors gave rise to grave abuse, and this kind of activity should be considered as a profession. Its case must therefore be settled in the article dealing with the exercise of professions and not in the Protocol.

SIR PERCY THOMPSON *(British Empire)* warned the Committee of the consequences which its decision might have on the other provisions of the Convention. If it were desired to settle the case of individual contractors by including their activities in the list of reserved occupations, it should not be forgotten that Article 7 also referred to companies. The decision of the Committee might therefore have the effect of preventing foreign companies from carrying on any insurance business. As regards the text submitted to the Committee he had to point out that it did not cover the case raised by the British delegation concerning " industrial assurance " —that was to say, life assurance, the premiums in respect of which were received by means of collectors and payable at intervals of less than two months.

THE CHAIRMAN thought that all members would agree that, if the proposed addition to the list of reserved occupations in Article 7 was made, it must be clearly stated that it did not apply to companies.

M. DE LA VALLÉE POUSSIN *(Belgium)* pointed out that the wording of the proposed insertion in Article 7 excluded companies.

THE CHAIRMAN asked the Committee to vote on the text proposed for insertion in Article 7, it being understood that it would not apply to companies.

The text was adopted by twelve votes to one.

M. YOUPIS *(Greece)* emphasised the necessity of adding to Article 16 a Protocol dealing with companies drafted in accordance with the proposals of the small committee of delegations. It was obvious that States must be allowed to lay down conditions governing the authorisation granted to foreign companies to carry on insurance business. The legislation of certain States, for example, required foreign insurance companies to have a representative of the nationality of the country in its territory. The legislation of other countries required foreign companies to pay an additional deposit. This was to be explained by the fact that the capital of these companies was situated abroad. The German delegate had urged that the text of Article 16 was sufficient. Even, however, if this were the case, and even if the proposed provision did not differ from the text of Article 16, the position would be made clearer by the addition recommended by the small committee of delegations.

To cover the case referred to by the British delegate, either paragraph *(b)* could be added, or the British delegation might be left to make a reservation in regard to the kind of insurance in question, which was a somewhat special case. There was, further, an Italian proposal, reserving workers' accident insurance.

DR. MARTIUS *(Germany)*, as Chairman of Committee C, said that, in his view, the special provisions covering insurance companies were superfluous. As representative of Germany, he explained that his country possessed a fairly strict system of control over insurance. His Government, however, considered that the text of the Economic Committee, adopted by Committee C, was entirely satisfactory. The present proposal was somewhat obscure. He did not understand whether, in the case of insurance companies, the intention was to respect or to enlarge the provisions adopted for companies in general. He would have to make a reservation if this text were adopted, either in whole or in part. It would not be possible to examine so difficult a problem in detail, but the present proposal only complicated the situation instead of simplifying it. In his view, the best solution would be to delete the draft Protocol *ad* Article 16.

THE CHAIRMAN was under the impression that, in so far as the German delegation was concerned, the present text of Article 16 covered what was said in the draft Protocol.

DR. MARTIUS *(Germany)* replied that the text of Article 16 seemed to him to be clearer than the draft Protocol.

M. PEROUTKA *(Czechoslovakia)* recalled that he had asked at the morning meeting that sickness insurance should be added to industrial insurance.

The draft Protocol ad Article 16 was adopted by twelve votes to two.

The amendment of the Latvian delegation to Article 7 was rejected.

British Amendment.

SIR PERCY THOMPSON *(British Empire)* moved the addition to paragraph 2 of Article 7 of the following words :

" Industrial assurance business, i.e., the business of effecting assurance upon human life, premiums in respect of which are received by means of collectors and are payable at intervals of less than two months ".

THE CHAIRMAN asked whether this reserve applied only to companies or also to individual contractors.

SIR PERCY THOMPSON *(British Empire)* replied that the reserve applied to both.

THE CHAIRMAN thought that, in this case, the drafting of the text would have to be changed.

The British amendment was adopted.

The amendment of the Italian delegation, to the effect that workers' accident insurance should be added, was adopted.

The Czechoslovak amendment covering sickness insurance was adopted.

TWENTY-NINTH MEETING

Held in Paris, on November 29th, 1929, at 10 a. m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

57. **Examination of the Articles of the Convention: Article 11** :
Text proposed by the Legal Sub-Committee (Annex A, 31).

THE CHAIRMAN asked the Committee to examine the text proposed by the Sub-Committee, paragraph by paragraph.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur for the Sub-Committee, proposed to read each paragraph and to indicate the changes adopted in the text which made the draft proposed by the Sub-Committee differ from that in the " Brown Book ". He proposed finally to survey, at any rate, the principal amendments which had been rejected by the Sub-Committee. In this way, if delegations with amendments which had not been accepted did not press them, the matter might be considered as settled. If they insisted on their amendments, they would have an opportunity of explaining their views. The time of the Conference would then be economised.

He then read and commented on the text proposed by the Sub-Committee :

" *Paragraph* 1. — Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative duty."

The Committee adopted paragraph 1.

" *Paragraph* 2. — They shall also be exempt in the territory of the other High Contracting Parties, in peace time and in war time, from all compulsory military service, whether in the army, navy or air forces, or in the national guard or militia, and from all compulsory personal contributions in respect of services attaching to national defence. They shall similarly be exempt from all exactions, whether in money or in kind, imposed in lieu of personal services."

This new text contained a comparatively important difference from the text in the "Brown Book", a point which did not appear in any of the amendments that had been proposed. It was a new question which had not yet been touched upon. The difference between the two texts related to the third and fourth lines.

The words "all compulsory personal military contributions" had been replaced by "all compulsory personal contributions in respect of services attaching to national defence". The reason for this change was as follows. It had been pointed out that recent laws on the organisation of national defence provided for a class of contribution which was practically new in war time, namely, services required from the civilian population in the interests of the defence of the country. Under several recent laws on the organisation of national defence certain elements in the civil population were required to give the army certain assistance, for instance in the manufacture of arms and munitions. The words "*military* contributions" in paragraph 2 of the "Brown Book" did not appear to include this form of contribution. The Sub-Committee had thought that it was legitimate and even absolutely necessary to exempt foreigners from all military obligations. The same reasons held good for exempting them from all obligations in respect of civil services for the national defence of a country which was not their own. It was for this reason, in order to make the text quite formal on this point, and to remove the difficulties of interpretation to which the somewhat too limitative character of the term "military contributions" might give rise, that the Sub-Committee had substituted for it the words "compulsory personal contributions in respect of services attaching to national defence". An engineer, for instance, could under recent laws be requisitioned to direct a shop in a factory for arms, munitions or other implements of war. Under the new text of Article 11, however, these services could not be demanded of a foreigner. The Sub-Committee had rejected a certain number of amendments, the most important being one from the Italian delegation (Annex A, 21). The Italian delegation had proposed to insert after the words "or militia" the words:

> ". . .in so far as such service is not required of them by the State in the territory of which they are residing if, being natives of that State, they are, for that reason, still subject to military obligations towards that State."

The Italian delegation had had in view a provision in Italian law which said that an Italian who, before discharging his military obligations, lost his Italian nationality was assumed to have kept it in so far as concerned the discharge of his military obligations and in so far as his service had not been completely finished. The Sub-Committee had, by a very strong majority, decided against allowing this amendment. It considered that it would gravely prejudice the general principle of the exemption of foreigners from all military service. The serious character of such an exception would be realised by everyone. The Italian delegate had pointed out that, in practice, the cases in which the provision which he had proposed would apply were very rare. It was obvious that a change of nationality before the fulfilment of military service was comparatively rare. If, however, having regard to the provisions of Italian law, this exception was not of much practical importance, the Sub-Committee had nevertheless thought that, from the point of view of the general structure of the Convention, it constituted a very serious infringement of one of the essential principles which it should embody, namely a complete exemption from all contributions and from any kind of military service on behalf of a foreign State. The Sub-Committee had thought that, if the Italian delegation wished to press its point, it might raise it at a plenary meeting.

M. LANDUCCI *(Italy)* explained why the Italian delegation had submitted its amendment.

According to the laws of several countries, young men who had not done their military service and who acquired a new nationality did not lose their nationality of origin until they had complied with their military obligations.

The Italian law admitted that the acquisition of a foreign nationality involved the loss of Italian nationality. The Italian laws on recruiting, however, did not recognise this loss of nationality, and did not exempt the citizen who had lost his nationality from military service.

The addition proposed was, therefore, intended to avoid the possibility of a discrepancy between Article 11 of the Convention and the Italian law on the military obligations of Italian citizens.

M. PILOTTI *(Italy)*, Rapporteur, agreed with M. de la Vallée Poussin in thinking that it would be dangerous to alter the principle of Article 11. He would point out, however, that the adoption of the text of the Convention would involve for Italy the adoption of more restrictive legislation than she now possessed in regard to nationality. He thought that the difficulty might be solved by allowing the Italian delegation to make a reservation, and consequently he asked whether M. Landucci would accept this compromise solution.

M. LANDUCCI *(Italy)* agreed to formulate a simple reservation to Article 11.

Dr. MARTIUS *(Germany)* pointed out that this article was connected with the grave problem of nationality, and he was convinced that the Conference on the Codification of International Law, which was to be held at The Hague in March, would have to deal with it.

The question had, moreover, been settled in a large number of bilateral treaties. He thought that, in any case, it would be a dangerous precedent to take account of the requirements of any particular law by means of a special provision in the Convention. In his opinion even the

suggestion for a special reservation by the Italian delegation would be going too far. In any case, the German delegation would have been unable to accept the addition of the Italian amendment to the article.

M. DE BEREZELLY *(Hungary)* thought, on the other hand, that the question was a simple one of double nationality. There was no question of imposing military service on a foreigner. There was no provision in public international law specifying that a foreigner who acquired a new nationality lost his nationality of origin. The Italian Government therefore was fully entitled to impose military service on an Italian subject even when he had acquired a new nationality. The case was not a rare one. There were many instances of double and even of triple nationality. The Hague Conference had considered the question from the point of view of marriage and had come to the conclusion that the law of the nationality of origin should hold good. It seemed even that there was no necessity to make a reservation to paragraph 2 of Article 11.

M. LANDUCCI *(Italy)* pointed out that it had been found necessary to introduce into bilateral treaties concluded with certain States the reservations which they demanded for insertion in their conventions. He urged therefore that the Italian reservation should appear somewhere, since its abandonment might place Italy in a position of inferiority as regarded countries which did not recognise the loss of the nationality of origin.

M. PILOTTI *(Italy)*, Rapporteur, thought that, as the question had been raised, it deserved to be settled. The question was not one of double nationality but that of the acquisition of a foreign nationality in order to evade military service in the country of origin. No change in Italian law on this point was to be expected.

In reply to Dr. Martius, he explained that the sixth basis of discussion for the Hague Conference was framed as follows :

> " In principle, a person who, on his own application, acquires a foreign nationality thereby loses his former nationality. The legislation of a State may, nevertheless, make such loss of its nationality conditional upon the fulfilment of particular legal requirements regarding the legal capacity of the person naturalised, his place of residence, or his obligations of service towards the State ; in the case of persons not satisfying these requirements, the State's legislation may make the loss of its nationality conditional upon the grant of an authorisation."

This text would justify the Italian law and would recognise that the military obligations of an Italian subject who had acquired a foreign nationality remained intact so long as he resided in Italy. He thought that this was a case where a reservation, if ever allowed, should be formulated.

M. GRONEMEIYER *(Netherlands)* shared the opinion of Dr. Martius and the Belgian delegation. The situation in the Netherlands was more or less the same in regard to Netherlands subjects who had acquired a new nationality before fulfilling their military services. This was a question to be settled by bilateral treaties, having regard to the similarities or differences of the laws of the countries concerned.

He thought that the present Italian recruiting law was possibly an old one which might be modified.

M. PILOTTI *(Italy)*, Rapporteur, thought that, if the Italian law were modified, it could only be in a restrictive sense. He pointed out that there was no verification of the loss of nationality. There would be a danger of further cases of double nationality and it was certain that the bilateral treaties on the question would retain their full force whatever decision might be taken.

M. GRONEMEIYER *(Netherlands)* thought that the subject of a country who renounced his nationality of origin thereby renounced the rights conferred upon him by that nationality, and he wondered why he should not be free to renounce at the same time his duties, in particular his military duties.

THE CHAIRMAN pointed out that questions of nationality were outside the scope of the Conference. He proposed, in consequence, the insertion in the Protocol of a clause specifying that the Conference had not studied the question and that Article 11 had been adopted without prejudice to questions of nationality, with which the Conference was unable to deal.

DR. MARTIUS *(Germany)* agreed with this proposal.

M. LANDUCCI *(Italy)* would prefer that the clause in question should say that the article did not in any way prejudice the special laws existing in certain countries, since not only the laws relative to nationality were involved.

DR. MARTIUS *(Germany)* thought that the reservation asked for by the Italian delegation might be accepted provided that it was framed in such terms that it would not in any way prejudice the definition of the general problem. This problem would undoubtedly be debated at The Hague, since hitherto agreement had been found only on the basis of discussion quoted by M. Pilotti.

THE CHAIRMAN said that the Rapporteur would be instructed to find a satisfactory formula.

M. GUERRERO *(Salvador)* thought that the Italian delegation was perfectly entitled to formulate a reservation. In his opinion this was one of the most typical cases in which a reservation was required. He did not, however, think that the Italian delegation could press for the insertion of its reservation in the text of the article. It would have to formulate its reservation at the time of signature of the Final Act.

M. DE LA VALLÉE POUSSIN *(Belgium)*, resuming his explanations, observed that the Sub-Committee had also rejected an amendment by the Netherlands delegation (Annex A, 19). The object of this amendment was to modify the first sentence of paragraph 2 as follows :

" *(a)* Modify the first sentence as follows : ' The nationals of the High Contracting Parties *who are foreigners according to the laws of the other High Contracting Party shall similarly be exempt*. . .'

" Instead of ' all compulsory military service ' say ' from all compulsory *personal* service '.

" *(b)* At the end say, in the French text, ' de tel service ' instead of ' de telles prestations '."

The purpose of this amendment was to determine the law under which the nationality of a person called up to perform his military service was to be judged, and the Netherlands delegation proposed that it should be laid down that his nationality was to be determined according to the law of the country on whose territory he found himself. The Sub-Committee had rejected this amendment as superfluous. The difficulty which it was intended to meet did not exist, since it was always their own law which the authorities, responsible for recruitment, would apply in deciding whether a man called up for service was a national or not. In fact, there were merely two quite simple cases: either the laws of the two countries concerned were the same in regard to nationality in this case there was no conflict or the two legislations did not follow the same principle. There would then be two possibilities. Either the two countries would have a Convention stating in which of them persons whose nationality was in doubt should perform their military service, or there would be no convention, and in this case the law to be applied would necessarily be that of the country in which the individual in question resided. The addition of the words proposed by the Netherlands delegation was therefore useless.

M. GRONEMEIYER *(Netherlands)* explained that, as a result of the discussion in the Sub-Committee, the Netherlands delegation agreed to withdraw its amendment, provided that mention was made of it in the report.

THE CHAIRMAN noted that the Committee agreed to include in the report a mention of the Netherlands delegation's amendment.

M. DE LA VALLÉE POUSSIN *(Belgium)* drew attention to another amendment also connected with paragraph 2 and proposed by several of the Latin-American delegations (Annex A, 30). The and all proposal was to add to paragraph 2 a sub-paragraph to read as follows :

" Nevertheless, they the foreigners may be obliged, under the same conditions as nationals, to take part in the services organised with a view to combating fires, natural catastrophes perils not due to war."

The Sub-Committee had thought that this amendment should not be included in the Convention, first because it considered it useless and, secondly, for the reason already mentioned in connection with other amendments, namely, that it risked deforming the structure of the provisions of Article 11. The great merit of Article 11, and it was a merit which must be retained, was that it determined with great precision the four subjects to which it applied, so that there was no danger of confusing them with other matters, and that its field of application was clearly defined. Paragraph 2 dealt with all matters touching military obligations. This term had a quite definite meaning in all cases and it was quite useless, and probably confusing, to mention the performance of services which were not of a military kind, such as assistance which might be required from inhabitants in the case of disasters or public calamities, ravages of all kinds such as fire, floods, etc. The movers of the amendment had advanced, among others, the argument that a similar provision was to be found in the conventions concluded by the Pan-American Conference. This argument was of no very great value. It was quite possible that this provision was of use in the Pan-American Conventions. That depended on its wording, but it was certainly of no use in the present Convention, since there could be no possible confusion. A provision of the kind might be regarded by the military authorities as discourteous to them and implying that their services might easily be ranked with those of a fire-brigade.

M. GUERRERO *(Salvador)* thought that Article 11 was the right place for the amendment proposed by the South-American delegations. The principle of the amendment had been adopted by all countries in Latin America, and was based on a sentiment of justice. Foreigners benefited by the advantages resulting from their residence in the country where they lived, and it was natural that they should co-operate in any efforts made to protect the country, and, in consequence, their own interests. It should be clearly laid down that, if foreigners were, as was perfectly natural, exempt from military obligations, they could not evade obligations which might be required of them in combating calamities which threatened both nationals and foreigners alike.

DR. MARTIUS *(Germany)* laid stress on the complexity of the problem. The services which the American delegations proposed to demand from foreigners in cases of grave peril presented an entirely different question from that of military obligations. True, in certain bilateral treaties, military obligations and the performance of certain services in case of need were dealt with in the same paragraph. The amendment by the South-American delegations was entirely justified, but it might lose its force if there were introduced in paragraph 2 an exemption for foreigners from compulsory labour. Dr. Martius therefore was prepared to adopt the amendment, provided that it was clearly specified that foreigners were exempt from all public labour, including cartage.

M. DE LA VALLÉE POUSSIN *(Belgium)* replied that the Committee was unanimous on the substance of the question. It was natural, and even a duty to humanity, that foreigners should take their share in the common defence in case of public disasters. There was no need for this stipulation to be formulated expressly. It followed, *ipso facto*, from the text of the Convention as framed by the Economic Committee.

Paragraph 2 said that foreigners were exempt from all military service. In the case, therefore, of a service which was not a military service, each State retained the right to impose on foreigners certain obligations, which it considered useful, and on this matter there could be no possible doubt. If a State thought that it should include in its laws a stipulation that foreigners would be required on the same footing as other inhabitants to give help in case of public disasters or calamities, it was perfectly free to do so. There could be absolutely no question of that, and any arrangements which might have been made in this connection between the various States represented at the Conference would subsist. The States would be able to conclude further arrangements and to settle the matter at their own discretion. The fact that paragraph 2 referred only to military obligations, and that the co-operation of the entire population in combating public disasters and calamities was not in the nature of a military service was absolutely unquestionable. Consequently, the text proposed gave complete satisfaction on the point of substance.

M. GUERRERO *(Salvador)* nevertheless urged that the point should be explained in definite terms in the article.

DR. MARTIUS *(Germany)* proposed, after the word " militia ", to insert the following words : " all compulsory public labour, including cartage ". In this case he was prepared to support M. Guerrero's amendment.

M. LINANT DE BELLEFONDS *(Egypt)* could not altogether accept Dr. Martius' proposal, since it should be clearly indicated that only service of a military character could not be exacted from foreigners. There were certain cases in which the entire population must take part in the common defence. In Egypt, for instance, in the case of Nile floods, the Government would have no hesitation in demanding the help of foreigners for cartage if this were thought necessary.

DR. MARTIUS *(Germany)* agreed with the Egyptian delegate's observation, and proposed the addition of the word " floods " in the amendment moved by M. Guerrero.

M. LINANT DE BELLEFONDS *(Egypt)* could not agree to this suggestion, since it was not only in case of floods that certain services would be required from foreigners. as well as from the rest of the population, but also when there was a menace of floods.

M. GUERRERO *(Salvador)*, at the request of the Chairman, revised his amendment, which would read as follows : Insert at the end of paragraph 2 :

> " Nevertheless foreigners may be subjected under the same conditions as nationals to any necessary and temporary services organised for the purpose of protecting their place of domicile against natural catastrophes and perils not due to war."

M. POZNANSKI *(Poland)* thought that paragraph 2 as it stood gave a sufficient guarantee, since the services from which foreigners were excluded were restricted to services connected with national defence. It followed *vice versa* that all other services might be imposed on them in the case of measures to combat a public disaster. In his opinion the proposal submitted by Dr. Martius would add an entirely useless limitation to the text.

THE CHAIRMAN asked whether M. Guerrero would be content with a passage in the report giving an interpretation of the paragraph in conformity with his point of view.

M. GUERRERO *(Salvador)* replied that he would prefer to have the point included in the text of the article itself.

M. MAYER *(Austria)* thought that, if M. Guerrero's point of view were adopted, and if the text he had proposed were introduced into Article 11, the Conference would be taking up a problem which might prove endless. Foreigners had certain rights and certain burdens which were the natural consequence of their residence in the country. It was impossible to take all these rights and burdens one by one. Foreigners, for example, used the roads just as nationals did. There was a host of other cases in which the duties of foreigners were regulated by national law. It was impossible to make a detailed survey of them in the text of the article.

M. DINICHERT *(Switzerland)* asked M. Guerrero to indicate what, apart from natural disasters, were the perils covered by paragraph 2, but not due to war.

M. GUERRERO *(Salvador)* explained that his object was to allow the Government to make use of the services of foreigners, not when the disaster had actually taken place, but when it was still only a menace, as the Egyptian delegate had observed.

M. FLORES DE LEMUS *(Spain)* was prepared to accept the Economic Committee's text, since it was possible to deduce therefrom the right to impose on foreigners any obligations which might be thought necessary. The wording proposed by M. Guerrero would result in a limitation of the text of the article. It would be possible to infer from it that only the services mentioned in the article could be imposed on foreigners, and that they were exempt from any other services. A clause of that sort would entail radical changes in the Spanish administrative system, which prescribed certain obligations for foreigners living in Spanish communities on the same footing as for nationals. These obligations were imposed on them by reason of the fact that they had their domicile on Spanish soil. There was no question of catastrophes or disasters. They were normal and regular obligations imposed by local law. If M. Guerrero's amendment were accepted, he would be obliged to make a reservation.

M. DE LA VALLÉE POUSSIN *(Belgium)* replied that the observations which he had wished to make in reply to those who favoured the introduction of any amendment into the second paragraph of the article were very similar to the remarks offered by the Spanish delegate. He wished, however, to complete these remarks. Everyone would note that the Conference was unanimous in its opinion in regard to the substance of the question, that was to say, the fact that the exemption for foreigners referring to military service ceased to exist for all matters outside military service, and it was precisely because he was as strongly as possible in favour of M. Guerrero's idea that, in the very interests of that idea, he would urge M. Guerrero not to insert anything at all in paragraph 2. The most effective means of safeguarding the full right of the State to impose on foreigners, at times of public catastrophe, the same services as were required from nationals was to keep the text proposed. If the method proposed by Dr. Martius along with other delegates were adopted, namely, the insertion of a list of services which were not military, the result would be that the inferences which might be drawn from the existing text as a result of its silence would most probably be weakened rather than strengthened. Reference had been made to public disasters, to fires, to floods, and the Egyptian delegate had spoken of possible disasters. The list of services might be multiplied a hundredfold, without, however, covering everything. There were public misfortunes which were outside the domain of natural calamities. There were countries where brigandage existed, and where the inhabitants had to perform certain services as guards or on night watches. This was not a case of natural calamity. For this form of service, as for fires, floods, earthquakes, locusts, etc., it was perfectly legitimate that a foreigner should be required to help in the defence of property and public security along with the natives. Consequently there could be no doubt as to the meaning of the term " military obligations ", and he was convinced that the Convention completely assured the right of the States to take measures of this kind if nothing were added in the form of a list of obligations which were not of a military character.

THE CHAIRMAN requested the Committee to decide first on M. Guerrero's amendment. If that amendment were not accepted, the amendment proposed by Dr. Martius would be put to the vote.

M. DE LA VALLÉE POUSSIN *(Belgium)* added that he was opposed to the insertion of an amendment or a protocol, though he had no objection to mentioning in the report that the amendment relating to national calamities had been rejected for the very reason that the Committee had wished to safeguard in the most categorical manner possible the right of States to impose on foreigners in this connection the same duties of social solidarity as were required from natives.

The Committee decided to retain the text of the article as it stood by fourteen votes to twelve.

Italian Amendment.

M. PILOTTI *(Italy)*, Rapporteur, submitted the following formula for insertion in the Protocol :

" It shall he understood that the provisions of the present article do not affect questions relative to the acquisition or loss of nationality and the consequences thereof."

This amendment was adopted.

Paragraph 2 was adopted.

Paragraph 3.

M. DE LA VALLÉE POUSSIN *(Belgium)* said that the Committee proposed that paragraph 3 should be drafted as follows :

" Nationals of each of the High Contracting Parties established in the territory of another Party shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory

billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In cases of requisitioning, fair compensation shall be given. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals."

This text embodies two amendments to that contained in the "Brown Book". The first covered the requisition of movable objects. In the text of the Economic Committee the question of requisitions was covered only in so far as concerned owners of landed property. There was no mention of movable property. It would be agreed, however, that for the service of the army the right of requisition must also extend to movable property. For instance, among the first things requisitioned in time of national danger were motor-cars. The Economic Committee's draft left this question untouched. In the view of the Sub-Committee this was an omission, and an omission which would give rise to obscurity. Did the movable property of foreigners come under the right of requisition or not ? The Sub-Committee had unanimously agreed that the article should be drafted in such a way that there could be no question that the right of requisitioning applied both to the movable and landed property of foreigners. Several delegations, among them the Belgian delegation, had proposed amendments in this sense.

The second amendment consisted in the insertion, after the words " movable property ", of the sentence : " In cases of requisitioning fair compensation shall be given ". He would not for the moment develop the reasons for this modification, since a corresponding provision had been introduced in paragraph 4 in regard to expropriations, and it would be better, he thought, to explain the reasons which applied to both amendments once only in connection with paragraph 4. The problems involved were exactly the same in the two paragraphs and they raised certain particularly delicate questions. The amendments concerning fair compensation would accordingly be reserved until paragraph 4 was discussed. If the allusion to fair compensation were to be omitted from paragraph 3, it would obviously also have to be omitted from paragraph 4.

M. GUERRERO *(Salvador)* thought that the words " fair compensation shall be given " in the new text of paragraph 3 was big with consequences from the legal point of view. This clause, if introduced into the text of the Convention, would have the effect of transferring the right of jurisdiction whenever proceedings arose as to requisitioning. The dispute, instead of being brought before the national courts, would come under Article 22 and be brought before the Court at The Hague. No State would ever consent to the transfer of the right of jurisdiction in such a case outside the national domain. He proposed consequently that the word " fair " should be omitted.

M. PILOTTI *(Italy)*, Rapporteur, requested M. Guerrero to reserve his observations until the end of the discussion, as the question under examination for the moment was that of the words " movable property ". The question of compensation was moreover contained in paragraph 4. It was, of course, necessary for this question to be settled definitely.

M. POPESCU *(Roumania)* supported M. Guerrero's remarks. The Roumanian delegation could not agree to an amendment which would involve a change in the classic formulæ adopted in treaties. He urged further that the discussion should deal with the original text of paragraph 3, and not with the revised text of the Sub-Committee, since there were fundamental differences between the two texts.

M. POZNANSKI *(Poland)* asked what was the exact meaning of the words " established in the territory of another Party ". Paragraph 5 referred to the burdens on property and not on persons. Why did paragraph 3 mention " nationals established "? It might be concluded that only foreign nationals established in the territory bore the burdens in question. He might site the example of a Pole who passed three months in France and owned property there. Such a Pole could not be considered as established in France. Would the Government be prohibited from requisitioning his property ? In his opinion, the words " established in the territory " should be removed.

Dr. MARTIUS *(Germany)* supported M. Poznanski's observations.

He laid stress on the importance of the addition to the article of the words " movable property ". The question was whether requisitioning should apply to movable property. The text proposed by the Economic Committee was inspired by a spirit of progress. The Sub-Committee, however, had thought well to strike it out. The question was liable to unexpected developments with regard to ships and cargoes. The requisitioning of ships might, as a consequence, apply to their cargoes and the situation of fact which would thereby be created could be easily realised. The requisitioning of means of transport such as motor-cars was, of course, not without importance, but the Conference had not met in order to determine the rights which the States proposed to reserve to themselves in the question of requisitioning.

In conclusion, he must state that the text proposed by the Sub-Committee was unacceptable to the German delegation, unless the words " movable property " were omitted.

M. DINICHERT *(Switzerland)* said that his delegation was in favour of adding to the text the words " movable property ", seeing that requisitioning was only carried out in quite exceptional circumstances, and in this case foreigners must be subject to it on the same footing as nationals.

He fully understood the point raised by Dr. Martius, but thought that agreement might be achieved on the following text : " or movable property capable of being used for military purposes ".

M. MEYERS *(Netherlands)* said that the Netherlands delegation agreed to M. Dinichert's proposal. He nevertheless shared the German delegation's feeling with regard to ships and cargo and pointed out that the Netherlands delegation had proposed an amendment on the subject for insertion in the Protocol. This amendment was given in the text of the report.

THE CHAIRMAN requested the Committee to vote on the amendment for the omission of the words " movable property ".

The Committee decided in favour of keeping these words and agreed to omit the words " established in the territory of another Party ".

The Chairman requested the Committee to vote on the amendment proposed by the Swiss delegation.

M. POZNANSKI *(Poland)* asked whether the Swiss delegation would accept the wording " capable of being used for national defence ".

DR. MARTIUS *(Germany)* pointed out that it would be difficult to determine the cases which M. Dinichert intended to cover, seeing that, in war time, almost all movable property might be used for military purposes.

M. DINICHERT *(Switzerland)* explained that the object of his amendment was not to give a definition but rather a general idea of the character which requisitioning should have. There could be no question that certain movable property could not be used for military purposes.

M. PILOTTI *(Italy)*, Rapporteur, thought that the term " military " in the words " military requisitions " was a sufficient definition of the character of such requisitions. It would be difficult to imagine the military requisitioning of a pearl necklace. In principle, the reason determining the requisition would be a military object, and it seemed that the addition proposed by the Swiss delegate was superfluous in the text as it stood. In his opinion the term " military " would suffice.

M. DINICHERT *(Switzerland)* thought that it was desirable to avoid any ambiguous terminology which might always result in dangerous interpretations. The time was not distant when objects which were of no military value had been requisitioned by the military. It should be clearly laid down that objects which could not be used for the army should not be requisitioned. Further, it would be desirable to cover the case of requisitions carried out with a view to taking advantage of requisition prices which might be lower than the normal price. The article would give a somewhat vague guarantee, but it would nevertheless be a guarantee.

M. POZNANSKI *(Poland)* said that he was satisfied with M. Dinichert's explanations and would not press his amendment.

THE CHAIRMAN asked the Committee to vote on the maintenance of the text of paragraph 3 as proposed by the Sub-Committee.

The Committee adopted the text by eleven votes to two.

THIRTIETH MEETING

Held in Paris on November 29th, 1929, at 9 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

58. **Examination of the Articles of the Convention : Article 11** (Suite).

Text proposed by the Legal Sub-Committee.

Paragraph 3 (continuation).

M. DE LA VALLÉE POUSSIN *(Belgium)*, said that an amendment had been proposed to paragraph 3 by the Netherlands delegation (Annex A, 19).

M. GRONEMEIYER *(Netherlands)* asked that reference to this amendment should be made in the report.

The Committee agreed.

M. DE LA VALLÉE POUSSIN *(Belgium)*, in reply to Dr. MARTIUS (Germany), who asked whether the exceptions concerning the requisition of shipping covered not only the ships but also their cargo, explained that the exception covered only the ships.

Paragraphs 4 and 5.

M. DE LA VALLÉE POUSSIN *(Belgium)*, said that the Sub-Committee suggested the insertion in paragraphs 3, 4 and 5 of a sentence to the effect that, in cases of requisitioning, fair compensation should be given. This was a question of great importance and delicacy and had given rise to a long discussion. The question of fair compensation had been examined in connection with the question of requisitioning dealt with in paragraph 3 and the question of expropriation dealt with in paragraph 4. It was important to proceed with method in order that the necessarily long discussion to which this matter must give rise might be abbreviated and that the Committee might not be drawn from the point. He, therefore, proposed to distinguish clearly between two questions and to deal with them successively. First there was the question of substance, which had to be settled at the outset. What rule must be adopted in respect of compensation for property requisitioned or expropriated. When this first question had been settled, the second would have to be considered, namely, the question of the formula to be adopted in order to embody the principle laid down.

The draft submitted by the Economic Committee stipulated that foreign owners who were expropriated should have a right to the same treatment as nationals. The Sub-Committee had not thought it possible to keep to this rule, thinking that account should be taken of the fact that, in certain States and in certain circumstances, the compensation allowed only represented a small portion of the value of the expropriated property, and that expropriations might even be carried out subject to no compensation at all. Certain countries had considered that, in special circumstances, expropriation might be regarded as an extraordinary tax justified by public interest and legitimately imposed on the inhabitants. The Economic Committee drew attention to this fact in its commentary on Article 11.

The anxiety to ensure everywhere a respect for the rights of property of foreigners had determined the views of the Sub-Committee. This preoccupation appeared to the Sub Committee to be one which should govern the whole problem and its solution. The Sub-Committee had thought that it was above all important to guarantee at least fair compensation to a foreigner deprived of his property, whatever might be the provisions of the legislation relating to expropriation of the country concerned.

M. IBL *(Czechoslovakia)* said that, as regarded expropriation and the compensation to be granted, the Committee had to choose between two texts. The text of the Economic Committee had been established after long discussion and careful reflection. It provided, in respect of compensation, a treatment equal to that accorded to nationals. The text, however, at present before the Committee granted to foreigners in the event of expropriation a fair compensation.

At first sight there was not any very serious difference between these two texts, as in all civilised countries the State, in cases of expropriation, accorded compensation to its own nationals.

Nevertheless, if the text were more closely examined, the conclusion would be reached that the new formula would result in granting foreigners an independent right which was superior to that possessed by nationals. The classic example of expropriation was expropriation made for the purpose of constructing a railway line. According to Czechoslovak legislation, which, he thought, was similar to the legislation of the majority of countries represented at the Conference, expropriation in such a case was effected in two stages. First, there was a decision of the administrative authorities whether expropriation for the purpose indicated should take place. If this question were decided in the affirmative, the national courts were asked to estimate what compensation should be allowed to the expropriated party. The case came before all the various courts provided by the Constitution ; the matter was decided in the last resort, and the expropriated party had no right of appeal against the decision of the supreme courts.

What would be the position if the Committee adopted the text at present under discussion ? It would result that a foreigner in cases where a national had no further right of appeal would have recourse to a court of arbitration under the Convention, and could have the question examined whether the compensation accorded by the national tribunal was fair or otherwise.

Evidently, such a solution would put the foreigner in a privileged position in comparison with nationals. It was equally clear that it was impossible to agree that a court of arbitration should again examine a decision regarding the compensation to be paid taken by the competent court of the country.

Further, the proposed provision was not in harmony with the general scheme of the draft convention. That scheme was governed by two fundamental principles : namely, the principle of national treatment and the principle of the most-favoured-nation clause.

The scheme provided in respect of foreigners certain exceptions, but these were always exceptions to their detriment. For example, Article 10, dealing with the acquisition of immovable property, stipulated that foreigners might be excluded for reasons of security or national defence.

There might conceivably be exceptions unfavourable to foreigners in respect of expropriation, allowed, for example, for reasons of security or national defence. The draft Convention established by the Economic Committee, however, had not provided for such exceptions. On the contrary, Article 11, as regarded compensation, put the foreigners on terms of absolute equality with nationals. Without asking that the text should be modified, he thought it only fair and equitable that in respect of expropriation the same treatment should be accorded to foreigners as to nationals, but his delegation could not go further than that.

The Conference, moreover, must be logical. In Article 9, which dealt with the legal protection of the property of foreigners, the Committee had decided that foreigners should enjoy the same treatment as nationals, and it had come to that decision virtually unanimously. Expropriation, however, was only one aspect of the legal protection of the property of foreigners. If national treatment were admitted in Article 9, it was only logical that the same principle should be maintained in Article 11.

Finally, the draft established by the Economic Committee had been settled after long discussions, which had endured for months and even years and which had followed upon observations submitted by the various Governments.

He had himself had an opportunity of taking part in the preparatory work of the Economic Committee. In the original draft of the Committee a stipulation regarding a fair compensation had at first been agreed. Owing, however, to the attitude of its various members and of the various Governments, the Committee had realised that such a formula would not be accepted by the majority of countries. The Brazilian member of the Committee had, in particular, emphasised that such a formula would be unacceptable to the countries of Latin America.

The Economic Committee, after long discussions, had decided to eliminate the formula at first proposed, and had embodied in the draft Convention the principle of national treatment as the only principle that could be justified in respect of expropriation.

He would accordingly conclude by proposing to maintain, in reference to compensation, the text of the draft Convention as established by the Economic Committee.

M. VALIMARESCO *(Roumania)* said that the object hitherto pursued by the Conference, as was clear from the draft submitted by the Economic Committee and from the amendments adopted, had been to seek to assure for foreigners treatment approximating as closely as possible to national treatment. In other words, the system from which foreigners should benefit according to the Conference had so far been that of equality of treatment with nationals, but in certain cases restrictions of foreigners in favour of nationals had been admitted. In regard, however, to paragraphs 3, 4, and 5 of Article 11, an entirely different principle had been proposed. The new principle was intended to establish, in respect of foreigners, a privileged system, independent of the national system. There was no longer, therefore, any question of assimilating foreigners to nationals. He thought himself justified in asking whether this privileged system to be granted to foreigners was really the object at which the Conference was aiming. If it were so, why had it not already been adopted in the case of other articles, and why was it only recommended in cases of expropriation ? There were occasions on which this conception had been pressed. For example, the delegation of Hungary had been the most desirous of any to prevent the adoption of the principle of equal treatment, and had proposed amendments to Article 9, paragraph 1, and to Article 10, paragraph 1, asking that the words " similar treatment " should be deleted from the articles, justifying this request by explaining that the principle of equality of treatment between foreigners and nationals might not give sufficient guarantees to foreigners. The Roumanian delegation felt compelled to state that the proposed addition to the text was quite unacceptable in so far as it was concerned. It was diametrically opposed to the conception underlying the original text submitted by the Economic Committee. That text had been circulated to Governments, and it was upon that basis that the Roumanian Government had sent its delegates to the Conference. It was quite impossible for the Roumanian delegation to consent to follow the Sub-Committee along this new path, for it would lead in a direction other than that which the Conference had hitherto pursued, and would establish in the case of foreigners a treatment which affected the sovereignty of States as guaranteed by international law. It would, in fact, set up something which amounted to a system of capitulations. He consequently supported M. Ibl and urged that the original text in the " Brown Book " should be adopted.

M. PARANJPYE *(India)* agreed with the previous speakers that the principle of national treatment was the only one which could be followed. The Economic Committee had carefully considered the problem, and the text which they submitted was the result. The Sub-Committee now proposed that this text should not be adopted, but that a new conception should be inserted in the Convention. He saw no reason to distrust the conclusions reached by the Economic Committee, and, in his view, it was quite impossible to grant foreigners better treatment than nationals. If foreigners, on entering a particular country, thought that the national treatment which they would be accorded would be harmful to their interests, then they were free not to establish their business in that country. If they did so, they took the risk with their eyes open. He was therefore in favour of granting the same treatment to foreigners as to nationals.

M. CHOUMENKOVITCH *(Yugoslavia)* agreed with the representatives of Czechoslovakia and Roumania. In opposing the adoption of the reference to fair compensation suggested by the Sub-Committee, he would emphasise that Yugoslavia had no intention of forcing unfair compensation upon foreigners. Governments took account of the interests of their people as well as of the interests of foreigners. As they were not usually unjust to their citizens in this respect, there was no reason to fear that, in granting national treatment, they would be unjust to foreigners. A system of unequal treatment to the detriment of nationals would be established if the Sub-Committee's text were adopted, for foreigners would be able to have recourse to arbitration to obtain a preferential treatment more favourable than that accorded to nationals. He was therefore in favour of maintaining the text in the " Brown Book ".

M. GUERRERO *(Salvador)* urged the Committee to bear the fate of the Convention carefully in mind. The work being accomplished by the Conference was very complex and difficult, mainly owing to the fact that an attempt was being made to cover too many questions. The whole tendency of international law was to give foreigners the same treatment as that granted to nationals. The Conference had more or less agreed on this principle, but the Sub-Committee had now gone beyond the maximum sanctioned by international law, and had sought to create a privileged position for foreigners. His own Government could not accept this proposal, and he thought that a great many other Governments would also be unable to do so.

M. Barboza Carneiro had explained this view very carefully to the Economic Committee, and had pointed out that no State would consent to treat foreigners more generously than its own nationals. If injustices were committed, it was always open to the Government of the foreigner complaining of his treatment to appeal to arbitration on the ground that the terms of the Convention had been violated. He therefore proposed that the original text of the Economic Committee should be adopted.

THE CHAIRMAN suggested the following amendment : " fair compensation, or, in case of confiscation, national treatment ".

M. DINICHERT *(Switzerland)* said that his delegation had submitted a comprehensive proposal in regard to expropriation and requisition, in which it had urged that fair compensation should be provided in both cases. The Swiss Government attached the greatest importance to this matter, and had been guided in its views, not by its own particular situation, but by preoccupations of a general kind. The Convention now being drafted was the first plurilateral and universal text which laid down no positive law or exact regulations, but whose stipulations were based on comparative elements. States were to be required to undertake reciprocally to grant national treatment. How was it possible, however, to assume such an undertaking in advance when the States which would, or would not, adhere to the Convention were not yet known, and when the nature of that national treatment consequently remained an unknown quantity ? In his view it was impossible to enter blindly upon this course. He doubted whether the Convention would be really capable of execution, if such a stipulation were included. In his view it was essential to lay down a positive law on the matter. The Swiss delegation had endeavoured to do so in the amendment which it had suggested, for it was convinced that the only solid basis for relations between Governments was respect for private property. From this point of view any State exercising the right of requisition or expropriation must, in return, grant fair compensation. The attitude that respect for private property was at the basis of international relations had been adopted by many States, and not a few Governments had informed the League that this principle must be respected. In view of the efforts now being made to codify international law, it seemed to him impossible to run counter to these principles in the present Convention. Even the Economic Committee had stated, on pages 46 and 47 of the " Brown Book " :

> " As recent experience has shown, certain countries have taken measures of expropriation or temporary deprivation whereby their nationals have had to make sacrifices equivalent to a special tax. Foreigners established in these countries have not received the real value of their expropriated property, or compensation actually equivalent to the damages resulting from deprivation.
>
> " Notwithstanding the inequality of treatment which would be introduced by the positive guarantees detailed above, it would certainly be unfair to insert in an international convention measures which would mean the spoliation, even if only partial, of certain classes of private property belonging to foreigners, for the benefit of a national community."

It was no argument to maintain that States had agreed to national treatment in bilateral treaties, for the position in regard to a multilateral treaty was entirely different, since it was impossible to know beforehand which States would be parties to that treaty and which would not. If international law laid down that adequate compensation must be given in cases of requisitioning by the armies of a State, it followed *a fortiori* that such compensation should be adequate in cases of expropriation.

A number of members had urged that to insert the reference to fair compensation would mean granting more to foreigners than to nationals. He had no desire to obtain for the foreigner more than was granted to the national, but in respect of expropriation both nationals and foreigners had an equal right to fair compensation and an equal right to have their private property respected. It seemed to him a surprising argument to maintain that a foreigner, since he could have recourse to arbitration, was in a better position than a national. Any State could at any moment support the case of one of its nationals who esteemed himself to be injured by another State, and therefore bring the matter up to arbitration by the terms of one of the arbitration treaties which it had concluded. States when concluding such treaties knew quite well that they ran this risk. Governments did not hesitate to follow this procedure when they were convinced that their nationals had a just claim.

In conclusion, he would emphasise that the Swiss Government had no private motive for supporting the Sub-Committee's text. His Government was convinced that respect for private property was the only sound basis for good international relations, and, if this principle could not be properly handled and respected, the whole of international life would become disorganised. In demanding fair compensation it should not perhaps be forgotten that Switzerland had a larger proportion of foreigners in her territory than any other country. She was, however, determined invariably to apply the principle of fair compensation.

M. DE BEREZELLY *(Hungary)* agreed with the Swiss representative. The rights of private property must be safeguarded. He had always been in favour of the system of fair compensation. If States, as so many maintained, were prepared to accord just treatment to foreigners, what had they to fear from the adoption of the Sub-Committee's proposal ?

In regard to arbitration, only a State could intervene in the interests of a private person, and it was quite obvious that it would not do so unless it were convinced that the person on whose behalf it was intervening had a just cause. National treatment sometimes afforded fair compensation in a number of countries, but there were unfortunately other countries in which national treatment resulted in marked unfairness, and it was precisely those countries in regard to which the Convention must provide adequate safeguards. Though the population of a country might accept a law which did not grant it adequate compensation, this was no reason at all why foreigners established in that country should also be deprived of it.

In document C.75.M.69.1929.V, a passage was to be found recording the unanimous opinion of Governments that the responsibility falling on a State according to international law as a result of injuries caused in its territory to the person or property of foreigners was distinct from the responsibilities which it might incur owing to the provisions of its own legislation. International responsibility was regulated by the law of nations, and consequently a State could not escape it by alleging, as a pretext, the provisions of its own national law.

A Conference for the Codification of International Law was to be held at The Hague, and among other questions that of the responsibility of States would be considered. The matter to which he had referred would therefore undoubtedly be discussed. There was no desire on the part of those who supported the Sub-Committee's text to create a privileged situation for foreigners, but merely to protect the principle of private property. It could not justly be maintained that to treat foreigners differently from nationals established a system of capitulations. He was convinced that the problem would arise under Articles 9 and 10, because Article 9 referred to private law and could be interpreted to mean that, in the matter of protection, the rights of foreign nationals were not invariably adequately safeguarded. Finally, he would point out that no State had yet had the temerity openly to proclaim that foreigners should be granted a less favourable treatment than that accorded to its nationals. The supporters of the Sub-Committee's text desired equality of treatment in all matters affecting natural rights. It was impossible for the Convention to stipulate the grant of merely national treatment because questions of natural rights continually arose, and these must at all costs be settled. He therefore urged that the Sub-Committee's text should be adopted.

M. POZNANSKI *(Poland)* said that the problem before the Committee was one of the most vital with which it had to deal. He had listened with great interest to the observations of the Swiss representative, with whom, in principle, he agreed.

M. Dinichert had referred to the necessity of respecting private property. This was a fundamental principle which must certainly be safeguarded. He could speak all the more strongly on this point, as in the past no less than half a million of his countrymen living in a foreign land had been forcibly deprived of all their property. Poland therefore fully realised the importance of maintaining respect for private property. That principle formed the basis of all good international relations, and was enshrined in the Polish Constitution. No one in Poland, whether a national or a foreigner, could be expropriated without compensation. Another problem, however, arose, and the difficulty of finding a solution lay in the fact that the principle that preferential treatment should be granted to foreigners in the territory of a sovereign State would have to be admitted. In regard to this matter there were two fundamental principles which clashed. The first was respect for private property ; the second the principle of equality of treatment for foreigners and for nationals. He himself was unable to decide whether, in order to defend the first principle, it would be necessary to sacrifice the second, or *vice-versa*. It was undoubtedly dangerous to maintain that foreigners could in no case be granted more favourable treatment than nationals within the borders of a sovereign State. A solution other than that proposed by the Sub-Committee must be found, but this was no easy matter. An effort could be made to create that positive law to which M. Dinichert had referred, but the whole problem was far too complicated to be solved by a single article of an international convention. While he saw the disadvantages of equality of treatment, it seemed to him dangerous to stipulate for privileged treatment.

DR. MARTIUS *(Germany)* thought that every member of the Committee would agree that a solution of the difficulty must somehow be found. It would be very regrettable if those who supported one view deliberately cut themselves off from any contact with those who supported the other.

M. Poznanski had emphasised the divergent principles underlying the problem. That divergence was apparent even between the various departments of a State. For example, the Foreign Office of a State did everything in its power to protect the nationals of that State resident abroad, while the Treasury invariably raised objections if attempts were made to compensate foreigners established in the country on a larger scale than that granted to nationals. The competence of international organisations for arbitration to decide matters of compensation was beside the point. The proposals of the Sub-Committee were to be found in a fairly large number of bilateral treaties, concluded with all kinds of countries, some of which were not Members of the League. Some countries had already adopted the proposals of the Sub-Committee. He thought, therefore, that, theoretically, there should be no insuperable difficulty in reaching agreement, and in this he could not agree with M. Poznanski, who maintained that the problem was too complicated to be settled in a part of one article of an international convention. If it were so complicated, why did so many bilateral treaties contain stipulations similar to those

proposed by the Sub-Committee ? Moreover, the adoption of the text of the " Brown Book " would imply the grant of most-favoured-nation treatment, though this solution had been set aside by Committee D.

What then were the difficulties connected with principles which had been inserted by Germany in many of her bilateral treaties ? The matter was really a political problem. Without being indiscreet he would remind the Committee that there were two States represented at the Conference which were engaged in a dispute over this problem. Neither of them could adopt one or other solution, because to do so would be to confess itself legally in the wrong. At all costs a compromise must be achieved, and the only solution in his eyes would be to leave the matter open. Let the Conference, therefore, take as a basis the Economic Committee's text. This would satisfy those who wanted to accord equality of treatment, and to meet the views of the others the following stipulation might be inserted in the Protocol to the article :

> " It should be clearly understood that the provisions of paragraph 5 do not in any way prejudice the question whether or not a foreigner has the right to appropriate compensation should he suffer expropriation as admitted by the general principles of international law."

THE CHAIRMAN suggested that possibly the sentence " In matters of compensation treatment should not be less favourable than that accorded to nationals" might meet the difficulty.

M. DINICHERT *(Switzerland)* was quite unable to agree that such a clause should be inserted in an international convention, for this would mean that a State would bind itself blindly to permit confiscation. When the confiscation occurred, the State carrying it out would reply to all complaints by maintaining that it was permissible under the Convention which had been ratified by the State making the complaint. The problem had not yet been settled in international law and it was impossible to solve it in an article of the present Convention.

M. CARAVALE *(Italy)* agreed with M. Dinichert.

M. SANDSTROEM *(Sweden)* thought that it would be possible to accept the principle underlying the text proposed by the Economic Committee, for in civilised countries fair compensation was invariably granted. The danger was that, in some countries, the compensation might not be adequate. Words should therefore be introduced into paragraphs 4 and 5 stipulating that compensation must be fair and just or such a phrase could be included in the Protocol to the article.

M. IBL *(Czechoslovakia)* said he would reply briefly to two observations which had been made during the discussion.

He had heard surprise expressed at the fact that certain delegations were distrustful in this matter of expropriation of procedure by arbitration, though the efforts of the League of Nations tended to a development of international arbitration. This expression of surprise, which implied a slight reproach, could hardly be addressed to his country. It was well known that Czechoslovakia was among the countries which had concluded the greatest number of treaties of arbitration. The efforts of the Ministry for Foreign Affairs of Czechoslovakia for the development of international arbitration were well known.

This question of arbitration had caused some misgivings in the matter of expropriation because it was justly considered impossible to admit that an arbitral tribunal should re-examine a decision taken by a competent national authority concerning the amount of compensation to be granted in cases of expropriation. Such a stipulation would put foreigners into a privileged position, and would therefore involve an unjust arrangement in respect of nationals. It would in no way correspond with the fundamental aims of the Convention, which was to ensure to foreigners, as far as possible, the same treatment as was enjoyed by nationals.

During the discussion, a delegation had pointed out that the expression " fair compensation " would do no more than confirm a principle already at present recognised by international law.

He would reply to that remark by quoting a distinguished English lawyer, Sir John Fischer Williams. Sir Fischer Williams, in a treatise on international law on the property of foreigners, published in *The International Law Year-Book*, of 1928, had come to two conclusions : (1) that there did not exist in international law any absolute recognised rule under which a State was bound not to proceed to expropriation without full or fair compensation ; (2) that, in cases of expropriation, the State should not discriminate between foreigners and its own nationals.

M. VAN ESSEN *(Netherlands)* thought that the suggestion of Dr. Martius was negative in character. Moreover, as M. Poznanski had emphasised, it was impossible to settle a problem which deeply concerned international law by means of a single sentence. Paragraph 5 of the text proposed by the majority of the Sub-Committee was already in the nature of a compromise, and covered the case of those who desired to stipulate for fair compensation. He had submitted an amendment designed to conciliate both views. The amendment was as follows :

> " Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties, as regards compensation for the exactions, requisitions and expropriations or temporary deprivations referred to in paragraphs 3 and 4 above, the treatment laid down by international law and, in any case, a treatment equal to that which it grants to its own nationals."

To facilitate the discussion, he proposed to maintain paragraph 5 of the draft of the Economic Committee and to add to the Protocol the following stipulation :

" Paragraph 5 in no way prejudices the compensation required by international law in this matter."

DR. MARTIUS *(Germany)* thought that his proposal had not been properly understood. The text of the Economic Committee excluded the idea of confiscation. It referred only to expropriation. The Netherlands representative had considered that the German proposal avoided the problem, but he was unable to agree. He could follow the Sub-Committee's text in so far as requisitioning was concerned, but he would strengthen the proposal of the Economic Committee and insert in the Protocol a stipulation that the provisions of paragraph 5 should not affect the question whether a foreigner had a right to compensation under international law. He was unable to see how it would be possible to achieve any compromise between the two sides except by leaving the general problem open. He would emphasise that his suggestion was put forward as an idea and not a definite amendment.

M. VAN ESSEN *(Netherlands)* thought that there was a considerable difference between his proposal and that of Dr. Martius. He urged once more his proposal for an insertion in the Protocol.

M. ITO *(Japan)* said that the problem was becoming less difficult. Two opposite currents of opinion had been fully expressed. For political reasons it appeared impossible for the States of Europe to yield in the matter and yet it was essential for the success of the Convention for a way to be discovered out of the difficulty. He would venture to propose the following text for paragraph 4 :

" The use of the term ' appropriate compensation ' does not in any way prejudice the problem whether it represents a compensation equal to that accorded to the nationals of a country or whether it represents a fair and equitable compensation according to international law."

It was to be noted that he had used the words " appropriate compensation " instead of the words " fair compensation ".

M. POPESCU *(Roumania)* said that the danger was that, if the classic formulæ in regard to expropriation were departed from, some States might follow the practice now prevalent in Soviet Russia, which did not accept the principles governing Western civilisation and, in consequence, might proceed to expropriation on the ground that it was endorsed by the Convention. If this idea were followed, respect for private property would cease to exist.

He was surprised at the considerable discussion which had taken place on the subject of national treatment. A proposal to depart from that treatment would open the door to political pressure which might be brought to bear on agrarian countries by industrial countries. That had been the unhappy experience of Roumania in the past and was, he thought, also the experience of certain countries of Latin America and Eastern Europe. Foreigners had been demanding equal treatment in Roumania for the last ten years. The present Government had just granted it. It was impossible for the Roumanian Government to go further and grant foreigners a privileged situation. If a foreigner did not believe that he would be granted fair treatment in the country in which he had invested his capital, there was no necessity for him to enter that country at all. Countries could not be expected to welcome foreigners unless they showed that they trusted their laws. In departing from the classic formula in the matter of compensation, the Conference would go beyond the scope of the Convention and introduce a principle which should only be debated and adopted by a special conference composed of delegates with powers to discuss such a matter. It was essential therefore to remain on firm ground as far as fundamental principles were concerned. So far the ideal had been to grant national treatment to foreigners. Now, at the last moment, the Sub-Committee, which many countries interested in the matter had not attended, had presented amendments reversing the principles hitherto followed and urging the creation of a special regime to be applied to foreigners.

He found no evidence that the Roumanian Government desired to confiscate foreign property. In this matter its actions had been entirely misunderstood, but it was essential for a Government to be allowed to defend itself from foreign pressure. He therefore moved that the original texts proposed by the Economic Committee in the "Brown Book" should be adopted.

DR. MARTIUS *(Germany)* thought that the distinction drawn between appropriate, equitable and fair compensation would lead the Committee into considerable difficulty. The Japanese proposal in regard to the Protocol was much the same as his own. The main problem was to find a form of words which would be acceptable to both parties in the Committee.

THE CHAIRMAN summed up the discussion.

The amendments proposed to paragraphs 4 and 5 of Article 11 were five in number. He suggested that the principles underlying these five amendments should be voted successively in the order in which they had been put forward. When the Committee had taken a decision as to the principle, it could entrust the actual task of drafting to the Drafting Committee.

The five principles upon which he would ask the Committee to take a decision were as follows :

(1) Should the idea of fair compensation be inserted in the article ?
(2) Should the compensation be equal to that granted to nationals ?
(3) Should the compensation be not less favourable than that granted to nationals ?
(4) Should the treatment be that laid down by international law and not less favourable than that granted to nationals ?
(5) Should the compensation be appropriate ?

M. DINICHERT *(Switzerland)* was ready to accept a compromise if it could be based on the fourth amendment as defined by the Chairman.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, agreed.

M. GUERRERO *(Salvador)* urged that the original proposal should not be forgotten. It was to reject the text proposed by the Sub-Committee and to adopt paragraphs 4 and 5 of Article 11 as submitted by the Economic Committee.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, thought it unwise to vote immediately on the retention or rejection of the articles of the "Brown Book", as the Committee had not yet settled the question of principle.

The Committee decided by twelve votes to eight to vote on the amendments according to the order suggested by the Chairman.

The first amendment (that a reference to fair compensation should be inserted in the article) was rejected by thirteen votes to five.

The second amendment (that the compensation be equal to that granted to nationals) was adopted by thirteen votes to eight.

THE CHAIRMAN announced that, in that case, the Committee had decided that in principle the compensation referred to in paragraphs 4 and 5 of Article 11 should be equal to that granted to nationals.

DR. MARTIUS *(Germany)* asked that the vote should be taken on the text he had proposed for the Protocol.

M. VAN ESSEN *(Netherlands)* proposed that an amendment to the following effect should be inserted in the Protocol :

" The paragraph in no way prejudices the compensation required by international law."

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, said that, in view of the decision that the Committee had just taken, the proposal of Dr. Martius in regard to the Protocol was no longer acceptable, for it was in formal contradiction to the stipulations which would now have to be inserted in the article itself.

M. DE BEREZELLY *(Hungary)* was unable to agree with the text proposed by the German delegation.

THE CHAIRMAN put the text proposed by Dr. Martius to the vote.

The text was rejected.

THE CHAIRMAN put the amendment proposed by M. van Essen to the vote.

The amendment was rejected by ten votes to five.

M. ITO *(Japan)* desired it to be made clear that the decision of the Committee in regard to Article 11 did not affect in any way the responsibility of States for damages caused to the person or property of foreigners residing on their territory.

M. GUERRERO *(Salvador)* said that this was obvious. The responsibility of States in this matter and their responsibility in respect of the general treatment of foreigners were two different things.

THE CHAIRMAN pointed out that, as a result of the Committee's decision, paragraphs 4 and 5 of Article 11 would remain substantially the same as worded in the "Brown Book". The Rapporteur would make the necessary drafting alterations.

Amendment submitted by the Delegation of Haiti.

M. NEMOURS *(Haiti)* recalled that a number of South-American States had submitted the following amendment to paragraph 5 :

" Add after paragraph 5 a new paragraph :

" ' In no case shall foreigners who are nationals of one of the High Contracting Parties and established on the territory of another be entitled to claim any compensation to which the country's own nationals are not entitled.' "

The object of the amendment was to cover a case in which destruction of property might have occurred. If a foreigner, for example, lost his property owing to revolution or rioting, he should not be entitled to greater compensation than that granted to nationals.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, said that this amendment had been considered by the Sub-Committee which had rejected it on the grounds that it was not relevant to the matters settled by the article.

M. NEMOURS *(Haiti)* pressed for the adoption of the amendment. The wording was very wide and covered every case. He would especially urge the inclusion of the words " in no case ".

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, pointed out that this very delicate question would require a very careful study and was entirely outside the scope of the Convention.

M. GUERRERO *(Salvador)* agreed. He urged the representative of Haiti not to press his amendment which was out of place in the present Convention.

M. NEMOURS *(Haiti)* withdrew his amendment in a spirit of conciliation.

Article 11 *was adopted and referred to the Drafting Committee.*

59. **Article 15.**

British Amendment.

MR. GRIFFITHS *(British Empire)* submitted a proposal that the reference to Article 12 should be deleted from Article 15.

This suppression was necessary because, if a reference to Article 12 were included, it would necessitate the placing of non-resident foreigners on the same basis as resident nationals in matters of taxation. This would not be practicable in the United Kingdom where even non-resident nationals were not placed on the same footing as resident nationals.

DR. MARTIUS *(Germany)* thought that the idea contained in the article was clear but that it should be submitted to the Drafting Committee in order to improve the wording. For example, there seemed to be no necessity to refer to Article 9.

M. PARANJPYE *(India)* supported the British amendment. In India the position in regard to income tax was similar to that in Great Britain. No distinction was made in India between nationals and foreigners, but in regard to non-resident foreigners the refunds allowed on the payment of income tax differed in amount from those allowed to resident nationals or foreigners. If the British amendment were not accepted, the Indian fiscal system would be upset.

The British amendment was adopted and the reference to Articles 12 *and* 14 *deleted from Article* 15.

M. ITO *(Japan)* said that he would raise another point in connection with Article 15 at the Plenary Conference. He would not suggest an amendment but would confine himself to making an observation.

Article 15 *was adopted and sent to the Drafting Committee.*

THIRTY-FIRST MEETING

Held in Paris on November 30*th*, 1929, *at* 3.15 *p.m.*

Chairman : Sir Sydney CHAPMAN (British Empire).
Secretary : M. SMETS.

60. **Examination of the Articles of the Convention : Article 11 : Draft Report of the Committee to the Conference** (Annex A, 33).

THE CHAIRMAN asked the Committee to take the report on Article 11, paragraph by paragraph.

Paragraph 1.

No observations.

Paragraph 2.

No observations.

Paragraph 3.

M. NEDERBRAGT *(Netherlands)* drew attention to the words " as well as compulsory billeting ", and to the passage stating that the amendment for the addition of the words " and clearing operations and destruction legally ordered by the authorities " had been rejected " as relating to events occurring in time of war — a type of question with which Article 11 should not deal." In his opinion, unless the Committee decided otherwise, there should be added in the report, after the words " events occurring in time of war " the words " and in time of peace ", since otherwise the argument advanced in the report was incomprehensible.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, thought he was right in saying that, on the previous afternoon, all members of the Committee had agreed that everything connected with the consequences of military operations in time of war fell outside the scope of the Convention. It appeared that the Netherlands delegate was referring, quite apart from damage effected in war time, to certain damage to property which might be caused even in peace time, for example, as the result of manœuvres. If the text was not sufficiently clear on this point, it could be amplified so as to include, for example, damage caused to the crops during manœuvres.

M. NEDERBRAGT *(Netherlands)* replied that he had, of course, in mind damage caused in war time and possibly during manœuvres, but also during internal disorders, since, even in the latter case, it might be necessary to undertake clearing operations and destruction. If, however, it was understood that this question was not affected but remained open, he would concur in the text submitted.

M. DE LA VALLÉE POUSSIN *(Belgium)*, Rapporteur, considered that damage caused during manœuvres should be included in the system of compensation. The question of civil disorders was an entirely different one and on the previous day an amendment on this point had been rejected on the ground that it was connected with a question which was entirely alien to the Convention. This problem came rather within the jurisdiction of the Conference which would have to deal with the civil responsibility of States. It would be better not to go beyond the Economic Committee's programme and to avoid so delicate a question which, for its considered solution, would require serious study.

THE CHAIRMAN suggested that the paragraph in the report should be amended as follows :

" This amendment was rejected as relating to events which, in so far as they occur in time of war, are outside the scope of the Convention, and which may be regarded, when occurring in time of peace, as being covered by Article 11."

M. NEDERBRAGT *(Netherlands)* agreed.

Paragraph 4.

No observations.

Paragraph 5.

M. DINICHERT *(Switzerland)* drew attention to the following passage :

" They (the delegations) pointed out, moreover, that the granting to foreigners in such cases of more favourable treatment than that enjoyed by nationals was, in fact, provided for in a great number of bilateral conventions. Their point of view, however, did not prevail."

He did not believe that there was a single convention which gave foreigners in this respect more favourable treatment than nationals. There were many conventions which only stipulated for compensation in this precise case, but it did not follow that the intention had been to give foreigners more advantages than nationals. In this matter the question, as it affected foreigners, was that of the *jus gentium*, while, in the case of nationals, it was one of justice and equity. He proposed that this passage in the report should read :

" They pointed out that many conventions prescribed fair and equitable compensation."

This amendment was approved.

M. ALTSTOETTER *(Germany)* observed that a number of delegations, in particular the German delegation, had supported the declaration made on the previous day by the Japanese delegate to the effect that the voting of paragraph 5 had not solved the question of the responsibility incurred by a State owing to losses sustained by foreign nationals.

He recalled that the decision taken by the Sub-Committee had been adopted by a majority and not unanimously.

THE CHAIRMAN said that the records of the Conference would show that the Sub-Committee's decision had not been taken unanimously.

61. **Examination of the Final Act** (Document).

THE CHAIRMAN asked the Committee to examine, article by article, the text of the Final Act contained, in the "Brown Book". The various amendments would be discussed during this examination.

Paragraph 1.

Amendements of the Italian delegation (Annex A, 21).

M. LANDUCCI *(Italy)* explained that the amendments proposed by his delegation to the second and third paragraphs and to sub-paragraph *(a)* of paragraph 3 of the Final Act were intended to give to the substance of the Final Act a form acceptable to the majority of the delegations. It was obvious that the problem of the free exchange of labour, employees and wage-earners in general, presupposed a change in the economic and social situation and in the interests of each State — interests which were sometimes antagonistic to one another. It would consequently be difficult for all the delegations to accept a text which, in the form in which it had been drafted by the Economic Committee, might be, in some points, at variance with the position of fact existing in their countries. For these reasons, and in particular because any change in the situation of fact was subordinate to the exigencies of public interest, it was thought essential that the recommendation should be kept within such limits that its acceptance would not be inconsistent either with the present situation or with the future situation in any State.

M. OBREMSKI *(Poland)* entirely concurred in the Italian delegation's point of view as to the modifications to be made in the first two paragraphs of the Final Act. He intended to submit to the Committee a draft text for the Final Act which would, he thought, satisfy both the Italian delegation and the States to which the emigration either of manual workers or of technical specialists, etc., was a matter of concern. The text which he was about to read was not a formal proposal, but simply a suggestion. It was as follows :

" The Conference, while recognising the legitimacy of the measures taken in certain States for the protection of their national labour market, desires to point out that these measures may sometimes entail difficulties for the running of certain undertakings.

" It recommends that the International Labour Organisation of the League of Nations should continue its studies with a view to the establishment of a policy of co-operation between the States for the purpose of regulating the international movements of labour in the manner best suited to ensure the welfare of workers and the development of production.

" The Conference further recommends that the States :

" *(a)* Should reduce, as far as possible, the restrictions which at present prevent the employment abroad of technical experts, employees and workers, and which prevent practitioners or other persons from going abroad in order to complete their professional training, subject always to the requirements dictated by the public interest ;

" *(b)* Should devise and apply the most effective means of protecting the workers against the disadvantages which on occasion result from their recruitment, transport, appointment and employment abroad. "

M. POLITIS *(Greece)*, Rapporteur, thought that the Committee would first wish to deal with the first two amendments of the Italian delegation which were purely formal ones, and then with the somewhat more important amendment suggested to sub-paragraph *(a)*. The Polish amendment on the other hand was a radical re-fashioning of the Final Act. The first paragraph of the amendment would replace the first paragraph of the text in the " Brown Book ", and the second paragraph would replace the third paragraph in the " Brown Book ", so that the second paragraph in the " Brown Book " would disappear.

The last part of the Polish amendment was intended to give a new form to the conditions in the " Brown Book " contained under sub-paragraphs *(a)*, *(b)* and *(c)* by changing the form of sub-paragraph *(a)*, making a change of substance in sub-paragraph *(b)* and eliminating sub-paragraph *(c)*.

M. STUCKI *(Economic Committee)* thought that the Final Act might be considered from two points of view. For some — and this was a conception which was unfortunately not exceptional — a Final Act was a platonic declaration which did not involve any action. In this case there was no need to waste time over weighing terms. In the view of others, at any rate, as long as an international convention was not signed or ratified, a recommendation in a Final Act had considerable weight. The obligations contained in it were no doubt moral and not legal ones, but, prior to the signature of an international Convention, many delegations which had been disappointed by the conditions of the Convention itself relied upon the considerations contained in the Final Act and counted on its moral execution. Such was the view of the Economic Committee, and from this point of view he would urge that the Polish proposal was far more restrictive than that of the Economic Committee.

Without going into details it might be noted first that there was a fundamental difference between the two texts. The Economic Committee had said :

" The Conference desires to draw attention to the hindrance that may be placed in the way of production and trade by the measures which certain States are obliged to take for the protection of their home labour market."

The Polish amendment, on the contrary, began by recognising in an entirely general manner, and without any exception or restriction, the legitimacy of all laws on the question of the home labour market. The legitimacy of such laws, however, was far from being recognised by the International Chamber of Commerce, the national Chambers of Commerce, the captains of trade and industry in the various countries and the Economic Committee itself.

There was another important difference between the two texts. The Economic Committee proposed the introduction in the Final Act of a recommendation from the delegates of the

Conference to the Governments, whereas, on one essential point, the recommendation suggested by the Polish delegate was addressed to another institution. While he did not fail to recognise either the goodwill displayed by the International Labour Organisation in its endeavours to improve international relations, or the fundamental difficulties which it encountered, he thought that all those who were aware of the capacity of the International Labour Organisation to achieve concrete solutions, would agree that the Polish delegate's proposal was equivalent to a first-class burial.

Thirdly, if the Committee wished to accept the Polish formula in principle, the recommendations contained in it must be inevitably compared with others which had been made by various organs of the League, in particular, the 1927 World Economic Conference, the Second Committee of the Assembly and the Council of the League itself. Such a comparison would show that there was no incompatibility between the recommendations of the present Conference and those which had been made by other organs of the League.

THE CHAIRMAN thought that the Committee should first decide whether it would take the text of the "Brown Book" or that of the Polish proposal as a basis for discussion.

M. LAEMMLE *(Germany)* proposed that the text of the "Brown Book" should be taken as a basis.

THE CHAIRMAN added that, if the Committee decided in favour of the "Brown Book", the Polish delegate would be free to submit amendments to the different paragraphs.

The Committee decided by twelve votes to six in favour of taking the text of the "Brown Book" as a basis of discussion.

THE CHAIRMAN asked the Committee to resume the examination of the text of the "Brown Book", paragraph by paragraph.

Section I, paragraph 1.

No observations.

Paragraph 2.

The Italian amendment was adopted by ten votes to three.

Paragraph 3.

M. LAEMMLE *(Germany)*, referring to the second Italian amendment, thought that it would be preferable to replace the word "exchange" by the word "activities", since it was not goods that were involved but persons.

THE CHAIRMAN put to the vote the first part of the Italian amendment which was to substitute for the words "restoring as far as possible the free exchange" the words "permitting as far as possible the exchange".

The Committee approved the substitution of the word "pernitting" for the word "restoring".

M. PEROUTKA *(Czechoslovakia)* proposed that, for the words "the free exchange" or "the free activities", there should be substituted the words "the free movement".

M. OBREMSKI *(Poland)* said that, if he had not pressed his proposal hitherto, it was in order to show that he was not very far from M. Stucki's point of view. He considered that there was no great difference between the words "exchange", "movement", and "activities". The word "exchange", however, did imply an idea of reciprocity and for this reason it would be better to keep it.

M. LANDUCCI *(Italy)* pointed out that, as the sentence included the words "permitting as far as possible", it would be inconsistent to speak later of "*free* movement". He urged, like the Polish delegate, that the word "exchange" should be kept.

The Committee decided by eleven votes to eight to keep the word "exchange".

Sub-paragraph (a).

The Italian amendment to substitute for the words "abolishing the restrictions" the words "reducing as far as possible the restrictions" was adopted by fourteen votes to three.

THE CHAIRMAN put to the meeting the second Italian amendment for the addition at the end of the paragraph of the words "subject always to the requirements dictated by the public interest".

M. LAEMMLE *(Germany)* recalled that the beginning of the paragraph now read "reducing so far as possible". It would perhaps be dangerous to weaken the recommendation to be made by the Conference still further. It was clear that the necessities dictated by the public interest would always be reserved.

The Italian amendment was rejected by ten votes to nine.

Sub-paragraph (b).

SIR PERCY THOMPSON *(British Empire)* recalled that the British delegation had proposed (Annex A, 1) the addition, after the words " seasonal labour ", of the words " where this appears desirable ".

M. OBREMSKI *(Poland)* thought it useless to keep sub-paragraph *(b)* ; sub-paragraph *(c)* would suffice if completed according to the Polish amendment, as follows :

" . . . as well as against the disadvantages which sometimes result from their recruitment, transport, appointment and employment abroad."

M. PILOTTI *(Italy)*, Rapporteur, pointed out that sub-paragraphs *(b)* and *(c)* dealt with two different questions.

M. OBREMSKI *(Poland)*, without wishing to press his proposal, thought that the addition which he had suggested would make it possible to strike out sub-paragraph *(b)* without loss.

M. PILOTTI *(Italy)*, Rapporteur, replied that the Committee must first decide in regard to sub-paragraph *(b)*. It was only later that it could be decided whether sub-paragraph *(c)* needed amendment.

M. OBREMSKI *(Poland)* wished to have an explanation of the term " itinerant ".

M. STUCKI *(Economic Committee)* agreed that the subjects mentioned in sub-paragraphs *(b)* and *(c)* were quite different. It was at the request of M. di Nola that the Economic Committee had decided to include a recommendation in sub-paragraph *(b)* as to the desirability of establishing, one way or another, regulations for the movements of itinerant and seasonal labour. He did not think that there was much difference between these two expressions.

The British amendment was adopted by six votes to two.

Sub-paragraph (c).

M. PARANJPYE *(India)* proposed that this sub-paragraph, which had no connection with the Convention, should be omitted.

M. OBREMSKI *(Poland)* asked the Committee to decide on his proposed addition to this sub-paragraph.

M. LAEMMLE *(Germany)* said that he, too, had wondered, not whether sub-paragraph *(c)* should be omitted, but what connection there was between sub-paragraphs *(b)* and *(c)* and the Convention. He realised that there were social reasons which militated in favour of a settlement of these various questions, and a recommendation on the subject might be made either to the Governments or the International Labour Organisation. That was not a matter of great importance. In this connection he would refer to M. Stucki's observations. He had entire confidence in the International Labour Organisation's capacity to settle the problems submitted to it. Solutions were of course sometimes held up for a long time owing to the obstacles confronting the International Labour Organisation, but the problems involved in these two sub-paragraphs certainly came within the jurisdiction of the Organisation and its attention might be called to sub-paragraphs *(b)* and *(c)*.

M. PARANJPYE *(India)* had no objection to the Conference recommending these two points to the attention of the International Labour Organisation, but he did not think that the recommendation in its present form was of any value.

M. OBREMSKI *(Poland)* agreed with M. Stucki that it was useless to make, in the Final Act, a recommendation to the International Labour Organisation. On the other hand, he did not at all agree, as the German delegate appeared to think, that the addition proposed by himself to sub-paragraph *(c)* had no connection with the Convention, or with the remainder of the Final Act. Labour problems were always of great importance in the economic life of the different countries. They were very important from the point of view of emigration for countries whose population increased rapidly. They were also important to States which received foreign labour and which owed in part the development of their industry and agriculture to such labour.

He pressed for the adoption in sub-paragraph *(c)* of the words which he had suggested, since thereby the Conference would draw the Governments' attention to the desirability of considering labour problems. A whole category of foreigners—namely, workers—were excluded from this Convention which dealt with the treatment of foreigners. That had been the intention of the Economic Committee and the delegations had accepted this standpoint. In connection with various articles, however, he had not failed to point out that the problem had not been solved, and it was difficult to speak of the development of the economic life of the different countries without bearing in mind this factor which was as important to their economic life as capital.

M. STUCKI *(Economic Committee)*, without wishing to exaggerate the importance of the clause in the Final Act, was glad to note that for the first time the Polish delegate had concurred

in the opinion of the Economic Committee. He thought that it was desirable to indicate, at any rate in the Final Act, that it would be necessary in the comparatively near future to endeavour to settle the great question of labour. He wished, moreover, to remove any misunderstanding with regard to the International Labour Organisation. He had merely wished to say that, if it were decided to recommend the study of one quesrtion or another to the International Labour Organisation, it must not be supposed that this would suffice to allay pangs of conscience or that there was no further need to deal with the questions involved.

M. LAEMMLE *(Germany)* fully agreed that the employment of workers was of great importance to the economic life of the various countries and that the various problems connected therewith would have to be settled. Furthermore, the German Government had, even as it was, legislation which was in conformity with the recommendations contained in the paragraphs under discussion and had concluded on the question dealt with in sub-paragraph *(b)* conventions with Poland, Czechoslovakia, Austria and other States. He had feared for a moment that the two sub-paragraphs were to be struck out and it was for that reason that he had emphasised that it would be for the International Labour Organisation in the first place to settle this question on an international basis. Nevertheless, he considered that a sentence referring to the Organisation should be included in the Final Act.

The addition to sub-paragraph (c) *proposed by the Polish delegate was adopted.*

M. MAYER *(Austria)* asked what were the terms in which a reference would be made to the International Labour Organisation.

M. PILOTTI *(Italy)*, Rapporteur, replied that it would suffice if the Final Act contained at the end a text in the following sense : " The Conference further draws the attention of the International Labour Organisation to this recommendation ". The Conference, while making a recommendation to the various States, would thus indicate that it knew that there was an International Organisation dealing with labour problems and that it drew this Organisation's attention to the provisions adopted by the Conference.

THE CHAIRMAN proposed to complete as follows the sentence suggested by the Rapporteur : " . . . in so far as these questions concern the said Organisation ".

M. PARANJPYE *(India)* said that he was satisfied with this wording.

The Committee adopted the addition to the Final Act in the following terms :

" The Conference further draws the attention of the International Labour Organisation to this recommendation, in so for as these questions concern the said Organisation."

Section II.

No observations.

Additional Proposal by the Netherlands Delegation.

M. NEDERBRAGT *(Netherlands)* read the following proposal submitted by the Netherlands delegation for addition to the Protocol or Final Act :

" The provisions of bilateral conventions, concluded before the date of signature of the present Convention, which are less favourable than those contained in the present Convention, shall automatically lapse as from the date on which the States Parties to these conventions accede to the present Convention. "

If a provision of that kind were inserted in the Final Act, it should be given the form of a recommendation to the effect that the States parties to bilateral conventions containing provisions at variance with those of the present Convention should, by common agreement, modify such provisions in accordance with the sense of the present Convention.

He added that, if the Committee thought fit to express this idea in the report, he would have no objection.

M. LAEMMLE *(Germany)* thought that the principle covered by this proposal was in conformity with legal practice. He wondered, however, whether it was advisable to include it in the Convention. It might simply be said in the report that the Committee had been of opinion that it was a matter of course that the provisions of the General Convention, when more favourable to foreigners, took precedence over bilateral treaties.

M. STUCKI *(Economic Committee)* observed that Committee D had discussed an amendment by the British delegation in the following terms :

" Nothing in the present Convention shall be held to derogate from the obligations in international law of any High Contracting Party with regard to the treatment of the nationals and companies of any other High Contracting Party.

" The present Convention shall not absolve any High Contracting Party from granting to the nationals and companies of another High Contracting Party any treatment provided for in the terms of any treaty or agreement in force between the two Parties which is more favourable than the treatment provided for in the present Convention."

This amendment embodied, on the whole, the same idea as that expressed by the Netherlands delegation, and care must be taken to see that the decisions of Committee A were in conformity with those of Committee D. As representative of the Economic Committee, he had warmly supported the British amendment, which was in conformity with the Economic Committee's views as to the desirability of expressing, at any rate in a Final Act, the idea that, in the case of a conflict between a multilateral and a bilateral convention, the more liberal provisions should in all cases prevail.

M. OBREMSKI *(Poland)* thought that there could be no question of the legitimacy of the principle advanced by the Netherlands delegation. If, however, the matter were considered from the legal, and more particularly the technical point of view, he wondered whether it was desirable to stipulate that bilateral treaties were excluded by reason of the signature of a collective convention. Hitherto there had existed no bilateral treaties dealing with just the same matter as that which formed the subject of the present Convention. The provisions involved were regulated in treaties of commerce. If the proposed provision were applied literally, either the other treaties would automatically lapse or, alternatively, it would be necessary to undertake the difficult work of eliminating from the old treaties the subjects which were regulated in the new Convention. It would be better to leave this to the States concerned.

M. NEDERBRAGT *(Netherlands)* said he would not press the formula he had suggested, provided that his idea was accepted. In view of the considerations developed by the Polish delegate, he was prepared to withdraw his proposal, if the necessary explanations were given in the report.

It was decided that the explanation should be given in the report.

Further Additional Provisions to the Final Act.

M. SMETS *(Secretary of the Committee)* recalled that the Committee had decided during the discussion on Article 8 (Annex A, 28), to insert in the Final Act a recommendation similar to that which had been proposed in connection with Article 6. The recommendation was as follows :

" Notwithstanding the freedom enjoyed by the States under Article 6, in the matter of admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings entered into under the terms of the present Convention. "

He recalled that the same report on Article 8 contained the following paragraph :

" The Sub-Committee, on the other hand, was unanimous in its view that it would be expedient to state, in the Final Act, the desirability of authorising the employment, irrespective of nationality, of the subordinate staff necessary for the proper working of the undertaking concerned. "

THIRTY SECOND MEETING

Held in Paris on December 2nd, 1929, at 10 a.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

62. **Examination of the Articles of the Convention : Article 7 : Paragraph 1. Report of the Committee to the Conference** (Annex A, 34).

THE CHAIRMAN asked the Committee to take the report on Article 7, paragraph by paragraph.

Paragraph 72.

No observations.

Paragraph 73.

M. SANDSTROEM *(Sweden)* proposed that the passage in the report relative to the granting of a permit required in Sweden for foreigners should be altered. He had emphasised that these permits were general and not specific in character. He would suggest a formula on the following lines : " The Committee was of opinion that, as the permit in question could be arbitrarily refused. . . "

In the second place, with regard to the deposit of security, the Committee had thought that this measure was not at variance with the Convention, provided that it was kept within reasonable limits and that the security was demanded for fiscal reasons.

He asked that this opinion might be reproduced in the report.

The Committee decided that the necessary amendments should be made in the report.

Paragraph 74.

No observations.

Paragraph 75.

At the request of M. SCHUMANS *(Latvia), the Committee decided* that this paragraph should be amended to read : " a previous authorisation from the State or from the municipal or communal authorities ".

Paragraph 76.

M. PUSTA *(Estonia)* said that he would have to make a reservation on the subject of financial companies, loan establishments and insurance companies, which, along with branches, had, under Estonian law, to be incorporated like national companies. He asked that the Committee should take note of this regulation.

The Committee noted this declaration.

DR. MARTIUS *(Germany)* observed that the report made no mention of the question of insurance except in so far as concerned the second paragraph of Article 7. The Committee had, however, discussed other aspects of this question, the final settlement of which would indicate the existence of a number of divergent views. What would be the terms in which these other questions would be indicated in the report ?

As to the other companies mentioned by the Estonian delegate, he thought that the case of banks, etc., was covered in another passage in the report.

M. SMETS *(Secretary of the Committee)* explained that, as the question of banks had not yet been discussed in substance, it had been held over. Paragraph 104 in the report was a blank, which would have to be filled in when that part of the report came up for examination.

Paragraphs 76 *to* 82.

No observations.

Paragraph 83.

M. PEROUTKA *((Czechoslovakia)* pointed out that the provisions of Article 7, paragraph 2, would also have to be examined in their relation to Article 16.

THE CHAIRMAN replied that the question of the relation between Article 7 and Article 16 would be considered in plenary session.

Paragraphs 85, 86 *and* 87.

No observations.

Paragraph 88.

M. NEDERBRAGT *(Netherlands)* wished to submit certain observations on the third sub-paragraph. The report made no mention of the observation which he had made on the problem of the omnipotence of the State. This was not in accordance with what had been agreed.

Further, the report referred to " administrations under the authority of the State ". The word " administrations " was not in accordance with the rest of the paragraph, which mentioned religious, cultural and other similar corporations.

In the second place, the words " administrations under the authority of the State " should obviously be taken to mean " administrations dependent upon the State ". It would be going too far to say that religious, cultural and other similar bodies depended on the State.

M. PILOTTI *(Italy)*, Rapporteur, pointed out that the corporations concerned were those which were dependent upon the State. The case of a country, for instance, in which confessional organisations were private corporations was not involved.

M. NEDERBRAGT *(Netherlands)* thought that in these circumstances the report should be more clearly worded.

He pointed out that, after stating that the administrations concerned were those under the authority of the State, the report went on to say that there were administrations which were not under the authority of the State and which were " endowed with a juridical personality", so that they were distinct from the State.

DR. MARTIUS *(Germany)* had taken the words " under the authority of the State " in a strict sense. He did not think that it had been the Committee's intention to decide in a general way that, in so far as concerned corporations, the State could say that foreigners were excluded. In his view, it would be preferable to omit these words, and likewise at the end of sub-paragraph *(a)* of paragraph 2 in Article 7 the words " irrespective of whether or not they are of a general or local character ". These words had not appeared in the Sub-Committee's draft. In this connection, he announced that the German delegation proposed at the end of the report to make a general declaration on paragraph 2.

M. PILOTTI *(Italy)*, Rapporteur, said that the explanations contained in the report had been added in order to meet the wishes of the Austrian delegate, who had submitted a text, which had been thought inadequate, to settle all the difficulties involved.

With reference to the Netherlands delegate's observations, he would draw attention to the following passage in the paragraph under discussion : " but also to any administration endowed

with a juridical personality distinct from that of the State, whether it holds its powers from the State or has itself a public law standing ". If this passage were completed by the enumeration which followed, it would be seen that the only corporations in question were those in public law. The Netherlands delegation had asked whether an administration which possessed *per se* a public law standing could be regarded as under the authority of the State. He thought it could. An administration might be directly under the authority of the State or, alternatively, it might have a public law standing, and in this sense it was under the authority of the State, since it must act within the limits laid down by the law. He admitted that the wording of this passage might perhaps be improved, but he did not think that there was any material difference of opinion on the subject, since everything that had a public law standing was excluded from the Convention. He hoped that the Austrian delegate would indicate his point of view.

The question raised by the German delegate's observation concerning the corporations enumerated was one which would have to be examined, case by case. There were certain countries in which a religious corporation was not a public law corporation, owing to the fact that the State did not take cognisance of religious problems. In this case, the article obviously would not be operative. In other countries, on the other hand, religious associations were created by a State decree and were under the authority of the State. It was this case that it had been desired to cover. The addition at the end of sub-paragraph *(a)* of paragraph 2 in Article 7 had been made in order to satisfy the Austrian delegate, and he did not see how it could be deleted. There might be certain public law administrations, and even certain Governmental administrations, which were not territorial. For instance, it was impossible to describe the administrations of the post office and of the railways mentioned in the report as territorial. They, at the most, had a general territorial character, such as that of the State itself. The essential character of such administrations was not their general or local territorial character but their governmental character. He was prepared to complete the report by the addition of a passage on the lines of the explanation requested by Dr. Martius, subject to the consent of the Austrian delegate.

M. NEDERBRAGT *(Netherlands)* asked whether the Rapporteur held that the term " religious corporations " did or did not exclude churches.

M. PILOTTI *(Italy)*, Rapporteur, would prefer the Austrian delegate himself to give an explanation, since the whole of this passage was intended to meet his views. He took the words referred to by the Netherlands delegate to mean cultural bodies set up by the State and governed by its laws. This provision would have no application in countries where the churches were completely free to organise themselves as they thought fit without State control. Examples of cultural corporations were academies, universities, etc., which were recognised as possessing juridical personality.

M. MAYER *(Austria)* thought that the Rapporteur had explained the position very clearly. The matter involved in this provision was not an obligation for the Governments, but a right allowed them, and he did not understand the preoccupation felt by Dr. Martius. It was clear that every Government was free to require or to refrain from requiring the employment of nationals in corporations under the authority of the State. The instances cited by the Rapporteur might in Austria be completed by savings banks, real estate organisations, professional associations, etc. — all bodies which enjoyed a large measure of autonomy, but which were under the authority of the State. He did not think that any prejudice would be created by leaving the interpretation given in the report.

In reply to the question put by the Netherlands delegate, he would say that the provision in question most certainly covered ecclesiastical communities and churches in the general sense, to whatever sect they belonged.

Dr. MARTIUS *(Germany)* observed that, in view of M. Mayer's explanations, the expression in question was bound to have a very wide bearing. He did not desire to raise in Committee a long discussion on a point of substance which was under the jurisdiction of the plenary Conference. He wondered whether the text would gain in clarity if there were added to the examples given those of the savings banks, fire insurance, the churches, etc. He would not press for any alteration of the text.

M. PILOTTI *(Italy)*, Rapporteur, on the basis of a suggestion by the Egyptian delegate, proposed to substitute for the word " corporations " the word " institutions ", the passage to be concluded as follows : " and institutions set up and *governed by administrative law* ".

The institutions mentioned by the Austrian and German delegates would come within this category in so far as they were set up by a country's administrative law. In this way, and with the list given between brackets, the text could not give rise to ambiguity.

He would emphasise that there was no question of exceptions. The point was simply that of the field to which the Convention would not apply, in the sense that every State would be free to act at its own discretion in this matter.

M. OBREMSKI *(Poland)* approved the substitution of the word " institutions " for the word " corporations ", but did not see the use of referring to administrative law. Reference should be made solely to law, since it was for the States themselves to describe their laws as administrative, constitutional or otherwise. He drew attention to the fact that in Poland the Protestant churches were not under the authority of the State, whereas the status of the Catholic Church was governed not only by the law but by a concordat concluded with the Holy See.

M. NEDERBRAGT *(Netherlands)* said that he would be satisfied if the report contained a passage on the following lines : " The Netherlands delegation pointed out that it had not admitted either the principle of the omnipotence of the State or the principle that the Church was under the authority of the State". In view of the important discussions raised by this question in the Netherlands, it would be impossible for him to admit any such principle on behalf of his Government.

THE CHAIRMAN asked the Committee to vote on the following amendment : " institutions set up by and governed by the law ".

The amendment was adopted.

The Committee also decided to put in the report the sentence proposed by the Netherlands delegate.

SIR PERCY THOMPSON *(British Empire)* asked that from the list of examples given by the Rapporteur the Post Office in Great Britain should be deleted.

Paragraph 89.

SALIH ZEKAI BEY *(Turkey)* proposed the addition of a paragraph 89 *bis* to explain the conditions in which sub-paragraph *(b)* of paragraph 2 of Article 7 had been amended by the addition of the words : " which, under the national laws by which they are governed, entail special responsibilities in view of the public interest ". In consequence of this addition, paragraph 106 in the report dealing with the Turkish delegation's proposal to reserve teaching in schools and hospitals might be deleted.

M. LINANT DE BELLEFONDS *(Egypt)* said that he had concurred in the Turkish amendment, not in order that the professions of doctor, hospital nurse, etc., might be reserved to nationals, but because the amendment indicated in precise terms that it was for the State itself to judge of the considerations of public interest.

M. DINICHERT *(Switzerland)* said that his delegation would be unable to accept a general reservation of which all the contracting parties would be able to avail themselves in order to reserve the medical and cognate professions. In a spirit of compromise, he was prepared to consider whether any one of these professions in a specified country should be reserved ; that was to say, a special reservation for a specified country and not a general reservation in regard to these professions. He would for the moment have to make a reservation as to the possibility of accepting this amendment.

SALIH ZEKAI BEY *(Turkey)* noted that the report did not mention the conditions in which the modification in question of sub-paragraph *(b)* of paragraph 2 in Article 7 had been adopted. It seemed to him that the right place for this in the report would be paragraph 89 *bis*. The amendment to sub-paragraph *(b)* proposed by the Turkish delegation had been supported by other delegations. In Turkey, as in other countries, the medical and cognate professions, along with the scholastic and hospital professions, were reserved to nationals. The question had been raised in connection with sub-paragraph *(a)*, but the Rapporteur had explained that this paragraph referred to free professions, so that the others would have to be mentioned in connection with sub-paragraph *(b)*, and it was in order to cover these various amendments that the Turkish delegation had proposed the addition of the words " under the national law by which they are governed ".

DR. MARTIUS *(Germany)* was in full agreement as to substance with the Swiss delegate's statement. He had, moreover, no objection to the amendment to the report submitted by the Turkish delegate, which helped to clear up the position.

M. OBREMSKI *(Poland)* understood that the Turkish delegate merely wished that the report should make clear the course of events which had occurred in the Committee.

M. PILOTTI *(Italy)*, Rapporteur, noted that the proposal for an addition to sub-paragraph *(b)* had been submitted by the Turkish delegation and seconded by the Polish, Belgian, Egyptian and Hungarian delegations. He was opposed to saying that the object of this addition had been to exclude the medical and cognate professions. The object, in point of fact, was to limit the scope of sub-paragraph *(b)* by stating that it was the laws of the country concerned which were to be taken as a criterion for judging that these professions entailed " special responsibilities in view of the public interest ". He thought he could meet the Turkish delegation by adding to his report :

> " In order to meet the wishes of the Turkish, Polish, Belgian, Egyptian and Hungarian delegations, the Committee adopted the words in question in the new draft of sub-paragraph *(b)*."

SALIH ZEKAI BEY *(Turkey)* recalled that, when he had raised the question of private schools, the Rapporteur had replied that, if free schools were involved, the question could be examined in connection with paragraph 2 *(b)*, which covered the practice of professions. The Rapporteur had then expressed himself as follows :

> " M. PILOTTI *(Italy)*, Rapporteur, added that there remained the question whether the difficulty raised by the Turkish delegation could somehow be solved so as to satisfy him. In discussing sub-paragraph *(b)*, the Committee would consider whether the report should be changed and the sub-paragraph in question amplified. For the moment, the question was reserved *in toto*."

When the discussion had been opened on sub-paragraph *(b)*, the Turkish delegation had proposed an addition to this sub-paragraph and, according to his idea, the object of the addition was to cover the medical and cognate professions and likewise the scholastic and hospital professions.

M. PILOTTI *(Italy)*, Rapporteur, replied that, during the discussion on sub-paragraph *(b)*, he had explained what was meant by " a special responsibility in view of the public interest ". He thought that he was correctly interpreting the Committee's opinion in thinking that there was no reason to mention schools, hospitals, etc., in a new paragraph to be entitled 89 *bis*. The discussion on national legislation had been of an entirely general character and had not taken into account these particular professions. It had, moreover, just been seen that the Egyptian delegation in no way agreed with the Turkish delegation on this matter, on the question whether the addition made to sub-paragraph *(b)* was of a general character.

With regard to the particular question of schools and hospitals, he would draw the Turkish delegate's attention to paragraph 106 of the report. The question of free schools was partly settled in paragraph 1 of Article 7 by the words " subject to the submission of the same titles or guarantees . . . ", and in the passage of paragraph 2, sub-paragraph *(a)*, referring to " a mission entrusted by the State ". He considered that paragraph 106 faithfully reproduced the result of the Committee's discussion. The Turkish delegate should therefore submit his observations in connection with paragraph 106, if he thought it necessary to do so.

SALIH ZEKAI BEY *(Turkey)* adhered to his proposal to insert the necessary explanation after paragraph 89 in the report and to drop paragraph 106. There was no need to mention the Egyptian delegation, but the other delegations which had expressed similar opinions to that of the Turkish delegation might be mentioned.

M. CHOUMENKOVITCH *(Yugoslavia)* asked that the name of his delegation might be added to those which had supported the Turkish proposal.

M. DINICHERT *(Switzerland)* wished to obviate any misunderstanding. He was prepared to accept provisionally the statement in the report, but at some time or another — since the Swiss delegation's adhesion to the Convention would depend on this point — it would be necessary for the Conference to give an authentic interpretation of the scope of sub-paragraph *(b)* and to say whether it intended that this sub-paragraph should state a general rule as to the medical and cognate professions. The Swiss delegation, if the scope of the sub-paragraph were general, would have to make a general reservation as to its subsequent attitude towards the Convention. If, on the other hand, the matter involved was only a special reservation made by certain States in order to take into account the professions mentioned, the Swiss delegation would be able to agree.

In regard to the interpretation of sub-paragraph *(b)* of paragraph 2 in Article 7, he asked that note might be come to of the fact that for the moment the Conference had come to no formal decision.

M. DE LA VALLÉE POUSSIN *(Belgium)* considered that the Rapporteur's comments on paragraph 2, sub-paragraph *(b)* were in complete accord with the idea which the Belgian delegation had had in mind when supporting the Turkish amendment.

The text proposed by the Rapporteur was adopted.

DR. MARTIUS *(Germany)* proposed that the paragraph should be completed by a list of the amendments submitted by the various delegations.

M. OBREMSKI *(Poland)* thought that the list of amendments prepared by the Secretariat was sufficiently complete. He thought, however, that in principle it should include not only amendments submitted in writing, but also those which had been submitted verbally during the discussions.

M. PEROUTKA *(Czechoslovakia)* considered that the account of the discussion in the report would be clearer if paragraph 90 were transferred to the end of the observations concerning paragraph 2 of Article 7.

M. PILOTTI *(Italy)*, Rapporteur, pointed out that the succeeding paragraphs of the report dealt with the question of industries and not with professions, whereas paragraph 90 was concerned only with the amendments on the practice of professions.

M. PEROUTKA *(Czechoslovakia)* pointed out that there still remained the question of banks.

M. PILOTTI *(Italy)*, Rapporteur, replied that, in the sense of the present text, banks would have to be classified among the industries.

DR. MARTIUS *(Germany)* thought that the picture of the situation would be confused if all the amendments without exception were mentioned.

THE CHAIRMAN concluded that the Rapporteur would consider whether the list of amendments should appear in the text of the report or in an annex.

Paragraph 91.

No observations.

Paragraph 92.

M. PILOTTI *(Italy)*, Rapporteur, proposed to use in the report the word " exception " in the case of general derogations stipulated in the Convention and the word " reservation " when only a single State was involved.

The Committee agreed.

Sir Percy THOMPSON *(British Empire)* drew attention to a law which prevented foreign companies from landing whales or engaging in the manufacture of primary products from whales in Scotland. If the Committee held that this did not constitute an infringement of the provisions of Article 7, the British delegation would propose that a passage to this effect should appear in the report.

M. DINICHERT *(Switzerland)* pointed out that during the discussion on the question of fishing the Swiss delegation had strongly urged that the reservations in regard to fishing should not be extended to waters known as " inland waters " ; that was to say, fishing in streams, rivers and lakes. The report mentioned " inland waters ". It would perhaps be well to indicate that the waters referred to were those specially mentioned by the Netherlands delegation (Annex A, 19).

Dr. MARTIUS *(Germany)* wondered whether it would not be possible to add the adjective " neighbouring " to the words " inland or territorial waters ". The terms used to cover the very special case mentioned in the Netherlands amendment seemed somewhat too general.

M. NEDERBRAGT *(Netherlands)* thought that this question would require further discussion. The matter in which the Netherlands delegation was interested was that of the arms of the sea, inland waters and fordable waters, as well as the zone separating the low-water line from the coast. The German delegate had very appropriately described these waters as " neighbouring waters ". The Netherlands delegation would have provisionally suggested the expression : " territorial or similar waters ". In any case, there was no question of the waters mentioned by the Swiss delegate, and he would suggest that, if necessary, another term should be found.

M. SANDSTROEM *(Sweden)* approved the formula : " territorial or similar waters ". There were in Sweden great lakes portions of which might be placed on the same footing as territorial waters. The case of such waters should be covered.

M. PILOTTI *(Italy)*, Rapporteur, explained that this paragraph of the report had been left as it stood because it had been impossible to find a formula which would cover only the case mentioned by the Netherlands delegate. The observations of the Swiss and Swedish delegations had been submitted since. It was clear that no formula for defining " inland waters " would ever satisfy delegations which wished to reserve the fishing services.

The Committee was free to make an exception covering only territorial waters in accordance with the spirit of the Economic Committee's draft, or to mention inland waters, but this word would not apply to fresh river waters, for instance, to waters of estuaries in which it was desired to reserve the fishing. In point of fact, it would either be necessary to reserve fishing everywhere or to reserve it nowhere, since there was no particular reason for reserving it in some waters and not in others. If the treaties on private international law stipulated that fishing was reserved in territorial waters, it was solely because territorial waters were subject to the sovereignty of the riparian State, which could consequently reserve such fishing to nationals. The same term was used in works on the codification of international law. All that had been said in regard to territorial waters was that they were dealt with in the same manner as territories so far as the jurisdiction of the riparian State was concerned. This applied equally to rivers, lakes, estuaries, inland waters, etc. He had been unable to find any formula covering solely that portion of the waters that it was desired to specify. It would not suffice if the report contained an explanation. It would be necessary for this explanation to be understood in the same sense by all the delegations concerned.

Dr. MARTIUS *(Germany)* agreed that the present text would not meet the views of the Swedish and Netherlands delegations. There was also the case raised by the Swiss delegation, but he wondered whether there was any real divergence on the substance of the question. If the formula " neighbouring waters " was adopted, this would cover the case of waters in estuaries and in a general manner would meet the wishes of the various delegations concerned.

M. LINANT DE BELLEFONDS *(Egypt)* did not think that this would be a good solution. In addition to the reasons given by the Rapporteur, there was a social reason. In many countries, fishing in territorial or in inland waters was reserved to nationals, because it was the sole or principle means of livelihood of the riparian population. That was the case of the Egyptian lakes, fishing in which was forbidden by the Government to foreign companies. He considered that it would be better to have the vague formula in the report without giving it any further precision.

The CHAIRMAN noted that the Committee had not had any formal amendment placed before it and asked whether it considered that the text of the report should be maintained.

The Committee agreed to maintain the text.

The Committee noted the British observation concerning the question of whale fisheries.

Paragraph 93.

M. PILOTTI *(Italy)*, Rapporteur, referring to the two texts to be inserted according to circumstances in the Protocol *ad* Article 7, mentioned in paragraph 93, proposed that the text of this paragraph should be altered as follows :

" The Committee considered that the second text should be inserted in the Protocol. This second text is alone compatible with the general spirit of the Convention and the Protocol, since the reservation regarding the application of other international conventions is manifestly justified, whereas the first text merely notes that there is in the Convention an omission deliberalety made by the parties, without any indication as to the reason.

" It should be added that, in so far as the idea of river and lake transport applied purely and simply to navigation on inland waters belonging to a single State, a prohibition for foreigners to engage in such navigation, as generally in any other form of navigation not governed by conventions, might be stipulated by the States concerned, provided that the latter, in adhering to the present Convention, had made a special reservation concerning the said industry.

" The adoption of the method of special reservations concerning certain occupations from which it is desired to exclude foreigners appears far preferable to the system of unduly amplifying the list of exceptions mentioned in Article 7, paragraph 2, since it allows other States whose legislation in this matter is more favourable to foreigners not to be bound in this respect towards a State which has made a reservation and does not oblige them to change their own legislation in a more restrictive sense."

He would add a few comments on this new draft.

While the first text mentioned in the original wording of the report said that " by the provisions of Article 7, paragraph 2, *lit. (f)*, the High Contracting Parties do not intend to lay down any decision . . .", it would be observed that at the beginning of paragraph 2 of Article 7 it was stated that " the provisions of the previous paragraph shall not apply to the exercise . . .". In these circumstances, it was difficult to understand the expression " by the provisions of Article 7, paragraph 2, *lit (f)*, the High Contracting Parties do not intend to lay down any decision ". Furthermore, the High Contracting Parties could never be required to give a decision on a situation of fact as to what constituted transport on rivers, etc. The second text mentioned in the report was, on the contrary, quite clear, since it introduced a new notion by saying that the provisions of Article 7 " shall in no way affect the *de jure* position which is the outcome of the international conventions . . .". In other terms, the conventions previously concluded on special subjects still remained in force, notwithstanding the present general convention, and, if there were a convention on river or lake transport, it would remain in force by an express provision of the Protocol in spite of the fact that the regulation of cabotage had been reserved to the States. There was no cause for apprehension on the part of States which wished to reserve to themselves the carrying on of the river transport trade, since these States would only have to make a special reservation when adhering to the Convention.

To sum up, he proposed that the Committee should adopt the second text in the report as the final text of the Protocol. It should add in the report that States wishing to reserve to themselves the carrying on of inland shipping in their territory (without employing the term " cabotage ", which might apply to a water which was not a purely territorial water) would only have to make a special reservation on the subject, and that the other States would not in this matter be bound towards the States which made the reservation.

M. DE SCHLICK *(Hungary)*, with reference to the general question, drew the Committee's attention to the fact that inland navigation was the subject of certain special conventions. He did not therefore understand why the Committees need regulate a certain type of inland navigation in the present Convention. He knew of no conventions on river shipping which reserved the transport trade to nationals. " Cabotage " was mentioned in the Danube Act, where it was said that regular " cabotage " was subject to previous authorisation, but neither the Danube Act nor any other Convention reserved " cabotage " to nationals. This provision would be a step backward if it stipulated a restriction which had not existed hitherto. By its proposal either to delete the word " cabotage " or to complete it by the word " maritime ", the Hungarian delegation was not intending to change the existing situation, but merely to prevent the present Convention being possibly taken as a basis for another restriction. Unless the Hungarian delegations's objections were met in a satisfactory manner, he did not think that his Government would be able to sign the Convention.

M. PEROUTKA *(Czechoslovakia)* agreed with the Rapporteur that it was unnecessary to give too much room in the report to this question, which was limited in scope to certain countries. In his opinion, it would be enough to say that, after an exchange of views between the principal delegations concerned, it had been impossible to succeed in framing a common text, and that the Committee had left aside this question which touched on the general problem of the relation between the present Convention and existing international conventions.

He was prepared to accept the second text if the words " the *de jure* position " were replaced by the words " the obligations ".

M. CHOUMENKOVITCH *(Yugoslavia)* urged that the original text should be preserved without the addition of the adjective " maritime " to the word " cabotage ", so that river transport might be covered.

Furthermore, there was the question whether a general international convention such as that under discussion could be derogatory to a special international convention. He would answer this question in the negative. In his opinion, the article should remain as it was without any addition.

M. PILOTTI *(Italy)*, Rapporteur, pointed out that the proposed addition would appear in the Protocol and not in an article.

M. MAYER *(Austria)* said that his Government was anxious to avoid the text of the Convention being taken as an encouragement to break the commercial ties which nature herself had provided by means of river waterways, and he accepted the Rapporteur's suggestions. In regard to the observations of the Czechoslovak delegate, he preferred in the "second text" to keep the words " the *de jure* situation ".

M. PUSTA *(Estonia)*, while observing that his delegation was not concerned in the question, thought that the "second text" mentioned in the report would at any rate obtain a majority of votes. He suggested that the text should read " the *de jure* situation and *the obligations* ".

M. PILOTTI *(Italy)*, Rapporteur, observed that, according to the Hungarian delegation, river cabotage — personally, he thought it would be preferable to say " river navigation " — should not form the subject of a reservation. This argument seemed to be in opposition to that of the Yugoslav delegate.

His own suggestion would be simply to mention "cabotage" in the sense of maritime cabotage, to recommend the adoption of the "second text" and finally, to say that States, like Yugoslavia, which wished to reserve river navigation to nationals could do so by means of a reservation to be made on signing the Convention.

THE CHAIRMAN thought that the simplest procedure would be to take a decision on the new text proposed by the Rapporteur and then to examine the various amendments.

M. PEROUTKA *(Czechoslovakia)* thought that there were two solutions : The first was to insert in paragraph 2 the word " cabotage " without limiting it to maritime cabotage, thus including river cabotage, and then to continue with the wording of the second text. The Czechoslovak delegation would be able to accept such a draft. The second solution was, in accordance with the Hungarian proposal, to limit cabotage in Article 7, paragraph 2, to maritime cabotage and to introduce a passage on this point in the report.

The Rapporteur seemed to share the Hungarian delegation's point of view. He could not himself for the moment accept all the details of the text under discussion, which was of a markedly legal character. It was for that reason that he would prefer the insertion in the report of a shorter and more general formula on the lines of his preceding observations.

The remainder of the discussion was postponed to the next meeting.

63. **Articles 7 and 8 : Declaration by the Luxemburg Delegation.**

M. SMETS *(Secretary of the Committee)* read the following declaration on behalf of M. Bastin, delegate of Luxemburg :

> " In connection with Articles 7 and 8 of the draft Convention, which we are now studying, I desire to renew the observations which I previously submitted in regard to Article 5.
>
> " The only object of the note which I have handed in concerning the declarations which the Luxemburg Government has instructed me to make in the general discussion is to submit certain objections and reservations on the part of the Grand Ducal Government.
>
> " I do not therefore intend to convert this simple statement into a series of amendments to be submitted for discussion. I have only one desire — a desire which is shared by the Government I represent — to facilitate so far as possible the task of the Conference, which is to achieve a common understanding that will ensure the success of a Convention whose purpose it is to strengthen the bonds of friendship and fraternity which should exist among the nations."

THIRTY-THIRD MEETING

Held at Paris on December 2nd, 1929, at 9 p.m.

Chairman: Sir Sydney CHAPMAN (British Empire).
Secretary: M. SMETS.

64. **Examination of the Articles of the Convention : Article 7. Paragraphs 1 and 2 : Draft Report of the Committee to the Conference presented by MM. Politis (Greece) and Pilotti (Italy)** (Annex A, 34) (continuation).

Paragraph 93.

At the request of certain delegations which had not been able to be present at the beginning of the meeting, paragraph 93 was reserved for future discussion.

Paragraph 94.
Adopted.

Paragraph 95.
Adopted.

Paragraph 96.
Adopted.

Paragraph 97.
Adopted.

Paragraph 98.

DR. MARTIUS *(Germany)* pointed out that this paragraph referred only to persons. He asked for explanations regarding the situation in which insurance companies were placed. The question would have to be settled in agreement with Committees C and A. Would it not be useful to insert in the report a reference to the discussion of these Committees regarding the question of insurance, in order that the result of this discussion could be examined by the Plenary Conference?

M. PILOTTI *(Italy)*, Rapporteur, explained that the text adopted by the two Committees would be inserted in Article 16. In Article 7, on the other hand, the Conference would content itself by stipulating that insurance contractors would remain entirely excluded. He proposed, in order to explain this point, that the following note should be inserted in the report at the bottom of the page :

" The question of insurance was also dealt with by Committee C in connection with companies engaging in insurance business. A Sub-Committee appointed for this purpose jointly by the two Committees proposed that the following clause should be inserted in the Protocol *ad* Article 16 :

" ' It is understood that the High Contracting Parties remain free :

" ' To make the activities of foreign insurance undertakings in their territory subject to previous authorisation involving conditions and guarantees other than those required of national undertakings, provided that these conditions and guarantees shall in no case be such as to prevent the said insurance undertakings from carrying on their business in normal economic circumstances.'

" The Committee approved this text and decided to submit it to the plenary Conference for consideration in connection with the results of the work of Committee C which dealt with companies."

DR. MARTIUS *(Germany)* agreed.

M. SMETS *(Secretary of the Committee)* said that the text should be modified in order to cover social insurance, accident insurance and sickness insurance.

Paragraph 98 *and the note were adopted with drafting amendments.*

Paragraph 99.

M. PEROUTKA *(Czechoslovakia)* recalled that when the question of insurance had been discussed by Committee A, the result of the discussions of Committee C had not been known. In Czechoslovakia, social insurance was compulsory and the premiums were paid in part by the employers. These insurances covered the three branches of social insurance: industrial accidents, disease and old age. He had not yet had an opportunity of referring to old-age insurance. It was necessary to mention in the paragraphs under discussion that in a certain number of States the three kinds of social insurance were organised by the State. In that case, he thought, in respect of those countries, a reference to insurance companies or private contractors would be useless, unless they were considered as auxiliary to the State insurance. In that case, their situation was settled by the general provisions relating to companies and individuals.

M. PILOTTI *(Italy)*, Rapporteur, explained that, if the Czechoslovak insurance funds were founded by the State and carried on their activity apart from private companies, these companies were in the nature of a monopoly and were covered in the Convention by the provisions relating to monopolies. If, on the other hand, the State insurance competed with the private insurance companies, the position with regard to the activities of the State insurance companies was equally clear, for they were a State industry and consequently not covered by it.

M. PEROUTKA *(Czechoslovakia)* said that he would be satisfied if his observations were recorded in the Minutes.

Paragraph 99 *was adopted.*

Paragraph 100 (a).

Adopted.

Paragraph 100 (b).

Adopted.

Paragraph 100 (c).

Adopted.

Paragraph 100 (d).

Reserved for discussion with paragraph 93.

Paragraph 100 (e).

Adopted.

Paragraph 101.

M. CHOUMENKOVITCH *(Yugoslavia)* noted that there was a divergence of text between the title of Article 7 proposed by the Sub-Committee and the title adopted by Committee A regarding the manufacture of war material, which now only covered " the manufacture of arms and munitions of war ". In the first instance, the words " industries concerned with national defence " had been proposed. The Committee had adopted the expression " war material ". The text proposed in the report now under discussion referred to the " manufacture of arms and munitions of war ". The field of the reservation was gradually being restricted.

M. PILOTTI *(Italy)*, Rapporteur, thought that the observation of M. Choumenkovitch was more in place in regard to paragraph 96. He had already explained to the Committee that the expression " war material " could not be accepted, because experience had shown in connection with the application of the Treaty of Peace that this expression had been far too vague and had led to all kinds of different interpretations. For that reason, it had been thought preferable to adopt the formula proposed by the Belgian delegation : " manufacture of arms and munitions of war ".

M. CHOUMENKOVITCH *(Yugoslavia)* said that, in his view, this formula was too restricted, and he would have, therefore, to make an express reservation, for he very strongly doubted whether his Government would be able to accept the formula " manufacture of arms and munitions of war ".

M. PILOTTI *(Italy)*, Rapporteur, in reply to M. PARANJPYE *(India)*, who proposed the expression " material essential for war " said thaf this wording would not be more explicite than the others.

In reply to M. DE LA VALLÉE POUSSIN *(Belgium)*, who proposed " arms, munitions of war and explosives ", he explained that nearly every industry was considered to be essential for the manufacture of war material. The Convention could not be put into operation if so wide a reservation were allowed. In regard to explosives, there were countries where their manufacture, which was essential for the mining industry, was not reserved to nationals. Italy was one of those countries. The expression " munitions of war " covered explosives specially manufactured for war.

The Committee decided to maintain the expression " manufacture of arms and munitions of war ".

Paragraph 101 *was adopted.*

Paragraph 102.

M. PILOTTI *(Italy)*, Rapporteur, pointed out that paragraphs 102, 103 and 104 of the report had been revised (Annex A, 35).

At the request of M. ITO (Japan), *the following textual changes were made in paragraph* 102 *and in the corresponding Protocol* (*Annex A*, 34) :

" As regards aerial navigation, it was pointed out that there was a special Convention on the subject concluded in 1919 . . . ".

" The provisions of Article 7 shall in no way affect the stipulations of the 1919 Convention on air navigation."

M. PILOTTI *(Italy)*, Rapporteur, said that he had been careful to mention in the report all the amendments presented in his report in order to describe the successive phases of the discussion.

Paragraph 102 *was adopted with the above amendment.*

Paragraph 103.

Adopted.

Paragraph 104.

M. MACHADO HERNANDEZ *(Venezuela)* recalled that in the report presented at the previous meeting (Annex A, 34), Venezuela had been mentioned in paragraph 104. In the text submitted at the present meeting (Annex A, 35), it was not to be found. He asked that a reference to Venezuela should be retained in the text of paragraph 104.

M. PILOTTI *(Italy)*, Rapporteur, said that the delegation of Venezuela had submitted an explanatory note together with certain documents relating to banks which had come from other delegations. He had always understood that the matter concerned banks of issue. For that reason, Venezuela had been mentioned in paragraph 100 *(a)* under that heading. Venezuela was free to adopt, in so far as banks of issue were concerned, any policy she liked, but there was no doubt that a State monopoly was always involved. Even if the issue of notes by banks were free, as in Venezuela, the system followed was merely a delegation of a sovereign right of the State to certain banks of issue. The case was covered by the stipulations referring to monopolies.

M. MACHADO HERNANDEZ *(Venezuela)* was satisfied with the reference to paragraph 100 *(a)*.

M. PEROUTKA *(Czechoslovakia)* had intended to propose an amendment at the previous meeting to be inserted in paragraph 104. There was a close connection between banks and insurance companies, and, without going so far as in the case of insurance companies, he thought that certain measures of exclusion should be provided for in regard to foreign banks. He consequently proposed to add a paragraph to the Protocol in the following terms :

> " The provisions of Article 7, paragraph 2, sub-paragraph *(b)*, shall apply to the profession of bankers and the conduct of financial transactions, as well as to the activities of emigration agents on the territory of States in which these matters are regulated by the national legislation and involve a special responsibility for reasons of public interest."

Should this formula be adopted, countries whose legislation contained somewhat strict provisions in regard to bankers and emigration agents would be prepared to dispense with a reservation. Four amendments had already been submitted in this connection. The measure was not a step back, but was a provision designed to make it possible for the countries in question to apply their legislation which required that persons exercising the profession of bankers should offer certain guarantees.

M. PILOTTI *(Italy)*, Rapporteur, thought that it would be more preferable for the four or five States whose legislation was particularly strict in regard to bankers to make a reservation rather than to draw up a general provision to be inserted in the text of the Protocol, as this course would affect the meaning of the Convention. The argument advanced was the following : a State which formulated a reservation did not bind the others, as the exception which it asked to enjoy was only accepted by the States on a basis of reciprocity. A general provision, on the other hand, would engage the responsibility of all the signatory States, which, in order to maintain equality among themselves, would be obliged to adopt legislation restricting the freedom of banks.

M. PEROUTKA *(Czechoslovakia)* asked that the exception to which he had referred should be included in paragraph 2 *(b)*. If this proposal were not adopted, he wondered whether countries which had formulated a similar amendment to his own would not be obliged to return to the question. For the sake of clearness, he asked that the Committee should vote on his proposal.

The proposal of M. Peroutka was rejected.

Paragraph 104 *was adopted.*

Paragraph 105.

This paragraph was adopted with the following draft amendment: The final phrase should be replaced by the words : " The delegation withdrew its request, however, as its views were met by the new drafting of Article 8 ".

Paragraph 106.

SALIH ZEKAI BEY *(Turkey)* proposed the insertion of the following phrase in paragraph 106 in order to take account of the resolutions adopted at previous meetings : " or by the provisions contained in paragraph 2, sub-paragraph *(b)*, which referred to the question of professions implying special responsibility of the public interest ".

M. PILOTTI *(Italy)*, Rapporteur, in reply, said he had intended to discuss this point at the same time as sub-paragraph *(b)*, without undertaking, however, to include the case referred to by the Turkish delegate in that paragraph. There had been a discussion on the point whether a wide or strict interpretation should be given to this paragraph. The Committee had voted in favour of a wide interpretation. Consequently, the question had remained indefinite. The special responsibility necessitated by the exercise of certain professions of public utility would be the object of future arbitral decisions. This responsibility, which was quite clear in the case of certain professions, was far less so in regard to States. For that reason, he had been careful to give a personal interpretation of the word " responsibility ", thinking that it would be for the Conference alone to give a final one. In his view, paragraph 106 would satisfy the Turkish delegation, because it referred to " special titles or guarantees ", which the State had the right to require for the exercise of certain professions. If the Turkish law was such as to breing, for example, the responsibility of all school-teachers under sub-paragraph *(b)*, the Turkish delegation must be quite clear on the point. It was impossible, however, for the Rapporteur to take the responsibility for such a statement.

SALIH ZEKAI BEY *(Turkey)* explained that the object of his request had been to reserve to nationals the right to open private schools for which the director must be responsible. A similar proposal had been submitted by the Hungarian delegation, and the Rapporteur had then declared that the discussion on that question would take place at the same time as that on sub-paragraph *(b)*.

M. POZNANSKI *(Poland)* supported the proposal of the Turkish delegation, holding that any delegation had the right to determine the interpretation of the article in so far as its application to the country which it represented was concerned. The importance of the question of public education from the national point of view meant that this question must not be lightly dismissed. He was well aware that the Rapporteur had not intended to give a general interpretation of the text of the provision contained in the paragraph under discussion.

DR. MARTIUS *(Germany)* asked what would be the exact meaning of the vote on the amendment proposed by the Turkish delegation. Would it affect the substance of the question ?

THE CHAIRMAN replied that the vote would be an expression of the Committee's opinion on this question.

The Turkish amendment was rejected by nine votes to eight.

Paragraph 106 *was adopted.*

Paragraph 107.

Adopted.

Article 7 : Text proposed by the Sub-Committee entrusted with the examination of the Article (Annex A, 34).

THE CHAIRMAN asked the Committee to take the text of the article, paragraph by paragraph.

Paragraph 1.

Sub-paragraphs (a) *and* (b) *were adopted.*

Paragraph 2.

Sub-paragraphs (a), (b), (c), (d) and (e) were adopted.

Sub-paragraph (f) was adopted, subject to a reservation that a reference to coasting trade should be made, this to be discussed at the same time as paragraph 93, which had been reserved.

M. PEROUTKA *(Czechoslovakia)* pointed out that the Yugoslav interpretation of the words " coasting trade " was referred to in paragraph 100 of the report.

Paragraph 2 (g).

Adopted.

Paragraph 2 (h).

DR. MARTIUS *(Germany)* recalled that the question of the exploitation of minerals and hydraulic power had been reserved for examination at the same time as Article 10. This question had been the subject of two different discussions. The first time it had been decided to reserve the exploitation of minerals and hydraulic power in so far as present national legislation made an exception in their respect. At the second discussion, it had been decided to insert a reservation concerning the exploitation of minerals and hydraulic power. Nothing further had been said in regard to activities dealing with these matters.

He recalled that in nearly all the mines of Europe foreigners worked under the same conditions as nationals. He asked that the Committee should vote on the reservation concerning the exploitation of minerals and hydraulic power.

M. PILOTTI *(Italy)*, Rapporteur, recalled that the discussion of this paragraph had been reserved until the result of the discussion concerning Article 10 had been known. It had been hoped that the discussion of Article 10 would throw light on the question. It had, however, only resulted in restrictions regarding the purchase of mines, but it had not dealt with the exercise of the mining industry, which could be carried on either by the proprietor of the mine or by the leaseholder. Article 10 ought in reality to be rediscussed. Personally, the Rapporteur had no objection to the deletion of sub-paragraph *(h)*. The exploitation of minerals and hydraulic power might be covered by the paragraph concerning concessions, for nearly all the mines were exploited by concessionaires. The text of the Economic Committee had been maintained as the result of the Committee's vote on concessions.

DR. MARTIUS *(Germany)* pointed out that in Article 10, paragraph 5, the preliminary authorisation for the exploitation of mines might be retained. The Committee might therefore agree to lay down that the exploitation of the mine, like the purchase of mines, could be made contingent on obtaining a special authorisation without it being necessary to make a reservation covering the exploitation of mines as a whole. In that case, the question would be covered by paragraph 5 of Article 10.

M. PEROUTKA *(Czechoslovakia)* supported the proposal of Dr. Martius.

M. DINICHERT *(Switzerland)* asked that it should be explained whether sub-paragraph *(h)* was intended to reserve the exploitation of minerals and hydraulic power to nationals acting as proprietors or concessionaires of the undertaking or whether it was intended to specify that only nationals could be employed in these exploitations.

M. PILOTTI *(Italy)*, Rapporteur, thought that, according to the text of the Economic Committee and the discussions in the Committee, Article 10 reserved the ownership of mines to nationals. In view, however, of the fact that these mines were generally not exploited by their owners, it had been desired to lay down in sub-paragraph *(h)* of Article 7 that the exercise of the mining industry would be reserved to nationals, and in that case the paragraph would cover the exploitation itself but not the working staff.

National law was free to impose any restrictions thought necessary on the employment of labour in the mines.

M. DINICHERT *(Switzerland)* emphasised the retrograde nature of the provision which aimed at allowing the exploitation of mines and water-power to be left exclusively in the hands of national workers. He wished that it should be definitely laid down that the Convention made it possible to reserve the ownership and exploitation of minerals and hydraulic power to nationals, but did not reserve to nationals posts on the staff used for working the necessary services.

M. SANDSTROEM *(Sweden)* said that, as he understood the discussion, the system o concessions for the exploitation of mines recommended was the Swedish system. He would therefore make a reservation only if sub-paragraph *(h)* were deleted.

The Committee voted for the maintenance of paragraph 2 (h).

Paragraphs 2 (i) *and* (j).

Adopted.

Paragraph 2 (k).

M. POZNANSKI *(Poland)* asked for the deletion of the end of the sub-paragraph, being of the opinion that it was impossible to define a method of insurance by the manner in which it was collected.

M. PEROUTKA *(Czechoslovakia)* and Dr. MARTIUS *(Germany)* supported this proposal.

Sir Percy THOMPSON *(British Empire)* would accept the deletion if provision were made for the special case to which the British delegation had drawn attention regarding life insurance the premiums for which were collected at the residence of the insured person and payable at short intervals.

The Committee adopted the following wording for sub-paragraph (k) :

" Direct and indirect insurance operations carried out by individual undertakers."

M. PILOTTI *(Italy)*, Rapporteur, in reply to Sir Percy Thompson, explained that the note already adopted would be added to the text of Article 7, laying down that insurance companies were covered by Article 16 and that the case of individual insurance contracts was covered by Article 7, paragraph 2. The views of the British delegation would thus be met.

The Committee decided to mention the British reservation in a note and left it to the Rapporteur to settle the text.

Protocol ad *Article 7 : Draft Report to the Conference* (Annex A, 34).

The CHAIRMAN asked the Committee to take the report, paragraph by paragraph.

Paragraph 108.

Adopted.

Paragraph 109.

Paragraph 109 *was adopted with the following drafting amendment proposed by the Indian representative :*

" The Indian delegation also asked that it should be understood that foreign industries could be subjected to conditions calculated to encourage the development of national industries."

Paragraphs 110, 111, 112, 113 *and* 114.

Adopted.

Paragraph 115.

M. ITO *(Japan)* reminded the Committee of a disagreement between himself and the Rapporteur, M. Politis, as to the contents of this paragraph. He had submitted an amendment concerning the exclusion of intellectual relations from the Convention. Should no account be taken of his amendment in the report, he would be compelled to make a reservation. Without pressing the point, in view of the absence of M. Politis, he would be content with the deletion of the observation that " intellectual relations were outside the scope of the Convention ". He was also prepared to re-open the discussion when M. Politis, the Rapporteur, was present.

M. POZNANSKI *(Poland)* was opposed to the deletion of the observation that " intellectual relations were outside the scope of the Convention ".

The CHAIRMAN proposed that the final words of the paragraph under discussion should be replaced by : " the Committee did not think it possible to take any decision in regard to the proposal made by the Japanese delegation". He asked the Committee to vote on the Japanese amendment.

The Committee decided to maintain the words " intellectual relations were outside the scope of the Convention ".

The paragraph 115 *was adopted.*

Paragraphs 116 *and* 117.

Adopted.

Paragraph 118.

M. SANDSTROEM *(Sweden)* recalled that the Swedish delegation had submitted an amendment concerning the position of the owner of a vessel. This amendment had not been examined. The Swedish delegation would therefore make a provisional reservation to cover the maintenance of the Swedish law, according to which the owner of a vessel flying the national flag must be a national of the country.

M. ENGELL *(Denmark)* said he would make a similar reservation on behalf of the Danish Government.

M. PILOTTI *(Italy)* Rapporteur, said that the question was covered by paragraph 103, revised text of the report, to which the Swedish reservation would be added.

M. SANDSTROEM *(Sweden)* said that the Swedish legislation on this matter did not place restrictions on foreigners. The Swedish and Danish delegations would be satisfied if a reference to their reservations were made in paragraph 103.

DR. MARTIUS *(Germany)* said that the German delegation desired to emphasise that the adoption of the text of paragraph 2 of Article 7 as it stood at present would result in creating uncertainty in regard to the exercise of a very large number of activities by foreigners. His delegation, therefore, reserved full and complete liberty in regard to the amendments which it would present to the plenary Conference with a view to modifying this situation and asked that a reference to this declaration should be made in the report.

SALIH ZEKAI BEY *(Turkey)* said he was not entirely satisfied with the way in which the Committee had been asked to vote on the motion which he had submitted. The Committee had been asked to decide upon the substance of the question, whereas the point at issue was merely a concordance of texts.

He would add, in regard to paragraph 106 of the report, that Turkey desired to reserve to its nationals the professions relating to schools, medicine, hospitals and similar activities. It also desired that this reservation should be covered by the provision of paragraph 2, sub-paragraph *(b)*, of Article 7.

M. POZNANSKI *(Poland)* observed that paragraph 118, sub-paragraph 2, embodied a recommendation, and he thought that this recommendation would be more appropriately put into the Final Act. He proposed that it should be transferred.

THE CHAIRMAN replied that the attention of the Drafting Committee would be drawn to the point.

M. PILOTTI *(Italy)*, Rapporteur, said that the text of the Protocol was not complete and that two references should be added to it, which would be found in the report, particularly the reference to the 1919 Convention on Air Navigation.

THE CHAIRMAN said that the Drafting Committee would settle this matter.

M. ITO *(Japan)*, in view of the fact that the Committee had accepted paragraph 115 concerning intellectual relations, asked that paragraph 118, sub-paragraph 2, should be deleted, since it dealt with the equivalence of titles or guarantees.

THE CHAIRMAN said that a reference would be included in the Minutes to the proposal of M. Ito, who would be free to raise the whole question of paragraphs 115 and 118 at the plenary Conference.

M. DE LA VALLÉE POUSSIN *(Belgium)* emphasised the confusion which the proposal of M. Ito would create in Article 7. There was no true connection between the two cases in point. Paragraph 2 *(b)* dealt with the conditions to which the exercise of certain professions were subjected and declared that States would be free to require equivalent titles and impose similar conditions in the case of foreigners as in the case of nationals. The question of intellectual relations must be kept carefully distinct.

M. ITO *(Japan)* recalled that the Committee on Intellectual Co-operation of the League was dealing with the question of the universal recognition of university degrees. He thought, therefore, that there was a connection between the two questions. He would, however, raise the matter at the plenary Conference.

Article 7 : Draft Report of the Committee to the Conference.

Paragraph 93.

THE CHAIRMAN asked the Committee to discuss paragraph 93 of the report. Paragraph 93 had been reserved. The text before the Committee was the version which had been revised (Annex A, 35).

M. CHOUMENKOVITCH *(Yugoslavia)* explained the position of Yugoslavia in regard to the question of river|shipping. His country desired that not only maritime coasting trade, but also river shipping, should be reserved to nationals. This had been the view of the Economic Committee. A delegation had succeeded in persuading the Conference to reserve maritime coasting trade to nationals alone, but not river shipping. This was a very important matter for States situated along the Danube and on this point the interpretation given by Yugoslavia to the Danube Act differed from that given by certain of her neighbours. The Committee, if it allowed foreigners to carry on river shipping, would place Yugoslavia in a position of inferiority in her discussions with her neghbours, for such a decision would mean that an international conference interpreted the Danube Act in a manner contrary to the views of Yugoslavia.

He was of opinion that both the maritime coasting trade and river shipping should be reserved to nationals, for the obvious reason that much greater freedom was possible |on the high seas than on rivers.

To meet the Hungarian delegation, he thought it possible to accept the second text proposed in paragraph 93.

The procedure which had been proposed during the previous meeting could not be accepted by the Yugoslav delegation. It meant that it would first of all have to sign the Convention and then make a reservation in regard to river shipping.

The Yugoslav delegation had no intention of signing a Convention which it was not sure that its Government would ratify.

M. DE NICKL *(Hungary)* agreed that there was a dispute between the riparian countries as to the interpretation of the Danube Act. He did not think that the present Conference was competent to interpret that Act.

He proposed that the second text in paragraph 93 should be adopted and that the beginning of the text should read : " The provisions of Article 7 shall in no way affect the *rights and obligations* ".

M. PILOTTI *(Italy)*, Rapporteur, said that in sub-paragraph *(d)* of paragraph 100 of the report reference was made to river coasting trade and there was another reference in the text drawn up by the Economic Committee ("Brown Book", document C.I.T.E.1).

M. DE NICKL *(Hungary)* replied that the Economic Committee was no more competent than the Conference to deal with the matter. He proposed, in the first place, to delete the reference in sub-paragraph *(d)* of paragraph 100 and to maintain in the text the words " coasting trade " without explaining whether it referred to river, maritime or lake trade.

M. MAYER *(Austria)* made a formal request for the closure of the discussion on this point. He asked also that the Committee should vote on the various amendments proposed, beginning with the Hungarian amendment.

M. PEROUTKA *(Czechoslovakia)* pointed out that, if the Hungarian proposal were adopted, the text of Article 7 would not be changed. The interpretation, however, given in paragraph 100, sub-paragraph *(d)*, of the report (Annex A, 34) would remain. He would accept the suggestion that the report should remain unchanged.

In his view, the question should not be treated as an exception, but, on the contrary, as a mere statement to the effect that the Convention did not in any way affect the terms of the Danube Act and of the other international conventions. This would involve an amendment in the wording of the second text proposed in paragraph 93. In his view, the word " rights " which the Hungarian delegation wished to insert before the word " obligations " was useless, for, if the Convention in no way affected the obligations resulting fron international conventions, it was obvious that it did not affect any rights.

M. CHOUMENKOVITCH *(Yugoslavia)* asked that the Committee should vote on his proposal as it was farthest removed from the proposals of the Rapporteur. His proposal was to delete paragraph 93, except the second text proposed, and to suppress sub-paragraph *(d)* of paragraph 100 of the report.

THE CHAIRMAN called on the Committee to vote on the Hungarian proposal.

The Committee rejected the first part of the proposal to the effect that sub-paragraph (d) *of paragraph* 100 *of the report should be deleted* (Annex A, 34).

The Committee adopted the second text proposed by the Rapporteur in paragraph 93 *in the following form :*

" The provisions of Article 7 shall in no way affect the obligations assumed under the international conventions concerning river and lake transport (river and lake coasting trade)."

M. PILOTTI *(Italy)*, Rapporteur, said that sub-paragraph *(d)* of paragraph 100 of the report would be amended to bring it into conformity with the decision of the Committee.

He added that, as a result of the adoption of the second text, paragraph 93 would conclude as follows :

" The Committee considered that the second text should be inserted in the Protocol. This second text alone is compatible with the general spirit of the Convention and of the Protocol, since the reservation regarding the application of other international conventions is manifestly justified, whereas the first text merely notes that there is in the Convention an omission deliberately made by the parties without any indication as to the reason. "

Paragraph 93 was adopted with the above amendments.

65. **Article 15 : Draft Report of the Committee to the Conference** (Annex A, 36).

The draft report was read, paragraph by paragraph.

The draft report was adopted.

66. **Final Act : Draft Report of the Committee to the Conference** (Annex A, 37).

The draft report on the Final Act was read.

The draft report was adopted.

COMMITTEE B.

FIRST MEETING

Held in Paris on November 8th, 1929, at 10.30 a.m.

Chairman: M. GUERRERO (Salvador).
Secretary: M. BAUMONT.

1. Opening of the Session.

THE CHAIRMAN, in opening the proceedings, urged that the discussions should be conducted as speedily as possible so as to enable the delegates to take part in the proceedings of Committee A which sat simultaneously with Committee B.

Committee B had been instructed to examine Articles 3, 4, 12, 13 and 14. These articles had two aspects : a commercial aspect (Articles 3, 4, and the second part of Article 12) and a fiscal aspect (first part of Article 12 and Articles 13 and 14).

The Chairman suggested that the Committee should begin with the commercial aspect, since certain Governments had expressed doubts upon the desirability of many of these articles and had asked for their omission.

The procedure proposed by the Chairman was adopted.

2. Articles 3 and 4 and the Second Paragraph of Article 12.

M. BRUNET (Economic Committee) wished to make a few general observations. The articles now under discussion had been made the subject of a considerable number of objections. It had been argued that the subject-matter of these articles fell outside the scope of a Convention on the Treatment of Foreigners and should rather be reserved for treaties of commerce. M. Brunet stated the reasons why he thought it preferable not to limit the subjects with which the Conference would deal strictly to what was usually called "treatment of foreigners".

He recognised that the draft Convention prepared by the Economic Committee contained certain clauses which went beyond the scope of the words he had just used. This was the case as regards almost the whole of the question which was under consideration by Committee B ; but it was just these clauses which concerned the whole group of questions which the President of the Conference had so happily described when speaking of the movement of men of capital and of merchandise. There was one matter, however, which was connected with this group of questions and which had not been included in the draft Convention, namely, Customs duties, a question with which the League of Nations was also dealing, but regarding which separate investigations had been begun. He referred to the discussions relating to the problem of the Customs truce and that of the reduction of Customs tariffs to be dealt with later.

M. Brunet was inclined to believe that the examination of the question whether it was desirable to insert in the Convention provisions relating to the substance of the articles submitted to Committee B should be reserved for the plenary Conference, and that the work of the Committee rather lay in studying the very substance of the articles which had been submitted to it, leaving, provisionally, on one side the question of their insertion in the draft Convention. The object of the investigations to be undertaken would therefore be to submit to the Conference definite texts for the aforesaid articles, while examining the different amendments which had been proposed. This procedure seemed to be the more desirable in that many delegations would no doubt be unable to take part in the work of Committee B, since it met at the same time as Committee A.

M. MATSUSHIMA *(Japan)* observed that the Japanese delegation had no objection to the suppression of Articles 3, 4, and 12 (paragraph 2), but, in view of the existence of two quite different currents of opinion, it proposed that, as a compromise, the following text should be employed instead of these articles :

> " The High Contracting Parties undertake not to render the provisions of the present treaty unworkable by giving differential treatment to foreign products in matters of internal taxation or of internal circulation."

M. IMHOFF *(Germany)* said that his delegation thought it desirable to retain Articles 3 and 4 in the Convention. It agreed, as M. Brunet had pointed out, that these articles fell outside the strict scope of a Convention on the Treatment of Foreigners, but it thought it important that they should be adopted so as to contribute towards the removal of trade barriers, since there was no prospect in the near future of there being another opportunity of including these provisions in a multilateral agreement.

M. BALLI *(Switzerland)* said that his delegation was also in favour of retaining Articles 3 and 4. It recognised that the contents of those articles belonged more especially to the subject-matter of treaties of commerce, but it considered that it would be useful to have a Convention in which these general provisions were definitely established.

M. ENGELL *(Denmark)* said that the Danish delegation shared the doubts which had been advanced as to the advisability of including Articles 3 and 4 in the Convention. It held that there was a very close relation between the subject-matter of these articles and the Customs question. Danish law made a difference between duties imposed on national goods and those imposed on foreign goods, not with any object of discrimination, but for purely practical reasons. He cited as an example alcohol, the production of which was subject to State control. It was quite impossible to control effectively the manufacture and exact volume of imported alcohols and, for technical reasons, the Danish Government was obliged to adopt differential rates in regard to imported alcohols.

M. BRUNET *(Economic Committee)* appreciated the importance of the observation made by M. Engell. He thought, however, that it would be possible to settle the matter within the scope of a plurilateral treaty without connecting with it the question of Customs duties. The Economic Committee had thought it desirable to take advantage of the meeting of a Conference composed of the representatives of a fairly large number of States to set forth in a plurilateral Convention some general principles which it would no doubt be impossible to submit for a considerable time to a special Conference, which in practice could only be convened on the basis of a rather large programme.

M. YOUPIS *(Greece)* said that the Greek Government shared the Danish Government's point of view. He thought that Articles 3 and 4 should be removed from the Convention on the ground that they belonged solely to treaties of commerce.

SIR PERCY THOMPSON *(British Empire)* wondered whether the Danish delegation's objection was, in fact, applicable to the subject-matter of Article 3. The question was solely that of foreign goods after their admission to the country and not that of differential treatment for native products and products manufactured outside the country.

MR. WRIGHT *(India)* said that his delegation shared the view expressed by the Danish delegation and was therefore against the inclusion of Articles 3 and 4. If those articles were retained, the delegation of India intended to propose certain amendments, more particularly with regard to the question of the apposition of marks on foreign goods at the time of sale. In the opinion of the delegation the subject-matter of Articles 3 and 4 should be dealt with by a special Conference. They would overweight the present Convention and make its acceptance more difficult for a large number of countries.

DR. HERNANDEZ *(Venezuela)* urged that Articles 3 and 4 should be retained in the Convention. They were very liberal in character and were entirely acceptable to the great countries of Europe and to the South American countries, where legislation in these matters was already very wide. Countries which could not accept those articles might be authorised to make a reservation, but the other countries could benefit by the very real advantages which would ensue from the adoption of these liberal provisions.

M. BRUNET *(Economic Committee)* fully understood the point of view of the delegate of India, but thought that, in order to avoid the inconveniences to which the latter had drawn attention, it would be possible to contemplate, as regards Articles 3 and 4, the establishment of a special agreement separate from the general Convention. He added that, in his view, the essential need was for Committee B to prepare texts which could be presented to the plenary Conference, which would decide whether certain delegations could be authorised to make reservations in the matter, or whether it would be desirable to have recourse to a different procedure for this special question.

MR. WRIGHT *(India)* said that his intention had been to emphasise the fact that the subject-matter of Articles 3 and 4 lay outside the terms of reference of the Conference which had been instructed to examine a draft Convention on the Treatment of Foreigners. It would be easier to adopt the Convention if it were limited to the object which had been assigned to it.

M. MEYERS *(Netherlands)* agreed with the opinion of the Danish delegate. The regulations in force in the Netherlands were similar to those in Denmark and made a difference, as regards certain products, between those coming from abroad and national products.

M. BRUNET *(Economic Committee)*, in reply to the Netherlands delegate, explained that the text of the articles under discussion would be the complement of the multilateral agreements to be concluded in regard to Customs questions.

M. ENGELL *(Denmark)*, in reply to Sir Percy Thompson, explained that the Danish Government's objections to Articles 3, 4 and 12 could not be reduced to the question of Customs. It was often impossible to apply the same rules to goods of national manufacture and to foreign goods. In view of the difficulty of checking the production of each foreign article imported —

for instance, foreign alcohol — it was necessary to adopt general average rules in regard to foreign products, and these rules differed from those applied to national products, for which it was possible to have an effective check.

M. HAGUENIN *(France)* said that he had been instructed by the French Government to ask that the question of the desirability of retaining Articles 3, 4 and 12 should be reserved for the decision of the plenary Conference. He therefore urged that the Committee should not be invited to take any decision on the subject.

THE CHAIRMAN replied that the present Conference was supposed to follow the procedure of all international conferences. The Committee should first decide whether the subject-matter of the articles which had been submitted to it should be studied or not, and the Conference would take a decision only after that of the Committee.

M. BRUNET *(Economic Committee)* wished to explain his point of view. He hoped that, even if the Committee decided by a majority against the retention of Articles 3 and 4, it would not refuse to examine the texts while noting, in its report to the plenary Conference, that the majority of the delegations were against the inclusion of the articles in question.

THE CHAIRMAN pointed out that all the delegations were supposed to be represented on Committee B. The latter, therefore, must submit to the Conference a proposal embodying the opinion of the majority of its members. If the Committee decided by a majority against the retention of Articles 3 and 4, it would be obliged to present the draft to the Conference without these articles, the Rapporteur being instructed to give the necessary explanations.

M. CLAVIER *(Belgium)* said that his delegation had no objection in principle to the retention of Articles 3 and 4. Belgium had long accorded the most liberal regime to the production, circulation and sale of goods. He wondered, however, whether it would not be possible to find a half-way house between the divergent opinions which had been expressed. He considered that Articles 3 and 4 were only outside the scope of the Convention because the title of the Convention covered only the treatment of foreigners. Foreign products could, of course, be sold by nationals.

Paragraph 2 of Article 12 expressed the same idea as Article 3 in a different form. M. Clavier therefore proposed that Articles 3, 4 and 12 (paragraph 2) should be combined and that there should be a special clause to which delegates might adhere optionally. In this way, a majority vote would be avoided. The main object was to suppress economic frontiers as far as possible. Articles 3 and 4 were definitely based on that idea. It seemed therefore better for the Conference to accept the Economic Committee's point of view, although the articles which expressed that view should be changed into a separate provision.

THE CHAIRMAN thought the suggestion for an optional clause, to which the Governments would be free to adhere or not, a valuable one. He would reserve his right to bring it up later when the general opinion of the Committee had been ascertained.

M. SERRUYS *(Economic Committee)* said that he had been instructed to indicate the position taken by Committee A with regard to Articles 3 and 4.

There was, in point of fact, a certain overlapping between the two Committees with regard to these articles. He did not think, however, that this applied, in particular, to Article 4 which did not relate to fiscal questions but solely to the liberal treatment to be granted to the trade in foreign products, a trade which could be hampered by arbitrary regulations.

Article 3, on the other hand, was definitely fiscal in character and Committee A would have to discuss its contents from the economic point of view. This article related to one of the most serious obstacles to international trade. An imported commodity should be considered to have been nationalised as soon as it had been admitted into the country and any discrimination made against it after it had passed the Customs was inadmissible. The declaration that such foreign goods could not, under any circumstances, be taxed at a higher rate or in a more onerous manner than similar national products was merely a recognition of the facts. The only reason for which this question had been raised was that this recognition might receive its final confirmation. In actual fact, in the majority of European countries, the identity of foreign goods with national goods, from the point of view of fiscal charges, was generally recognised. In certain countries, however, foreign goods were subject, after admission to the country, to additional taxes. In Canada, for instance, there was a special turnover tax for foreign products, this being a countervailing tax for the taxes which might have been levied on them in the country of origin. M. Serruys stressed the point that the countries remained entirely free fiscally and that the Governments taking part in the Convention were only being asked to confirm the existing situation. The principle which it was desired to ratify was that, once a commodity had been nationalised by the payment of Customs duties, it should not be liable to differential treatment in the interior of the country.

M. Serruys said that he would be unable to take part in the discussion on Articles 12, 13 and 14, which were more particularly fiscal in character, and requested that he might be allowed to state the Economic Committee's point of view with regard to them. There was a possibility of confusion which it was important to avoid. These articles were not devised to prevent double taxation ;

they were devised merely to secure fiscal equality as between foreigners and nationals. It was not, for instance, proposed to prevent an Austrian company established in France from having its taxes in Austria reduced in proportion to the taxes it paid in France, but solely to prevent such a company from being required to pay more in France than a French company by reason of the fact that it was a foreign company. It was in accordance with the categorical instructions of the Council, following on the Genoa Conference, that the Economic Committee had taken up the question of fiscal equality.

The resolutions passed by the Genoa Conference contained a clause which was practically identical with that which had been referred by the Council to the Economic Committee for study. The Council had thought that the remedy might consist in domestic measures taken by the Governments and in bilateral conventions. That, however, had not been the case, and it was for that reason that the Economic Conference of 1927 had urged that the question of fiscal equality should be included in an international convention and should be made an international obligation. It was on these grounds that the Economic Committee had thought fit to insert in the Convention the articles confirming fiscal equality. A grave omission would be allowed to continue if these affirmations of principle were abandoned and left to other conferences. The great trap in connection with the establishment of foreigners was fiscal discrimination. In certain countries foreign capital and labour had been invited to invest in undertakings which, once established, had been intentionally threatened with ruin by arbitrary fiscal action, the promoters of the business being obliged to leave the country. Certain countries, before the war, had achieved what might be termed a virtuosity in this matter. As soon as the foreign enterprises began to pay, a system of fiscal discrimination became operative. Instances had occurred in which the raw material supplied to finishing factories had been taxed 30 per cent more when consigned to foreign factories set up in the country.

The question had been taken up by the Fiscal Committee of the League, which had considered that the articles in question were not sufficiently technical or effective. The Fiscal Committee would undoubtedly indicate the obstacles which would arise to the application of the articles. It was, however, none the less true that the articles could not be removed from the Convention without leaving a very serious gap. An intermediate formula might be found. The articles might be combined and the engagement limited to a moral one. Nevertheless, M. Serruys wished to underline the very great importance attached to them by the Economic Committee.

COUNT O'KELLY DE GALLAGH *(Irish Free State)* said that his Government was opposed to the retention of Articles 3 and 4.

M. POPESCU *(Roumania)* pointed out that, if it were proposed to insert in the Convention an optional clause embodying the present provisions of Articles 3 and 4, it was probable that a clause of that kind would only be accepted by those States which already practised a liberal regime towards foreigners. The object of the Conference, however, was not to codify the existing situation, which was already confirmed in a large number of bilateral agreements, but, on the contrary, to do something constructive. He pressed, therefore, for the retention of Articles 3 and 4.

M. SCIÉ TON-FA *(China)* said that the Chinese delegation wished Articles 3 and 4 to be suppressed.

The discussion was adjourned to the next meeting.

SECOND MEETING

Held in Paris on November 8th, 1929, at 3.30 p.m.

Chairman: M. GUERRERO (Salvador).
Secretary: M. BAUMONT.

3. **Articles 3 and 4 and the Second Paragraph of Article 12** (continuation).

THE CHAIRMAN recalled that an amendment had been submitted on behalf of the British delegation (Annex A, 1).

M. ENGELL *(Denmark)*, Rapporteur, speaking on behalf of the delegate of Norway who was attending Committee A, said that the Norwegian Government agreed with the proposal to delete Articles 3 and 4 and the second paragraph of Article 12. The fact that the Economic Committee had put these articles between brackets had resulted in a less close study of them on the part of Governments which had undoubtedly gained the impression that their acceptance was not considered probable. A number of countries, including Great Britain, had changed their minds on this point, but a large number still remained which wished the suppression of these articles.

M. BRUNET *(Economic Committee)* recalled that the Belgian delegate had contemplated at the last meeting the possibility of a compromise proposal which would perhaps make it possible to maintain the articles, but under a different form. Certain States were not in favour of the inclusion of these articles in the Convention. This fact might lead to their insertion in a separate instrument which would be signed at the same time as the general Convention and to which any State which so desired could adhere.

M. CLAVIER *(Belgium)* said that, if a vote were taken on the question of the inclusion of these articles, he would vote in favour of maintaining them. His suggestion had been designed to secure their retention in some form or other. If, however, the articles were retained, they were out of place in their present position in the Convention and should be included in Section F, " Fiscal Treatment ".

M. IMHOFF *(Germany)* supported M. Clavier.

M. BOLAFFI *(Italy)* said that, although the Italian Government saw no objection to accepting the principles embodied in the provisions of Articles 3, 4 and 12, paragraph 2 — since in the Italian legislation no distinction was made between national and foreign goods in so far as the treatment contemplated in these articles was concerned — it was nevertheless in favour of the suppression of the said articles because they did not seem to the Italian Government to have anything to do with the treatment of foreigners. If no discrimination were made between trade in foreign goods on the part of foreigners and similar trade on the part of nationals, it could not be said that any regulations regarding trade in foreign goods was detrimental to the interests of foreigners. On the other hand, the connection between the questions dealt with in the above articles and those relating to the importation and exportation of goods and the protection of national production was so close that the Italian delegation really thought it preferable to arrive at a general settlement of these questions by means of treaties of commerce. In any case, statements of principle contained in the articles in question could much better be included in a protocol to a general Customs convention.

M. Bolaffi added that he was not in favour of including the provisions in question in an annex or in an additional Protocol. This procedure might give rise to misunderstandings by allowing it to be thought that all States which did not feel able to sign, owing to a mere question of procedure, were opposed to the spirit of equity by which these articles were inspired. This might be somewhat dangerous as regards certain countries which were less developed and less liberal.

M. LYCHOWSKI *(Poland)* agreed with the Italian delegate.

M. FEHR *(Sweden)* recalled that the Swedish Government had not made any observations on the articles in question. They would give rise to no serious difficulty in Sweden. Owing, however, to the objections made on the part of a number of other States, it would be better perhaps to delete them, for the object of the Conference should be to obtain, if possible, a Convention which could be unanimously accepted.

M. DUCHÉNOIS *(International Chamber of Commerce)* said that the International Chamber of Commerce was very anxious to witness the adoption of Article 3, because taxes on foreigners were usually the heaviest part of the burden that they were called upon to bear. He was, however, quite ready to agree to any proposal to change the place of that article. It might perhaps form a new paragraph of Article 12. In any case, the International Chamber of Commerce was strongly in favour of the retention of the articles. If a number of States felt unable to agree with them, they could be allowed to make reservations, for, in the view of the International Chamber of Commerce, it was better to draft a Convention containing a number of really effective provisions, even though it was signed by only a small number of States, than an ineffective Convention to which all States could agree.

M. ROJON *(France)* urged that the articles should be deleted. Their proper place was in a commercial treaty and not in an international convention, for in a commercial treaty they could serve as a corrective to internal duties. Article 3, for example, had no direct connection with the treatment of foreigners.

M. DA GAMA OCHÕA *(Portugal)* and M. MENDEZ PEREIRA *(Panama)* agreed with the delegate of France.

SIR PERCY THOMPSON *(British Empire)* said that his Government did not feel very strongly either way. Its first thought had been that the provisions were inappropriate to the Convention. It had now, however, changed its mind on the subject and proposed to amend the articles.

If it were decided to exclude them entirely, it would be equivalent, he thought, to inviting a foreigner to enter a country and assuring him of perfectly courteous and reasonable treatment, provided he left his clothes behind him before he crossed the frontier.

THE CHAIRMAN, summing up the discussion, thought that it would be difficult to find a compromise between the views which had been expressed, since these were sharply divided. He was, however, reluctant to put the matter to a vote if it would be possible to find a formula to which both parties in the Committee could agree.

M. MATSUSHIMA *(Japan)* said that the proposal which he had made at the previous meeting would, he thought, provide the compromise which the Chairman was anxious to obtain. It was to the following effect :

> "The High Contracting Parties undertake not to render the provisions of the present Treaty unworkable by giving differential treatment to foreign products in matters of internal taxation or of internal circulation."

M. MEYERS *(Netherlands)* pointed out that Articles 12 and 15 were connected. In order to make it possible to apply Article 12 to foreign nationals not established in the country, it would be necessary to add the phrase "*who are in the same position*" to Article 12, so that it would read :

> "In the matter of taxes and duties of every kind or any other charges of a fiscal nature . . . nationals of each of the contracting parties shall enjoy in every respect in the territory of the other High Contracting Parties, both as regards their person and property, rights and interests . . . the same treatment and the same protection by the fiscal authorities and tribunals as nationals of the country who are in the same position, etc."

It had probably been intended merely to assimilate the foreigners residing in their territory to the nationals also residing therein, and *vice versa* to assimilate the nationals not established to foreigners who did not reside in the territory of the foreign country in which they were taxed. By inserting the words which he suggested, the Conference would avoid imposing a heavier taxation than that borne by nationals not resident in their own country.

M. BRUNET *(Economic Committee)* thought that the text proposed by the Committee could be completed by that proposed by the Netherlands delegate.

SIR PERCY THOMPSON *(British Empire)* certainly thought that the amendment could be accepted. It would not, however, solve the difficulty, which concerned internal taxes levied on goods after they had become national. He thought, however, that the proposal of the Japanese delegate, suitably amended, offered a greater possibility of agreement.

THE CHAIRMAN consulted the Committee on the Japanese proposal.

M. BRUNET *(Economic Committee)* while realising that the proposal was designed to achieve a compromise, wondered whether it would be possible to arrive at an agreement on such a basis. He thought that this proposal, if it were to be adopted, should be modified in such a way as to make its scope more definite. Certain delegations might hesitate to accept an undertaking which had been formulated in such general and rather vague terms.

M. BOLAFFI *(Italy)* was still of the opinion that it was difficult, if not impossible, to adopt a clause dealing with a matter which was outside the principal aim of the Convention. He repeated that, as regards the substance of the question, Italy could very well accept these articles without any difficulty, but that, for reasons of procedure, he thought that they should not be inserted in the Convention. He did not understand, for example, how the system of internal taxes on foreign goods could be contemplated apart from the Customs regime.

M. PUSTA *(Estonia)* said that Articles 3 and 4 dealt with goods and not with persons. They should therefore be suppressed. If, however, it were decided to retain them, it would be necessary to examine carefully the Japanese proposal.

M. BRUNET *(Economic Committee)* laid stress upon the difficult situation which had arisen in regard to these articles. He wondered whether the Committee should not consult the Bureau of the Conference owing to the fact that in certain respects the decisions of Committee B in regard to these articles would affect the decisions of Committee A which was also discussing certain aspects of them.

M. Bolaffi had expressed the view that Articles 3 and 4 were outside the scope of the Convention. As the President of the Conference had emphasised in his opening speech, the Convention was intended to assure the movement of persons, capital and goods. It seemed, therefore, that these articles should be included in it.

M. Brunet thought that, taking into account the contrary views which had been expressed in the Committee, two solutions were possible. Either that suggested by M. Clavier, namely, that the articles in question should take the form of optional clauses which might be given different forms, or that suggested by the representative of the International Chamber of Commerce, who was of the opinion that the States which did not think they could accept these articles might make reservations.

M. BOLAFFI *(Italy)*, in reply to M. Brunet, stated that he had never intended to say that the question of goods was not included in the programme of the Conference. Such a question, if it were raised, should certainly be referred to the Bureau of the Conference for consultation, as M. Brunet had just proposed. He had said, on the contrary, that the regulation of the treatment of goods was a matter which called for a careful and complete study which it would be better to reserve for a future occasion. This, therefore, was a proposal on which Committee B was fully competent to express an opinion, which, needless to say, would merely take the form of a suggestion.

M. DEVÈZE *(President of the Conference)* said that the decision to be taken by Committee B in regard to Articles 3 and 4 would undoubtedly affect the work of the other Committees of the Conference. The work of all Committees, therefore, in regard to these articles would have to be co-ordinated. In view of the fact that the Chairmen of the Committees and the Rapporteurs were to meet to discuss the question of the co-ordination of the work of Committees, Committee B might perhaps postpone its decision on the articles until after this consultation had taken place.

The Committee agreed to postpone its decision on Articles 3 and 4 and the second paragraph of Article 12 until after the meeting of the Chairmen and Rapporteurs of the Committees.

4. **Article 12, Paragraph 1.**

M. FEHR *(Sweden)* said that the question of the taxes paid by commercial travellers was dealt with both by Article 12 and Article 5. The two articles were therefore interdependent. If the Swedish proposals regarding Article 5 were adopted, it would be unnecessary to discuss Article 12.

THE CHAIRMAN suggested that, in view of the fact that the Swedish proposals only concerned Article 5, they should be submitted to the Sub-Committee dealing with that article.

M. FEHR *(Sweden)* agreed.

M. MEYERS *(Netherlands)* repeated his observation to the effect that Articles 12 and 15 were connected. The amendment which he had suggested to Article 12, namely, the addition of the words " who are in the same position ", should therefore be allowed. He further proposed the following addition to be inserted in the Protocol to explain the meaning of Article 12 :

> "As regards the application of Article 3 and Article 12, paragraph 2, it is understood that they do not apply to Customs duties or other taxes to which goods are subject solely by reason of their importation or exportation."

M. CLAVIER *(Belgium)* thought that the suggestion of the Netherlands delegate was due to the fact that the meaning of the term " ressortissant " (in the English text " national ") had not been defined with sufficient accuracy. Did this word refer simply to the citizens of a country or also to its subjects, and even to all the inhabitants whatever their nationality ?

THE CHAIRMAN said that the meaning of the term "ressortissant" was being discussed by another Committee. He suggested that Committee B should await the definition of the term before it considered the amendment of the Netherlands delegate.

M. DUCHÉNOIS *(International Chamber of Commerce)* agreed.

M. BRUNET *(Economic Committee)* thought that the amendment should apply not only to Article 12 but to other provisions of the Convention, as it was in the nature of an interpretative statement.

M. CLAVIER *(Belgium)* agreed. It was essential to explain the exact meaning of the term "ressortissant".

M. MEYERS *(Netherlands)* agreed with M. Brunet.

M. BORDUGE *(Fiscal Committee)* said that the Fiscal Committee had not discussed Article 12 at any length. He thought that it would be ready to accept the suggestion of the Netherlands delegate. It was essential, however, that the term "ressortissant" should be accurately defined. This also, he thought, applied to the English translation, which was " national ".

SIR PERCY THOMPSON *(British Empire)* said that it should be understood that the first paragraph of Article 12 did not apply to visa fees. It should be made clear that such charges did not constitute differentiation against a foreigner.

M. BRUNET *(Economic Committee)* thought that was obvious. It could, however, be put in the Protocol to the Convention or merely in the report of the Committee to the Conference.

SIR PERCY THOMPSON *(British Empire)* agreed that it would be sufficient if his observation was included in the Minutes of the Committee and in the report.

M. BORDUGE *(Fiscal Committee)* also agreed. It should be made clear in the report, however, that visa fees were not a fiscal tax but a duty. It was precisely because they were not in the nature of a tax that Article 12 did not apply.

Article 12, paragraph 1, was adopted with a reservation concerning the definition of the term " ressortissant " and " national ".

5. **Article 13.**

THE CHAIRMAN recalled the amendment to Article 13 submitted by the British Government (Annex A, 1). The latter had pointed out that since Part I of the Convention purported to deal with the treatment to be accorded to nationals (individuals), while the treatment of companies formed the subject-matter of Part II, the words " subsidiary or affiliated companies " in Article 13 of Part I seemed to be out of place.

M. BOLAFFI *(Italy)* said that subsidiary or affiliated companies existed which belonged not to a parent company but to private enterprises established abroad. Article 13 should cover such cases also.

SIR PERCY THOMPSON *(British Empire)* explained the meaning of the British amendment. The British Government was in full sympathy with Article 13, but had two objections to it in its present form.

In the first place, the article might be taken to apply not to individuals but only to companies. The British amendment was designed to show quite clearly that it applied to individuals, and its application to companies was provided for by Article 16.

Secondly, the British amendment was designed to cover the following case. A business might only be registered in country A but possess its real centre of management in country B and branches in country C. The taxes levied on that business should not be limited in country B to the profits made in country B only, because such profits might well be *nil*, since country B contained only the real centre of management. The profits of the company were probably made in country C, where the branches were established. It was essential, therefore, not to limit the discretion of country B to tax the whole of the profits of the company. This case was very important in regard to Great Britain, where a progressive tax was imposed on all persons resident in the territory. If the whole profits of such companies were not to be taxed, it could not be said that the shareholders who received those profits were being taxed on the whole of their dividends. Under the British system, companies paid the full tax and were then allowed to recoup themselves by deducting the amount of their income tax from their dividends. On the production of the dividend warrant by the shareholder, the income-tax authorities reimbursed him, if he were entitled to reimbursement, at the full rate of 4/- in the pound. The tax was therefore in reality purely personal, and Great Britain must be allowed to follow this system of taxing the entire profits of a company, otherwise her whole system of taxation would have to be revised.

M. BOLAFFI *(Italy)* said that the observations of Sir Percy Thompson showed clearly the difficulty of finding a solution for the problem. The system of taxation existing in Great Britain as regards a company having its head office in country A, its effective direction in country B and its branches in country C, differed entirely from that in force in most other countries. In a certain number of States, the taxation on the profits of a company in such a case was divided between the different countries where the company had dealings, so that all overlapping was avoided. It seemed, therefore, that agreement on this point would be difficult to obtain. He thought that it would be impossible to find a single formula — and one which would not be ambiguous — which would be acceptable to all States.

M. Bolaffi wished to emphasise that the question to be settled was, no doubt, that of double taxation limited, it was true, only to stable organisations belonging to undertakings having their seat abroad. The principle of equality of treatment with nationals had nothing to do with the present case.

He wondered, therefore, whether it would not be better, in view of the difficulty of arriving at a definite and concrete solution which would be acceptable to all States, to replace Articles 13 and 14 by a formula containing a simple declaration of principle against double taxation and reserving the matter for settlement by means of bilateral treaties.

M. CLAVIER *(Belgium)* agreed with M. Bolaffi and Sir Percy Thompson in regard to the necessity of settling the question for moral as well as for physical personalities. This was precisely the scope of No. 8 of Article 16, which made the provisions of Article 13 applicable to foreign companies.

As regards the taxation of profits, it was important to emphasise the fact that Article 13 referred to the taxation of branches established in another country from that in which the principal organisation was established. The Convention did not provide for the taxation of the undertaking in its own country ; it merely stipulated that foreign nationals should not be treated otherwise than the nationals of the country in which they were effectively established (branches, agencies, etc.).

M. ROJON *(France)* agreed with M. Bolaffi. In the view of the French Government, Articles 13 and 14 were of too precise a nature to find a place in a plurilateral treaty. In France, for example, foreign companies were taxed not upon their profits but upon the amount of capital invested in their business in France. The French Government therefore thought that both Articles 13 and 14 should be dealt with by means of bilateral conventions covering double taxation.

M. RADIMSKI *(Czechoslovakia)* agreed entirely with M. Bolaffi and M. Rojon. Questions of double taxation should be omitted from the Convention.

M. BALLI *(Switzerland)* agreed. It would be impossible to insert such a provision in a plurilateral treaty and, moreover, to seek to do so would be to discourage those countries which were now in the process of negotiating bilateral conventions concerning double taxation. Switzerland, for example, had reached a partial agreement on this matter with Germany, and was conducting negotiations with France and Great Britain. He would therefore strongly urge that no obstacle should be placed in the way of States desiring to solve the problem of double taxation by means of bilateral treaties.

M. SERRUYS *(Economic Committee)* wished to explain why it was that that Committee had decided to insert the articles in the Convention. They were, in the first place, a guarantee for international trade. The same objections which had been made by the Swiss delegate and others, to the effect that matters regarding double taxation were better dealt with in bilateral conventions, had also been put before the Economic Committee. That Committee, nevertheless, had still maintained its view and had inserted the articles because it had noted that, though a number of countries were beginning to conclude treaties in regard to double taxation, a very large number were taking no such step, and, moreover, did not contemplate doing so, at any rate, in the immediate future. Those countries, however, might well sign the Convention on the Treatment of Foreigners for commercial reasons, and it was of the utmost importance from the point of view of international trade that they should do so. It was precisely in those countries that the commerce of a number of States suffered owing to discrimination in fiscal matters. For example, a commercial traveller, if he happened not to be a national of one of those countries, found himself hindered at every turn in the carrying-on of his business. If, therefore, those countries could be induced to adopt a convention in which certain general provisions covering fiscal matters similar to those contained in Articles 12 and 13 were to be found, a considerable step forward would have been taken. The terms of the Convention must not be less favourable than those of existing treaties, and M. Serruys would point out that all countries bound by the most-favoured-nation clause already possessed the advantages offered by Articles 13 and 14.

The Committee was therefore faced with two possibilities : it could either take the view that international trade must wait until a highly technical and complicated net of bilateral conventions dealing with double taxation had been spread all over the world, or else it could insert a number of guarantees in a plurilateral treaty, laying down the principle of no fiscal discrimination. That those guarantees would be partial and not all-embracing was obvious, but none the less the first step would have been taken.

He would point out that it was essential to provide for equality of taxation between nationals and foreigners. This was an old principle which had been affirmed more than once, notably at the Genoa Conference. The Committee could therefore either choose to proclaim a sane doctrine in regard to taxation or decide to do nothing until bilateral conventions had been concluded in regard to double taxation.

The Economic Committee had consulted various States by means of a questionnaire. Some Governments which had concluded bilateral conventions on double taxation had replied that Articles 13 and 14 were not necessary. Others, however, and among them some very important countries, had urged that, from the point of view of international trade, those articles should be included. It was for the Committee to decide.

The continuation of the discussion was postponed to the next meeting.

THIRD MEETING.

Held in Paris on November 9th, 1929, at 10.30 a.m.

Chairman : M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

6. **Examination of the Articles of the Convention : Article 12** (continuation).

THE CHAIRMAN informed the Committee that the Netherlands delegation wished to propose an amendment to Article 12, which had already been discussed and adopted. He felt that, in principle, it was undesirable to return to an article which had already been adopted, but the Netherlands delegation would have the right to raise the question in the plenary Conference, and it accordingly seemed that it would facilitate the work of the Conference to discuss the question immediately.

M. NEDERBRAGT *(Netherlands)* thanked the Chairman for acceding to his request.

It was difficult for his Government to accept Article 12 as at present drafted. The Netherlands Government had endeavoured to conclude bilateral treaties with a view to eliminating double taxation. The Netherlands Treasury, however, had itself the right to take steps, in its own discretion, in order to achieve the same object. That being the case, it was very difficult for the Netherlands Government to apply the provisions of Article 12 to foreigners in all cases in which facilities were accorded to its own nationals.

He accordingly proposed to add the following sentence at the end of Article 12 :

" This provision will not apply in the case of treatment resulting from bilateral agreements and regulations intended to prevent double taxation."

M. Nederbragt pointed out that the application of the most-favoured-nation clause always raised discussion during the framing of multilateral conventions at Geneva. It might happen that a country which had not signed a multilateral treaty enjoyed, under a treaty of commerce, the most-favoured-nation clause and, in that case, the country might decide that it was useless to adhere to the Geneva Conventions.

It was for this reason, moreover, that a discussion had taken place at Geneva regarding the question whether it would not be useful to exclude the Geneva Conventions from the scope of the most-favoured-nation clause, a conception which was applied at the present time by the Netherlands Government. But in that case, it would be necessary also to exclude from the application of that clause the unilateral measures taken by the Government of the Netherlands in order to avoid double taxation. If the Committee did not accept this point of view, the Netherlands Government could not continue to exercise its liberal system without harming the logic of that system and without sacrificing the interests of its nationals abroad, who were in exactly the same position as that of the foreigners who would be exempt in the Netherlands.

M. BRUNET *(Economic Committee)* said that the question of the relations between the general Convention to be concluded and special conventions would arise when the other articles were examined. It was especially dealt with in article 18. It might be useful to hold a general discussion on the point. He thought, moreover, that the examination of Article 18 had been entrusted to Committee D.

M. NEDERBRAGT *(Netherlands)* pointed out that Article 18 would only satisfy him in regard to the first point he had raised. Article 18 did not deal with the question of autonomous measures. In Article 12 there was no question of applying the most-favoured-nation clause but merely of applying national treatment to foreigners.

Finally, M. Nederbragt, in reply to a question from Sir Percy Thompson, explained that the Netherlands Government had laid down special regulations for its nationals. He presumed, however, that the Governments of other countries would have to follow the same course in regard to their own citizens. The Netherlands Government would apply the same regulations both to foreigners and to its own nationals, provided that the Governments of the countries of which those foreigners were nationals were ready to conclude bilateral treaties intended to apply the same exemption to the Netherlands. As M. Nederbragt had already pointed out, numerous measures had been taken to avoid double taxation without the conclusion of any agreement.

Sir Percy THOMPSON *(British Empire)* took the view that, if different treatment were accorded to nationals than to foreigners, considerable complications would arise. In the United Kingdom, the nationality of the taxpayer was of no account. All that the Government required to know was whether he was domiciled or not in the country. Once that question had been settled, the same system was applied both to the foreigner and to the national. The British Government would have no difficulty in agreeing to Article 12.

M. NEDERBRAGT *(Netherlands)* felt that, in this case, the Netherlands Government went further than the British Government. If all other Governments took similar action, the situation would be fairly simple. Consequently, if Article 12 were adopted in its present form, M. Nederbragt would be obliged to consult his Government and to inform it that it was pursuing too liberal a policy.

M. BRUNET *(Economic Committee)* was too well aware of the extremely liberal views of the Netherlands Government to be apprehensive of the use which it might make of the amendment proposed by M. Nederbragt. The exception thus made for the benefit of all the contracting states might, however, have unfortunate results by diminishing, in practice, the scope of Article 12. M. Brunet suggested that M. Nederbragt should explain in a note the situation of his country regarding this matter, in order that the Committee might endeavour to find a means of taking it into account. He asked M. Nederbragt not to have recourse, in order to meet the special case in his own country, to an amendment which was so general in scope.

M. NEDERBRAGT *(Netherlands)* said that he would try to collect the necessary documents in order to draft this note. If, however, it were impossible to adopt his amendment or to make any reservation, he would be compelled to inform his Government that it had gone too far and that the liberal measures adopted by it were a weapon which had turned in its hand. The Convention was based on the view that only a few States had adopted liberal measures in this respect.

M. Nederbragt did not wish to take a step backward, but merely to safeguard the progress accomplished in his country by proposing a reservation.

M. BRUNET *(Economic Committee)* was glad that his intervention had led to the statement just made by M. Nederbragt. He was sure that the latter had no desire to limit the scope of the Convention drawn up by the Economic Committee.

The CHAIRMAN thought it would be useful to know the views of the Fiscal Committee.

M. BORDUGE *(Fiscal Committee)* said that that Committee would be unable to give its views until it had considered the note to be drafted by the Netherlands delegate. He understood that M. Nederbragt wished to reserve the benefits conferred by bilateral treaties solely to States which had signed them. This was an example of the difficulties which arose on every side, immediately an attempt was made to solve the problems of double taxation.

THE CHAIRMAN asked M. Nederbragt whether he maintained his amendment.

M. NEDERBRAGT *(Netherlands)* agreed to the suggestion that the question should be discussed at a later stage. He would return to it when the occasion arose. In the meanwhile he would draw up a note explaining the position of his country. He would be very happy to have an exchange of views with members of the Fiscal Committee.

The examination of the Netherlands amendment was postponed to a later meeting.

7. **Article 13** (continuation) **and Article 14.**

M. BORDUGE *(Fiscal Committee)* shortly summarised the discussions which had taken place in the Fiscal Committee previous to the examination of Articles 13 and 14.

He said that he had not referred to Articles 3 and 4 because the Fiscal Committee had not examined them. That was only natural, because these articles did not raise any technical difficulty. That, however, was not the case in respect of Articles 13 and 14.

These articles were subject to a certain ambiguity. All those who had read the articles and the preparatory documents of the Economic Committee had first been under the impression that an endeavour was being made to settle the problem of double taxation. That, however, was incorrect. On page 22 of the "preparatory documents" of the Conference (document C.I.T.E.1.) the following statement would be found :

> "As for Article 13, it deals with a special question of double taxation ; but this question is of such great practical importance and the underlying principle is so generally accepted that its introduction into the establishment Convention can only be of advantage, even though bilateral agreements between the signatory States should perhaps ultimately become necessary in order to apply it as widely as possible and as appropriately to circumstances as possible."

The evils caused by double taxation would not thus be cured. They resulted from legal provisions for which Articles 13 and 14 provided no remedy and international trade would not be in any way relieved. The Fiscal Committee felt bound to draw attention to this fact.

Apart from double taxation, however, it was sufficient to read these texts in order to realise that they aimed at a rapid settlement of extremely difficult questions. In practice, it was not easy to distinguish clearly between taxes on income and taxes on capital. Similarly, it had not yet been possible at Geneva to find a formula clearly to define "capital used in a country" or "activities exercised in a country". Thus the fiscal experts had been led to establish three model draft conventions and, in each Convention, to provide safety valves. The Fiscal Committee was of opinion that general Conventions were virtually impossible at the present moment and that problems of double taxation must be dealt with between individual Governments by means of bilateral agreements.

M. Serruys had replied that bilateral conventions were very rarely concluded for this purpose. It was true that there was not yet a close network of such conventions but a fair number, nevertheless, existed. M. Serruys had also said that these conventions were the result of bargaining. Personally, he thought that expression somewhat derogatory. The term "negotiations" would perhaps be more exact. Countries had sometimes legitimate interests which they must defend. The case of the Netherlands to which reference had just been made was an example. It had also been said that certain countries had contracted bad habits in dealing with these matters, but, if that were true, would they more easily be induced to subscribe to bilateral conventions and, in that event, in view of their bad habits, would any further progress be thereby achieved? Finally, it would appear that the most-favoured-nation clause would act to the detriment of those who concluded bilateral conventions. Personally he believed, on the contrary, that the evil would be thereby mitigated.

Conclusions had been adopted at Geneva by a large majority which had considered that bilateral agreements alone would enable the various countries to know to what provisions they were committing themselves and to be clear as to the guarantees accorded to them.

M. CLAVIER *(Belgium)* submitted the following amendments [1] :

> "*Article* 13. — The High Contracting Parties shall comply with the following principles in connection with the taxation of *permanent establishments* situated in their territory and subsidiaries of enterprises having their centre of management and control *(siège principal)* in the territory of another High Contracting Party ;
>
> "*(a)* When the taxation is levied on profits or revenues it shall be confined to those accruing from the activities carried on or directed *by the said permanent establishments*.

[1] The words in italics indicate the changes proposed. The inversion of *(a)* and *(b)* of Article 13 is suggested in order that the principle clause should precede the accessory clause.

"*(b)* When the taxation is levied on any other basis than profits or revenues, it shall be confined to the *taxable assets of the above-mentioned permanent establishments.*

"*Article* 14. — *In derogation of the provisions of Article* 13, nationals of one of the High Contracting Parties who regularly or occasionally undertake the transport of persons or goods, *by sea or air,* between localities situated in different States may not on this account be called upon to pay taxes or duties elsewhere than in the territory in which the *real centre of management and control* of the undertaking is situated, irrespective of the authority on whose behalf these taxes or duties are levied. The exemption provided for in the preceding paragraph shall not apply to the *other* activities which the undertaking may carry on, or to other grounds of taxation such as the ownership of immovable property or other taxable property."

It should further be stated in the Protocol that, as regards the application of Articles 13 and 14 and particularly as regards the meaning of the terms " permanent establishment " and " real centre of management " employed in these Articles, reference should be made to the comments on the Draft Convention drawn up by the Government experts on Double Taxation, and that, as regards the assessment of the profits of permanent establishments, the rules established by the Fiscal Committee of the League of Nations should be observed.

Moreover, it would be understood that the words " other basis than profits or revenues " inserted in *(b)* of Article 13 refer in particular to the *capital, business turnover, rentable value* and area of the establishments and to the staff employed therein if these factors serve as a basis for general taxes or rates.

Alternative Text to replace Article 14, *if it is decided to delete the latter.* — " The provisions of Article 13 shall not affect the bilateral or other agreements under which the profits or revenues of shipping and air navigation undertakings are taxable only in the State in which their real centre of management is situated."

He wished to state, in the first place, that the decision of Italy, Switzerland and Czechoslovakia not to accept Articles 13 and 14 had caused him considerable disappointment. This disappointment had been accentuated when France, which had led the way in the progress of modern society and whose motto was " Liberty, Equality and Fraternity ", had also refused to accept the principle of equality and justice embodied in these articles. Would the countries with which Belgium had very important economic relations, which were so famed for their industries and had been convened with so many others in order to lay the foundations of a new economic system, confess to their own public opinion that they were opposed to the application of the principle of elementary justice such as that embodied in the provision that a trader who brought into a foreign country his capital, industry and intelligence, should be ensured that some day, by a fiscal act, all the fruits of his work would not be destroyed ? Was there anyone who would contradict the justice of the principle at stake ? It was being rejected for a mere question of form or owing, perhaps, to the sacrifice that it might involve for certain countries. But that sacrifice was of small account if regard were had to the considerable relief that was contemplated and, above all, if the ideal pursued were kept in mind.

Turning to the reasons for his amendment, M. Clavier admitted that he had originally been in favour of bilateral conventions. He had, however, cast aside purely fiscal considerations and had turned his attention to the interests of industry and trade with the result that he had recognised the need for the fundamental safeguard that a foreigner could only be taxed on the profits obtained in the country where he had a permanent establishment.

Further, although the Fiscal Committee had elaborated three draft Conventions no major differences existed between them and such differences as there were would be lessened if, in Article 13, the words "subsidiary or affiliated companies or agencies" were replaced by the term " permanent establishments". For the signification of this latter term and of the term "effective management" and likewise for the determination of profits, it would be also expedient to include in the Protocol a reference to the rules laid down by the Fiscal Committee.

In conclusion, M. Clavier urged those delegations which were opposed to Articles 13 and 14 to take refuge provisionally in abstention rather than fight them and to ask their Governments whether it would not be possible to change their negative attitude. Whatever the decision taken, he would have the consolation of having fought for a principle of justice and of reflecting that, if an ideal could not be achieved at once, it had nevertheless not been killed.

M. DUCHÉNOIS *(International Chamber of Commerce)* said that the International Chamber had felt the hesitations now experienced by certain Governments. The Double Taxation Committee of the International Chamber of Commerce had even appeared to be tending towards the suppression of these articles, but, since the discussions which had taken place at Amsterdam, and more especially in view of the explanations given by M. Serruys, the Chamber had decided unanimously in favour of their retention.

It was true that these articles were not entirely satisfactory and the Chamber of Commerce would have desired to go further. They did, however, possess the advantage that they suggested exact rules, rules which had, in point of fact, been included in a number of treaties of commerce, more particularly in those concluded by France. Furthermore, no protest had been made as regards the justification of those rules. The vote taken on the occasion of the present Conference would show which countries were prepared to amend their legislation in an equitable sense. M. Borduge had said that, if Articles 13 and 14 were adopted, the situation would remain unchanged. It was impossible to concur in that view.

A signatory country whose legislation differed from the stipulations of the draft Convention would be forced to alter its legislation, since otherwise no international treaty would be possible. M. Borduge had further pointed out that there would be difficulties in regard to interpretation, but it was in order to meet those very difficulties that Article 22 had been drafted.

Lastly, M. Borduge feared that a general Convention would not meet with a favourable welcome, since there were very few bilateral conventions. These fears were, perhaps, well founded, but the International Chamber of Commerce preferred a general Convention, even if it were only signed by four or five countries, to a Convention which all the countries could sign, but which would, in fact, be a negation of the principle of liberty and justice which the Conference wished to establish.

M. BOLAFFI *(Italy)* said that M. Clavier's observations had placed him along with other of his colleagues, as it were, on the bench of the accused. He would hasten, however, to say that Italy had never thought of treating foreign and national goods differently. Article 12 (1) was not under discussion. On the other hand, Italy would be prepared to regard the abolition of double taxation as a duty incumbent on all countries. The difficulty was to find a rule which would be generally acceptable, and M. Clavier had not yet succeeded in doing so. It was for that reason that the Fiscal Committee had recommended the method of bilateral treaties. In M. Bolaffi's view paragraph *(a)* of the Belgian proposal would cause, rather than prevent, double taxation. Finally, he considered that a Convention should not solve technical questions but lay down general rules. Article 14, however, referred to a quite special case.

M. BORDUGE *(Fiscal Committee)* said that there would be no weakening in the friendship between France and Belgium if the former was unable to accept Articles 13 and 14. He wished to add that he spoke solely on behalf of the Fiscal Committee and on the basis of technical considerations. M. Clavier's amendment formed part of a text which had been examined at Geneva conjointly with Article 13, and neither of them had been accepted.

Furthermore, M. Borduge considered that the provisions which M. Duchénois thought precise were hopelessly ambiguous, and he wished to point out that he had never said that they would make no change but that they would make only a small change, which was a very different matter. Lastly, Article 22 did not provide any complete safeguard. It was precisely the insertion of that article, referring to the Court of Arbitration disputes between States and even between administrations and persons administered, which showed how defective the Convention was. International justice should be reserved for much more important matters.

M. ROJON *(France)* said that his country had no intention of denying its ideal or its principles. The two criticisms made by the French Government in regard to Articles 13 and 14 were that they were too precise and too much specialised. They were too precise, because they went into details which were not in place in a general Convention. They were too highly specialised, because they did not cover the whole subject of double taxation. Further, if he had understood M. Serruys correctly, the latter had, on the previous day, urged that the first thing to be safeguarded was the principle and not the wording. Again, M. Rojon did not agree with the opinion of M. Duchénois that, by refusing to accept the terms of Articles 13 and 14, France would be acting at variance with the principle of equity. France did not contest the principle, and she was fully prepared to consider any other formula which the Economic Committee might be good enough to propose.

M. IMHOFF *(Germany)* said that a large number of delegates had urged the omission of Articles 13 and 14. It seemed very unlikely, especially after M. Borduge's observations, that the Committee would accept them. Nevertheless, although it was true that it was easier to settle the problem by bilateral agreements, the alternative of a plurilateral Convention was still preferable.

M. Imhoff proposed that a Sub-Committee should be appointed to seek for a form of wording which might be advantageously substituted for the too special terms of Articles 13 and 14.

THE CHAIRMAN said that, if those delegates who had sent in their names to speak would withdraw them, the question of appointing a Sub-Committee would be considered at once.

M. STOPPANI *(Secretary-General of the Conference)* noted with satisfaction that the antagonisms with which the discussions had opened were beginning to give way to a desire for conciliation. Acting on the experience acquired by the Secretariat of the League, he appealed to those speakers who had sent in their names to allow the Sub-Committee to get to work as soon as possible. This course would not, moreover, prejudice the solution of the problem since the Sub-Committee's proceedings would be reported to the Committee.

MR. WRIGHT *(India)* said that he agreed with the representatives of Italy, France, Czechoslovakia and Switzerland, but he would not oppose the immediate formation of a Sub-Committee.

8. **Appointment of a Sub-Committee on Articles 13 and 14.**

THE CHAIRMAN proposed that a Sub-Committee should be appointed composed of the following members :

M. IMHOFF (Germany), Sir Percy THOMPSON (Great Britain), M. BOLAFFI (Italy), M. CLAVIER (Belgium), M. ROJON (France), and the Rapporteur ;
and, to represent the Committees of the League of Nations :
M. BORDUGE, M. BLAU, M. BRUNET.

The Sub-Committee, as proposed, might seem rather large, but it would be difficult in any other way to take into account all the currents of opinion that had been expressed.

The Chairman's proposal was adopted.

FOURTH MEETING

Held in Paris on November 12th, 1929, at 11 a.m.

Chairman : M. GUERRERO (Salvador).

Secretary : M. BAUMONT.

9. **Examination of the Article of the Convention : Articles 3 and 4 and Article 12, Paragraph 2** (continuation) : **Appointment of a Sub-Committee.**

M. MEYERS *(Netherlands)* said that his delegation would have some difficulty in agreeing to the proposal to maintain Article 4, because in the Netherlands national and foreign goods were treated differently. The Netherlands delegation was uncertain whether this difference of treatment was compatible with the text of the Convention. If that difficulty, which he would explain, could in any way be eliminated, the delegation would willingly agree to the maintenance of the article.

The Gold and Silver Guarantee Act of September 18th, 1852 *(Bulletin of Laws*, No 178) contained different provisions concerning the treatment of gold and silver articles. The standard of silver articles imported from abroad was not guaranteed. They were merely stamped, the object being to prove that the duties required by the law had been paid. In so far as imported gold articles were concerned, no difference was made between these and gold articles of home manufacture, except in so far as concerned the use of the stamps. Imported articles of whatever nature were exclusively stamped with the marks used to denote articles of small dimensions made at home.

Article 78 of the same Act allowed the export of new gold and silver articles with a refund of nine-tenths of the assay duty. This article did not apply in the case of imported silver articles. Imported gold articles received the same treatment as gold articles made at home.

M. BRUNET *(Economic Committee)* observed that the law in question was not of very recent date. He suggested that the Netherlands delegation should explain in a note the difficulties which the Netherlands might experience, in view of the existence of that law, in adhering without reservation to Article 4. The Committee would thus be in a position to decide whether an exception covering this particular case could be allowed. It would, moreover, be desirable for the delegations which had to draw attention to special situations resulting from existing legislation to do the same.

M. ENGELL *(Denmark)* said that Article 4 was drafted in such general terms that it was difficult to form an accurate opinion as to its exact scope. In so far as Denmark was concerned, could the regulations requiring the placing of marks on retail articles remain unchanged if Denmark accepted Article 4 ? By the terms of these regulations, a stamp had to be placed on certain articles for sale to show whether they were of foreign or home manufacture. It seemed necessary to decide whether this practice was contrary or not to the terms of Article 4.

Sir Percy THOMPSON *(British Empire)* said that the British delegation desired to make a reservation either in the text or in the Protocol concerning : (1) the marking of goods with an indication of their origin, and (2) the reservation of certain fairs for national goods. His Government desired it to be made clear that certain fairs could be reserved for national goods.

M. DE NAVAILLES *(France)* thought that a preliminary question arose. It would be useless to discuss the terms of Articles 3 and 4 and the second paragraph of Article 12 until the Committee had decided whether or not they should be included in the Convention, since they dealt with goods and not with persons and might, therefore, be more appropriately inserted in a commercial treaty. The French delegation had no objection to the inclusion of the articles in the general Convention on the Treatment of Foreigners, because similar provisions were to be found in all commercial treaties concluded by France.

THE CHAIRMAN said that there were two different currents of opinion in the Committee. Some desired the maintenance, others the suppression, of the articles in question. He suggested that a sub-committee composed of the delegates of Greece, Japan, the Netherlands, Poland, Switzerland and Venezuela should be appointed with instructions to submit to the Committee at its next meeting a definite proposal either for or against the inclusion of the articles in the Convention.

The proposal of the Chairman was adopted.

It was understood that representatives of the Economic Committee and of the International Chamber of Commerce could also attend the meetings of the Sub-Committee.

10. **Appointment of an Additional Member to the Sub-Committee on Articles 13 and 14.**

At the request of the CHAIRMAN, M. FLORES DE LEMUS (Spain) *was appointed a member of the Sub-Committee on Articles* 13 *and* 14. *It was understood that representatives of the International chamber of Commerce could also attend the Sub-Committee.*

FIFTH MEETING

Held in Paris on November 13th, 1929, at 3.30 p.m.

Chairman: M. GUERRERO (Salvador).
Secretary: M. BAUMONT.

11. **Examination of the Articles of the Convention : Articles 3 and 4 and Article 12, Paragraph 2 : Report of the Sub-Committee.**

M. YOUPIS *(Greece)*, Rapporteur, submitted a verbal report.

The Sub-Committee instructed by the Committee to examine Articles 3 and 4, and paragraph 2 of Article 12, of the draft Convention, and to propose, if possible, a concrete solution as regards these articles, had noted during the discussions that two opposite tendencies were to be observed in regard to the question of the maintenance or deletion of the clauses contained in those three articles.

In regard to that question, however, the Sub-Committee had felt unable to adopt any final attitude. It was for the Committee, after having considered the *pros* and *cons*, to decide whether to adopt the three articles which were of a fiscal nature or simply to delete them.

To facilitate the discussion, however, the Sub-Committee had thought it useful, in case the Committee decided to maintain the articles to examine their text as well as any other text which might with advantage be substituted for it.

A large number of amendments had been submitted to the text of the draft by various delegations. The Sub-Committee, however, had only felt able to take a few of them into account. This meant, therefore, that the articles were essentially unchanged. Another text, however, had been drafted to replace that contained in the draft Convention. It had been proposed by the Japanese delegation and was couched in general terms. Its object was to prevent any form of discrimination in regard to foreign goods both in respect of internal taxation and their circulation in the country. The text, however, was not drafted in detail. It was as follows :

> " The High Contracting Parties undertake not to subject foreign goods to any discriminatory treatment incompatible with the provisions of the present Convention, either as regards internal taxation or the distribution of such goods within the country."

The Sub-Committee, wishing to submit alternative solutions to the Committee in order to enable it to make a choice — always supposing the Committee decided to retain the articles —

had examined this amendment and had thought it better to submit it in the following form as a provision to be inserted in the Protocol explanatory of Article 1 of the Convention :

> " In order to give full effect to the principle of equality of treatment laid down in paragraph 1 of Article 1, the High Contracting Parties undertake to abstain from taking measures for the purpose of subjecting the products of the other High Contracting Parties, as regards internal taxation, sale, offering for sale, distribution and consumption, to any conditions or charges other or more burdensome than those to which national products of the same kind are subject."

It was obvious that the adoption of this text would result in the deletion of Articles 3, 4 and paragraph 2 of Article 12.

Another possibility had also been contemplated by the Sub-Committee, namely, to make the three articles of the draft Convention or the text suggested by the Japanese delegation in its initial form or in its amended form purely optional in character. Any Government adopting the Convention might adhere or reject the fiscal clauses concerning foreign goods.

In the view of the Sub-Committee, therefore, the Committee would have to decide whether it desired to maintain or delete the clauses in question.

If it decided to maintain these clauses, it would have to choose between the text of the draft as amended or the suppression of the three articles and the insertion of the Japanese proposal either in its original or in its amended form. The final possibility was to make the text adopted optional in character. In that case, the clauses would be, so to speak, isolated and each Government, when ratifying the Convention, could adopt them or not as it so desired.

M. MATSUSHIMA *(Japan)* wished to explain his amendment. It was in the nature of a compromise designed to conciliate two opposing views in the Committee. The Japanese delegation, however, had found that even this compromise proposal had given rise to much doubt. In order, therefore, to avoid further complications, it withdrew its amendment and proposed the complete suppression of Articles 3 and 4 and of paragraph 2 of Article 12. It did so in order to leave the Committee free to examine the new proposal submitted by the Sub-Committee.

In view, however, of the importance of the question of the treatment of foreign products in respect of internal taxation and circulation, the Japanese delegation hoped that the Conference would adopt a resolution to the effect that this question should be settled by a further Conference to be convened by the League at some future date.

M. BALLI *(Switzerland)* recalled that the Sub-Committee had been appointed in order, if possible, to achieve a compromise. The main objection to inserting the articles had been that they contained matter which was foreign to the Convention. The Sub-Committee had accordingly transformed them into a simple formula, for insertion in the Protocol, designed to show the connection between treatment of goods and treatment of foreigners. M. Balli hoped that it would be possible to accept the articles in this form.

M. LYCHOWSKI *(Poland)* agreed with the suggestion of the Japanese delegate. The treatment of goods should be discussed by another Conference to be summoned at some future date. A resolution in this sense would, he thought, meet the case. Such a procedure was supported by the suggestion contained in Article B of the document on the tariff truce (document C.519.M.177.1929.II) drawn up by the Economic Committee. That article showed clearly that the Economic Committee contemplated further discussion in regard to the matter of the internal taxation of goods.

M. BRUNET *(Economic Committee)* said that the document to which the Polish delegate had just referred had been designed to form the basis for the discussions of the Conference on the tariff truce. The object of that Conference was to achieve an agreement whereby Customs duties should not be increased over and above the level at which they had stood at a certain date. The object of the truce had been to ensure a period of calm and stability during which it would be possible to discuss, under favourable conditions, progressive improvements in the present tariff situation. The conclusion of such a truce, however, did not in any way prevent States from immediately concluding a Convention designed to give guarantees as regards the conditions applicable to foreign goods in the territory of the contracting States. The Conference on the tariff truce would not attempt to settle the question of internal taxation, but only to prevent an increase of tariffs on goods, owing to the fact of their importation. These two questions were not interdependent.

M. BOLAFFI *(Italy)* said that the Italian delegation, for the reasons which had already been explained, would prefer the articles in question to be suppressed.

In spite of the fact that the question of the internal taxation of goods, as M. Brunet had pointed out, had nothing to do with the question of Customs duties, those two questions were nevertheless more closely connected than the questions of the treatment of goods and of foreigners.

It must not be forgotten that the protectionist policy in respect of national goods was applied, at the same time, directly in the form of Customs duties and indirectly in the form of internal taxes. It was not possible to consider separately only one aspect of a general problem. Even

as regards the methods employed, apart from their application, the Customs duties and the taxes consisting of duties on manufacture were connected with each other. Both were collected together at the time of the introduction of the foreign goods. The second were often considered as accessory duties to the first, while both had the same economic and fiscal object.

No question arose as regards the treatment of foreigners, if traders in foreign goods were treated in the same way whether they were nationals or foreigners. Several delegations, however, wished to make the present Conference an occasion for an affirmation of principle in favour of equality of treatment for national goods and foreign goods already introduced into a country. If that were to be done, the suggestion made by the Sub-Committee would certainly give satisfaction to this legitimate desire. The recommendation would find its proper place in the Protocol.

M. ENGELL *(Denmark)* agreed with M. Bolaffi. If, however, it were decided to delete the articles, the Japanese proposal suitably amended might be adopted. It was better, he thought, to delete the articles, for the relationship between internal taxation and Customs duties was much closer than that between the treatment of goods and the treatment of foreigners.

MR. WRIGHT *(India)* noted that the report of the Sub-Committee had not greatly advanced the question. Had the Sub-Committee proposed a text whereby Governments were merely urged not to introduce discriminatory practices in regard to internal taxation, with the direct object of nullifying the provisions of the Convention, the Government of India would have had no difficulty in accepting such a proposal. It had, however, done no such thing. It had merely suggested that the articles should be transferred from the Convention to the Protocol. With that suggestion the Indian delegation could not agree. Moreover, the Sub-Committee had not suggested any exception as regards the marking of imported articles.

M. SCIÉ TON-FA *(China)* was in favour of the deletion of the articles.

M. DE NAVAILLES *(France)* said that, while his Government thought that the articles in question would not normally form part of a Convention on the Treatment of Foreigners, it had no objection to their maintenance. It appeared, however, that a large number of delegations desired their deletion.

The Sub-Committee had proposed a text for insertion in the Protocol and a number of objections had been made to it, mostly on the ground that, if it were adopted, no great effect would be achieved. No reference had been made to the marking of foreign goods in the Sub-Committee's text. It appeared that some thought that to require the marking of foreign goods was a discriminatory practice. It was quite easy, however, to assimilate the treatment of foreign goods with the treatment of national goods. All that was necessary was that the goods should bear the mark of their origin. There was no reason, because they bore that mark, to subject them to a different form of taxation from that borne by national goods. A distinction must therefore be made between the purely fiscal question of the internal taxes paid on goods and the question of the method of their payment.

M. JULLIARD *(International Chamber of Commerce)* desired to explain the views of the International Chamber, which represented both industry and commerce. The Chamber was as much interested in regulations for the treatment of goods as it was in those for the treatment of persons. The Chamber hoped, therefore, that the articles would be retained, but would be quite ready to accept the proposal of the Sub-Committee. It would deeply regret their total disappearance, for, as M. Bolaffi had pointed out, it would be the greatest misfortune if the discriminatory practices against persons abolished by the Convention were transferred to foreign goods. To do so would nullify the whole Convention.

He therefore expressed the hope that the articles would be adopted in the form suggested by the Sub-Committee.

M. YOUPIS *(Greece)*, Rapporteur, said that the Sub-Committee had only provisionally examined the texts of the articles, for it had felt unable to draft a definite proposal until the Committee had decided whether or not to maintain the articles. If they were maintained, the Committee must decide in what form to include them in the Convention.

M. IMHOFF *(Germany)* said that, since opinions were divided as to the maintenance or deletion of the articles in question, the views of all delegations should be obtained for the information of the Conference. A majority and a minority report should be presented.

M. STOPPANI *(Secretary-General of the Conference)* said that the Committee could, if it desired, vote on the principle of the inclusion or exclusion of the articles. Was not the question

of principle, however, as follows ? If a State, by differential internal treatment of foreign goods, put the persons selling those goods in an inferior position *vis-à-vis* persons selling national goods, did that State contravene the general principles of the Convention on the Treatment of Foreigners as laid down in Article 1 ? In other words, the Committee should first decide whether the internal taxation of foreign goods, over and above the Customs duties which were levied upon them, was contrary to the provisions of Article 1.

M. BOLAFFI *(Italy)*, in reply to M. Stoppani, pointed out that, if discrimination between national and foreign goods applied both to foreign merchants and nationals — whether resident or non-resident in the country — there would be no infringement of Article 1.

M. MEYERS *(Netherlands)* wished it to be clear whether, in the event of the suppression of Articles 3, 4 and 12, paragraph 2, the new text proposed by the Sub-Committee would be adopted as it stood, or whether it would be possible to amend it.

M. YOUPIS *(Greece)*, Rapporteur, explained that, when the Committee had decided to maintain the articles, the text proposed by the Sub-Committee could be modified, if desired. A very full discussion had now taken place, and the Committee was, he thought, in a position to decide whether or not Articles 3 and 4 and the second paragraph of Article 12 should or should not be included in the Convention.

M. BRUNET *(Economic Committee)* said that the object of the present Conference was to establish guarantees whereby foreigners would not be treated differently from nationals. If a State were allowed to introduce discrimination in its treatment of foreign goods as compared with that which national goods enjoyed, the effects of the Convention would be largely destroyed.

M. BORDUGE *(Fiscal Committee)* said that the Fiscal Committee had not discussed Articles 3 and 4 in any detail. It had occurred to its members, however, that a country could surreptitiously, by means of internal taxation, discriminate between foreign and national goods. That Committee would therefore be in favour of the inclusion of Articles 3 and 4 in the Convention in some form or other. M. Bolaffi had maintained that the articles ought to be included in treaties dealing with Customs tariffs in which it would be easy to insert a clause covering the question of the internal taxation of foreign goods.

While this contention was true, yet the Conference possessed a unique opportunity to deal with the matter on an almost universal basis. The Convention which was to be concluded was multilateral, whereas Conventions on Customs tariffs were nearly always of a bilateral nature. If, therefore, it was really desired to deal with equality of treatment in all its aspects, it was essential to include Articles 3 and 4 in some form or another. At the moment, foreign goods could be subjected to discrimination either by means of Customs duties or by internal taxation. To remove the latter form of discrimination would be to make one form of malpractice in regard to foreign goods henceforth impossible. Would the Committee venture to refuse to take that step ?

He would point out that even those who were in favour of the suppression of the articles had not criticised them in principle. The matter was in fact one of opportunity.

M. BOLAFFI *(Italy)* said that his difficulty was the following : The problem of the treatment of goods had not been sufficiently studied, whereas that of the treatment of persons had been carefully examined. In Italy, as he had already pointed out, no discriminatory practices existed. He thought it impossible, however, to deal with that side of the problem of the equality of treatment at the present moment. Much time was still required before it would be ripe for treatment.

M. CLAVIER *(Belgium)*, as a member of the Fiscal Committee, agreed with the views of M. Borduge regarding the retention of the articles. As delegate of the Belgian Government, he had no objection to them, provided they were suitably amended.

The question of principle, however, should be settled. There were three possible solutions : (1) the articles could be retained ; (2) if rejected, they could be made optional ; (3) they could be retained, but inserted in the Protocol as was suggested by the Sub-Committee. In the last case, the text would have to be changed in order to take account of the case of nationals selling foreign goods. In this he agreed with M. de Navailles. The Convention should not have the effect of preventing foreign goods from remaining foreign in the country in which they were sold. For example, a Belgian selling French wines must still be able to sell those wines, and should not thereby be subjected to any discrimination on the grounds that the product he sold was foreign

and not national. The text therefore proposed by the Sub-Committee for insertion in the Protocol should be amended by the addition of the word " fiscal " in the sentence : " The High Contracting Parties undertake to abstain from taking *fiscal* measures ", etc.

Further, the text proposed by the Sub-Committee for insertion in the Protocol should not refer to Article 1 of the Convention, which dealt solely with persons and not with goods. He himself would personally prefer the adoption of the Japanese proposal with suitably drafted amendments ; such as, for example, the addition of the word "fiscal" in the phrase : "any discriminatory *fiscal* treatment".

M. BALLI *(Switzerland)* thought it impossible to imagine that a country would discriminate in respect of a foreign product according as to whether it was sold by a foreigner or by one of its own nationals.

THE CHAIRMAN proposed to consult the Committee on the following points : First, whether the articles should be maintained or rejected ; secondly, in the event of their maintenance, whether the text proposed by the Sub-Committee should be adopted.

In regard to the proposal of M. Imhoff that a majority and a minority report should be presented, he proposed to take a vote by roll-call in order that the view of each delegation might be known.

On a vote by roll-call being taken, the representatives of the following countries voted *in favour* of the retention of Articles 3 and 4 and the second paragraph of Article 12 : Belgium, British Empire, Canada, France, Germany, Hungary, the Netherlands, Roumania, Spain, Switzerland and Venezuela.

The representatives of the following countries voted *for the rejection* of the articles : China, Cuba, Denmark, Greece, India, Italy, Japan, Poland, Portugal, Salvador and Sweden.

THE CHAIRMAN noted that the delegates of eleven countries had voted in favour and the representatives of eleven against the retention of the articles. He asked the delegate of Czechoslovakia, who had not recorded his vote, to do so.

M. RACHINSKI *(Czechoslovakia)* said that he was in favour of the retention of the articles.

THE CHAIRMAN declared the principle of the retention of the articles to be adopted by twelve votes to eleven.

He called on the Committee to decide whether the text proposed by the Sub-Committee should be adopted and, if so, whether it should be inserted in the Protocol.

M. BORDUGE *(Fiscal Committee)* urged that, since the principle of the articles had been maintained, they should be included in the Convention. Officials of Government departments who would be called upon to apply the Convention would not understand why articles containing a very important matter of substance should have been included in the Protocol and not in the text itself. If the Committee were convinced of the usefulness of these articles, it should have the courage of its convictions and place them in the Convention.

M. BRUNET *(Economic Committee)* supported M. Borduge. The provisions of a Protocol were, as a rule, interpretative ; it would therefore be quite unusual to include in the Protocol the fundamental principles of Articles 3 and 4.

M. DE NAVAILLES *(France)* said, in view of the great uncertainty regarding the exact views of the Committee, the retention of the articles only having been adopted by one vote, he saw no objection to their inclusion in the Protocol rather than in the text of the Convention. In this case such a solution was justifiable, because the articles in question were not normally such as would be included in a Convention on the Treatment of Foreigners. The text, however, proposed by the Sub-Committee must be amended in order to cover the marking of goods. It was quite justifiable for States to require an indication of the origin of foreign goods.

SIR PERCY THOMPSON *(British Empire)* thought it inconceivable for the articles in question to be included in the Protocol. They must either be kept separate altogether on the grounds that they did not concern the real object of the Convention, or else be included in its text. In any case, they were quite out of place in the Protocol.

THE CHAIRMAN proposed that the Rapporteur of the Sub-Committee should explain the procedure followed in regard to the amendments proposed to the articles, which should then be discussed one by one together with their amendments.

M. YOUPIS *(Greece)*, Rapporteur, said that three amendments had been submitted to Article 3. That from the British delegation had been to substitute the phrase " any other " for the words " in a more burdensome " in the article. The Sub-Committee had met the views of the British delegation by using the phrase " to any conditions or charges other or more burdensome ".

SIR PERCY THOMPSON *(British Empire)* said he was ready to accept the text of the Sub-Committee.

M. YOUPIS *(Greece)*, Rapporteur, said that the second amendment had been proposed by the Netherlands delegation. It had been adopted in principle and was to the following effect :

> "As regards the application of Article 3 and Article 12, paragraph 2, it is understood that they do not apply to Customs duties or other taxes, to which goods are subject, solely by reason of their importation or exportation."

Finally, the Turkish delegation had submitted an amendment dealing with the most-favoured-nation clause. The Sub-Committee desired to have the views of that delegation as to the exact object of this proposal.

With regard to Article 4, the Venezuelan delegation had proposed an amendment to deal with the case of the transit of foreign goods. Since transit was not dealt with in Article 4 of the Convention, the Sub-Committee had felt unable to accept this amendment, but had referred the matter to the Drafting Committee.

The Estonian delegation had raised the question of licences. The exact point of its objection had not been fully understood by the Sub-Committee which desired to know the views of the delegation on the point.

The amendments submitted by the Latvian, Austrian and Egyptian delegations would be considered later by the Sub-Committee.

The British delegation had proposed an addition to the Protocol. The Sub-Committee had thought that such an addition might be adopted with regard to Article 2 of the Convention, but was uncertain whether it was really necessary. This point would also have to be discussed. There was also an amendment in similar terms from the Danish Government which would have to be considered.

The special case raised in the amendment of the Dutch delegation had been considered.

With regard to Article 12, paragraph 2, the Austrian, Egyptian and Latvian delegations had submitted amendments dealing with the encouragement of national industries. The Sub-Committee had been of the opinion that the encouragement of national industries was admissible, and legislative measures to that effect were legitimate, provided that no discrimination was shown between foreigners and nationals engaged in the same industry. It had been confirmed in its view by the observations of the Economic Committee in the commentary on the Convention (page 49).

Finally, the Venezuelan delegation had submitted an amendment in regard to transit which the Sub-Committee had thought unnecessary, but to which it had no objection.

He suggested that now that the principle of the retention of the articles had been adopted, all the amendments should be submitted to the Sub-Committee for further consideration.

This proposal was adopted.

SIXTH MEETING

Held in Paris on November 14th, 1929, at 10.30 a.m.

Chairman : M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

12. **Article 3 : Report of the Sub-Committee** (continuation).

THE CHAIRMAN said that various amendments had been submitted to Articles 3, 4 and paragraph 2 of Article 12 (Annex B, 1).

He proposed that the Committee should resume the examination of Article 3 and observed that, in the absence of the Rapporteur, M. Baumont, Secretary of the Sub-Committee, would give any explanations required.

SIR PERCY THOMPSON *(British Empire)*, in reply to a question from the Chairman, said that the British amendment to Article 3 could not be regarded as withdrawn unless the Committee accepted the compromise text submitted by the Sub-Committee (Annex B, 1). As the discussion dealt for the moment only with Article 3, the British amendment should be regarded as maintained.

M. CLAVIER *(Belgium)* had only certain drafting objections to the British delegation's amendment, and Article 3 in general. In his opinion the use of the term "internal" in the phrase "internal taxation" was incorrect, since all taxes imposed by a Government were necessarily internal, seeing that they existed solely within the territory of that Government. He also proposed the omission of the word *"conditionnement"*, which he thought vague and useless.

Finally, he proposed the following wording for the end of the article :

". . . may not, on any grounds, subject the products of the High Contracting Parties to fiscal charges other or more burdensome than those to which similar national products are subjected."

THE CHAIRMAN asked if the wording proposed by M. Clavier would meet the wishes of the British delegation.

SIR PERCY THOMPSON *(British Empire)* replied in the affirmative.

M. BLAU *(Fiscal Committee)* explained that the adjective "internal" was properly used in the text of Article 3, since it described the character of such taxes as compared with Customs or transit duties. It therefore enhanced the clarity of the text.

M. BRUNET *(Economic Committee)* approved M. Blau's observation. He stated that the Economic Committee had employed the normal terminology in treaties of commerce, and had wished to make a clear distinction between Customs duties and internal taxes.

M. BLAU *(Fiscal Committee)* pointed out, further, that the text proposed by M. Clavier modified, to a certain degree, the substance of Article 3 by the suppression of the word *"conditionnement"*. He added that it was difficult to define the meaning of that term, and that it had given rise to criticism on the part of certain delegations.

M. CLAVIER *(Belgium)* would consent to the retention of the word "internal", although he considered it a pleonasm in Article 3.

SALIH ZEKAI BEY *(Turkey)* recalled that the Turkish delegation had proposed the addition at the end of Article 3 of the following words : "and in the absence of similar products of the country itself than on those of the most-favoured-nation". This addition covered non-unmanufactured goods or goods produced in the country but liable to taxes there.

SIR PERCY THOMPSON *(British Empire)* pointed out that there were serious discrepancies between the French and English texts.

THE CHAIRMAN proposed that the Committee should decide as to the retention, or omission, of the term *"conditionnement"* which did not appear in the English text.

M. IMHOFF *(Germany)* explained that, in his country, there was no legislation on the finishing and improving *(conditionnement)* of goods, but, as certain countries possessed legislation regarding this matter, he thought that place should be found for it in the text of the Convention.

M. BOLAFFI *(Italy)* was in favour of omitting the word *"conditionnement"* which, in his opinion, was not clear enough.

THE CHAIRMAN proposed that the Committee should take a vote.

It was decided to omit the word "conditionnement".

M. MATSUSHIMA *(Japan)* recalled that, on the previous day, the Committee had been requested to vote on the question of retaining or omitting Articles 3 and 4 and the second paragraph of Article 12. The Committee had decided by a small majority in favour of retaining these articles. What, he asked, would be the significance of the vote of those delegations which had voted for the omission of these articles in regard to drafting amendments ?

THE CHAIRMAN replied that there would be no change in the position of these delegations, since the final decision would be taken by the plenary Conference.

M. BRUNET *(Economic Committee)* recalled that, at a previous meeting, he had pointed out that the delegations which would vote against retaining Articles 3, 4 and 12, paragraph 2, should not, for this reason alone, abstain from taking part in the discussions which were intended to improve the text of these articles. Participation in such a discussion would not infringe in any way their liberty of action at the moment when the final vote was taken in the plenary Conference.

M. FEHR *(Sweden)* observed that he had, on the previous day, voted for the omission of Articles 3 and 4. The Swedish delegation therefore reserved its right to maintain the same attitude during the discussion of these articles in the plenary Conference. It would not

be committed in any way if it took part in the discussion on the drafting of the articles, for it was of opinion that the acceptance of the stipulations in Articles 3 and 4 relative to the treatment of goods was not calculated to facilitate the signature and ratification of a Convention on the treatment of foreigners.

THE CHAIRMAN requested the Turkish delegate to explain the bearing of his amendment.

SALIH ZEKAI BEY *(Turkey)* pointed out that his amendment covered goods which did not originate in the country, colonial goods for instance, but which were, nevertheless, liable to internal taxation. In Turkey coffee, tea, etc.were taxed in this way. There were in the country no products similar to these colonial products. The bearing of the article would therefore require amendment. Furthermore, there were many other countries in a similar situation to that of Turkey in this respect.

M. ENGELL *(Denmark)*, Rapporteur, recalled that the Danish delegation was one of those which had voted against the retention of Articles 3 and 4. It had not done so because the Danish Government had any intention of making discrimination in practice with regard to foreign goods. It could not, however, accept a text which stipulated that foreign goods might not on any grounds be subject to fiscal charges other than those to which national goods were subjected. It was impossible in certain cases to apply the same procedure for foreign goods and for national goods. He had already cited the example of alcoholic beverages. It was impossible to measure exactly their alcoholic content when sugar had been added to them. The Danish Government was therefore obliged to press for the adoption of average taxes in such cases. He would accept a wording specifying that the products of the other contracting parties should not be subjected to " more burdensome " fiscal charges, but the countries should be left free to apply, when necessary, average taxes to foreign products.

M. BRUNET *(Economic Committee)* suggested that, in order to give satisfaction to the Danish delegation, the word " other " should be suppressed. On the other hand, the words " may not subject the products ", which occurred in the proposal made by the Belgian delegation, could be replaced by the words " which might involve for the products ". The text would gain in clarity by this amendment.

THE CHAIRMAN asked whether the British delegation would accept this text and would withdraw its amendment.

SIR PERCY THOMPSON *(British Empire)* considered that the text proposed by M. Clavier would probably satisfy the British delegation. The latter did not agree that there were any insurmountable obstacles to the adoption of methods which would make it possible to have an identical check on foreign goods and national goods. In view, however, of the administrative difficulties to which attention had been drawn, he was prepared to accept the text of Article 3 as amended by M. Clavier and M. Brunet.

M. CLAVIER *(Belgium)* recalled that the purpose of Article 3 was to obviate discrimination between foreign goods and national goods. It would nevertheless be useful to specify in the Protocol that this article placed no obstacle in the way of the adoption of special taxes in cases where it was impossible, in practice, to differentiate between national and foreign goods, provided, of course, that these special taxes were not heavier than the ordinary taxes.

M. IMHOFF *(Germany)* did not consider that the amendment to Article 3 made any improvement in it. The old text took into account charges other than fiscal taxes which might constitute a form of indirect protectionism which it was desired to abolish. The old drafting of Article 3 was in conformity with that of a large number of treaties of commerce and he proposed that it should be retained.

M. CLAVIER *(Belgium)* explained that the phrase "more burdensome charges" did, in fact, cover all the charges to which the German delegate had referred.

SIR PERCY THOMPSON *(British Empire)* pointed out that the charges might be more burdensome for foreign goods, not only because the rate was higher, but also by reason of the way in which they were collected.

M. IMHOFF *(Germany)* said that he would agree to the text which had been proposed if adequate explanations were inserted in the Protocol.

The Committee decided to accept the text of Article 3 as amended by M. Clavier and M. Brunet.

THE CHAIRMAN proposed that the Committee should next decide on the amendment proposed by the Turkish delegation.

SALIH ZEKAI BEY *(Turkey)* said that he would be satisfied if the end of Article 3 were amended in the following way : "similar national products *if any exist*", it being understood that

it would be explained in the Protocol that the terms of Article 3 did not affect the legislation of countries which levied internal taxes on certain goods not produced in the country.

M. BOLAFFI *(Italy)* recalled that he had always been opposed to the articles in question owing to the ease with which it would be possible to go beyond the limits which the Economic Committee had wished to give them.

These articles, in reality, merely established the principle of complete equality (sometimes too complete, perhaps) between foreign and national goods. He did not think it advisable to include in the text of the Convention a stipulation recognising explicitly the right of the Government to tax foreign products which were not similar to national goods.

SALIH ZEKAI BEY *(Turkey)* proposed the addition of the words "without any discrimination between the products of the various foreign countries".

M. BRUNET *(Economic Committee)* explained that the Economic Committee had wished to avoid dealing with the delicate question to which the Italian delegate had referred. It was for that reason that it had preferred to keep to cases where national goods existed which were similar to foreign goods. M. Brunet thought that the adoption of the Turkish delegate's amendment would lead the Conference indirectly into the very delicate domain of Customs tariffs.

M. ENGELL *(Denmark)*, Rapporteur, thought that Article 17 gave the Turkish delegate the safeguard for which he was asking.

SALIH ZEKAI BEY *(Turkey)* thought that Article 17 did not meet his view. The purpose of his amendment was to make it clear that countries retained the right to levy consumption taxes on goods which did not exist on their territory.

Such cases occurred very frequently and deserved consideration in a Convention. The freedom of the countries to tax such foreign goods should be respected, although, of course, no discrimination should be admitted between the goods of the different foreign countries.

M. BRUNET *(Economic Committee)* explained that the case to which the Turkish delegation had drawn the attention of the Committee had not been contemplated in the draft Convention. The Economic Committee had been unwilling to express an opinion on this special case which was connected with the question of Customs duties.

M. IMHOFF *(Germany)* added that Article 17 applied to nationals and not to goods, which were still subject to national treatment. There was, therefore, no relation between Article 17 and Article 3.

M. BRUNET *(Economic Committee)* insisted that the particular case which the Turkish delegate had in mind was not covered by Article 3, which referred solely to cases where there existed in the country goods similar to imported foreign goods.

SALIH ZEKAI BEY *(Turkey)* said that, in view of M. Brunet's observations, he would be satisfied if the explanations which had been given were inserted in the Protocol. He recalled that various bilateral conventions took into account the point of view he had expressed, in particular, every one of the treaties signed by Turkey. He insisted that the Protocol should contain the necessary explanations.

M. BOLAFFI *(Italy)* urged the danger of going outside the scope of Article 3, as it had been drafted, that was to say, going beyond a simple comparison between national goods and similar foreign goods, and taking up the extremely difficult question of dissimilar foreign products. He was in favour of including an explanation in the Protocol to the effect that Article 3 covered exclusively foreign goods similar to goods existing in the countries of importation.

SALIH ZEKAI BEY *(Turkey)* agreed.

M. CLAVIER *(Belgium)* thought it essential to avoid extending the scope of the Convention unduly. The Convention referred to the treatment of foreigners. Its scope had already been extended to include foreign goods, and it would be still further extended if it were to cover foreign goods dissimilar to national goods. No such attempt should be made.

He would agree to a statement in the Protocol that Article 3 covered only cases where there existed in the country goods similar to imported foreign goods, but he thought that care should be taken to avoid saying that the Convention definitely admitted the right of the Governments to tax dissimilar products. To do so would be to go outside the scope of the Conference.

M. BLAU *(Fiscal Committee)* proposed the following text for insertion in the Protocol :

"The provisions of Article 3 do not prevent the High Contracting Parties from levying an internal tax on the goods of any other High Contracting Party on whose territory there do not exist similar goods."

M. BRUNET *(Economic Committee)* thought that this text was outside the scope of the Conference. He would prefer M. Clavier's proposal to insert in the Protocol a declaration to the effect that Article 3 had nothing to do with those cases where no similar national goods existed. It was important to avoid a provision which might be embarrassing when the question of Customs duties was being settled by means of another convention.

M. MATSUSHIMA *(Japan)* pointed out that the scope of the Convention had already been extended to include goods. He thought that it might be further extended to stipulate in the Protocol that foreign goods should always enjoy at any rate most-favoured-nation treatment. For that reason, he was in favour of the Turkish delegate's amendment.

M. IMHOFF *(Germany)* also supported the Turkish delegation's amendment, which he considered to be an improvement on the draft Convention.

M. ENGELL *(Denmark)* pointed out that the discussion once again brought out the fact that it would have been far better not to include Articles 3 and 4 in the draft Convention. He also held that Article 17 referred only to foreign nationals and proved that the Convention had in fact been intended to cover solely foreign nationals and not foreign goods.

SALIH ZEKAI BEY *(Turkey)* proposed the following text for insertion in the Protocol :

"In adopting the provisions of Article 3 the High Contracting Parties had no intention of prejudging the treatment, in regard to internal taxes, of foreign goods which are not similar to goods existing in the country."

If this text were adopted, no change would be made in the text of Article 3.

The sentence proposed by the Turkish delegation for inclusion in the Protocol was adopted.

M. MEYERS *(Netherlands)* asked permission to revert to the amendment proposed by the Netherlands delegation which had been withdrawn during the discussion in the Sub-Committee. That amendment had only been withdrawn in so far as concerned the drafting of the Protocol relative to Article 12. The Rapporteur of the Sub-Committee, however, had explained that the Netherlands delegation insisted that the terms of the Protocol relative to Article 12 should be also applicable to Article 3 and ultimately to Article 4.

In the Sub-Committee no opposition had been raised to the application to Article 3 of the terms relative to Article 12.

M. BRUNET *(Economic Committee)* said that he had no objection to the extension to Article 3 of the terms of the Protocol relative to Article 12.

M. FLORES DE LEMUS *(Spain)* thought that the proposal by the Netherlands delegation concerning Article 12 should be completed by the addition of the words " or to State monopolies ". State monopolies would always make a discrimination in regard to foreign products for which there was a State monopoly.

THE CHAIRMAN pointed out that the Protocol relative to Articles 3 and 4 contained a general reservation as to monopolies, and this should, he thought, meet the point raised by M. Flores de Lemus.

M. FLORES DE LEMUS *(Spain)* recognised that the Protocol covered the objection he had made and consequently withdrew his proposal.

MR. MCGREER *(Canada)* asked whether the reservation made by the Netherlands delegation covered anti-dumping taxes.

M. BRUNET *(Economic Committee)* explained that anti-dumping taxes were supplementary Customs duties. Consequently, the reservation covered them as well.

The proposal of the Netherlands delegation to extend to Article 3 the text of the Protocol relative to Article 12 was adopted.

13. **Article 4 : Report of the Sub-Committee** (continuation).

THE CHAIRMAN proposed that the Committee should examine the reservation made by the Estonian delegation to Article 4 (Annex B, 1).

M. PUSTA *(Estonia)* explained that his Government's reservation was due to the fact that the legislation now in force in Estonia divided traders into a number of categories. Only those in the first and second category had a permit to sell foreign goods. There was therefore a *de facto* discrimination with regard to foreign goods in Estonia, and the Government would be unable to subscribe to an undertaking to make no discrimination with regard to foreign goods. It was for that reason that it had decided to make a reservation (Annex B, 1). If Article 4 were not amended, his Government would be obliged to maintain its reservation.

M. BRUNET *(Economic Committee)* stated that the situation explained by the Estonian delegate fell within the category of special cases which were peculiar to certain countries. It would hardly be desirable to make general exceptions for isolated cases of this kind. M. Brunet thought that it would be preferable to reserve the Estonian amendment for discussion in the plenary Conference. Perhaps the Conference would consider it sufficient to mention the case of Estonia in the Minutes, when Article 4 was being examined.

M. PUSTA *(Estonia)* said that he was satisfied with this explanation.

M. IMHOFF *(Germany)* asked whether it was possible for foreigners to obtain in Estonia a patent as traders in the first and second categories at the same fee as that demanded of nationals.

M. PUSTA *(Estonia)* replied that the discrimination made by Estonian law existed not as between persons but as between commodities.

M. BRUNET *(Economic Committee)* asked M. Pusta whether the prices of patents varied for the different categories of traders which he had quoted.

M. PUSTA *(Estonia)* replied that he would give an explanation on this point in plenary session.

THE CHAIRMAN noted that the Committee agreed to hold over the discussion on the Estonian amendment for the plenary Conference.

M. LYCHOWSKI *(Poland)* said that he would submit at a plenary session of the Conference a reservation in regard to the special cases existing in Poland.

M. MATSUSHIMA *(Japan)* pointed out that, in countries where there was a State monopoly for an imported product, there would always be a difference in the treatment accorded to such products even if there existed a similar national product. What was the position of the State monopolies in regard to Article 4 ?

THE CHAIRMAN thought that this question should be held over until the discussion on the Protocol relative to Article 4.

SEVENTH MEETING

Held in Paris on November 15th, 1929, at 10.30 a.m.

Chairman: M. GUERRERO (Salvador).
Secretary: M. BAUMONT.

14. **Examination of the Articles of the Convention : Article 4** (continuation).

British and Danish Amendments (Annex B, 1).

THE CHAIRMAN said that the Sub-Committee, considering that the first part of the British amendment might be accepted, proposed the following form of words :

> " This provision does not preclude the right of the other contracting parties to reserve certain public markets and fairs for the sale and exhibition of their own products as laid down in Article 2."

With regard to the second part of the amendment concerning the marking of goods, the Sub-Committee was anxious to receive explanations from the British and Danish delegates as to the meaning of their amendment (Annex B, 1).

SIR PERCY THOMPSON *(British Empire)* explained the legislation in force in the United Kingdom with regard to merchandise marks.

M. ENGELL *(Denmark)* said that in Denmark there was a law stipulating the marking of goods in order to prevent unfair competition. Certain goods had to be marked so as to show whether they were national or foreign in origin. Marks consisted either of stamps or metal plates, the latter, for example, in the case of musical instruments. The only object of the law was to protect the buyer, by providing him with means to know exactly the origin of the goods he was buying. The Danish Government considered this law to be of great value and would have to make a reservation if the British amendment or its own were not accepted. Similar legislation was in force in Norway, and M. Engell, on behalf of the Norwegian delegate who was attending another Committee, said that Norway would have to make a similar reservation. He hoped it would be possible to amend the Sub-Committee's draft to take account of the views which he had expressed.

M. IMHOFF *(Germany)* said that, in view of the fact that the British delegation had explained that only marks of origin were covered by its amendment, the words "of origin" should be inserted in Article 4.

M. FEHR *(Sweden)* said that similar legislation was in force in Sweden where the law required the marking of foreign goods in order to prevent unfair competition. He would accept, therefore, the British amendment with the addition of the words proposed by M. Imhoff.

Sir Percy THOMPSON *(British Empire)* accepted the addition proposed by M. Imhoff.

M. YOUPIS *(Greece)*, Rapporteur for the Sub-Committee, thought the request made by the British, Danish, Norwegian and Swedish delegations legitimate. This form of marking goods was used solely to show their origin, and not for the purpose of making any discrimination between foreign and national products. On behalf of the Sub-Committee he accepted the amendment.

M. RADIMSKY *(Czechoslovakia)* was prepared to accept the British amendment, though no regulations for the marking of goods existed in Czechoslovakia. Should a text, however, be inserted in the Final Act to the effect that the use of such marks should not result in placing any burdens on trade or in any form of discrimination ?

M. BRUNET *(Economic Committee)* suggested the following text for inclusion in Article 4 :

> " The measures taken in the matter of marks of origin shall not be regarded as derogations to Article 4, provided they are not of a discriminatory nature."

Sir Percy THOMPSON *(British Empire)* was uncertain whether the words " provided they are not of a discriminatory nature " might not be interpreted to mean that Great Britain resorted to a form of discrimination because she did not require national goods to bear marks of origin but only foreign goods.

M. BRUNET *(Economic Committee)* did not think it would be possible to interpret the action taken by the British Government in that way. The general tendency of the policy adopted in Great Britain was opposed to any form of discrimination, and this was too well known, he thought, for there to be any fear of the criticisms mentioned by Sir Percy Thompson.

M. CLAVIER *(Belgium)* suggested the addition of the words " incompatible with the spirit of the Convention ", in order to meet the point raised by Sir Percy Thompson.

After a further exchange of views, *the amendment was finally adopted in the following form:*

> " The measures taken in the matter of marks of origin shall not be regarded as derogations to Article 4, provided they are not of a discriminatory nature incompatible with the spirit of the Convention."

Netherlands Amendment (Annex B, 1).

M. MEYERS *(Netherlands)* said that during the discussion at the previous meeting concerning the difficulties caused by Article 4 of the draft Convention in so far as the Netherlands was concerned, the Rapporteur had asked for further information in regard to the Dutch amendment.

Referring to the observations of two members of the Economic Committee, M. Brunet and M. Serruys, M. Meyers thought that he would be right in maintaining that the practice of the Netherlands in marking foreign silver, with the object of showing that the tax upon it had been paid, was not contrary to Article 4, because the articles in question could only circulate freely in the country after the tax had been paid and the hall-mark had been placed upon them. The special tax on silver of foreign origin was exactly the same as that paid on native silver articles. Both categories of goods were treated in exactly the same way as soon as they entered into free circulation. As far as the regulations dealing with free trade in the country were concerned, particularly in regard to the sale, placing on sale and circulation and consumption of goods, no distinction was made between the national goods and those of other countries.

A regulation existed to the effect that only silver of guaranteed quality could be exported under Customs control, and in this case a partial rebate on the tax was allowed. Apart from the fact that that stipulation was a consequence of the system applied to foreign silver articles before they were admitted to free circulation, it could be maintained that the export of goods under Customs control did not come within the scope of Article 4 of the Convention any more than was the case with imports. If this principle were not admitted, the question would arise whether a State granting export bonuses was contravening the terms of Article 4 if it only granted these bonuses to goods of national origin. If such a procedure were not forbidden by the Convention,

M. Meyers thought that there was nothing in regard to the system employed in the Netherlands for the export of silver articles which could give rise to criticism. If the Conference agreed with this view, he suggested that words to this effect should be inserted in the Protocol to Article 4. It could be stated that the legislation in force in the Netherlands in regard to the import of gold and silver articles was not considered to be in contradiction with the terms of the Convention.

M. YOUPIS *(Greece)*, Rapporteur for the Sub-Committee, thought it unnecessary to insert such a statement in the Protocol to Article 4. All that would be necessary would be for a statement of the views of the Netherlands delegation to appear in the Minutes of the Conference to the effect that the Law of 1852 was not contrary to the spirit of the Convention. In the view of the Rapporteur, however, it would be difficult for the Conference to adopt such a procedure, for it was not in a position to obtain sufficient knowledge of Dutch legislation to enable it really to form an opinion. Such a procedure, if adopted, would open the door to a large number of other requests on the part of other nations.

The reason for the proposal made by the Netherlands delegation seemed to lie in the latter part of the statement which it had made explaining its case. In this it was said that the "exportation of new articles of gold and silver made in the country (was allowed), subject to the refunding of nine-tenths of the dues levied for the guarantee". This amounted to a kind of export bonus and might therefore be regarded as a form of discrimination. It would be better, in his view, to include in the Minutes of the Conference a purely general statement covering the case of the Netherlands and any other similar cases.

THE CHAIRMAN agreed with the Rapporteur. It would be very difficult, in fact impossible, to take account of the laws of all countries and include an opinion of them in the Minutes of the Conference. The case raised by the Netherlands delegation was a special case and should therefore be treated in the same way as that raised by the Estonian delegation. The Netherlands delegation should be asked to put its case before the Conference.

M. BOLAFFI *(Italy)* noted in passing the difficulties to which the discussion of Articles 3 and 4 was giving rise, and to which reference had previously been made. These difficulties were inevitable and he wondered whether the Committee, if it followed such a course, would not very shortly be obliged to consider whether such a vexed question as dumping was or was not a discriminatory practice.

M. BRUNET *(Economic Committee)* agreed with the Chairman. A statement of the particular case should be made by the delegation concerned to the Conference, which would then decide whether or not such a case must be considered to be contrary to the spirit of the Convention.

M. FLORES DE LEMUS *(Spain)* thought that the case raised by the Netherlands delegation was not of a special but of a general character. States allowing rebates or bonuses for the export of goods would always encounter the same difficulty as that met with by the Netherlands. It was quite clear that the Convention laid down that, in so far as internal taxation was concerned, the treatment of foreign and of national goods must be the same. It did not, however, and could not, contain any reference to the question of export taxes. This should be made clear, and words inserted in the Protocol to the effect that Article 4 did not cover the regime of exports.

M. BRUNET *(Economic Committee)* did not think that it would be necessary to include a special statement in the Protocol to the Convention. It would be sufficient to consider whether or not the case raised by the Netherlands delegation concerned export bounties, which were outside the scope of the Conference.

It was decided to refer the case raised by the Netherlands to the Conference.

The Netherlands delegate undertook to make a statement setting out his case.

Amendment proposed by the International Chamber of Commerce.

THE CHAIRMAN said that the International Chamber of Commerce proposed the deletion of the words "which they have instituted or may institute in the future" in the Protocol to Articles 3 and 4.

M. BRUNET *(Economic Committee)* said that in inserting those words the Economic Committee had merely followed the tradition whereby provisions were drawn up for the present and for the future. This wording might prove useful and, in his view, should be retained.

THE CHAIRMAN agreed. Unless there was some special reason for the deletion of the words, they should be kept.

The Committee decided to maintain the words in the Protocol, it being understood that it would return to this question if the representatives of the International Chamber of Commerce desired to re-open it.

EIGHTH MEETING

Held in Paris on November 15th, 1929, at 3.30 p.m.

Chairman : M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

15. **Examination of the Articles of the Convention : Articles 3 and 4** (continuation).

Amendment proposed by the Delegation of Latvia (Annex B, 1)

M. SCHUMANS *(Latvia)* explained the motive of his amendment. The legislation in force in his country did not, as a rule, make any distinction between national and foreign goods. An exception was made, however, in the case of contracts concluded by Governmental services. These services were authorised, in certain cases, to give preference to home products, even if their cost was higher than that of the products offered by foreign countries. This practice had been in use for a certain number of years, and had been definitely established by a Governmental decree. The only discrimination which occurred in such a case was a differentiation between goods coming from abroad and national goods. There was, however, no discrimination, as regards public tenders submitted for the account of the Government, between the offers of foreign houses established in Latvia and national enterprises.

M. BRUNET *(Economic Committee)* said that the practice in Latvia was followed in certain other countries. The Economic Committee had not considered the desirability of putting an end to this practice.

M. SCHUMANS *(Latvia)* said that, in the opinion of his delegation, a new paragraph should be inserted in the Protocol covering this special case. He interpreted the observations of M. Brunet, however, to mean that in this instance Latvia was not contravening the spirit of the Convention, and, that being so, an amendment would not be necessary.

M. YOUPIS *(Greece)*, speaking as the representative of his country, supported the observations of the Latvian delegate. Similar provisions were to be found in Greek law. In the matter of contracts issued by Government institutions, preference was given to national goods, but this practice was confined strictly to Government contracts. Mention of that practice was to be found in the provisions of the Protocol referring to Articles 3 and 4, in which it was stated :

> "1. The provisions of Articles 3 and 4 shall not preclude the High Contracting Parties from introducing taxes or taking other steps to safeguard their interests in the matter of any State monopolies which they have instituted, or may institute in the future.
>
> "2. The High Contracting Parties declare that they refer solely to monopolies which, individually, are applied only to one or several specified products."

M. BRUNET *(Economic Committee)* reminded the Committee of the efforts which had been made to find a solution by means of bilateral treaties for the delicate question of tenders. It went without saying that there would be still less chance of settling a similar matter by a plurilateral treaty.

M. BOLAFFI *(Italy)* said that provisions of this kind existed in a large number of countries. He drew attention to the article of the Protocol referring to Article 1, which was similar in nature, though it dealt in this case with persons and not with goods.

M. CLAVIER *(Belgium)* thought that a phrase might be added in the Protocol saying that the observations regarding Article 1 applied, *mutatis mutandis*, to Articles 3 and 4.

M. BRUNET *(Economic Committee)* pointed out that Article 4 covered a different point from that contemplated in Article 1. The provision of the Protocol relating to the former contemplated exceptions in favour of persons, whereas in Article 4 the exception would apply to national goods used by the firms submitting the tenders.

M. BOLAFFI *(Italy)* said that he quite agreed with M. Clavier. He was quite sure that "*ad* Article 1, paragraph 1", referred to *locatio operis vel operarum*, whilst the exception to be introduced in "*ad* Articles 3 and 4" referred to contracts to supply goods. As in the case of purchases by tender for the public services, discrimination *intuitu personae* had been allowed for reasons of nationality, so discrimination could be allowed also for reasons of origin, in order to promote the national production of certain goods which were required by the public administrations in general.

In Italy also, as in a large number of countries, such discrimination existed. In these markets, national products had preferential treatment, provided that their price did not exceed, by 5 per cent or 10 per cent, the price of foreign goods. There was nothing disloyal to international commerce in these provisions, the spirit and object of which were very evident and quite honest.

He thought, therefore, that it would be useful to insert a formula in this sense in the Convention or in the Protocol.

M. CLAVIER *(Belgium)* considered it would be better to take no decision in regard to the form of words to be inserted in the Protocol covering such cases until the exact scope of the term "nationals" used in Article 1 had been defined.

M. SCHUMANS *(Latvia)* did not desire any amendment to be made, provided that it could be stated in the Minutes that the Conference agreed that the provisions of the Convention were not violated by the practice prevalent in Latvia.

M. BRUNET *(Economic Committee)* could not state that the provisions of Article 1 covered the case to which the Latvian delegate had referred. It would appear from Latvian law that a Latvian firm must, in certain cases, supply only Latvian goods.

M. SCHUMANS *(Latvia)* said that discrimination in his country related only to the origin of the goods and not to persons supplying them.

M. BOLAFFI *(Italy)* gave some further explanations of Italian legislation and insisted on his proposed amendment.

After a short exchange of views, *the Committee decided*, on the proposal of the CHAIRMAN, *to refer the case raised by the Latvian delegate to the Sub-Committee on Articles* 3 *and* 4, *with instructions to prepare a formula for insertion in the Protocol.*

Amendment proposed by the Delegation of Venezuela (Annex B, 1).

M. MACHADO HERNANDEZ *(Venezuela)* said that Venezuela had proposed that mention should be made of transit in connection with Article 4, because it had not yet ratified the Barcelona Convention, and it seemed necessary for the principle to be mentioned in the present Convention.

M. YOUPIS *(Greece)*, Rapporteur, said that the Sub-Committee had taken the view that Article 4 did not cover cases of transit. All cases of transit were dealt with by the Barcelona Convention. In any case, the amendment proposed by the representative of Venezuela would be more in its place if attached to Article 3.

M. MACHADO HERNANDEZ *(Venezuela)* had no objection to his amendment being added to Article 3.

M. YOUPIS *(Greece)*, Rapporteur, said that, in his opinion, the amendment was justified, and proposed its adoption. Mention should therefore be made of transit in the Protocol to Article 3.

M. BRUNET *(Economic Committee)* said that the Economic Committee had intentionally refrained from making any mention of transit in the Convention since this question was outside the competence of the Convention. Transit questions had been made the subject of a special Convention concluded at Barcelona under the auspices of the League. If the Economic Committee had considered these questions also, it would have been obliged to ask for the assistance of the competent technical organisation, namely, the Advisory Committee on Communications and Transit.

By signing the new Convention, the States would not modify in any way the rights and obligations which they had adopted in the Barcelona Convention or any other Convention at present in force.

THE CHAIRMAN proposed that it should be stated in the Committee's report to the Conference that, in the view of the Committee, transit matters were not within the scope of the Convention.

M. MACHADO HERNANDEZ *(Venezuela)* agreed with the proposal.

Articles 3 *and* 4, *as amended during the course of the discussions, were provisionally adopted.*

M. GUERRERO, Chairman, left the Committee.

The Chair was taken by M. ENGELL *(Denmark)*, Vice-Chairman.

16. **Article 12, Paragraph 2** (continuation).

Amendment proposed by the Venezuelan Delegation (Annex B, 1).

M. MACHADO HERNANDEZ *(Venezuela)* said that his delegation proposed to delete paragraph 2 of Article 12.

Amendment proposed by the Delegate of Austria (Annex B, 1).

M. MAYER *(Austria)* had already explained the legislation in Austria regarding installations. A system was in force in his country whereby industries were exempted from certain taxes in order to encourage them to renew their out-of-date machinery with new plant. To obtain the advantages of these exemptions, national products must be used if they were of the same quality and price as those of foreign goods. The measure was, in a certain sense, of a protectionist nature, but was not used as such. It was in the nature of a bounty granted to encourage national industry, and its application was somewhat complicated. He would emphasise that in Austria there was no desire to make any discrimination in this matter. For example, an Austrian firm and a foreign firm established in Austria were in this respect on exactly the same footing. There were many States which possessed similar laws, but they had not informed the Conference of this fact, presumably because they had felt quite certain that their system was not in contradiction with the spirit of the Convention. The Austrian delegation had laid the stipulations of Austrian legislation in this respect before the Conference, solely out of a spirit of loyalty.

M. BOLAFFI *(Italy)* agreed with the spirit of the amendment proposed by the Austrian delegation. He pointed out, however, that once more the question raised concerned a subject which should remain outside the scope of the Convention and which might be calculated to raise difficulties owing, above all, to the lack of preparation and study of the question of the treatment of foreign goods and the protection of national production — a problem which was very wide and very important.

There were no such laws in Italy, but a certain degree of exemption from taxation was granted to firms using national instead of foreign fuel. It must be made quite clear in the Convention that such practices were legal.

M. LYCHOWSKI *(Poland)* entirely agreed with the Austrian amendment, and with the view of the Italian delegate that the matter did not concern the Convention. It was essential for countries developing their industry to be allowed to enact such legislation. The Polish delegation had not proposed an amendment, because it did not think that the stipulations of the article in regard to the fixation of the tax would be too rigidly interpreted, so rigidly in fact as to exclude the possibility of granting rebates of taxation to a firm using national goods. He therefore supported the Austrian amendment.

M. BALLI *(Switzerland)* said that he understood the Austrian practice to be one of very indirect discrimination. Industry was encouraged in various ways in Austria, but exemption from taxation in exchange for the use of national goods was only an accessory form of encourragement.

M. MAYER *(Austria)* agreed. It was an indirect favour granted to any undertaking established in Austria, whether national or foreign, using national goods. The favours granted to national industry were various in form ; for example, an undertaking was allowed to show expenditure on new plant, if that plant were Austrian, as part of capital expenditure, and thus escape taxation.

M. DUCHÉNOIS *(International Chamber of Commerce)*, while understanding the explanations furnished by the delegates of Poland, Italy and Austria, said that the International Chamber of Commerce was nevertheless compelled to note that such practices did amount to discrimination between foreign and national goods. As such, therefore, they were in contradiction with paragraph 2 of Article 12. The International Chamber of Commerce could not but oppose the amendment.

M. IMHOFF *(Germany)* shared completely the opinion expressed by the representative of the International Chamber of Commerce. He was fully aware of the difficulties of Austria, and of the Austrian Government's desire to develop national industry, but he wished to make it clear that the result of adopting the Austrian amendment would be to allow a form of discrimination which would be operative in regard to half-finished goods. There was reason for fearing that, if the amendment were introduced into the Convention, many States would take advantage of it to keep half-finished foreign goods out of their territories. For this reason, he would urge the Austrian delegate not to press his proposal and to content himself with a passage in the Protocol.

M. YOUPIS *(Greece)*, Rapporteur, pointed out that the amendment of the Austrian delegation was a repetition in another form of the opinion expressed by the Economic Committee. Page 49 of Document C.I.T.E 1. (Brown Book) contained the following passage :

> " One Government accepts the wording of paragraph 2 of Article 12, on condition that the words ' employed or ' should be omitted before the words ' offered for sale '.

" It fears that, as worded at present, the clause might be interpreted as being contrary to the provisions of certain laws which, in order to encourage home industries, grant fiscal facilities to certain industries on condition that these industries utilise home products for their installation.

" It considers such provisions are not contrary to the equitable treatment of commerce any more than the other methods used to induce purchasers to select home products without hampering their liberty.

" Finally, if paragraph 2 of Article 12 is maintained, it would like its provisions to be completed by the insertion of the following text in the Protocol :

> " The provisions of Article 12, paragraph 2, do not affect legal provisions aiming at encouraging home industry and granting certain tax facilities to enterprises setting up their initial installation *(Investitionen)* and employing home materials and products."

The Economic Committee had added the following note :

"As will be seen from the Economic Committee's comments on Article 20, the Committee did not regard as a departure from the principle of equality between foreigners and nationals exemptions from taxation granted to certain undertakings to stimulate industries utilising national resources, whilst other industries are subject to such taxation, always provided that this does not involve any differentiation between nationals and foreigners."

It followed that the Economic Committee had recognised the correctness of the Austrian Government's observation, subject to the proviso that the exceptional régime adopted did not imply any differentiation between nationals and foreigners. The Conference could hardly take a more rigorous line than that taken by the Economic Committee, especially since the case submitted by the Austrian delegation fell somewhat outside the scope of the question under discussion.

M. BRUNET *(Economic Committee)* thought that the situation expounded by the Austrian delegate deserved consideration and merited careful attention, especially if account were taken of the circumstances which had given rise to it. It would be unfortunate, however, in order to cover this case, to introduce into the Convention a provision which would appreciably lessen the scope of Article 12. As M. Youpis had pointed out, the Economic Committee, in the note which he had read, had contemplated the possibility of similar cases, on condition, however, that the régime adopted implied no differentiation between nationals and foreigners.

M. Brunet nevertheless urged the Austrian delegate not to press his amendment, which would weaken Article 12, but to reserve the particular case of his country for explanation before the plenary Conference, without asking for an addition to the text of the Convention.

M. BORDUGE *(Fiscal Committee)* observed that it had been proposed not to alter the text of the Convention, but to insert certain comments in the Protocol.

He wished to approach the question from the point of view of the administration which would have to apply the Convention. Care must be taken not to leave the door open to interpretations which would allow of th enon-application of the Convention on the ground of inconsistencies between the Convention itself and the Protocol.

If the Austrian delegation's point of view were admitted, it must be taken into account in the text of the Convention itself and not elsewhere. The note on page 49 of the Preparatory Documents of the Conference, which had been read, was additional proof of the importance of the preparatory work. M. Borduge held that the note was incorrect. He considered that Article 12, paragraph 2, categorically prohibited any discrimination as to the nature of goods, and that it should be impossible by an indirect process to get round Article 12 and practise the differentiation which it was desired to obviate. It was impossible both to keep the text of Article 12 and to satisfy the Austrian and Polish delegations.

M. BRUNET *(Economic Committee)* thanked M. Borduge for having given, in connection with the note which the Greek delegate had read, an explanation which he himself had found difficulty in giving. It was, of course, impossible to recognise as legal practices which would be contrary to the terms of the Convention. But it would be possible perhaps to admit, in favour of certain specified countries and owing to special circumstances, exceptions covering existing situations. In this way would be avoided the insertion in the Convention of a general derogation which would weaken its scope.

M. DUCHÉNOIS *(International Chamber of Commerce)* concurred entirely in M. Brunet's opinion.

THE CHAIRMAN pointed out that the proposal of the Austrian delegation did not in its present form constitute a special case which would require to be referred to the Conference. He therefore requested the Committee to take a definite decision on the subject.

M. YOUPIS *(Greece)*, Rapporteur, observed that the Austrian delegation's amendment had been supported by the Egyptian and Bulgarian delegations. In his opinion, it was bad procedure to make exceptions for a particular State in the text of a Convention, in the Protocol or in the

Minutes of the meetings. It would amount to setting up a privilege in favour of one country, a thing which it was difficult to admit, seeing that the Convention which was being prepared was to be a general Convention.

M. MAYER *(Austria)* pointed out to the representative of the International Chamber of Commerce that his proposal was in no wise incompatible with the terms of the Convention, and he did not think it necessary to submit it to the plenary Conference. Furthermore, the various opinions which had been given on the subject had expressed only doubts and no opposition. No speaker had considered the restriction which M. Mayer had suggested for Article 12 as being altogether inacceptable. He thought that it would be possible to find a common ground of agreement and to submit to the plenary Conference an agreed text.

M. DUCHÉNOIS *(International Chamber of Commerce)* did not altogether share the Austrian delegate's opinion. In his view, notwithstanding the note on page 49 of the Preparatory Documents, several delegates who had spoken on the Austrian amendment, as well as M. Brunet, had observed that Article 12 was incompatible with the practices current in Austria.

M. MAYER *(Austria)* considered that, on the contrary, there was general agreement in recognising that practices did not constitute differential treatment, and he inferred, therefore, that it was possible to take the Austrian proposal into account in the Protocol.

M. LYCHOWSKI *(Poland)* shared the Austrian delegate's opinion, which was, moreover, in agreement with that of the Economic Committee in its note on the comments on Article 12, but he thought that the Austrian delegate might be satisfied by amending the second paragraph of that article to read as follows :

> " In fixing the rates of taxation and duties of any kind levied on national or foreign commerce and industry established in a country, no discrimination shall be made on account of differences in the origin of the goods employed or offered for sale."

M. MAYER *(Austria)* said that he could accept the textual amendment proposed by the Polish delegate.

M. IMHOFF *(Germany)* wished to reply first to the Greek delegate with respect to a question of principle. The Convention submitted to the Conference would in many ways be incompatible with the legislation of certain countries. It was, for instance, possible that the Austrian Government would be unwilling or unable to amend its legislation so as to bring it into line with the provisions of the Convention.

Two possible alternatives would therefore arise : either the countries concerned must be allowed to make a special reservation or the text of the Convention must be modified. M. Youpis had thought it better to modify the Convention rather than to formulate a special reservation for a given country. M. Imhoff was of the opposite opinion. He thought it better not to weaken the Convention by modifying its text, more particularly since there would be a large number of cases of the same kind. In the Convention on Export and Import Prohibitions, which had been prepared in similar circumstances, the system chosen had been that of special reservations on behalf of certain countries.

M. CLAVIER *(Belgium)* was not in favour of the system of reservations for one ortwo countries, since other countries might find themselves in an identical situation as a result, for instance, of a disaster. They would then be obliged to devise means to support their national industries. He thought it would be better to keep the text of the Convention intact, as M. Imhoff had urged, but he wondered whether the second paragraph of Article 12 was really of value, the principle of equality between nationals and foreigners having already been formulated in Articles 1, 3 and 4. The second paragraph of Article 12 seemed to overlap with these articles.

The principle of equality of treatment was established in Article 3 both as regards industry and commerce. This principle was confirmed in Article 4, so far as commerce was concerned. To give the second paragraph of Article 12 a wider scope would imply that it was desired to regulate also the case of nationals using foreign goods in their industries. This question, however, did not fall within the scope of the Convention.

If, therefore, it were desired to extend equality to industry, it would be necessary to insist in Article 12 on the character of the foreign undertakings established in the country. They would then come within the terms of Article 1, that was to say, they would employ the same raw materials as national undertakings.

M. BRUNET *(Economic Committee)* associated himself with M. Imhoff's observations concerning the work of the Conference on Import and Export Prohibitions. If he personally had not been able to profit from experience gained on the occasion of that Conference, he would not have insisted on the procedure which he now proposed, but he ventured to say that it was thanks to the exceptions and individual reservations in the matter of prohibitions which had been agreed upon that it had been possible for a large number of States to accede to a Convention expressing somewhat rigid principles. M. Brunet could not agree with the opinion expressed by M. Clavier regarding Article 12. That article referred to a special question—taxes and fiscal duties—whereas Article 3 covered internal taxes, and Article 4 the movement and sale of goods. Article 12 was therefore an essential article both in regard to commerce and industry.

M. MAYER (*Austria*) noted that the question had made progress, but was unable to consent to an exception on behalf of his country. The Austrian Government was opposed to protectionism ; its essential object was to show that the legislation it had applied was in no way incompatible with Article 12. Furthermore, the Protocol represented an authentic interpretation and not a body of rules. He thought that the omission of the words " employees or " and the addition of the words " irrespective of nationality " would have furnished a suitable compromise.

M. BALLI *(Switzerland)* held that it would be regrettable for the general scope of the Convention to be weakened as the result of a single exception. The Austrian delegate had said that his Government did not regard its point of view as in any way derogatory to the Convention. M. Balli therefore was convinced that he himself would prefer not to weaken the Convention and would, in consequence, be prepared to accept a reservation on behalf of his country.

THE CHAIRMAN noted that the Austrian delegate, by refusing to consent to a reservation being made on behalf of Austria, would be satisfied with the insertion in the Protocol of a provision to take account of his point of view by specifying that no discrimination should be made as to nationality.

M. CLAVIER *(Belgium)* urged that it should be laid down that the provision referred solely to countries which, owing to circumstances, were temporarily placed in a special situation and that the reservation was only accepted by reason of these special and temporary circumstances; circumstances, moreover, to which other countries might subsequently find themselves exposed.

M. MAYER *(Austria)* asked that M. Clavier's declaration might be mentioned in the report.

M. BORDUGE *(Fiscal Committee)* pointed out that the situation would be a somewhat difficult one if it were agreed to state in the Protocol that a country would be allowed to act at variance with the requirements of Article 12 on the ground of exceptional circumstances. What would be the authority to decide that a country was placed in an exceptional situation justifying the application of the special measures mentioned in the reservation ?

M. BOLAFFI *(Italy)* concurred in the opinion of M. Borduge. The object of the Convention was to prohibit discriminatory measures. Measures taken with regard to foreign goods were invariably based on the necessity for the protection of national industries. It followed that the Protocol would be explicitly admitting the opposite of what was specified in the text of the Convention itself.

M. MAYER *(Austria)* recognised that, theoretically, a reservation of the kind in question was open to abuse, but he did not think this possible in practice. In particular, he did not think that the system would result in disguised protectionism. It would only be a system which could be used in case of disaster. In Austria, moreover, the possibility of repealing the legislation to which he had referred was now under discussion.

M. DE NAVAILLES *(France)* observed that the difficulty in question arose only in regard to Austria. The Austrian Government was asking for the insertion of a reservation in the Protocol. There did not appear to be any reason for refusing to insert in the Protocol an exception on behalf of a single country. It must be remembered that there were two sorts of Protocol, a general Protocol like that submitted in the Preparatory Documents for the approval of the Conference and containing only general provisions, and a Protocol of Signature, to which each delegate might at the time of signature append the reservations required by the special circumstances of his country. It would therefore be possible to make provision in the Protocol of Signature for the special situation of certain countries without affecting the principle of the Convention.

M. CLAVIER *(Belgium)* observed that the suggestion he had made might offer an adequate compromise, especially since it was in accordance with the intentions of the Economic Committee, as was shown by the preamble on page 3 of the Preparatory Documents (document C.I.T.E.1), which M. Clavier then read. The special situation of Austria was purely temporary. It should be taken into account, while at the same time it should be explained that the reservation granted was itself only temporary.

M. Borduge had asked what was the authority which would have to decide whether a country was placed in exceptional circumstances which would allow it to apply for the benefit of the reservation. The question was a controversial one, which would probably be settled by arbitration. It would be better not to adhere too rigidly to principles and so refuse an application which was perfectly admissible on the ground of special temporary circumstances. M. Clavier submitted an amendment in this sense.

M. MAYER *(Austria)* said that he could accept M. Clavier's amendment.

M. BOLAFFI *(Italy)* agreed with the spirit of the amendment put forward by M. Clavier, but he would prefer that, as regards the exception in question, the Committee should take into consideration, not the difficulties of a country placed "in exceptional circumstances ", but rather the " exceptional circumstances of a certain industry or of the whole economic structure of a country at a given moment."

The Committee adopted the following text to be inserted in the Protocol :

" The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to promote national industry and for this purpose grant certain facilities in the matter of taxation, irrespective of nationality, to undertakings established in the country which maintain installations therein and employ national products."

NINTH MEETING

Held in Paris on November 16th, 1929, at 10.45 a.m.

Chairman : M. ENGELL, (Vice-Chairman), and then M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

17. **Examination of the Articles of the Convention : Article 12, Paragraph 2** (continuation).

Observations of the Netherlands Delegation (Annex B, 2).

M. MEYERS *(Netherlands)* read the observations submitted by the Netherlands delegation (Annex B, 2).

M. BORDUGE *(Fiscal Committee)* inferred from the observations of the Netherlands delegation that, if a foreigner installed himself in the Netherlands, he was taxed by Dutch law on his income from abroad, but that Dutch law exempted from income tax Dutch nationals in respect of their income from the same source, that was to say, from abroad. He noted that the Netherlands delegation was asking for an exception to the application of Article 12 and, consequently, for a system of inequality as between nationals and foreigners.

M. DUCHÉNOIS *(International Chamber of Commerce)* thought that the system of the Netherlands Government was one of liberality towards its own nationals and not one of discrimination as regarded foreigners. He thought that this was a case in regard to which no reservation should be formulated.

M. BOLAFFI *(Italy)* thought, on the other hand, that the Netherlands legislation constituted in this matter an infringement of Article 12, since it was always easy to pass a law affecting foreigners and to exclude nationals from its application. This was an indirect way of practising discrimination in regard to foreigners. It was, moreover, impossible to accept the principle of exemption through reciprocity applied by the Netherlands legislation. The object to be attained by the present Convention was equality for all.

M. IMHOFF *(Germany)* agreed with M. Bolaffi. The Netherlands amendment would introduce into the Convention a principle of reciprocity which could only have the effect of weakening it.

SIR PERCY THOMPSON *(British Empire)* observed with satisfaction that, on this point, he agreed with M. Borduge and M. Bolaffi. The British Government was opposed to the Netherlands amendment, for it thought that the principle on which taxation should be based was that of the taxpayer's capacity to pay. For this reason, it favoured the taxation of the taxpayer in respect of his whole income irrespective of the source, whether national or foreign.

THE CHAIRMAN noted that the Committee agreed by a majority to accept a special reservation and not a general reservation expressing the Netherlands Government's point of view.

M. FLORES DE LEMUS *(Spain)* wished to make the same reservation as the Netherlands delegation. The same liberal régime existed in Spain. It seemed to him odd that it should be those very Governments which practised the most liberal fiscal policy which were obliged to make a reservation in the present Convention.

M. GUERRERO *(Salvador) took the Chair.*

18. **Articles 13 and 14.**

Text presented by the Sub-Committee (Annex B, 3).

M. ENGELL *(Denmark)*, Rapporteur, explained briefly the results at which the Sub-Committee had arrived. It had at first been in favour of accepting the Netherlands reservation as a special reservation.

In regard to Articles 13 and 14, the Sub-Committee had felt certain doubts as to the possibility of bringing these articles into conformity with the work for obviating double taxation. After a long discussion, and notwithstanding the spirit of conciliation which all members had invariably shown, the Sub-Committee had been forced to note that there were certain fundamental divergencies between the minority and the majority on a question of principle, the minority being represented by Sir Percy Thompson, the British delegate. The views of the majority were indicated in the draft submitted by the Sub-Committee (Annex B, 3). The majority had adopted a text which combined the central points of Articles 13 and 14 in a single article. This text had been adopted by all the members of the Sub-Committee except Sir Percy Thompson, who had later formulated a draft amendment in the following terms :

1. Omit from " or the business " in line six of paragraph 2 of Article 13 to end of paragraph and insert " from the business operations conducted or controlled by them within that territory through permanent establishments or the volume of such operations".
2. Delete the penultimate and last paragraphs of Article 13.

The fundamental difference between the opinion of the majority and that of the minority related to the amount of taxable income. The majority considered that the taxation of the nationals of the other contracting parties should be limited exclusively to the part of their capital invested in the territory of the country or of the goods they possessed there, the profits they earned there and the business they engaged in there through a permanent establishment. The British amendment, on the other hand, stipulated the taxation not only of the profits of foreign establishments set up in the territory of the country but of all profits earned by establishments situated in other territories and controlled by the head establishment situated within the frontiers of the country in question. A system of that kind would entail double or treble taxation. It had been impossible to find a compromise, and the British delegation had reserved its right to expound its views in the Committee.

Two amendments had been submitted by the Austrian delegation to the Protocol *ad* Articles 13 and 14 (Annex B, 4). The amendment to Article 13 had been withdrawn after the adoption of the new wording of that article. The amendment to the Protocol *ad* Articles 13 and 14 submitted by the Austrian delegation referred to a question of principle—that of the relations between bilateral and multilateral treaties. There was a fundamental difference between the opinions of the minority and of the majority and the result had been disagreement as to the text of the Protocol *ad* Articles 13 and 14, with the result that two texts had been submitted—a majority text and a minority text (Annex B, 3). Owing to the divergencies on questions of substance, the Sub-Committee had been unable to submit a definitive text.

THE CHAIRMAN said that two currents of opinion had been expressed in the Committee, one in favour of deleting Article 13 and the other in favour of retaining it. The Sub-Committee appointed to settle the difference had concluded in favour of omitting Article 14 and drafting a new Article 13 which would contain the essential points in the old Articles 13 and 14. He opened the discussion on the new wording of Article 13 (Annex B, 3).

M. MATSUSHIMA *(Japan)* said that his delegation had had no opportunity of expressing its opinion on Articles 13 and 14. The former Article 13 had had as its object the abolition of unfair taxation rather than that of double taxation. In point of fact, this sort of unfair taxation was not abolished. It tended to make trade impossible in foreign countries, and for that reason the Japanese delegation was in favour of retaining Article 13 in its original form. Article 14 was of some value to certain countries owing to their geographical situation. The Japanese delegation considered that it was important for countries placed in such situations to conclude bilateral treaties. It was in favour of omitting Article 14.

The new text of Article 13 satisfied the Japanese delegation, which was prepared to accept it for the very reason that Article 14 was to be omitted.

M. FEHR *(Sweden)* reminded the Committee that his delegation had proposed that the Conference should omit Articles 13 and 14. It wondered whether Article 13, which was drafted in abstract and general terms, was in point of fact calculated to furnish the real guarantees required. Article 14, on the other hand, did not remove certain ambiguities. Its object was the exemption of certain transport undertakings—a purpose which was justified by the importance of the interests it represented. It laid down that the nationals of the contracting parties engaged regularly or occasionally in a service for the transport of passengers or goods between places situated in different States should only be subject to taxes or duties in the country in which the seat of the undertaking was situated—even in cases where the nationals of the country had, in orderto meet the requirements of the undertaking in question, agencies or establishments in the countries to which the goods were transported.

The Economic Committee said in paragraph 2 of the Commentary :

" The principle laid down in this article is in conformity with that which the experts studying the measures to prevent double taxation adopted in the last paragraph of Article 5 of their draft bilateral convention. In that draft, the rule is itself an exception to the general rule that income from any industrial, commercial or agricultural undertaking, and from any other trades or professions, shall be taxable in the State in which the persons controlling the undertaking, or engaged in the trade or profession, possess permanent establishments."

It should, however, be observed that the bilateral Convention did not refer to the seat of the undertaking, but to the effective centre of management which, in his opinion, was an entirely

different matter, and he cited the example of the United States of America, where a large number of concerns had their headquarters in the State of Delaware owing to the fiscal facilities which were provided in that State. It followed that Article 14 would cause some uncertainty, and he was in favour of omitting both Articles 13 and 14.

After the speech made by M. Clavier a few days before, in which he had shown that Article 13 embodied a principle of justice, M. Fehr would have some difficulty in opposing the article categorically. He proposed that Article 13 should be retained, that Article 14 should be omitted, and that in the new text proposed by the Sub-Committee all points taken from Article 14 should be deleted.

THE CHAIRMAN thought that M. Fehr would be satisfied if Article 14 were deleted. He added that in the draft adopted by the Sub-Committee the same terms as those contained in the document relative to double taxation (document C.216.M.85, page 11) had been adopted.

SIR PERCY THOMPSON *(British Empire)* thought that he should explain, in view of the Rapporteur's statement with regard to the divergencies of opinion between the British delegation and the remainder of the Sub-Committee, that his delegation was satisfied with the present wording of the Protocol.

The discussion in the Sub-Committee had dealt with the amendment submitted by the International Chamber of Commerce, which had since been withdrawn. If that amendment had been inserted in the Protocol, the British delegation would have been obliged to make an objection.

He was, moreover, not entirely in agreement with the Rapporteur when he said that the British fiscal system entailed double taxation. Double taxation could not exist unless there were two countries whose fiscal systems were superimposed upon one another. It was possible that, in certain cases, one of the two countries might agree to abandon its system in favour of the other. This had occurred as a result of the treaty between Great Britain and Ireland. If a European agency had its headquarters at London and carried on business in Ireland, it would not be taxed in Ireland in respect of its business in that country. In this way all double taxation was prevented.

M. BOLAFFI *(Italy)* agreed, but noted that at the present moment there was no question of settling all the problems relating to double taxation.

The question involved was not that of knowing whether the country in which an undertaking was situated should tax the whole of the profits of that undertaking, even that part of them in foreign countries, since the whole of that problem, which concerned nationals of the country, had nothing to do with the treatment of foreigners.

But when it was a question of a foreign firm which proposed to set up any kind of stable business in a country, it was necessary definitely to determine, at any rate in a general way, what system of taxation could be considered equitable and one which would not prejudice unjustifiably international relations.

On this point, which was certainly within the scope of the Conference, there was very definite opposition between the system favoured by Sir Percy Thompson and the opinion of the greater part of the other delegations, because the British delegate asked the Conference to recognise the right of a country, in which an agency of a foreign undertaking was situated, to tax not only the profits obtained by that agency directly in the countries in which the undertaking had no permanent establishments, but also the profits of the business done abroad by real branches, provided that those businesses could be considered as " controlled or directed " by the agency in question.

This problem, moreover, became much more complicated when it was a question, for example, of an American company having its seat at Boston and an agency in England controlling branches in different countries of Europe. In accordance with the legislation of the United States of America, the company would pay income tax in the country where its headquarters were situated on the whole of the revenue, even on that part obtained in Europe, and, as a national company was involved, the Convention on the Treatment of Foreigners could not touch the matter. But, according to English law, income tax was paid on all the revenues obtained from the business done by all the European branches controlled by the agency established in England, whilst the States in which the branches were situated would levy taxes on the profits obtained by the permanent establishments situated in their territory. It was on this matter of double taxation that the Conference could very well express an opinion, because it was a question of the treatment of foreigners.

What would be the desirable solution? M. Bolaffi did not hesitate to say that, in his view, the matter should be settled by the renunciation, on the part of countries in which the agency was situated, of their claim to tax integrally the whole of the profits obtained by the branches abroad. An equitable distribution of taxation could be contemplated between the different countries in which the enterprises developed.

Sir Percy Thompson, on the other hand, thought that, in order to avoid double taxation, the countries in which there were branches controlled by the agency established in England had only to renounce their right to levy taxes.

M. Bolaffi did not feel able to judge the English point of view. He would merely state that, on this question, there was a divergence of opinion between the majority which had accepted Article 13 and a minority which refused to interpret it in a sense contrary to the English thesis.

M. Bolaffi did not think that it would be possible to find a solution for such a fundamental divergence of opinion, but what he feared most of all was that an effort would be made to obtain a formula that would hide the divergence instead of removing it. He wished to lay stress on the fact that the present Conference was composed of Government delegates and that it was important

that the latter should know very clearly the scope of the clauses in the Convention which they were called upon to sign, since the administrative services would later have to apply them in accordance with the idea of the Conference and in complete good faith.

In the name of Italy, he felt obliged immediately to say that his Government could not accept the point of view of the British delegate. He fully understood that England did not wish to change a law and a system which, as Sir Percy Thompson had just said, it had applied for a great number of years without any inconvenience to the interests involved. He thought, however, that, in order to continue the application of that law, it was not at all necessary to obtain international adherence to it on the part of the Conference.

M. PEROUTKA *(Czechoslovakia)* said that it would be impossible for him to adopt, in regard to Articles 13 and 14, the liberal attitude he had adopted in regard to Articles 3 and 4. On behalf of his Government, he could not accept Articles 13 and 14, or even their new wording.

On page 22 of the " Brown Book ", the Economic Committee had recalled that a certain number of bilateral conventions had been concluded on a common basis, chiefly between the Central European States. Czechoslovakia had taken part in preparing these agreements and had shown the greatest liberality in negotiating them. Although the negotiations had, in all cases, been long and difficult, Czechoslovakia was prepared to take up the matter with all countries, but she did not think that it would be possible to insert in the present Convention the provisions proposed in Articles 13 and 14, not because she was opposed to them in principle, but because she considered that there were technical obstacles to the adoption of these articles conjointly with the Convention. The reasons for this opinion had already been given by the Chairman of the Fiscal Committee.

M. CLAVIER *(Belgium)* thought that, before taking up the general discussion, it would be well to solve a previous question, namely, whether Articles 13 and 14 should be retained or rejected. He thanked the Swedish delegate for having agreed to Article 13, but added that he had expected no less from a country which practised a liberal régime in regard to trade.

Should these articles be included in the Convention ? For his own part, M. Clavier held that they offered an essential guarantee to industry and commerce. Article 12 already provided a guarantee for a foreigner established in a country, with his family, and Article 13 extended the guarantee to foreign industries or traders who had merely a permanent establishment in the country. If it were desired to facilitate the influx of capital, foreign capitalists must be given some assurance against the spoliation to which they might be exposed by subsequent fiscal measures. For this reason, M. Clavier hoped that the Convention would include at any rate the principle that foreigners would be only taxed in a country in respect of the permanent establishment they owned in it. In conclusion, he pointed out that the first paragraph of Article 13 embodied a principle of justice which no country could reject.

The countries which regularly exported capital had a vital interest in preventing their nationals from being despoiled, but countries which required foreign capital had also an interest in keeping such capital, since, once an industry had been permitted to establish itself in the country, it was bound to constitute an increase in the country's capital, and in the nearer or remoter future the industry was assimilated by the country in which it had been established. This had occurred in Belgium in regard to metallurgy, and also in the Netherlands, where the Jews and the French had proved important factors in the country's prosperity. In France, too, a number of industries had been established by foreigners. There were, therefore, economic and even political reasons in favour of the adoption of Article 13, since international economic interpenetration greatly assisted international mutual comprehension. For economic, political and sentimental reasons, M. Clavier therefore urged that the Conference should adopt Article 13, and thereby consecrate a principle of justice.

MR. WRIGHT *(India)* did not think that his Government was prepared to withdraw its proposal in regard to Article 13. It considered that the contents of that article formed the subject of multilateral treaties and not of a general convention. He would, however, agree to the principle in the first paragraph of the new Article 13. He had submitted an amendment to the second paragraph with the object of bringing the system recommended by the Convention into line with that applied in India. The fiscal system of India was half-way between that of those countries which did not tax foreigners in respect of their foreign income and countries which taxed them in respect of such income. He thought, therefore, that he could say that the Government of India would accept the principle of the first paragraph of Article 13 in its new wording.

THE CHAIRMAN noted that various delegations had spoken in favour of omitting Article 13. He would therefore request the Committee to vote on the previous question of retaining or omitting the article, but, in order to facilitate the vote, he would submit the article to the Committee, paragraph by paragraph.

The first paragraph of Article 13 *(new wording) was approved by ten votes to eight.*

The remaining four paragraphs of Article 13 *were rejected by ten votes to nine.*

M. DUCHÉNOIS *(International Chamber of Commerce)* regretted the Committee's decision to omit the last four paragraphs of Article 13, since the article was thereby rendered valueless. He asked that mention should be made in the report that it had been decided to remove these paragraphs only by a majority vote.

SIR PERCY THOMPSON *(British Empire)* said he assumed that the vote taken in the Committee would not prevent the ultimate restoration of these paragraphs by the plenary Conference.

THE CHAIRMAN explained that this vote, like all votes of the Committee, was only indicative. The Conference would decide in the last analysis.

M. BOLAFFI *(Italy)* thought it absolutely essential that the new Article 13 should contain the affirmation of principle given in its former wording, namely, that the attempt must be made to prevent cases of double taxation. He regretted the failure to settle the general question of the taxation of branches.

M. BORDUGE *(Fiscal Committee)* proposed that, in order to make allowance for M. Bolaffi's suggestion, the last paragraph of Article 13, as presented by the Sub-Committee, should be retained with the omission of the words " if necessary ".

M. CLAVIER *(Belgium)* supported this suggestion, provided, however, that the delegations in the minority retained the right to propose at the plenary Conference the restoration of Article 13 in its entirety.

The Committee decided by ten votes to six to retain the last paragraph of Article 13, with the deletion of the words " if necessary ".

THE CHAIRMAN noted that the Committee was in favour of adopting the first and last paragraphs of the new text of Article 13 and deleting Article 14.

19. **Protocol ad Article 13.**

M. DE NAVAILLES *(France)* proposed that the beginning of the first paragraph should be worded as follows :

> " Permanent establishments shall be deemed to include the effective centre of management, branches, mines and oil wells, factories, workshops, agencies, warehouses, offices and depots and permanent plant . . .".

SIR PERCY THOMPSON *(British Empire)* was prepared to accept the wording proposed by M. de Navailles, if the Conference would consent to retain the first paragraph of Article 13 alone. If, however, the Conference restored the paragraphs which had been removed, in particular, the second paragraph of Article 13, he would be forced to oppose the insertion of the words "effective centre of control and management " in the first paragraph of the Protocol.

M. BOLAFFI *(Italy)* was of the opposite opinion.

M. DA GAMA OCHÕA *(Portugal)* pointed out a contradiction between the beginning of the first paragraph of the Protocol and Article 7, paragraph 2.

THE CHAIRMAN observed that the Committee could not examine possible contradictions with Article 7, since it was not yet certain whether the wording of that article would be accepted or not by Committee A.

M. DUCHÉNOIS *(International Chamber of Commerce)* thought that the contradiction was only apparent. Article 7 conferred on the Governments the right to prevent foreigners from engaging in the exploitation of minerals in the country. This was a right of which a large number of Governments would not take advantage.

THE CHAIRMAN requested the Committee to vote on retaining the first paragraph of the draft Protocol. The amendments would be examined later.

It was decided by five votes to three to retain the text of the first paragraph of the draft Protocol as proposed by M. de Navailles.

The other paragraphs in the draft Protocol were deleted on the ground that they referred to paragraphs in Article 13 which had been previously deleted.

M. BOLAFFI *(Italy)* explained that he had abstained from voting because he considered that the Protocol was at variance with the intentions of Article 13.

TENTH MEETING

Held in Paris on November 18th, 1929, at 11 a.m.

Chairman : M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

20. **Examination of the Draft Report on Articles 3 and 4 and Article 12, Paragraph 2** (Annex B, 5).

The draft report of the Committee to the Conference was read, paragraph by paragraph.

M. YOUPIS *(Greece)* proposed additions to the second and third paragraphs. The object of the first addition was to make it clear that several Governments had not given sufficient attention to the articles in question owing to the fact that they had been placed in brackets. Those Governments had gained the impression that the importance of the above articles was not equal to that of other articles in the draft Convention. This should be made clear. The object of the second addition was to state in the report that equality of treatment in regard to persons necessitated as a corollary equality of treatment of goods.

The Committee adopted the two additions, the text of which was sent to the Drafting Committee for final drafting.

The text of the third paragraph was also amended, on the proposal of SIR PERCY THOMPSON *(British Empire), to read as follows :*

> " Other delegations, on the contrary, asserting that the differential treatment of foreign goods constituted a serious impediment to international trade, were very anxious to have these articles retained in the Convention."

M. LYCHOWSKI *(Poland),* with reference to the paragraph in the report dealing with the manner in which the Committee had adopted the principles of Articles 3 and 4 and the second paragraph of Article 12, pointed out that the Japanese delegation had proposed a compromise formula designed to meet the views both of those who were in favour and those who were against rejecting the articles. The Japanese proposal had subsequently been modified by the Sub-Committee instructed to examine Articles 3 and 4 and the second paragraph of Article 12. No mention of this, however, appeared in the report. It would surely be necessary to inform the Conference of the Sub-Committee's work in this respect.

M. BRUNET *(Economic Committee)* noted that the Japanese delegation had withdrawn its amendment and had voted in favour of deleting the articles.

THE CHAIRMAN explained the situation. The Sub-Committee had been appointed to consider the articles in order, if possible, to find a compromise which would satisfy both points of view in the Committee. The Committee, however, had by a vote decided to maintain the articles in question. As the result of this decision, the text of the Sub-Committee became, therefore, of no object.

M. BRUNET *(Economic Committee)* agreed. The report was very concise and precise. Its harmony would be disturbed by introducing into it too many details regarding a particular point.

M. PUSTA *(Estonia)* pointed out that the Conference might reverse the Committee's decision and decide to reject the articles. In this case, the Sub-Committee's compromise proposal might prove of great value, and means should be found to make it possible to submit it to the Conference.

M. LYCHOWSKI *(Poland)* agreed.

M. YOUPIS *(Greece)* said that the Sub-Committee had been hampered in its task by being unable to know clearly what would be the decision of the full Committee in regard to these articles. It had thought that the Committee might, if necessary, wish to submit two texts to the Conference in order that it should be given the possibility of choosing between the two main currents of opinion.

THE CHAIRMAN pointed out that the Committee's action had been perfectly logical. As it had eventually decided to maintain the articles in question, the adoption of the compromise proposal had proved unnecessary. He suggested that the report of the Committee should be submitted to the Conference. If a majority voted against retention of the articles, the Chairman and

Rapporteur of the Sub-Committee could lay the draft compromise proposal before the Conference, explaining at the same time that it was the work of a Sub-Committee, and that Committee B had not had an opportunity of discussing the proposal.

SIR PERCY THOMPSON *(British Empire)* agreed, but pointed out that it would be difficult to forward the report of a Sub-Committee to the full Conference until after the Committee which had entrusted the work to a Sub-Committee had read and approved that Sub-Committee's report.

M. BALLI *(Switzerland)* agreed with the Chairman's proposal.

M. LYCHOWSKI *(Poland)* agreed with Sir Percy Thompson. It would be difficult for the Committee to submit the compromise proposal to the Conference without discussing it. No decision, for example, had as yet been taken as to the place which it would occupy in the Convention.

THE CHAIRMAN suggested that, in the event of the Conference voting for the rejection of the articles, the Chairman and Rapporteur of the Sub-Committee could point out, in submitting the compromise text, that the Committee had not discussed it, and that it would therefore have to be examined by the Conference itself.

The representatives of *Germany*, *Japan* and the *British Empire* agreed with *the proposal of the Chairman, which was adopted.*

It was decided, on the proposal of M. BRUNET *(Economic Committee)*, *to mention, in that paragraph of the report where it was stated that the Committee had voted in favour of retaining the articles, that the representatives of twenty-four States had taken no part in the voting owing to their absence.*

M. BOLAFFI *(Italy)*, in connection with the paragraph which stated that several delegations which were opposed to the retention of the articles had taken part in the discussion of the final amendments, proposed that this paragraph should be amended to make it clear that the delegations in question were not opposed to the articles because they considered them to be contrary to their own legislation, but because they were out of place in a Convention on the Treatment of Foreigners.

M. LYCHOWSKI *(Poland)* agreed with the Italian delegate.

M. YOUPIS *(Greece)* thought that such an amendment would be unnecessary. All the delegations had reserved the right to make known their final views on the articles in question at the meeting of the Conference.

M. BOLAFFI *(Italy)* said that his proposal had been designed to show the reason why delegations which had voted against the retention of the articles had nevertheless taken part in the discussion on the amendments which had been suggested. He would not, however, press his suggestion.

With reference to the paragraph regarding the marking of goods, SIR PERCY THOMPSON *(British Empire)* desired an addition to the following effect to be inserted.

> " The Committee took the view that practices such as had been described by the British and Danish representatives were not inconsistent with the concluding words of this paragraph " (i. e., the paragraph dealing with the marking of goods).

The object in raising the matter had been to guard against possible criticism levelled against Great Britain on the ground that she sometimes required the marking of foreign goods but never the marking of British goods. Such a practice might be described as discriminatory, and it was to forestall such an accusation that he had suggested this amendment. It was quite clear that the meaning of the paragraph was that the marking of foreign goods was not a derogation from the principles of the Convention, provided that it was carried out in a reasonable and non-discriminatory manner.

The delegates of *Italy*, *Sweden* and *Denmark* felt that such an addition was unnecessary. The matter had been already fully explained when the question of the marking of goods had first been discussed by the Committee.

SIR PERCY THOMPSON *(British Empire)* said that, on reflection, he agreed. He would be content if reference were made to that part of the Minutes of the Committee regarding the discussion on the marking of goods. He hoped, however, that it might be possible to add some such words as " of imported goods ", in order that the final paragraph of Article 4 might read as follows:

> " Any measures taken in the matter of marks of origin *of imported goods* shall not be deemed derogations of the provisions of Article 4, provided that they are not of a discriminatory nature incompatible with the spirit of the Convention."

After an exchange of views, *the Committee adopted the suggestion of Sir Percy Thompson.*

With reference to the paragraph concerning the reservations made by the Latvian delegation concerning the sale of foreign goods by the holders of first or second class licences only, M. PUSTA *(Latvia)* explained that foreign goods were allowed to be sold only by the holders of first and second class licences. He suggested that the paragraph should be made somewhat clearer.

This suggestion was adopted.

On the proposal of M. RADIMSKY *(Czechoslovakia), it was decided to make a reference to Article* 20 *in connection with the Protocol to be added to Article* 12, *paragraph* 2.

The report was adopted, on the understanding that the final text would be revised by the Drafting Committee and submitted to the Committee once more for final approval.

THE CHAIRMAN assured Sir Percy Thompson that attention would be paid to the English text and to the various improvements he had proposed concerning it, with the object of ensuring absolute uniformity between the two texts.

ELEVENTH MEETING

Held in Paris on November 18th, 1929, at 3.30 p.m.

Chairman : M. GUERRERO (Salvador).
Secretary : M. BAUMONT.

21. **Examination of the Draft Report on Article 12, Paragraph 1, and Articles 13 and 14** (Annex B, 6).

THE CHAIRMAN proposed that the draft report should be read, paragraph by paragraph, and observations submitted as each paragraph was read.

M. ENGELL *(Denmark)*, Rapporteur, corrected certain drafting errors and certain inconsistencies between the French and English versions.

SIR PERCY THOMPSON *(British Empire)* drew attention to a point of drafting in Article 13 which altered appreciably the sense of the article. The English text of the first paragraph of Article 13 read : " whose principal establishment is situated in the territory of another High Contracting Party ", while the French text read : " ayant leur principal établissement sur un autre territoire ". The original French text of Article 13 in document C.I.T.E./1 read : " qui ont leur siège principal sur le territoire d'une autre Haute Partie contractante ". There was an essential difference here, and Sir Percy Thompson did not remember that the text of the paragraph had been amended.

M. ENGELL *(Denmark)*, Rapporteur, replied that the authentic text was the French one. He thought he was correct in saying that the Committee had discussed the question whether the words " autre Haute Partie contractante " in this paragraph should be retained or not. As the question was one of substance, he would ask the members of the Sub-Committee for their opinion.

M. DE NAVAILLES *(France)* explained that the wording had been amended in the Sub-Committee, so as to extend the privileged régime to all branches, even including those which were established in countries other than those of the High Contracting Parties. It was for that reason that the words " autre territoire " had been introduced into the text of the article instead of " autre Haute Partie contractante ".

THE CHAIRMAN noted that the Committee agreed that the amendment of the first paragraph in Article 13 should read as follows: " whose principal establishment is situated in another territory ".
The draft Protocol *ad* Article 13 should be completed as follows: " offices, warehouses and fixed installations ".

Article 12, *Paragraph* 1.

M. MEYERS *(Netherlands)* recalled the observations he had made earlier with regard to Article 12, paragraph 1. His remarks had been recorded in the Minutes of the meeting of November 8th (document C.I.T.E. Com. B./P.V.2, page 5) in the following terms :

> " M. MEYERS *(Netherlands)* pointed out that Articles 12 and 15 were connected. In order to make it possible to apply Article 12 to foreign nationals not established in the country, it would be necessary to insert the pnrase " in the same conditions " in Article 12, so that it should read :
>
> " '1. In the matter of taxes and duties of every kind or any other charges of a fiscal nature . . . nationals of each of the contracting parties shall enjoy in every respect

in the territory of the other High Contracting Parties and *in the same conditions*, both as regards their person and property, rights and interests, the same treatment and the same protection by the fiscal authorities,' etc.

" What had probably been aimed at was merely to assimilate the foreigners residing in their territory to the nationals also residing therein, and, *vice versa*, to assimilate the nationals not established to foreigners who did not reside in the territory of the foreign country in which they were taxed. In inserting the words which he suggested, the Conference would avoid imposing a heavier burden than that borne by nationals not resident in their country."

He recalled that the Chairman had pointed out to him that it would be difficult for the moment to accept his proposal, since the word " nationals " had not yet been defined by Committee A. He thought it would be well to specify in the report that it was necessary to complete the text of Article 12 by the addition of the words " upon the same conditions as nationals " in the following passage: " shall enjoy in every respect in the territory of the other High Contracting Parties . . . the same treatment and the same protection by the fiscal authorities and tribunals *upon the same conditions as nationals* . . .".

At the request of the Netherlands delegate, the Netherlands reservation was amended to read as follows :

" The Netherlands Government accepts Article 12 subject to the reservation that it cannot undertake to extend to foreign nationals autonomous measures designed to prevent double taxation in the case of its own nationals established in its territory.

" The Netherlands Government is, however, prepared to apply these measures in the case of foreigners established in its territory if the State of which such foreigners are nationals applies the same measures to Netherlands nationals established in the territory of the said foreign State."

M. DE NAVAILLES (*France*) regretted that he had been unable to take part in the discussion on Article 12, paragraph 1. He would have liked to point out that an exception would have to be made for taxes on visitors and charges connected with police formalities. If Article 12 were accepted in its present wording, it would involve the abolition of the taxes and charges he had mentioned. He therefore proposed that it should be explained in the report that Article 12 did not cover the taxes mentioned, provided they remained at a moderate rate. Should the Conference refuse to accept this proposal, the French delegation would be obliged to make a reservation.

M. WIJKMAN *(Sweden)* had certain observations to make in connection with Article 12.

The Swedish delegation had already referred in committee A to the regulations in force in Sweden as to the deposit of security for the payment of taxes and duties (Annex A, 8). A foreigner who came to Sweden to establish himself as a trader or to engage in industry had to deposit a security for the payment of taxes and duties over a period of three years. Further, a foreigner residing in Sweden and wishing to organise public performances or meetings or to take part in them was placed on a footing of equality with Swedes residing in the country on condition that he deposited a security as explained. Foreigners who had not fulfilled this formality, and likewise Swedes living abroad, had to apply for a special permit and were, moreover, required to pay a special tax. These regulations had been discussed in Committee A in connection with Article 7, and Committee A had decided to refer the matter to Committee B.

The Swedish delegation considered that the security for the recovery of taxes and duties was in conformity with the provisions of the Convention. M. Wijkman had, however, thought it right to submit the question to Committee B. He wished, nevertheless, to say that his delegation would have no objection to an arrangement whereby this question of the security might be discussed in Committee A.

M. LYCHOWSKI *(Poland)* approved M. de Navailles' proposal for the inclusion in the Protocol of a clause referring to taxes on visitors and police charges, although such taxes and charges did not exist in his country. Poland, however, was bound by certain bilateral conventions which covered these exceptions, more particularly by a Convention with France. It would therefore be better to have a reservation in the multilateral Convention.

M. BRUNET *(Economic Committee)* asked how many bilateral conventions of this kind had been concluded by Poland.

M. LYCHOWSKI *(Poland)* thought that there were three such conventions.

M. POPESCU *(Roumania)* supported the proposal of the French and Polish delegations. In Roumania there was a very low tax on visitors, which was intended solely to cover police expenses.

M. IMHOFF *(Germany)* thought that the point which had been raised should be discussed at a plenary meeting, since at the present meeting the Committee should confine itself to the drafting of the report.

He took the opportunity to state that he approved neither the Swedish nor the French proposal.

THE CHAIRMAN thought M. Imhoff's first observation pertinent. The best thing would be to refer the question to a plenary meeting.

M. WIJKMAN *(Sweden)* concurred in this suggestion. He asked, however, whether mention could not be made in the report of the fact that the Swedish delegation had made a reservation.

M. DE NAVAILLES *(France)* asked that, in that case, mention might be made of his reservation as well.

THE CHAIRMAN said that both reservations would be mentioned. He noted further that there seemed to be no objection to accepting the wording of the Netherlands reservation.

The Committee agreed.

Articles 13 *and* 14.

(a) *Work of the Sub-Committee.*

This section of the report was adopted with a minor drafting modification.

(b) *Work of Committee B.*

MR. WRIGHT *(India)* proposed a new wording for the passage referring to the reservations made by the delegation of India. His text made no essential change, but expressed the doubts of his delegation more clearly.

M. BOLAFFI *(Italy)* asked for the insertion of the following statement on page 7 :

" The Italian delegation declared that it had not voted in favour of the above-mentioned text since the latter did not establish a general rule for the taxation of branches of foreign undertakings, but merely granted such branches treatment similar to that accorded to the branches of national concerns, whose principal establishment was abroad.

" The case of national undertakings having their principal establishment abroad is, however, comparatively rare in practice and cannot occur in regard to companies.

" Moreover, the Italian delegation observed that the text adopted contained neither rules nor recommendations for the prevention of double taxation, whereas the text adopted by the Sub-Committee aimed at preventing double taxation, not, it is true, in respect of nationals, but in respect of foreign undertakings."

The Committee decided to suppress the words " s'il est nécessaire " *in the French text of Article* 13, *paragraph* 2.

SIR PERCY THOMPSON *(British Empire)* pointed out that the adoption of the new text, which combined the old Articles 13 and 14, presented a serious inconvenience. Paragraph 2 of the old Article 13 had been struck out. The first paragraph of Article 13, however, referred only to the taxation of permanent establishments. What, in that case, would be the status of independent agents ? The result would be that in all cases where there was not a permanent establishment in its territory, each of the High Contracting Parties would be entitled to tax foreigners without restriction. In the old text, it had been laid down that everything which did not come within the category of permanent establishments was not to be taxed at all.

M. ENGELL *(Denmark)*, Rapporteur, agreed that this observation was perfectly correct, but observed that as the text had been considerably altered—he might even say mutilated—many good things had undoubtedly been dropped in the course of the discussion. The only course would be to raise the question again in plenary session.

M. FLORES DE LEMUS *(Spain)* proposed that the report should state that the delegations had the right to raise the question again in plenary session.

M. BRUNET *(Economic Committee)* pointed out that certain delegations would undoubtedly prefer to communicate the report to their Governments so that they might receive useful instructions. It would therefore be of great use to insert in the report the remark made by Sir Percy Thompson.

THE CHAIRMAN agreed with M. Brunet on this point.

SIR PERCY THOMPSON *(British Empire)* said that he was entirely satisfied by this procedure.

The text of the report was adopted subject to the foregoing amendments.

22. **Conclusion of the Work of the Committee.**

THE CHAIRMAN noted that the Committee had, in principle, concluded its work, although the Conference might refer certain questions back to it for examination.

He was sure that he was voicing the wishes of all the members in thanking M. Baumont, M. Rueff and the other members of the Secretariat of the League who had given the Committee such valuable help.

M. DE NAVAILLES *(France)*, on behalf of the Committee, congratulated the Chairman and the Rapporteur on the way in which they had conducted the proceedings.

COMMITTEE C

FIRST MEETING

Held in Paris on November 19th, 1929, at 9.15 a.m.

Chairman : Dr. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

1. Examination of the Articles of the Convention : Article 16.

THE CHAIRMAN asked the Committee to discuss Article 16, paragraph by paragraph.

M. VAN WALREE *(Netherlands)* enquired whether the Committee would discuss the application of Article 16 to colonies, or whether this matter would arise under Article 28.

THE CHAIRMAN said that this question would be referred to Committee D.

M. ITO *(Japan)* pointed out that, before the Committee could discuss the terms of Article 16, it must decide whether it should take into consideration the discussion and decisions of Committee A in regard to physical persons and legal entities.

THE CHAIRMAN replied that Article 16 referred only to legal entities. Physical persons were dealt with in the other articles of the Convention.

M. ITO *(Japan)* said that the question of the recognition of legal entities (moral persons), which had been discussed by Committee A, arose immediately, and he did not believe that it would be possible to separate this question from the definition of what constituted a legal entity for the purpose of Article 16. There were two cases : first, the recognition of a company belonging to one High Contracting Party by another High Contracting Party with no branches outside its own country ; and, secondly, the recognition of a company with branches in another country. Both kinds of companies were covered by Article 16, therefore the question of admission at once arose. To recognise a company with branches in another country presupposed automatically that the admission of that company into the country where it carried on its business was allowed.

M. RIEDL *(International Chamber of Commerce)* said that the Economic Committee had always taken the view that companies must be subject, in so far as their constitution was concerned, to the laws of the country in which they had been founded. Their legal existence must be defined by the laws of that country. In the second case mentioned by M. Ito, when companies were constituted in the country in which they carried on business, their legal existence was defined by the laws of that country. For example, if a foreign company established itself in Japan, then its legal existence would be defined by Japanese law ; if, however, a French company constituted in France carried on business in Japan, then the legal existence of that company would be defined by French law.

The admission of representatives of a foreign company into the territory of one of the High Contracting Parties was a question with which Article 16 did not deal. Article 16 dealt only with the legal definition and recognition of companies, but not with the persons representing them. For example, once a foreign company was recognised by the Japanese Government, that company was free to choose a Japanese representative to carry on its business in Japan. If, however, it chose a foreigner, then the latter must conform to the Japanese law in regard to his admission into Japan. The admission of a company as a legal entity was something quite different from the admission of the representatives of that company into a country.

M. ITO *(Japan)* explained his point. Paragraph 1 of Article 16 dealt with the definition of the legal entity of a company and its recognition by the High Contracting Parties. It would seem, however, that, as at present worded, the recognition was purely abstract in character and was of little practical utility. It seemed to him useless to adopt an abstract definition for the good

pleasure of lawyers and professors of jurisprudence. What good purpose, for example, would be served by laying down that Japan should recognise the legal existence of a company with its seat of business in the Argentine, when that company carried on no activities in Japan ? It seemed that the question of admission was inevitably connected with the question of the recognition of legal status. Supposing, for example, the Argentine company in question became involved in a lawsuit with a Japanese national ; the question of the admission of the representatives of that company into Japan for the purpose of appearing before the Japanese courts would at once arise. It seemed, therefore, that the question of the admission of a company and not of individuals must be dealt with in discussing Article 16.

M. DINICHERT *(Switzerland)*, Rapporteur, said it was quite clear that the Committee, in discussing Article 16, could not touch the tenor of the other articles of the Convention. While it could not change the terms of another article, it could, and must, decide how the other articles of the Convention should apply to companies.

In regard to the question of recognition, it was essential to define in paragraph 1 of Article 16 what was meant by a company for the purpose of the present Convention. A company for that purpose was one which was recognised by the country in which it possessed its seat, and only the authorities of that country could decide whether that company was or was not regularly constituted. To determine what were the consequences of this recognition in so far as the activities of the company in another country were concerned was quite another question. The mere fact of recognition conferred a number of passive rights upon a company. For example, its recognition involved granting it the right to go to law if necessary in the territory of all States recognising it. In regard to its other activities, special conditions might be required by particular countries, but the fact of recognition did not merely confer an abstract right upon a company of no practical importance.

Mr. BARRINGTON *(Irish Free State)* recalled that a number of questions in regard to limited liability companies, banks, insurance companies and pawnbrokers, raised in connection with Article 7, paragraph 1, by the Latvian delegation, had been transferred to Committee C from Committee A. He hoped that it would be possible to discuss the position of these companies from the point of view not only of their legal status and rights but also of their activities.

The CHAIRMAN said that the question was somewhat complicated. Committee A had submitted to Committee C the Latvian amendment which referred to the requirements of Latvian legislation concerning limited companies, banks, insurance companies and pawnbrokers (Annex A, 18). A Sub-Committee of Committee A, however, was also discussing this amendment. For the moment, the matter would not arise, because, as it was not very closely connected with paragraph 1 of Article 16, it would be better to await the decision of Committee A in regard to the amendment.

Mr. BARRINGTON *(Irish Free State)* merely wished to be clear that the question of insurance and banking would be discussed and not lost sight of between the two Committees.

M. MAYER *(Austria)* said that it was essential clearly to define the objects of paragraph 1 and the general scope of Article 16. The article dealt only with legal entities and was in this respect different from the rest of the Convention which covered the treatment of nationals, *i.e.*, physical persons.

While man was defined by nature, the definition of the legal entity of a company depended upon the legal system of the country to which that company belonged. That system created an artificial personality, and, when that artificial personality was transferred from one country to another, definite rules must be established to cover the recognition of its existence. It was maintained that the legislation of the country in which the company had its seat was sufficient to define the existence of the company, and that definition must be recognised by the other High Contracting Parties. The definition, however, did not depend on the exercise of the company's activities. A company might be forbidden to carry on business in a particular country, but this did not mean that the country in question refused to recognise its existence. Paragraph 1 was designed solely to secure recognition of the company's existence.

British Amendment (Annex A, 1).

The CHAIRMAN submitted the British amendment to Article 16, paragraphs 1 and 2 (Annex A, 1). In paragraph 4 of the commentary on Article 16, in the " Brown Book ", the following passage was to be found :

" According to paragraph 1, any company may benefit by the terms of Article 16 if it has its seat in the territory of one of the contracting parties and is regularly constituted in accordance with its laws.

" This provision makes it possible to avoid the difficult problem of settling the nationality of a company. It might perhaps be objected that the mere registration of companies in the territory of a country would have been a preferable rule to adopt ; but it would have involved

drawbacks, since a company belonging to a country not a party to the Convention would have enjoyed all the advantages granted by the Convention simply by having a branch registered in the territory of one of the contracting parties."

The British amendment provided another way of recognising a company, and also dealt with the question of illicit activities. The latter part of the British amendment could be disregarded for the moment in view of the fact that a Hungarian amendment of a somewhat similar tenor would also have to be discussed.

Mr. GRIFFITHS *(British Empire)* said that the object of the British amendment was, first, that the article should begin by a definition of all the companies to which its terms related, and, secondly, to remove the difficulties connected with the meaning of the term " seat ". That term was open to various interpretations. In the United Kingdom it would probably be taken to mean only the registered office of the company. Other countries, however, might take it to mean the place where the principal business of the company was carried on. The British delegation thought, therefore, that a reference to the seat of a company should be avoided owing to its ambiguity. It was sufficient to provide that a company must be constituted according to the laws of one of the parties in order to secure recognition by the other High Contracting Parties. If it were considered necessary to impose any further limitation, it should suffice to provide, in addition, that the company must be carrying on business in the territories of that party, which was something more than simply maintaining a registered office.

THE CHAIRMAN said that Article 16 was based in large part on Article 26 of the Franco-German Treaty of August 17th, 1927. The British amendment was, in some respects, purely formal. It divided paragraph 1 of Article 16 into two parts, the first containing a separate definition of what constituted companies for the purpose of the article.

M. BRUNET *(Economic Committee)* said that the advantage of the British amendment was that it gave at the outset a clear definition of the categories of companies to which the various provisions of the article applied.

M. MAYER *(Austria)* thought that the definition of the constitution of a company should be kept separate from the rest of the paragraph.

M. ITO *(Japan)* agreed. He supported the British amendment in so far as its form was concerned.

M. CARAVALE *(Italy)* thought that, for the moment, the point was to decide whether a definition of the companies to which Article 16 applied should be placed at the beginning of the article, without discussing the terms of the definition.

The Committee decided that the article should open with a definition of what constituted companies for the purposes of the Convention.

THE CHAIRMAN asked the Committee to decide whether the definition should be that suggested in the draft Convention or that proposed by the British delegation.

M. VAN WALREE *(Netherlands)* preferred the definition of the Economic Committee in the " Brown Book " to the definition suggested by the British delegation.

To the Netherlands the question of the seat of the company was of far greater importance than its nationality.

M. DE NICKL *(Hungary)* wondered whether it would be possible to achieve a definition which would satisfy the majority of States represented at the Conference, owing to the fact that the legal systems in force regarding companies were widely different throughout the world.

The Hungarian Government preferred the definition in the " Brown Book " to that of the British delegation, because the seat of the company was the main factor taken into consideration by Hungarian legislation.

M. BRUNET *(Economic Committee)* pointed out that it was necessary to define the scope of the word " company " for the purposes of the Convention, precisely because the laws of the various countries had an appreciable different terminology. The expression " commercial companies " had not the same meaning in all countries. Article 16 should begin with a specification of the kinds of companies to which its provisions applied.

MR. GRIFFITHS *(British Empire)* said that the difficulty of the British delegation was that the term " seat " had more than one meaning. It was not, therefore, easily intelligible.

M. DE NAVAILLES *(France)* agreed with the British delegation. What was essential for the purposes of the Convention was to define whether a company had or had not been regularly

constituted. According to the British delegation, the fact of its regular constitution would be determined by the laws of the country to which it belonged. If the law of that country did not require the seat of the company to be in the country, the company might, none the less, still be regularly constituted. Therefore, the question of the seat of the company need not enter into the definition.

M. MAYER *(Austria)* said that there were three points in connection with paragraph 1 which would have to be discussed. In the first place, there was the definition of the company. What was meant by the term " company " ? In that respect he would propose that the Committee should follow the suggestions of M. Brunet. Secondly, what determined the nationality of a company would have to be discussed, and, lastly, the question of its activities.

THE CHAIRMAN recalled that the Committee had decided that the article should open with a definition. It was now discussing the terms of that definition.

M. MAYER *(Austria)* said that the question of the seat of the company affected its nationality but not its definition.

M. DINICHERT *(Switzerland)*, Rapporteur, said that the Committee would have to choose between the definition in the " Brown Book " (document C.I.T.E.1) and that suggested by the British delegation. The British delegation had divided paragraph 1 into two parts, the first part containing the definition of a company and the second the manner in which it was to be recognised. Whether to combine both ideas or to keep them separate was purely a formal point. What was of importance, and rather difficult, was to achieve a definition of the term " company ".

M. MAYER *(Austria)* pointed out that the formula in the "Brown Book " had been used in a large number of commercial treaties. It was not, however, very clear, especially in regard to the use of the term " commercial ". In Austria, for example, " Handelsgesellschaften " might be civil companies and not commercial companies. The activities of both kinds of companies occasionally overlapped. A " Handelsgesellschaft " might carry on business which was not of a commercial kind. The question was therefore rather complicated. Austria had tried to solve the difficulty in a treaty recently concluded with Italy, but this solution had not been very satisfactory. Perhaps some such phrase as the following might prove acceptable :

> " Shareholders' companies and other companies engaged in economic activities, including commercial companies, etc. "

It should, of course, be understood that all such companies must possess a legal personality.

M. ITO *(Japan)* said that, if a purely abstract definition of what was meant by a company was desired, the British amendment was sufficient. Three points, however, arose in regard to the question of definition. First, the fact that the company had been constituted according to the laws of its country of origin; secondly, the question of its seat; thirdly, the nature of the company determined according to its activities. In some countries the definition of a company depended on its legal constitution and on the whereabouts of its seat. Both ideas should be introduced in the definition to be adopted.

The point raised by M. Mayer in regard to commercial and civil companies was very delicate and difficult to deal with owing to the great difference between the legislation of the various countries. He suggested that it should be discussed by a small sub-committee.

In conclusion, therefore, he emphasised from a practical point of view, the importance of including in the Convention the two ideas, namely, the constitution of a company according to the laws of its country of origin and the whereabouts of its seat.

M. IMHOFF *(Germany)* was unable to support the amendment of the British delegation, because no reference to the seat of a company appeared in it. He preferred the definition in the " Brown Book ". He also agreed with M. Ito in thinking that the point raised by M. Mayer should be dealt with by a sub-committee.

M. PESCHARDT *(Denmark)* preferred the definition in the " Brown Book ". From the point of view of Danish legislation, the seat was the fundamental criterion of nationality.

M. CARAVALE *(Italy)* had no difficulty in accepting the definition contained in the " Brown Book ". There were three differences between that definition and the one contained in the British amendment. First, should the definition cover civil as well as commercial companies ? The British amendment covered both, but the " Brown Book " covered only commercial companies. He was disposed to support the British amendment so far as this aspect of the question was concerned. Perhaps the definition might read as follows :

> " Shareholders' companies and any companies, civil or commercial, industrial, banking, financial, transport or insurance companies... "

Secondly, the British delegation desired no reference to be made to the seat of the company because of the difficulty of understanding the meaning of the term.

The final difference between the British text and the text of the " Brown Book " was that the former stipulated that the company must carry on business in its country of origin. That did not seem to him to be necessary. He was, therefore, in this respect, in favour of the text in the " Brown Book ".

M. DE LA VALLÉE POUSSIN *(Belgium)* thought it was essential to keep the idea of the seat of the company in the definition. At any rate, this was necessary from the point of view of Belgian legislation. Civil as well as commercial companies should also be covered by the definition.

M. WIJKMAN *(Sweden)* agreed with M. Ito. He did not think there would be any difficult in making a reference in the definition to the seat of the company. This was the usual practice in commercial treaties.

MR. GRIFFITHS *(British Empire)* asked any delegation in favour of retaining the idea of the seat of the company to give an exact definition of what was meant by the term " seat ". If that could be satisfactorily defined, the difference between the British amendment and the text in the " Brown Book " might prove to be smaller than was supposed.

THE CHAIRMAN asked the British delegation to get into touch with the Rapporteur on the subject of the definition of the term " seat ". It was understood that any other delegation interested in this question could attend this consultation.

The remainder of the discussion was postponed to the next meeting.

SECOND MEETING

Held in Paris on November 20th, 1929, at 9.15 a.m.

Chairman : DR. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

2. **Examination of the Articles of the Convention : Article 16, Paragraph 1** (continuation).

The CHAIRMAN asked the Committee to discuss the definition proposed by the Economic Committee in paragraph 1 of Article 16. The definition was as follows :

> " Shareholders' and other commercial companies, including industrial, financial and insurance companies and companies providing communications or transportation . . . ".

And the text of the British amendment, which stated :

> " For the purposes of this Convention, the companies of a High Contracting Party shall be the limited liability and other companies, partnerships and associations . . . carrying on commercial, industrial, financial, transport, or any other description of business in its territories."

He noted that the phrase " limited liability companies " should be translated in French by the phrase " société par actions ".

The main difference between the two texts was that the British amendments referred to partnerships and associations, which were omitted in the Economic Committee's draft.

M. ITO *(Japan)* reminded the Committee that it was asked to decide what kind of companies were to be covered by the article. The definition of what constituted a company widely differed from country to country. The Committee could choose either to enumerate every kind of company or merely make use of the term " limited liability or other commercial companies ". To enumerate every kind of company would be very difficult, owing to the lack of uniformity. In some countries, for example, limited liability companies possessed a legal personality, while in others they did not. The same was true of partnerships. He would prefer, therefore, the wider and more general formula, and a suitable explanation as to its scope could be inserted in the Protocol.

M. WIJKMAN *(Sweden)* suggested that the Committee should confine its discussion for the moment to the opening words of the text of the Economic Committee : " shareholders' and other commercial companies ". It would be necessary at a later stage to decide whether to include a mention of transport companies.

M. ITO *(Japan)* said that the Committee would have to classify the companies which were to be enumerated in the article, first according to their constitution, and, secondly, according to the activities they pursued. For the moment, he suggested the Committee should discuss classification according to constitution.

M. BRUNET *(Economic Committee)* said that the meaning of the word " commercial " as used by the Economic Committee differed from that which it bore in the British amendment. In the former it was meant to describe a certain category in the legislation of some countries. In the latter it denoted the kind of activities which a company pursued. He preferred, in this connection, the British text.

M. DE LA VALLÉE POUSSIN *(Belgium)* agreed with M. Ito. There was a third consideration in regard to the first paragraph of Article 16 which should not be neglected. It was of first-class importance to provide a means of determining the nationality of a company in addition to its constitution and its activities.

M. DINICHERT *(Switzerland)*, Rapporteur, said that the question of terminology was complicated. The idea put forward by M. Ito was to separate the constitutional character of companies from their activities. This was attractive but scarcely possible in the circumstances. The Committee was faced with a choice. It could either draw up a list of companies classified according to their constitution, in which case every form of company must be mentioned, or else the more general formula " shareholders' and other companies " could be adopted. To enumerate a complete list of companies would give rise to every kind of difficulty. If, however, the words " industrial and financial " were added to the general formula, it would become, he thought, sufficiently explicit for the purposes of the Convention.

M. ITO *(Japan)* explained that he had merely divided the classification of companies in the manner which he had suggested for purposes of simplifying the discussion.

Netherlands Amendment.

The CHAIRMAN laid before the Committee the definition of the Netherlands delegation (Annex C, 1), which was to the following effect :

> " Shareholders' and other commercial, industrial and financial companies, including insurance companies, shipping and other transport companies and companies providing communications having their seat in the territory of one of the High Contracting Parties... "

M. VAN WALREE *(Netherlands)* said that this amendment had been submitted in order to take account of the British comment on Article 16 (" Brown Book ", page 81), which stated that the word " commercial " was hardly appropriate, because it was made to include " industrial ". The Netherlands delegation was prepared, subject to drafting amendments, to accept the proposals of the Rapporteur.

M. MAYER *(Austria)* reminded the Committee that he had suggested the following formula at the previous meeting :

> " Shareholders' companies and other companies engaged in economic activities, including commercial companies, etc. "

He would also urge that it would be necessary to take into account the case of philanthropic companies covered by the British amendment.

M. PEROUTKA *(Czechoslovakia)* said that the real difficulty arose owing to the fact that the word " commercial " bore more than one meaning. It was necessary to make a clear distinction between the three methods of classifying companies : (1) according to their constitution, (2) according to their activity, and (3) according to the seat determining their nationality. He thought that the Committee's task would be facilitated if it began by discussing the classification of companies according to their activities. In this, he thought, he could follow the British text.

M. DE LA VALLÉE POUSSIN *(Belgium)* recalled the observations of the Rapporteur, who had told the Committee that it would have to choose between an enumerative or a more general formula, and who had pointed out the difficulties which would be encountered in seeking to draw up a complete list of companies.

He entirely agreed with M. Dinichert on this point. In regard to the general formula, he suggested that the Committee should return to a proposal made by the Turkish delegation (Annex C, 2), whereby the paragraph would read " shareholders, companies established for purposes of gain . . . ". He thought that some such general formula as this would be more suitable than the text proposed by the British delegation, which was too wide in scope.

THE CHAIRMAN thought that the Committee might proceed to vote on the general lines of the British delegation's amendment in view of the fact that it differed more widely than any other from the text in the " Brown Book ". It should be understood that the question whether to include the " seat " of the company and the question of " illicit aims " were for the moment reserved.

MR. GRIFFITHS *(British Empire)* said that the meaning of the British amendment, when it referred to " any other description of business ", was similar to that of the Turkish proposal, referred to by M. de la Vallée Poussin. Both appeared to aim at the same object, which was to include companies, etc., engaged in any form of economic activity.

M. CARAVALE *(Italy)* pointed out that the discussion had not shown that there was any fundamental difference between the British amendment and the text of the " Brown Book ". The Committee was in general agreement that the companies to be enumerated in the article must include limited liability companies, and must exercise economic activities. He suggested that a small sub-committee be formed to produce a formula taking account of the amendments suggested.

M. MAYER *(Austria)* withdrew his original amendment in favour of the following text :

" Limited liability companies and other companies established for purposes of gain, including commercial, industrial, financial and insurance companies and companies providing communications or transportation, having, etc. "

In the Protocol should be inserted the following words :

" The list of the matters with which these companies deal is not intended to be exhaustive but merely illustrative. Such list should thus not be considered as being complete ".

M. ITO *(Japan)* was ready to support the British amendment, subject to the deletion of the words " partnerships and associations ".

M. DE NAVAILLES *(France)* pointed out that the Committee seemed to have reached agreement on the point of substance. Some such phrase as " companies established for purposes of gain " should be inserted in the article. The only disagreement concerned the exact terminology to be used. He suggested that the best course would be to insert a general formula in the article itself, which might run as follows :

" Companies for the purpose of profit, shareholders' companies and others. (Les sociétés à but lucratif, par actions et autres)."

An explanation could be inserted in the Protocol, if it were desired, to show the scope of the article.

THE CHAIRMAN asked the Committee to vote on the general lines of the British amendment.

The amendment was rejected.

Appointment of a Sub-Committee.

On the proposal of the CHAIRMAN, the Committee appointed a Sub-Committee consisting of M. DE NAVAILLES (France), Mr. GRIFFITHS (British Empire), M. ALTSTOETTER (Germany), M. WIJKMAN (Sweden), with instructions to draft the first paragraph of Article 16 in accordance with the suggestions made during the meeting of the Committee and provisionally adopted.

Protocol ad *Article* 16 : *Proposal submitted by the British Delegation.*

MR. GRIFFITHS *(British Empire)* explained that he had consulted various delegations who wished to maintain the idea of the seat of a company in the article. The British delegation had now decided to withdraw its amendment and to consent to the inclusion of the word "seat" in the article, provided the following explanation was inserted in the Protocol :

" The law of the country where the company hasb een incorporated determines where its seat is, and in cases where under such laws the conception of the " seat " of a company does not exist, then the seat of the company shall be deemed to be situate in the country where the company has been incorporated."

M. ITO *(Japan)* did not quite understand the scope of the explanation. In countries where the conception of the seat of a company did not exist, was the seat to be determined by law or by actual fact ?

MR. GRIFFITHS *(British Empire)* said that he had made it clear at the previous meeting that, in Great Britain, there was no conception of the seat of a company. The British amendment, if adopted, would make it possible to retain the notion of seat in the article, but the explanation inserted in the Protocol would cover the case of Great Britain and other countries whose laws did not recognise the conception of a " seat ".

M. MAYER *(Austria)* suggested that the word " registered " might be inserted in the article before the word " seat ", in order to meet the requirements of British legislation.

M. CARAVALE *(Italy)* said that, according to Italian law, if a company established abroad had its head office and main business in Italy, it was considered to be Italian and was consequently subject to Italian law. This meant that its effective seat was regarded as being in Italy. Was such a provision compatible with the British amendment ?

M. DE NAVAILLES *(France)* recalled that he had pointed out at the previous meeting that it would be sufficient to stipulate that the existence of a company should be determined by its

constitution and not by its seat. If, however, the notion of " seat " was to remain in the article, there was no necessity to lay down how that seat was to be defined ; all that need be said was that, if a company possessed a seat in the territory of one of the High Contracting Parties, it came under Article 16. A decision to this effect should meet the point raised by the Italian delegation.

M. DINICHERT *(Switzerland)*, Rapporteur, noted that the Committee, in establishing the legal status of the company, regarded the question from the international point of view. It was essential to respect the legislation of every country. If a country had no notion of "seat" in its legislation, the notion could not be imposed upon it. The only solution was, therefore, as the British delegation had suggested, to meet the case of that country by inserting a suitable formula in the Protocol, explaining the scope of the article. It was possible, in theory at any rate, if the word "seat" were maintained in the article, for a company to find itself regularly constituted in more than one country. For example, a company might be regularly constituted in country A because its seat was in country A, and also regularly constituted in country B because it fulfilled the stipulations of country B's laws in regard to its constitution, country B having no notion of " seat " in its legislation. Even in this case, however, no insuperable difficulty would arise from the point of view of the Convention.

THE CHAIRMAN said that the Belgian, German, Danish and Netherlands delegations had urged that the notion of "seat" must remain in the article if their legislation were to be respected. To facilitate the Committee's task, therefore, he proposed that the notion of "seat" should be retained and a suitable explanation inserted in the Protocol on the lines suggested by the British delegation. The British amendment could, he thought, be sent to the Sub-Committee already appointed.

M. WIJKMAN *(Sweden)* agreed that it was impossible to ask a country to change its legislation in the matter. The British proposal, however, would make it possible to take account of the special situation in certain countries by inserting a suitable formula in the Protocol, while at the same time maintaining the word "seat" in the article. The matter was really one of drafting.

The suggestion of the Chairman was adopted.

It was understood that any member of the Committee who was interested in the question could lay his views before the Sub-Committee. It was further understood that the Sub-Committee would consult the Rapporteur if it so desired.

THIRD MEETING.

Held in Paris on November 21st, 1929, at 9.15 a.m.

Chairman : Dr. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

3. Examination of the Articles of the Convention : Article 16, Paragraph 1 (continuation), and Paragraph 2.

THE CHAIRMAN said that amendments to the first paragraph of Article 16 had been received from the delegations of the British Empire, Hungary, Bulgaria, Portugal, Venezuela and Turkey (Annex C, 3).

The Bulgarian, Venezuelan, Portuguese and Turkish amendments should, he thought, be taken at the same time as paragraph 3. There according by remained, apart from the amendment submitted by the British Empire, the Hungarian amendment.

M. DE NICKL *(Hungary)* said that he would be satisfied if the word " illicit " in the text proposed by the Economic Committee were retained. Consequently the Hungarian amendment might be regarded as withdrawn, if this word were kept.

THE CHAIRMAN observed that two amendments had been proposed to these paragraphs (Annex C, 3) : the first by the Italian delegation, which proposed that the paragraph should be struck out, and the other by the British delegation, which proposed a new text for the paragraph 2 (Annex A, 1).

He asked whether the Italian delegation would consent to its amendments coming up for discussion later, since it had also proposed that paragraphs 4, 5 and 6 should be struck out.

M. CARAVALE *(Italy)* said that the reasons for which he was asking for the suppression of these paragraphs were not the same for paragraph 2 as for paragraphs 4, 5, and 6.

The principle embodied in paragraph 2 was applied under Italian legislation. The Italian delegation, however, thought that it was preferable to suppress this paragraph because the problem of the law which settled the legal capacity of companies raised great difficulties in the field of private international law, and was at present the subject of very thorough study by the Conferences of International Law at The Hague. The Italian delegation was of opinion that it was not advisable to prejudice by a provision of the present Convention the result of the discussions at the Hague Conferences which, in view of their composition and their character, were much more qualified to deal with this matter than the International Conference on the Treatment of Foreigners.

The Convention, moreover, did not aim at indicating the law which should settle the legal capacity of physical persons. It might seem strange that it should seek to establish the law concerning the capacity of moral persons. It was done that a provision similar to that contained in the paragraph had been embodied in certain bilateral conventions, but, though such a provision was possible between countries which, in this matter, followed the same principles of private international law, it would be very difficult to get all countries to accept a single principle for the settlement of the legal capacity of persons in a plurilateral convention.

M. DE LA VALLÉE POUSSIN *(Belgium)* shared the Italian delegate's opinion. He laid stress on the necessity for similarity between the provisions adopted in regard to physical persons and those adopted in regard to moral persons. The Convention did not settle the question of the capacity of physical persons. It would be better to await the results of the Hague Conference before coming to a decision.

M. BRUNET *(Economic Committee)* explained, in regard to the objections to paragraph 2, that the Economic Committee had thought it better to insert the text of this paragraph on the ground that, if agreement were not obtained as to the adoption of the principle laid down in the paragraph, conflicts of laws would inevitably result. The Hague Conference was examining the question of the legal capacity of moral persons within much wider limits than the present Conference which would therefore leave to the Hague Conference a very interesting task.

M. IMHOFF *(Germany)* was in favour of striking out paragraph 2 for the reasons given by M. Caravale.

M. ITO *(Japan)* had no objection in principle to striking out paragraph 2, but he would be sorry if the Committee decided to do so. The Hague Conference was, of course, dealing with the legal capacity of foreigners. The principal divergences were due to the existence of two systems—the continental system and the Anglo-Saxon system, which had at the present moment an exceptional opportunity for agreeing on a common principle. As the British delegate accepted in principle the continental system, it would be inexpedient to lose so good an opportunity of agreeing on a single principle.

He would accept the view of the majority but, should the Committee decide to strike out the paragraph, he would ask that it should be stipulated in the Protocol that the Conference did not intend to prejudice in any way the question of the capacity of physical and moral persons.

M. PEROUTKA *(Czechoslovakia)* was in entire agreement with the Italian proposal. He pointed out, however, that the same question had been put on the previous afternoon to the Committee of Legal Experts who had met to examine Articles 9, 10 and 11. The Legal Committee had not yet concluded its proceedings, and he thought that, in view of the similarity of the subjects of Articles 16, 9 and 11, the results of its work should be awaited before taking a decision.

M. MAYER *(Austria)* also agreed with the Italian proposal and thought it better not to insert in the present Convention matters which formed the subject of judicial conventions. He pointed out, however, that the discussion bore only on the words " to appear in court " and not on the whole paragraph, which dealt with company law and more particularly with the question of the legality of the constitution of companies, which was not referred to in paragraph 1.

THE CHAIRMAN said that he had taken part in the proceedings of the Committee of Jurists and he had the impression that the question of companies had been left entirely outside Article 9. There would, therefore, be no inconvenience if the Committee continued the discussion of paragraph 2 of Article 16.

M. DINICHERT *(Switzerland)*, Rapporteur, thought that the discussion might result in the Committee's contemplating the omission of paragraph 2 in view of the fact that the question of the legality of the constitution of companies had already been settled in paragraph 1. All delegates, however, agreed that the Conference had neither the power nor the intention to settle the legal capacity of physical and moral persons which formed the subject of another Conference. It would, however, be possible, without settling that question, to lay down a principle which was at present a principle of common international law—the principle of the right of all physical and moral persons to appear in court. This principle was embodied in all existing treaties. As, moreover, the Committee which was examining Article 9 had introduced into that article the right of physical persons to appear in court, it would suffice to refer in the article under discussion to Article 9 and to say that moral persons enjoyed in this respect the same rights as physical persons.

M. ITO *(Japan)* agreed with the Rapporteur. Paragraph 7 already adequately embodied the right to appear in court, if it were not desired to deal with the legal capacity of moral persons.

THE CHAIRMAN recalled that the arguments in favour of keeping paragraph 2 of Article 16 were to be found in the Economic Committee's Comments (" Brown Book ", page 54, paragraph 5) which read as follows :

" The legality of a company's constitution and its capacity to appear in court depend upon the statutes of the company itself and the law under which it is constituted.

" Any other principle would inevitably involve conflicts of laws and would allow the law of the country of origin to be adduced against the statutes whenever it differed from the laws of the country of establishment.

" The business of companies, on the other hand, cannot be carried on otherwise than in conformity with the laws of the country of establishment.

" Any other conception would lead to the existence in that country of different régimes based on the laws under which the various foreign companies were established, and the outcome would be, not merely an intolerable disparity between them, but insoluble disputes.

" The supremacy of the national law in all that concerns the activities of foreign firms is essential if these firms are to be assimilated to national firms in all matters relating to their economic activities, their civil and judicial rights, their property rights and their fiscal status."

It had further been pointed out that paragraph 7 embodied the right of companies to appear in court.

He thought that it would be expedient to mention that the Committee had abstained from taking a decision on the question of the legal capacity of moral persons solely in order to avoid prejudicing the decision of the Conference on International Private Law which was considering the same point.

M. BRUNET *(Economic Committee)* considered this suggestion most opportune. It would make it possible to obviate what might be called a conflict of Conferences and would testify to the deference felt by the present Conference for the proceedings of the Conference on International Private Law at The Hague, while at the same time allowing the present Conference to indicate its preference for a definite doctrine. He thought that the declaration proposed by the Chairman should be included in the Final Act of the Conference.

M. MAYER *(Austria)* was sure that, if the Committee began by voting on the retention or omission of the words " capacity to appear in court " in accordance with his proposal, many delegates would then be able to agree to keep the paragraph itself which dealt with the legality of the constitution of companies.

M. CARAVALE *(Italy)* observed that there were two points for consideration. There was the right to appear in court and the legality of the constitution of companies. He had no objection to the portion of the article which dealt with the legality of the constitution of companies, though he would observe that this question appeared to be already settled in paragraph 1. The essential object of the Italian proposal was to suppress any allusion in Article 16 to the law which settled the right to appear in court.

As to the question of the legality of the constitution of companies, he would observe that the British amendment aimed at suppressing any allusion to articles of the association. It seemed necessary to ask the British delegation whether it intended to maintain its proposal to suppress this reference.

MR. GRIFFITHS *(British Empire)* thought that the words " in accordance with their articles of association " should in any case be deleted. The legality of a company's constitution was determined by ascertaining whether the company had complied with the law of the country in which the company was constituted. It did not in any way depend on the company's articles of association, which laid down its powers.

THE CHAIRMAN read the following formula proposed by the Sub-Committee which had been appointed at the previous meeting, and asked whether there was, in point of fact, any great difference between these provisions and those embodied in paragraph 1 of the text of the Economic Committee :

" *Article* 16.

" 1. For the purpose of the present Convention, limited liability and other commercial companies, and industrial and financial companies, including, . . . being regularly constituted in accordance with the laws of one of the High Contracting Parties and having their seat in its territory, shall be deemed to be companies of that High Contracting Party.

" The companies of each of the High Contracting Parties shall be recognised by the other Contracting Parties as being regularly constituted.

" *Protocol* ad *Article* 16, *Paragraph* 1.

" In the case of countries under whose laws the conception of the 'seat' of a company does not exist, the condition laid down in paragraph 1 with regard to this matter shall not apply."

M. MAYER *(Austria)* thought that the divergence existing between the British delegation and the Sub-Committee was due to the employment of technical terms which had a different meaning in the two languages. He thought that it would be well to ensure the exact concordance of the English and French texts.

THE CHAIRMAN noted, first, that paragraphs 1 and 2 were identical in substance ; secondly, that no delegate was opposed to the British amendment to strike out the words " in accordance with their articles of association " ; thirdly, that the Committee agreed to adopt M. Brunet's proposal to omit the words " capacity to appear in court ", in order to avoid encroaching on the field of the Hague Conference on International Private Law, provided that the Final Act contained a special mention of the reasons for this decision, the Rapporteur being instructed to find a formula and to submit it to the Committee at the next meeting.

M. DE NICKL *(Hungary)* asked whether the Final Act formed an integral part of the Convention. If it did not, what would be the position of a Government which signed the Convention but not the Final Act ?

THE CHAIRMAN explained that the Final Act was a different document which had no need of ratification, but contained a note of the deliberations which had been held in regard to the text of the Convention.

M. DINICHERT *(Switzerland)*, Rapporteur, thought it preferable to be content with furnishing the necessary explanations as to the omission of paragraph 2 in the Committee's report. The Committee, he considered, would be anticipating the future if it took at once a decision to introduce a text in the Final Act, seeing that the Final Act belonged, so to speak, to the Conference as a whole. When the decision taken by Committee A with regard to Article 9 was known, Committee C would be able to conform to it, but it could not possibly confront Committee A with a *fait accompli*. It would be for the Conference to decide whether the Final Act should contain a special passage referring to the question of the legal capacity of companies, and if it did so, the passage would probably refer to Articles 9 and 16 alike.

M. BRUNET *(Economic Committee)* agreed with M. Dinichert, but thought that it would be well to mention in the report both the reasons given for the omission of paragraph 2 and the suggestion for a reference in the Final Act.

The Committee accepted the proposal of the Rapporteur, as modified in the sense suggested by M. Brunet.

THE CHAIRMAN, on behalf of the Committee, thanked the Sub-Committee and Rapporteur for the successful result of the work entrusted to it.

M. DINICHERT *(Switzerland)*, Rapporteur, said he would confine himself to a brief comment on the text proposed by the Sub-Committee for paragraph 1 of Article 16 and the relevant Protocol. He pointed out that, in drafting this text, the Sub-Committee had accepted the British proposal to deal in two separate paragraphs with the legal constitution of companies and the recognition of their legal constitution.

The first question examined by the Sub-Committee had been that of the definition of the companies which should come within the scope of the Convention. The discussions in the Sub-Committee had been prolonged. After having favourably considered the Turkish contention that the companies in question were companies established for purposes of gain, the Sub-Committee had been obliged to abandon the Turkish suggestion, owing to the fact that certain countries had companies which were formed for purposes of gain but which, nevertheless, were not commercial companies. The Sub-Committee had then reverted to the formula in the Netherlands proposal. This formula was not an ideal one, and it was for that reason that it had been thought well to mention first the constitution of companies as shareholders' companies, and, secondly, the objects of their operations. In this way shareholders' companies whose objects were not economic were included in the formula proposed.

After noting that the majority of the delegations considered that there should be a double condition—first the regular constitution of the company, and, secondly, that of the establishment of its " seat "—the Sub-Committee had decided in favour of making a distinction between these two conditions and had considered first the question of constitution and, secondly, that of the seat. It had then been confronted with a difficulty in regard to countries which did not have the conception of a company's seat. It had accordingly favoured the adoption of as simple a formula as possible on the ground that a few words of explanation in the Protocol would suffice to make the formula clear, together with a record of the discussions in the Minutes. This solution had been unanimously approved by the Sub-Committee.

The Sub-Committee had decided on the omission of the last words in paragraph 1 of Article 16 in the Economic Committee's draft, " provided they pursue no illicit aims ". The Sub-Committee had thought that this condition had nothing to do with the regular constitution of a company, but that the whole point of the matter related solely to the pursuit of an illicit aim in a third country. Consequently this question was connected with paragraph 3.

The Committee adopted the text proposed by the Sub-Committee.

The consideration of the words " and insurance companies, and companies providing communications or transportation " *was held over, pending the decision to be taken by Committee A on this point, and simultaneously on Article 7.*

The Committee adopted the text of the Protocol ad *Article* 16, *paragraph* 1, *proposed by the Sub-Committee.*

The words " provided they pursue no illicit aims ", *proposed by the Economic Committee, were, with the approval of the Hungarian delegation, held over for examination at the same time as paragraph* 3.

M. LYCHOWSKI *(Poland)* laid stress on the importance of the condition, " provided they pursue no illicit aims ". It might happen that a company which was regularly constituted under the law of one of the High Contracting Parties pursued an aim which was illicit in the territory of another High Contracting Party. If the passage in question was struck out, might it not give rise to the inference that this other High Contracting Party would be obliged nevertheless to recognise the activities of the company?

M. DINICHERT *(Switzerland)*, Rapporteur, recalled that this question had been very carefully examined by the Sub-Committee which had unanimously decided on the omission of the last words in paragraph 1 on the ground that they were not relevant to that paragraph. Each country would judge in accordance with its law the regularity of the constitution of a foreign company which applied for admission. It would be absurd to lay down a requirement that a company must not pursue an illicit aim in its country of origin seeing that in this case its constitution would be illegal. It could, however, be admitted that a company which was regularly constituted might pursue an illicit aim in another country, but it was only when the Committee came to discuss the conditions for the carrying on by a company of its transactions in a foreign country that it would need to examine the question of illicit aims in a third country. The matter should accordingly be taken in connection with paragraphs 3 and 4.

4. Article 16, Paragraph 3.

THE CHAIRMAN read the commentary of the Economic Committee on this paragraph (" Brown Book ", page 54) :

> " Any other principle would inevitably involve conflicts of laws and would allow the law of the country of origin to be adduced against the statutes whenever it differed from the laws of the country of establishment.
>
> " The business of companies, on the other hand, cannot be carried on otherwise than in conformity with the laws under which the various foreign companies were established, and the outcome would be, not merely an intolerable disparity between them, but insoluble disputes.
>
> " The supremacy of the national law in all that concerns the activities of foreign firms is essential if these firms are to be assimilated to national firms in all matters relating to their economic activities, their civil and judicial rights, their property rights and their fiscal status."

He added that paragraph 3 was a statement of principle, the question of the admission of companies having been settled in paragraphs 4, 5 and 6.

M. WIJKMAN *(Sweden)* thought that paragraph 3 would be more in its place if it followed paragraph 6.

M. DINICHERT *(Switzerland)*, Rapporteur, pointed out that the proposal of M. Wijkman affected the substance as well as the form of Article 16.

If paragraph 3, which dealt with the activities of foreign companies, were to be placed after paragraphs 4, 5 and 6, which dealt with the activities of companies in regard to which a previous authorisation was necessary, the danger would be that States might think that the activities of a foreign company, whatever they might be, must be submitted to a previous authorisation. It was important to emphasise the essential difference between the activities of companies not required to obtain a previous authorisation and companies whose activities had to be authorised. Paragraph 3 contained a matter of principle which should be stated at the outset.

THE CHAIRMAN asked the Committee to vote on the amendment proposed by the British delegation, which consisted in the deletion of the words " constituted under the laws " (Annex A, 1).

MR. GRIFFITHS *(British Empire)* explained that these words were unnecessary in view of the definition inserted in the first paragraph.

The British amendment was adopted.

M. DE LA VALLÉE POUSSIN *(Belgium)* recalled that the reference to illicit aims had been reserved for consideration under paragraph 3. He thought that a reference to this matter was as unnecessary in paragraph 3 as in the first paragraph. He gave as example the case of an association of distillers established in a country where consumption of alcohol was unrestricted and deciding to sell its products abroad. The object of that company was perfectly legitimate in its country

of origin but illegitimate in countries where the sale of alcohol was prohibited. It was none the less true that the company must, in order to carry on its activities in a dry country, be prepared to submit to the legislation of that country.

M. DE NICKL *(Hungary)* said that, in view of the commentary on Article 16 and the statement just made by the Belgian delegation, he would not press his proposal concerning the retention of the words "provided that they pursue no illicit aims".

THE CHAIRMAN noted that *the Committee agreed to insert a reference in the report regarding the solution of the question of the illicit aims of companies.*

M. BRUNET *(Economic Committee)* pointed out that the last words of paragraph 3 referred to the laws and regulations laid down by a country so far as national companies were concerned. He thought that it would be useful to specify this explicitly.

M. CARAVALE *(Italy)* admitted that the expression adopted in paragraph 3 was borrowed from numerous commercial treaties. He reminded the Committee, however, that this expression had given rise to all sorts of difficulties, and he believed that the suggestion of M. Brunet was extremely opportune. It was necessary clearly to indicate what was the exact meaning of the provision that : " Operations . . . . carried on in the territory of another party shall be subject to the laws and regulations of that party . . . ".

The question was somewhat serious if the reference was to laws or regulations excluding foreign companies from certain operations which were permitted to national companies. For that reason he would ask that it should be laid down that no reference was intended to laws limiting the nature and extent of the operations of foreign companies in comparison witn operations which were allowed to national companies of the same kind, but only to laws of a general character to which even national companies were subject, or laws and regulations which required foreign companies to comply with certain formal conditions, particularly as regarded the publicity of their articles of association.

THE CHAIRMAN asked the Italian representative to reserve this question in view of the fact that paragraph 3 laid down a general principle. The question of the admission and of the activities of companies would be dealt with in paragraphs 4 to 8.

The amendment submitted by the Austrian delegation concerning paragraphs 4, 5 and 6 would be examined at a later stage. The amendments of the delegations of Bulgaria, Portugal, Venezuela and Turkey would be examined at the beginning of the next meeting, since the representatives of those countries were not present.

5. Article 16, Paragraphs 4, 5 and 6.

THE CHAIRMAN recalled that amendments had been submitted to the paragraphs in question (Annex C, 3). The Italian delegation had urged their deletion, and the British delegation had raised the question of reciprocity in connection with the authorisations granted to foreign companies to carry on operations in certain countries. The discussion would be confined to the general principles involved by these amendments, the drafting details being reserved to a later occasion.

M. CARAVALE *(Italy)* explained the views of the Italian delegation.

It must be admitted that the Economic Committee in drafting Article 16 had met with several difficulties and that it had clearly made an attempt to find solutions as satisfactory as possible which might be accepted by the majority of countries. One of these difficulties arose from the fact that certain countries required foreign companies which desired to carry on economic operations in their territory to obtain previous authorisation. The Economic Committee had felt itself bound to give a special consideration to this case. He would observe, however, that this had been done in a form which might be described as retaliatory and on the basis of a strict and rigid principle of reciprocity, which in the view of the Italian delegation was not perhaps very desirable.

The adoption of such a principle might in fact lead the majority of States to take as a basis in settling this matter the legislation of the country which had the most restrictive system.

It must be remembered that the Economic Committee had admitted the possibility of such a consequence. In its commentary on the article in question it had very clearly stated :

> "Although the Committee has thus given satisfaction to the oft-expressed desire for actual reciprocity, so as to lessen the inequalities of the various national régimes, yet, at the same time, it has been anxious not to allow this right of reciprocity to appear capable of extension to other fields where it could not be so readily applied, or of being so rigid as to subject the right of establishment to perhaps impracticable conditions rather than smooth the way for it."

The Italian delegation was of opinion that the system adopted in paragraphs 4, 5 and 6 of Article 16 was somewhat too complicated, and that it was desirable to make it simpler and at the same time more liberal.

Paragraph 4 laid down the principle of strict and rigid reciprocity, whereas in the following paragraph an attempt was made to make this principle less rigid. The latter paragraph could not,

however, achieve the desired object since, owing to its general form, it merely amounted to a recommendation which could not radically modify the effectiveness of the rule laid down in the previous paragraph.

He thought that the provisions of Article 16 would be much simpler and more liberal if they merely laid down that foreign companies might carry on operations which were allowed to national companies except that they must observe the laws and regulations of the country, and if all idea of requiring authorisations only from foreign companies were eliminated.

In conclusion, he would point out that, in making these observations, he had desired to draw the attention of the Committee to the importance of the question to be settled. He would observe that, if the Committee could not go as far as the Italian delegation proposed and agree to the suppression of the paragraphs in question, so that the principle of complete equality between foreign and national companies might be adopted, he would be ready to take as a basis of discussion the British amendment, subject to certain modifications which he proposed to submit at a later stage.

M. BRUNET *(Economic Committee)* said that, after the very generous views expressed by the Italian delegation, he felt some embarrassment in defending the text proposed by the Economic Committee. That text, however, had been designed to harmonise divergent views and was the result of a compromise. If, however, the Conference felt it should adopt the solution urged by the Italian delegation, he would raise no objection as a representative of the Economic Committee.

MR. GRIFFITHS *(British Empire)* suggested that the question of reciprocity should be discussed later and dealt with by the Conference in plenary session, for it was connected with articles other than 16—such as, for example, Article 18.

THE CHAIRMAN said that the problem of reciprocity was very complex. While every effort should be made to avoid an overlapping of the discussions on this point, he would observe that Committee D would have to deal with this question. While that Committee was naturally free to discuss the question of reciprocity in any way it so desired, it might be useful for Committee C to hold a general discussion with the object of assisting Committee D. Committee C might, he thought, with advantage decide whether the principle of reciprocity should be admitted or rejected.

He would refer once more to the British amendment, which was to the following effect (Annex A, 1) :

> " Each of the High Contracting Parties may make the carrying on of operations in its territories by the companies of the other High Contracting Parties subject to previous and revocable authorisation."

That paragraph was designed to take the place of paragraph 4. The British delegation further suggested that paragraphs 5 and 7 of Article 16 and Articles 17, 18 and 19 should be deleted, and that the following text should be substituted (Annex A, 1) :

> " Each of the High Contracting Parties agrees that the treatment accorded to the nationals and companies of the other High Contracting Parties in respect of all matters, other than those referred to in the following paragraph, shall in no case be less favourable than that accorded to the nationals and companies of the most favoured foreign country.
>
> " Most-favoured-nation treatment may not be claimed in respect of :
>
> " (*a*) The recognition of the equivalence of titles or guarantees required for the exercise of certain professions ;
>
> " (*b*) Privileges arising out of agreements for the avoidance of double taxation."

He suggested that the Committee should examine these amendments with a view to deciding the question of reciprocity.

M. DE NAVAILLES *(France)* agreed. There were two proposals before the Committee—one from the Italian delegation, which desired the complete deletion of the paragraphs in question, and another from the British delegation, which urged the adoption of a system of reciprocity based on most-favoured-nation treatment. The French Government could not be said to be in favour of either solution. The Italian proposal, on the face of it, appeared to be most liberal, but, when it was more closely examined, obvious difficulties rose to view. No difficulty would be experienced in regard to countries whose legislation in practice was similar and comparable, but some countries were, in regard to the treatment of foreigners, far more advanced than others, which meant that the country with more liberal provisions would find itself at a distinct disadvantage as compared with the country which imposed restrictions on the activities of foreign companies for the benefit of its own companies. In that case the nationals of the less liberal country would be able to establish themselves in the territory of the more liberal country and enjoy greater freedom from restriction than the nationals of the more liberal country established in the territory of the less liberal. To require the condition of reciprocity might well have the effect of causing countries with a less liberal system to become more generous in order to improve the position of their nationals established abroad.

MR. GRIFFITHS *(British Empire)* said that these three systems involved very complex and difficult questions. He was still of opinion that it would be better to deal with the matter in the plenary meeting.

The discussion on reciprocity was adjourned to the next meeting.

FOURTH MEETING

Held in Paris on November 22nd, 1929, at 9.15 a.m.

Chairman : Dr. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

6. Examination of the Articles of the Convention: Article 16, Paragraph 1. (continued)

Turkish Amendment (Annex C, 2).

THE CHAIRMAN said that the Turkish delegation desired to present some observations on its proposed amendment to Article 16, paragraph 1.

SALIH ZEKAI BEY *(Turkey)* asked that his amendment should be discussed in connection with the definition of the term " seat ". If the interpretation of the Economic Committee in regard to paragraph 1 of Article 16 were adopted, the paragraph would be in contradiction with Turkish law. The Economic Committee explained that according to paragraph 1 any company might benefit by the terms of Article 16 if it had its seat in the territory of one of the contracting parties and was regularly constituted in accordance with its laws. That interpretation might mean merely that only part of the company's operations were conducted in the country in mhich it possessed its seat. In that case there would be no difficulty.

THE CHAIRMAN pointed out that the question of the definition of the term "seat" had already been dealt with by the Committee which had adopted a text proposed by a sub-committee.
If the Turkish amendment, as appeared to be the case, concerned the question of the admission of foreign companies, this was a matter which had yet to be discussed by the Committee. He suggested that the Turkish delegate should consult the Rapporteur on the subject.

SALIH ZEKAI BEY *(Turkey)* recalled that the term " seat " had been changed in Article 12 by Committee B to " principal establishment ". He was, however, quite willing to adopt the suggestion of the Chairman. In any case the question of the Turkish amendment could be discussed in connection with paragraph 4.

7. Article 16, Paragraph 3.

Egyptian Amendment.

M. LINANT DE BELLEFONDS *(Egypt)* said that the Egyptian delegation interpreted paragraph 3 of this article as not precluding States from making foreign companies, and more particularly insurance companies, subject to certain measures of control, or to the obligation of retaining in the country where they conducted their operations part of their property to serve as guarantee for the operations conducted in the said country.
If there were any doubt in this connection, a statement to this effect should be inserted in paragraph 3.

THE CHAIRMAN said that this question had been deferred until the whole matter of insurance companies had been decided by Committee A.

M. LINANT DE BELLEFONDS *(Egypt)* noted that there was no reference to Article 7 in paragraph 8 of Article 16, presumably because it was impossible for a company to engage in every form of activity open to a private person. It might be necessary to deal with the Egyptian amendment by means of a joint meeting of Committees A and C.

THE CHAIRMAN said that this procedure would be adopted if necessity arose.

M. VAN WALREE *(Netherlands)* reminded the Committee that the Netherlands delegation had also proposed an amendment concerning insurance companies to be inserted in the Protocol. This could be discussed at the same time as the Egyptian amendment.

The two amendments in question were reserved.

8. **Article 16, Paragraph 4.**

SIR SYDNEY CHAPMAN *(British Empire)* explained the motives of the British amendment.

He would express his regrets that he had not been able to attend the Committee before, the reason being that he had been so much occupied in preparing for the meetings of Committee A.

His colleagues on Committee C would have observed that the provision of the Convention regarding most-favoured-nation treatment and reciprocity were extremely complicated. Where national treatment was given, most-favoured-nation treatment was said to be implied, but, in other cases, countries were given the liberty of making special agreements, the benefits of which third countries could only secure on conforming to the special agreements, and in other cases most-favoured-nation treatment could only be claimed to the extent to which the system in the country claiming most-favoured-nation treatment was identical with the system in the country where the treatment was claimed. It was not necessary to weary his colleagues by running over in detail the exact provisions. They would be found in several clauses of Article 16 and in Articles 17, 18 and 19 — and, perhaps, also elsewhere.

It seemed to the British delegation that these complicated arrangements would result in a network of discriminations which would be extremely disturbing to trade, as two of the delegates of the United Kingdom had already indicated, namely, Sir Gilbert Vyle and Sir Peter Rylands. In the opinion of the British delegation every effort should be made to prevent these obstacles being imposed on trade. The first thing the business man desired was that, in a foreign country, he should trade on the same terms as his rivals who were also foreigners. There were other reasons why the safe and simple rule of most-favoured-nation treatment was highly desirable. He did not propose to enter into this general question at the moment, because he recognised that there were arguments to be advanced on both sides. But he would like merely to advert to this point—that, if there were not a simple rule of most-favoured-nation treatment, there would be a fear of the maximum of obstacles possible under the Convention, and not the minimum of obstacles, being imposed on the business of foreigners, because each country would be authorised to impose obstacles imposed by any other country, thus reduplicating the obstacles to trade. Countries might be tempted to accord the minimum possible under the Convention in order to retain things to bargain with against the possibility of their being discriminated against in other countries. And, in the opinion of the British delegation, nothing led so much to bad feelings in the business world as discrimination.

Consequently, the British delegation would strongly urge that the simple rule of most-favoured-nation treatment should be applied in matters covered by the Convention as between all countries which ratified it. Surely if countries were prepared to enter into a Convention of this character, they could trust one another to the extent of agreeing not to discriminate in any way against one another in the matters covered by the Convention.

That disposed of the general question, but he wanted to be perfectly frank with the Committee and to lay before it in addition the special difficulties with which Great Britain —and possibly other countries also—found itself confronted by certain provisions in the draft, particularly in the articles to which he had referred. The attitude of his Government to discriminations was well known, and it was equally well known that it was not in accordance with its practice to enter into the special agreements contemplated in certain of the articles mentioned, except in respect of such special matters as were referred to in Article 18, paragraph 2 *(a)* and *(b)*. Consequently, his Government would find it extremely difficult to sign a Convention which recognised the system of special agreements and which seemed to authorise discrimination against its business people, particularly in matters so important as those dealt with in the Convention. Therefore, if he could not persuade his colleagues—as he hoped to do—to adopt in this Convention what appeared to him to be the safe and simple rule—that of most-favoured-nation treatment—he was afraid he would have to press for the omission of all reference to the matter, whether most-favoured-nation treatment or reciprocity, leaving to countries their liberty of action, though the British delegation would regret extremely having to sacrifice most-favoured-nation treatment, the importance of which it very strongly emphasised.

The Committee decided not to discuss the general observations of Sir Sydney Chapman until they had been circulated to the members of the Committee.

THE CHAIRMAN suggested that the details of the provisions of paragraph 4 concerning the admission and activity of companies should be examined, reserving the general principle and also the decisions which Committee D might subsequently take. A general discussion of the question of the most-favoured-nation treatment would also involve Articles 17, 18 and 19.

M. BRUNET *(Economic Committee)* reminded the British delegation that, during the general discussion, the Italian delegation had expressed itself in favour of most-favoured-nation treatment.

THE CHAIRMAN said that the Committee could only discuss the question of most-favoured-nation treatment and reciprocity from the point of view of their effect upon companies. Their more general effect would be dealt with by Committee D.

M. WIJKMAN *(Sweden)* agreed. There was a Swedish amendment to paragraphs 7 and 8, but it would be better to discuss the question of most-favoured-nation treatment in as general a manner as possible, particularly in regard to its application to companies, before questions of detail were considered.

The amendment proposed by the Netherlands and Turkish delegations to delete the word " commercial " in the first sentence of paragraph 4 was adopted.

The Committee decided to discuss the question of the admission of companies after the general discussion on most-favoured-nation treatment had taken place.

M. PESCHARDT *(Denmark)* said that Article 4 could be accepted by the Danish delegation as it stood, being in conformity with Danish legislation.

French Amendment to paragraph 4 (" Brown Book ", page 78).

M. DE NAVAILLES *(France)* said that the French delegation was prepared to accept either assimilation to national treatment or most-favoured-nation treatment, but only provided that the principle of reciprocity was definitely included in the Convention. In the view of the French Government it was essential for countries with a liberal system in regard to their treatment of foreign companies to be protected from possible dangers arising out of the fact that there were some countries which deliberately reserved a number of advantages to their national companies. Some clause must be introduced into the Convention whereby all States would be free to adopt the same measures in their own territories as were adopted in those of other countries in the treatment of foreigners. If this principle were not admitted, the French delegation would reluctantly be compelled to make a formal reservation when signing the Convention.

He was somewhat in doubt as to the exact meaning of the provisions of paragraph 4. Did they apply to the operations conducted in a foreign territory by a company of another High Contracting Party through the medium of a branch office or subsidiary company, or did they refer only to activities carried on by a foreign company not possessing a branch in the country ? The point was important and should be elucidated.

M. ITO *(Japan)* fully agreed with M. de Navailles, who had, in fact, raised the question of admission in a slightly different form. Did the words in paragraph 4 refer to the activities of a company already established in a foreign country or to the right of that company to establish itself in that foreign territory with the object of carrying on business ? In other words, did the word " operations " cover both establishment and the actual conduct of the companies' business ? In view of the fact that paragraph 5 of the article also dealt with the question, he was of opinion that paragraph 4 should be held to refer only to the establishment of companies.

M. WIJKMAN *(Sweden)* said that another Committee of the Conference had discussed the question of the establishment of physical persons and an agreement had been reached, according to which all questions concerning admission had been reserved. The scope of the articles in the first part of the Convention had been settled and in Article 6 the problem of the admission of foreigners had been dealt with and solved. Article 7 dealt with the activities of a foreigner who had been admitted to a foreign territory in accordance with the terms of Article 6. Several delegations had strongly urged that the provisions relating to the freedom of States to decide whether or not to admit a foreigner and allow him to live and establish himself in their countries should be carefully defined. The same questions had now arisen in a slightly different form in regard to the problem of companies. If it were a question of establishing foreign firms, that part of the problem was covered by paragraphs 1, 5 and 6.

The Committee was to deal with the question of the activities of companies allowed to establish themselves in their territories. The difficulty was to discover whether the Committee was agreed on reserving the question of admission as far as physical persons were concerned, or whether it would not be necessary to insert similar provisions in the present article to deal with the admission of companies. He himself thought that it would be necessary to do so in order to establish a connection between the first and second parts of the Convention.

THE CHAIRMAN said that the draft in the " Brown Book " closely followed the wording of Article 26 of the Franco-German Treaty of August 17th, 1927. M. de Navailles had asked the Committee to decide the exact meaning to be attached to the word " operations ", and he quite agreed with him that a distinction must be made between what might be described as the direct activities of a company and the activities carried on through a branch in a foreign country. M. Ito had raised the problem of what activities of companies depended on their admission and what did not. The two questions were connected, but he thought that they would be better discussed when paragraphs 7 and 8 were before the Committee.

It was essential to make a clear distinction between the question of admission as dealt with in paragraphs 4 and 6, and the question of the activities of a company dealt with in paragraphs 7 and 8. If the words " activities " or " operations " gave rise to misunderstanding, it might be possible to find some other term and he would be grateful to those delegations, which disliked these words, to make an attempt to do so. He thought, therefore, that the Committee should now discuss paragraphs 4 and 6 with reference to their possible effect on paragraphs 7 and 8 which dealt with activities of the companies.

SALIH ZEKAI BEY *(Turkey)* pointed out that, while paragraph 4 dealt with the question of admission, paragraph 5 completed it. Both paragraphs referred to the admission of companies established in the country for the purpose of carrying on their business. The activities of non-established companies, on the other hand, were covered by paragraph 3.

THE CHAIRMAN asked the Committee to reserve its discussion of the question of the activities of companies until paragraphs 7 and 8 were under consideration.

M. MAYER *(Austria)* thought that the difficulties referred to by M. Ito were due in part to the fact that the word "commercial" had now been removed from paragraph 4, thus rendering the meaning of the word "operations" obscure. The scope of companies' activities had by this amendment been considerably widened. He was unable to form any clear opinion as to the exact extent of the operations mentioned in the paragraph. To take an example—a manufacturing company might have a commercial office in another country. Under what heading would the activities of that company be classified ?

M. ITO *(Japan)* was unable to agree to the text proposed by the Economic Committee, though he understood the reasons which had led to its adoption by that Committee. Paragraphs 4, 5 and 6 had been inserted in order to cover differences in the legislations of the various countries. Most countries required no previous authorisation before a company was allowed to establish itself, whether that company was foreign or national. There were countries, however, in which that was not the case and in wheich an authority was required both for foreign and national companies. For this reason, paragraphs 4, 5 and 6 had been inserted. In the first place, however, the Committee must decide whether the authorisation, when it was necessary, should cover only the establishment of the company or also its activities. It was possible for a company to establish itself for purposes other than commercial.

The Turkish delegate's interpretation of paragraph 3 might be correct, but he found it difficult of acceptance. In his view, paragraph 3 had been introduced in order to provide a means of settling conflicts of laws.

M. DE NAVAILLES *(France)* agreed that a distinction must be made between the establishment of a company and its activities. Paragraph 4 should be limited entirely to establishment, and he would therefore suggest the following amendment :

> " If one of the High Contracting Parties subjects the installation of a fixed establishment on its territory by a company of the other High Contracting Party to previous and revocable authorisation, etc."

M. MIEZIS *(Latvia)* said that the proposal of the representative of Italy would be difficult to accept, for the deletion of paragraphs 4, 5 and 6, without the insertion of anything in their place, would mean that there would be no regulations governing the admission or the commercial activity of foreign companies. There were two systems regulating the foundation of commercial joint-stock companies, the system of simple registration and the system of previous authorisation.

Paragraphs 4, 5 and 6 were worded in such a way that countries in which a system requiring previous authorisation for the foundation of companies existed were not asked to alter their procedure. Paragraphs 4, 5 and 6 guaranteed that this system should not become arbitrary or discriminatory in regard to the grant of authorisations to foreign companies. If the paragraphs were deleted, the result would be that, in countries where a system requiring previous authorisation existed, foreign companies would be in a more favourable position than national companies, for paragraphs 1 and 2 provided that the legality of the constitution of foreign companies should be determined in accordance with the laws of the country of their constitution. Companies, therefore, belonging to countries where a system of mere registration was in force would be able to begin their activities in a country where there was a system requiring previous authorisation, even for national companies, without any hindrance, whereas the national companies would have to ask for authority before they could complete the act of foundation.

To avoid such a situation, therefore, it was necessary to retain paragraph 4 in the draft amendment proposed by the British delegation.

He would also ask the Italian representative whether, after deleting paragraphs 4, 5 and 6, it was not desirable to reinsert provisions to regulate the question of the admission of foreign companies.

M. PEROUTKA *(Czechoslovakia)* supported the amendment proposed by M. de Navailles.

M. DINICHERT *(Switzerland)*, Rapporteur, said that the problem was of great complexity. Despite every effort, the text proposed by the Economic Committee was not, he thought, in this instance of much assistance. Paragraph 4 mentioned the case of countries requiring previous and revocable authorisation. The first question which arose was what activities were to be subject to this authorisation. This question appeared to be answered by the stipulations of paragraph 5, which ran :

> " The High Contracting Parties hereby declare that they will not, by granting the authorisations referred to in the above paragraph (paragraph 4), hinder the establishment of companies engaged in business which companies of all countries are usually allowed to conduct, etc."

This might make the meaning of paragraph 4 fairly clear, but a little further on in the article, in paragraph 7, it was stated :

> " Companies of each of the High Contracting Parties may, if they conform to the laws and regulations of the High Contracting Party into whose territory they are admitted, therein acquire, possess or lease movable and immovable property, etc."

Now the companies had been admitted in accordance with the stipulations of paragraph 4, which meant that, even before a company could exercise any passive right at all, it would have to obtain, in certain countries, a previous authorisation. With this it was impossible to agree, for there was a fundamental difference between authority to exercise commercial activity and authority to use the passive rights inherent in any legally constituted company.

It seemed, therefore, necessary entirely to redraft paragraphs 4, 5 and 6.

M. de Navailles had proposed an amendment which would confine the stipulations of paragraph 4 entirely to the establishment of a company in a foreign country. If, however, an authorisation were required only in regard to establishment, any activity of a company carried on outside its permanently established quarters in that country would not be subject to such authorisation.

He did not maintain that this was a wrong principle but he must in fairness warn the Committee of its possible consequences. If establishment was to be separated from activity and the former subjected in certain countries to the grant of a previous authorisation, then it inevitably followed that the latter would be free. The same principle might be extended to persons as well as to companies. If this was what was really aimed at, then it must be made quite clear in the Convention.

THE CHAIRMAN said that it would be quite impossible for the Committee to take a final decision at the present stage. The amendments proposed by M. de Navailles and by the British and Italian delegations were all in favour of freedom concerning activity. It was essential, therefore, to discuss the various forms which that activity might take before any final text were drafted. If the principle of previous authorisation were admitted, the Committee would have advanced one stage nearer the completion of its work. He suggested for the moment that M. de Navailles' proposal should be noted and that the Committee should return to it after having first discussed the question of the various forms of activity.

M. MAYER *(Austria)* said that he had already pointed out that the connection between Articles 16 and 7 was not very close. Article 7 covered the case of physical persons, and therefore paragraph 8 of Article 16 should not contain any reference to Article 7.

M. DE NAVAILLES *(France)* pointed out that his proposal must be regarded as strictly limited to paragraph 4 and must depend on the wording to be adopted for paragraphs 5 and 6. The problems of establishment, of activity and of the activity of companies not established must be dealt with separately. His amendment to paragraph 4 was designed solely to make it possible for all countries to apply the system of previous authorisation if they wished to do so. Personally the French delegation was not in favour of such a system, which did not exist in France. A provision must be adopted, however, whereby it would be possible for all countries to apply it in order to safeguard the interests of those countries which did not possess such a system and whose nationals, in countries which did apply such a system, might find themselves injured thereby.

THE CHAIRMAN noted that the amendments to paragraphs 4, 5 and 6 had now been discussed. The Austrian amendment to paragraph 6 (Annex C, 3) was purely a matter of drafting and should be sent to the Drafting Committee. The Turkish amendment to paragraph 5 (Annex C, 2) might, he thought, be left to the Rapporteur.

SALIH ZEKAI BEY *(Turkey)* agreed. The amendment was one of pure form.

FIFTH MEETING

Held in Paris on November 23rd, 1929, at 9.15 a.m.

Chairman : Dr. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

9. Insurance Questions : Appointment of Joint Committee.

THE CHAIRMAN announced that the President of the Conference had called together on the previous evening the Chairmen of the Committees and had strongly urged without, however, making any criticism, that the work of the Committees should be pushed forward energetically.

In conformity with the resolution taken in Committee A, the Chairmen of Committees A and C proposed to convene a sub-committee for insurance questions which were common to the programme of Committees A and C. A number of amendments had been submitted on this subject.

The sub-committee would be composed in principle of the representatives of the delegations which had submitted amendments, that was to say, Belgium, the British Empire, Finland, Greece, Italy, Latvia, Portugal, Turkey, Venezuela.

The proposals of the Chairman were adopted.

10. Examination of the Articles of the Convention : Article 16, Protocol.

Austrian Amendments (Annex C, 3).

THE CHAIRMAN observed that the Austrian delegation had submitted three amendments for insertion in the Protocol. He had the impression that these proposals were in conformity with the general spirit of the Convention. He would ask, however, whether the Austrian delegate would be content with a passage in the report mentioning the observations of his delegation in the event of the Committee approving them.

M. MAYER *(Austria)* accepted the Chairman's proposal in regard to the first and second restrictions. He could not, for the moment, make any definite statement in regard to the third restriction, since he had submitted a text in the same sense, laying down the principle of the equality of treatment with national companies, in connection with Article 7, paragraph 1. As Article 16 in its present wording did not refer to Article 7, the Austrian Government considered that the third restriction should be maintained if Article 16 were adopted in its present terms.

The Committee agreed to insert in the report the first and second restrictions submitted by the Austrian delegation. The third restriction was held over for discussion later.

M. BRUNET *(Economic Committee)* recalled that, on the previous afternoon, the Rapporteur had criticised the not very appropriate use of certain terms, *e.g.*, " commercial operations ", and " establishment " in paragraphs 4 and 5. He felt bound to draw attention to the faulty drafting of a passage in paragraph 4. The passage " makes commercial operations conducted in its territory by a company *of another* High Contracting Party subject. . ." seemed to imply that the High Contracting Parties might enforce a system of discrimination as between themselves, a reading which was contrary to the views expressed by the British delegation.

He proposed, therefore, to read " the commercial operations of the companies of the other High Contracting Parties " or better " of the foreign companies ". This wording would have the advantage of obviating any discrimination and would, at the same time, meet the views of the Austrian delegate.

THE CHAIRMAN stressed the importance of this question. He recalled that, at the previous meeting, the Committee had considered that the draft for paragraph 4, which referred to the establishment of companies on the territory of one of the High Contracting Parties, should be examined by drawing a parallel between the conditions for companies and the conditions for the admission of physical persons to the same territory. All questions connected with the operations of companies in the territory of the High Contracting Parties was to be held over for discussion at the same time as paragraphs 7 and 8. The question at issue was as follows : Did the admission of a company for the purposes of establishment in the territory of one of the High Contracting Parties constitute an individual act or no ? Did the most-favoured-nation clause operate in this case or no ?

He recalled that M. Brunet, representative of the Economic Committee, had stated that the Economic Committee had decided in favour of the principle that the authorisation for the establishment of companies should be a general authorisation.

M. BRUNET *(Economic Committee)* explained that the question before the Committee was merely whether the legislation of the country involved a previous authorisation or no. If such an authorisation was necessary, it should apply to all companies.

M. MAYER *(Austria)* gave a few explanations on the system in force in his country. Certain foreign companies must obtain, in order to establish themselves in the country, an authorisation for admisssion, but not all companies were required to do so. This authorisation was granted on consideration, not of the objects of the company, but of its species. When it had been decided to admit a company belonging to a certain category, the measure thus taken was applicable to all companies in the same category and belonging to all countries.

He would point out, however, that paragraph 4, by excluding the notion of reciprocity and the application of the most-favoured-nation clause, appeared to allow of retaliatory measures in regard to States which practised a similar system.

M. WIJKMAN *(Sweden)* agreed with the Austrian delegate. He thought that the question would be solved if the system of a general authorisation were adopted, the Government retaining he right to examine in advance the case of the companies allowed to establish themselves.

M. DINICHERT *(Switzerland)*, Rapporteur, stressed the importance of this question. According to the wording proposed by M. Brunet, if a country wished to make the establishment of foreign companies contingent on a previous authorisation, it must apply the same system of authorisation to the companies of all countries. This system would be the same for all countries, but could apply only to certain categories of companies. In this way, the principle of direct reciprocity as between countries would disappear.

M. PESCHARDT *(Denmark)* asked whether the wording proposed for Article 16, paragraph 4, covered the case of the Danish system which was based on reciprocity.

M. DINICHERT *(Switzerland)*, Rapporteur, held that the proposed system made no change at all in the system of reciprocity. It had no other effect than to extend it; it was equivalent to saying that each country might institute a system of previous authorisation, but that it must in that case apply the same system to the companies of all countries.

M. BRUNET *(Economic Committee)* explained that he had not meant to make any proposal. That would be exceeding his responsibilities in the matter. He had merely wished to draw attention to the faulty wording of paragraph 4 which seemed to involve the possibility of discrimination.

M. MAYER *(Austria)* thought that the wording suggested by M. Brunet added to the clearness of the paragraph, and he pressed for its adoption.

THE CHAIRMAN asked whether, in this case, M. Mayer insisted on the adoption of the first Austrian restriction. M. Brunet had raised the question of the possibility of differentiating between foreign companies and national companies in general, while the Austrian delegate had raised the problem of the possibility of making a discrimination of the same kind in the case of individual companies. There was here a question of principle to be settled.

M. DINICHERT *(Switzerland)*, Rapporteur, thought that the textual amendment suggested by M. Brunet raised a question which was not purely one of drafting. It had a much wider scope. It involved the question whether the previous authorisation prescribed in paragraph 4 for the permanent installation of foreign companies could be granted specially for certain individual cases or must be given in a general manner to all companies belonging to the same category.

Hitherto it had been argued that the Economic Committee's formula laid down that the States were free to practise the system they thought best in dealing with any particular country.

M. Brunet, on the other hand, had argued that the authorisation should be extended to all countries in regard to companies of a similar category. There was therefore a question of substance to be settled.

M. CARAVALE *(Italy)* wondered whether the Committee was, in fact, faced with so wide a question of substance as M. Dinichert believed. The question was not to decide whether a State should apply most-favoured-nation treatment or a system of reciprocity. This was a reserved question. The paragraph under discussion dealt with the principle of retaliation, which logically involved discrimination. If it were admitted that a country might require from foreign companies an authorisation which was not required from national companies, and if it were further admitted that other countries might impose the same requirements upon the former country, it was obvious that a system of discrimination was recognised.

The Committee agreed to mention in the report the second Austrian restriction.

II. Article 16, Paragraph 6.

THE CHAIRMAN recalled that the Committee had decided to hold over the British and Czechoslovak amendments to paragraph 6.

British Amendment. (Annex A, 1).

THE CHAIRMAN read the British amendment.

MR. GRIFFITHS *(British Empire)* did not think that his amendment made any fundamental change in paragraph 6. Its only object was to make the text clearer. It was arguable that the laws and regulations contemplated by this paragraph were the general rules applicable to all companies both national and foreign, *e.g.*, they must not commit fraud. It was not clear whether the paragraph as drafted would permit legislation to the effect that a form of business which had previously been permitted should no longer be carried on, or that the carrying on of the business should be subject to new conditions. The object of the British amendment was to remove any doubts on this point. Supposing that a foreign insurance company had been permitted to carry on business without making any deposit, and subsequently a law was passed requiring all companies, national and foreign, to make a deposit, what would be the position of the foreign company? It was only reasonable that it should be required to comply with the law.

THE CHAIRMAN drew attention to the following comment of the Economic Committee (" Brown Book ", page 55, paragraph 7) :

> " In adopting the principle of national treatment for Article 16, the Economic Committee is taking the same line as that followed in Article 11 regarding expropriation, requisitions, or the temporary deprivation of the use of movable or immovable property."

He thought that this point of view was in conformity with the observations made by the representative of the British delegation.

If the Committee decided to adopt the British proposal, the connected question of the amendments which had been submitted to Article 11 would have been reserved as being within the competence of Committee A.

He further proposed that the Committee should instruct the Sub-Committee to consider whether the words " unless forced to do so " in paragraph 6 were of any value.

M. MAYER *(Austria)* pointed out that the British delegation's proposal was in agreement with the third restriction he had himself submitted.

The amendment proposed by the British delegation was adopted, subject to special references to be made in the report.

Czechoslovak Proposal (Annex A, 11).

M. PEROUTKA *(Czechoslovakia)* explained that the object of his proposal was to establish a closer parallel between the provisions adopted in regard to physical persons and those applying to moral persons. He had in particular proposed a modification which would make it possible to have complete concordance between Article 16, paragraph 6 and Article 10, paragraph 4. If the reservation which he had formulated was covered by Article 16, paragraph 6, the Czechoslovak delegation would withdraw its amendment.

THE CHAIRMAN pointed out that Article 10 had not yet been adopted by Committee A. The Czechoslovak reservation would come up for discussion at the same time as Articles 7 and 10.

M. PEROUTKA *(Czechoslovakia)* agreed.

THE CHAIRMAN said that the Italian proposal for the general omission of the paragraph as a whole was also held over.

12. Article 16, Paragraphs 7 and 8.

THE CHAIRMAN observed that these paragraphs dealt with the operations of foreign companies. Various delegations had submitted drafting amendments.

Sub-paragraph 2 of paragraph 7, however, raised a question of principle, that of the most-favoured-nation treatment. Many delegations, in particular the Italian, had proposed that the end of this sub-paragraph should be struck out. The Chairman asked whether the other delegations supported this proposal.

He noted that the British, Italian, Polish, Bulgarian and Danish delegations had proposed the omission of sub-paragraph 2 of paragraph 7. The Japanese delegation, on the other hand, had proposed that it should be retained. He therefore suggested that the question should be held over till the next meeting, by which time the Committee would know the results of the discussions in Committee A on the point of principle.

The Committee agreed.

THE CHAIRMAN proposed that the Committee should discuss paragraph 7, sub-paragraph 1, and paragraph 8, leaving on one side questions of drafting.

The German delegation had proposed a purely formal amendment for paragraph 8, which would be referred to the Drafting Committee.

M. IMHOFF *(Germany)* agreed.

M. MATSUSHIMA *(Japan)* said that his delegation had submitted an amendment to paragraph 7 (Annex C, 3). He would, however, be glad to have an explanation on the Economic Committee's ideas with regard to the first sub-paragraph of paragraph 7, concerning which the commentary was not very clear.

This sub-paragraph dealt with most-favoured-nation treatment and national treatment. What were the cases in which either was to be applied ?

THE CHAIRMAN read the British amendment to paragraph 8 (Annex A, 1). He observed that this amendment was in conformity with the observations contained in the commentary on paragraph 7, sub-paragraph 1.

M. BRUNET *(Economic Committee)* explained that the practical bearing of the first sub-paragraph of paragraph 7 could not be determined until the resolutions taken in Committee A with regard to Article 9 and Article 10, to which this sub-paragraph referred, were known.

THE CHAIRMAN noted that the Committee agreed to hold over the question of reciprocity, and to come to a decision on the principle of most-favoured-nation treatment. The draft Convention offered, for the application of the principle of most-favoured-nation treatment, two systems; the one affirmed the right of companies to acquire and possess movable and immovable property, etc.—this was the point contained in paragraph 7, sub-paragraph 1—while the other extended to companies the provisions conferring on foreign nationals the same rights as those held by nationals, as was indicated in the Economic Committee's commentary.

The question of principle was whether foreign companies were to be treated on the same basis as foreign nationals, who were treated as nationals, or on the same basis as national companies. There was in this matter an essential difference, which had been stressed in the British amendment.

MR. GRIFFITHS *(British Empire)* explained that the question was chiefly one of drafting. The English text seemed to give ground for the inference that foreign companies would benefit by the same treatment as individuals; and this would not always be possible.

The purpose of the British amendment was to make it clear that if, for example, an article provided for national treatment in a particular matter, foreign companies would receive the same. treatment as national companies, not national individuals.

M. LYCHOWSKI *(Poland)* pointed out that Article 8 could not be discussed until the Committee had studied the different articles to which it referred, in particular Articles 11, 13, and 14. No decision could be taken on Article 8 until the Committee had a general view of the situation in regard to foreign companies. While he favoured the principle which had been enunciated, M. Lychowski thought that he would have to reserve his opinion.

THE CHAIRMAN said that the Committee would take note of the Polish representative's reservation. He noted further that the Committee unanimously agreed in recommending that foreign companies should enjoy the treatment of national companies and not that of nationals.

M. DE NAVAILLES *(France)* observed that this was the crux of the whole question. Were foreign companies to be treated on the footing of foreign nationals or of national companies? The principle preferred by the British delegation was that of the most-favoured-nation clause. If, however, foreign companies were to be placed on the same footing as national companies, they must not be given most-favoured-nation treatment. The Convention, in paragraphs 7 and 8, indicated the various conditions to be fulfilled by a foreign company which enjoyed the same treatment as national companies. The paragraph referred, moreover, to Article 9 which dealt with nationals. Either one or other of these methods must be adopted. He thought that, if it were stated that foreign companies should enjoy the same treatment as national companies, there was no need to say any more; the French delegation could concur in this formula.

THE CHAIRMAN, in reply to M. WIJKMAN (Sweden), explained that the present drafting of the article was defective and caused ambiguity. It was for that reason that he had insisted on the discussion of the British amendment which was intended to clear up the meaning of the paragraph.

He requested the Committee to come to a decision on the proposal to adopt, as a basis of discussion, the principle that foreign companies should be treated as national companies, the details being left for settlement by a sub-committee.

M. CARAVALE *(Italy)* thought that the tenor of paragraph 7 was confused. That paragraph established three different systems. First, there were the material provisions. The paragraph recognised that foreign companies had the right to acquire and to possess property and to appear before the courts, etc. There was here no comparison with national companies and no comparison with companies belonging to a most favoured nation.

Secondly, there was a reference to Articles 9 and 10 which stipulated that there should be equality between foreigners and nationals. Further, paragraph 8 referred to several other articles which also provided generally that national treatment should be applied. Finally, paragraph 7 stated that, in any case, the most-favoured-nation clause would be brought into operation.

It was desirable to know what exactly was the field of application of the most-favoured-nation clause in respect of companies. It might perhaps be said that the clause applied in cases where there was an exception to national treatment. Article 17, however, laid down, in reference only to Part 1 of the Convention, that the most-favoured-nation clause did not apply to the special provisions which allowed specific exceptions to the rule regarding national treatment.

There was here a position which was somewhat confused, and which it was desirable to elucidate.

M. BRUNET *(Economic Committee)* explained that the Economic Committee had contemplated a combination of national treatment and most-favoured-nation treatment. This combination was common in treaties of commerce and gave the contracting States the right to choose the régime which was the more advantageous to them.

THE CHAIRMAN reminded the Committee that Committee D was to consider the details of the question of the application of the most-favoured-nation clause. He thought that Committee C should choose between the two systems, namely, the application of the most-favoured-nation clause or the extension of national treatment to foreign companies.

If the draft adopted by Committee D involved the omission of any mention of the most-favoured-nation clause, there would then be time to comply with this resolution. He proposed that the Drafting Committee should prepare a text based on the British proposal.

The procedure proposed by the Chairman was approved, note being taken of the reservation by the Polish delegate.

THE CHAIRMAN observed that the words " they shall have *free and ready* access to the courts " were contained in paragraph 7, sub-paragraph 1, but not in Article 9. He thought that the two texts should be brought into concordance.

M. DE NAVAILLES *(France)* pointed out that there was a question of substance in this connection. In French law the term " *libre et facile accès des tribunaux* " meant that a foreigner was exempt from security for costs *(cautio judicatum solvi)*. Article 9, paragraph 3, on the other hand, retained security for costs in the case of foreigners. He thought that, as access to the courts was mentioned in paragraph 8, there was no point in mentioning it also in paragraph 7.

THE CHAIRMAN observed, in connection with the reference made in Article 16, paragraph 7, to Article 10, that Article 10 was concerned with the right of foreign nationals to possess immovable property in the territory of the High Contracting Parties. A number of important amendments had been submitted to this article, both in Committee A and in Committee C. There were, in particular, the amendments of the British, Finnish, Danish and Mexican delegations. He wished to know whether the Committee intended to take a decision in regard to the right of foreign companies to acquire immovable property in the territory of the High Contracting Parties or whether it preferred to await the decision of Committee A.

M. MAYER *(Austria)* thought that the wording of the reference in Article 16, paragraph 7, to Article 10 should be altered. Article 10 dealt not only with the right of nationals, but also with certain restrictions imposed on them. This was the origin of the amendments which had been submitted. He did not, consequently, think that Article 10 was applicable, in its present terms, to companies.

THE CHAIRMAN replied that the question of the application of Article 10 to companies would be examined later. This question was held over until the results of the discussion in Committee A were known.

13. **Article 16, Paragraph 8.**

M. PESCHARDT *(Denmark)* recalled that his delegation had ponted out that the Danish Government would be unable to grant national treatment to foreign companies upon the conditions prescribed in Article 12 (" Brown Book ", *Addendum*, page 4).

M. VAN WALREE *(Netherlands)* said that the Netherlands Government, which had a similar legislation to that of Denmark, had formulated the same reservation (Annex C, 1).

M. LYCHOWSKI *(Poland)* had no objection in principle to the reference in paragraph 8 to Article 12, but his Government, like the Danish and Netherlands Governments, intended to make a reservation. Foreign companies were not subjected in Poland to more burdensome treatment than that to which national companies were subjected, but the system of application differed in the two cases. The total amount of the tax remained the same.

M. BRUNET *(Economic Committee)* recalled that delegations which had special cases to submit would have complete latitude to do so in the plenary Conference.

THE CHAIRMAN proposed that the fiscal questions raised by the Danish and Polish delegations should be specially studied by a small Sub-Committee to consist of M. DINICHERT and M. BLAU, member of the Fiscal Committee.

The question of insurance mentioned in Article 13 had been held over pending the results of the discussions in Committee A. The Committee of Jurists had examined the possibility of substituting the expression " equal treatment " for " identical treatment ".

The Chairman proposed that the Drafting Committee should be instructed to prepare a text for paragraph 7, sub-paragraphs 1 and 2, it being understood that the question of reciprocity was held over for discussion in Committee. The question of the right of companies to acquire movable and immovable property was also reserved pending the decision of Committee A, and the problem of insurance was reserved pending the decision of the special Committee on insurance. Finally, he would remind the Committee that the definition of the companies mentioned in paragraph 1 was also reserved.

He proposed that a drafting committee should be appointed, to consist of M. DE NAVAILLES (France), Chairman, M. WIJKMAN (Sweden) and a representative of the British, French and Italian delegations. This drafting committee should prepare a text for the whole of Article 16, to be submitted to the Committee at the next plenary meeting.

The President's proposals were adopted.

M. PESCHARDT *(Denmark)* drew attention once again to the reservation made by his Government in regard to the granting to foreign companies of equal treatment with national companies in the matter of retail trade. He would refer the Committee to the declaration of the Danish Government on this subject ("Brown Book", *Addendum*, page 4). He had since received instructions from his Government indicating that it intended to maintain its point of view.

M. WINCKELMAN *(Finland)* recalled that Finnish legislation did not allow foreigners to acquire immovable property. It would therefore be necessary for the Finnish Government to make a reservation.

SIXTH MEETING

Held in Paris on November 27th, 1929, at 9.15 a.m.

Chairman : Dr MARTIUS (Germany).
Secretary : M. HUSSLEIN.

14. Article 16, Paragraphs 4, 5 and 6. Revised Text Submitted by Drafting Committee (Annex C, 4).

M. DINICHERT, *(Switzerland)*, Rapporteur, reported briefly on the work of the Drafting Sub-Committee which had been instructed to prepare a text for the various paragraphs of Article 16 which were still undecided.

The Sub-Committee was now proposing a new text for Article 16, paragraphs 4, 5 and 6.

The Drafting Sub-Committee had got into touch with the Fiscal Sub-Committee which had been set up to examine the possibility of the application of Article 12 to companies and the amendments submitted in that connection. Articles 12 and 13 dealt with the fiscal régime. This question was of considerable moment to Committee C. Committee B had submitted a revised text for Articles 12 and 13. The revised text for Article 13 was in the following terms :

> "Each of the High Contracting Parties undertakes not to subject permanent industrial commercial or agricultural establishments of nationals of other High Contracting Parties whose principal establishment is situated in another territory to higher taxes or charges, taken all round, than those borne in like circumstances by its own nationals.
>
> "The Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements."

The result of this article was that permanent establishments, branches and affiliated companies, belonging to individuals who were nationals of foreign countries were treated in the same way as branches of establishments belonging to nationals of the country in question whose head offices were situated abroad. For instance, in the case of an individual owning a commercial firmin Switzerland and a branch in France, France, by signing the Convention, would undertake to treat the branch belonging to the Swiss national in the same way as a branch belonging to a Frenchman who had a commercial firm with its principal centre in Switzerland. The Sub-Committee had held that the article as thus drafted was inapplicable to companies. For that reason it proposed that the article should be omitted entirely.

Article 12 as proposed by Committee B was as follows :

> "1. In the matter of taxes and duties of every kind or any other charges of a fiscal nature, irrespective of the authority on whose behalf they are levied, nationals of each of the High Contracting Parties shall enjoy in every respect in the territory of the other High Contracting Parties, both as regards their person and property, rights and interests, including their commerce, industry and occupation, the same treatment and the same protection by the fiscal authorities and tribunals as nationals of the country.
>
> "2. In fixing the rates of taxation and duties of any kind levied on commerce and industry, no discrimination shall be made on account of differences in the origin of the goods employed or offered for sale."

Article 12 stipulated that the nationals of a foreign country which signed the Convention should, in all respects, enjoy in the territory of the other High Contracting Parties the same treatment, as nationals, both in respect of their persons and their property.

Article 12 as thus worded was somewhat difficult to apply to companies. It amounted to giving a branch the same treatment as the principal house of a national company. It followed that a commercial house, for example, with its seat in Switzerland and a branch in France would have its branch treated in the same way as a branch company having its seat in France. The inconvenience was due to the difficulty of placing a foreign branch on the same footing as a principal house of business in France. This was, however, a difficulty which it would be possible to overcome if the participating Governments showed goodwill. It would only be necessary to provide for a fiscal system which would tax branches and parent houses separately.

Articles 12 and 13, as submitted by Committee B, were not therefore calculated to satisfy Committee C, which was more particularly concerned with the fiscal régime. If the plenary Conference decided to adopt the text proposed for Articles 12 and 13, Committee C would have to demand that Article 13 shoud be revised by a special provision regulating the manner in which foreign companies were to be taxed. Article 12 did not provide adequate guarantees for foreign branches.

M. ITO *(Japan)* thought that the question as defined by the Rapporteur was of particular importance. He regretted the fact that the Fiscal Committee had considered Article 13, as drafted by the Economic Committee, inapplicable. He also regretted that he was unable entirely to agree with the Rapporteur's arguments, but he agreed with his conclusion that, in regard to companies, it was absolutely essential to have in the Convention an article defining the fiscal régime to which they would be subjected. The whole proceedings of the Conference would be rendered entirely futile if the question of the fiscal régime of companies was not solved, since it would be easy in practice, through the simple operation of the fiscal régime, to nullify every provision in the Convention. The Japanese delegation attached paramount importance to this question and urged that, if it were not discussed in Committee, it should at any rate be discussed by the Conference in plenary session.

THE CHAIRMAN noted that *the Committee decided in principle in favour of deleting Article* 13 *and keeping Article* 12. He proposed further that the considerations which had been offered as to the necessity of introducing into the Convention a precise provision concerning the fiscal régime of companies should appear in the report.

M. DINICHERT *(Switzerland)*, Rapporteur, referred the members of the Committee to the new text proposed by the Drafting Sub-Committee for paragraphs 4, 5 and 6 of Article 16 (Annex C, 4). He pointed out that, in consequence of the deletion of paragraph 2, these paragraphs would have to be renumbered. The Sub-Committee had thought that no change need be made in the text of the former paragraph 3, which now became paragraph 2. This paragraph would, of course, be subject to any drafting modifications which might be necessitated by the Committee's adoption of the following paragraphs. Paragraph 4 (formerly 5) read as follows :

> " The High Contracting Parties who make the installation in their territory of permanent establishments of foreign companies subject to authorisation, hereby declare that they will not, by granting such authorisations, hinder the establishments of companies engaging in business which it allows companies of any other country to conduct under similar conditions."

This paragraph reproduced exactly, in spirit and content, the corresponding paragraph in the Economic Committee's draft. It should be observed that in the terminology adopted, the authorisation applied to permanent installation in the territory and not to the operations of the company.

The Drafting Sub-Committee had intentionally adopted a somewhat vague formula in consideration of the question which might arise as to the character of the authorisation granted in each country for permanent installation. The Sub-Committee had avoided taking up a definite position and had confined itself to mentioning the permanent establishments of foreign companies, while avoiding any explanation as to whether the authorisation in question was a general measure or, on the other hand, a discriminatory measure in regard to certain countries.

THE CHAIRMAN requested the members of the Committee to examine the new text of paragraphs 4, 5 and 6 submitted by the Drafting Sub-Committee, and to submit any objections on points of principle to which these paragraphs might give rise on their part, leaving aside points of detail which would be discussed at the next meeting.

M. MAYER *(Austria)* said that paragraph 4 in its new wording was still unacceptable to his country in regard to the permanent establishments of companies.

THE CHAIRMAN observed that this objection was related to the question whether the authorisation bore on the operations or installation of a company. This question had already been discussed and he proposed to invite the Committee to take a vote at its next meeting, the Austrian delegation retaining its right to submit any observations it thought fit.

M. MAYER *(Austria)* said that, even if the authorisation related to the installation of companies, the text was still unacceptable to his Government, since there were certain establishments of companies which in his country would have to be subjected to a special authorisation, building companies for instance. He thought, however, that it would be possible to bring this statutory requirement into conformity with Article 5.

M. PESCHARDT *(Denmark)* asked whether installation and admission originated from the same conception. If that were the case, the Danish Government could not accept the paragraph, because Denmark did not desire the application of the most-favoured-nation clause so far as the admission of companies was concerned.

THE CHAIRMAN thought that " admission " and " authorisation " were two corresponding terms, but that " admission " and " installation " were different terms.

M. LYCHOWSKI *(Poland)* would have preferred to keep, instead of the words "business which it allows", the words " *usually* allowed to conduct ". The most-favoured-nation clause came into operation if the business of a company were allowed as a general right and not if it were allowed as a special favour.

M. DINICHERT *(Switzerland)*, Rapporteur, explained that the Drafting Sub-Committee had thought the adverb " usually " useless and had decided to delete it.

M. CARAVALE *(Italy)* recalled that the Committee had reserved the question of the reciprocity of the most-favoured-nation clause. He inferred that the texts proposed in the report dealing with the question of reciprocity in regard to the most-favoured-nation clause were only provisional pending the Committee's decision on the question.

M. DINICHERT *(Switzerland)*, Rapporteur, pointed out that, in substance, the question amounted to deciding whether an authorisation covered the admission or the operations of companies. The Committee had decided that the authorisation should relate to the admission of a company. It had been added that, in the case of certain special operations, the question of authorisation might be raised again. At the next meeting, the Committee must take a decision as to the field of application of the authorisation, according to the formula laid down in Article 16. It appeared to him that the authorisation for the installation of establishments involved authorisation for the operations of the company which had been installed. He pointed out, however, that there were certain transactions which Governments wished to be able to authorise without their involving the installation of companies in their territory. That was the purpose of the Austrian delegation's observation, and this question had not yet been settled. Its settlement must necessarily be contingent on the previous adoption of the principle that the operations of a foreign company must be subject to the law of the country in which they were carried on. Reference to the application of the law of the country was made in paragraph 3 of Article 16 in the draft, which said that the operations of companies, in so far as they were carried on in the territory of another High Contracting Party, were to be subject to the laws and regulations of the latter. The authorisation for installation might form the subject of a special measure. In any case, it was obviously impossible to grant a foreign company better treatment than that enjoyed by a national company.

M. WIJKMAN *(Sweden)* thought that it would be desirable to change the order of the paragraphs and to put first the paragraph dealing with admission and second that dealing with the operations of companies. In this way, difficulties as to the extension of the rights provided under the first paragraph to companies which were not admitted for the purposes of permanent installation would be avoided.

M. DINICHERT *(Switzerland)*, Rapporteur, read the following new text for paragraph 5 (formerly paragraph 6) :

> " The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business with or without authorisation, except in the case of an infraction of the laws of the country. They undertake in particular not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same circumstances to national companies."

The Drafting Sub-Committee had adhered to the contents of the corresponding paragraph in the Economic Committee's text. The only new proposal made by the Drafting Sub-Committee was that the acquired rights to be safeguarded should be safeguarded in both cases, that was to say, irrespective of whether the company had obtained authorisation or not. Authorisation was a simple formality, and it was admission which gave rise to the acquired rights to be safeguarded.

The second sentence contained an idea which had been submitted by the British delegation, namely, that the States should retain the right to apply to companies the legislation which they thought fit, without the foreign companies being able to enter a plea of acquired rights, on condition that the new treatment was the same for national companies and foreign companies.

M. LYCHOWSKI *(Poland)* drew attention to the omission of the words " unless forced to do so ", which appeared in the Economic Committee's text in the passage " not to prejudice acquired rights, unless forced to do so ". He thought that this omission affected the substance of the article, since the Governments must retain some degree of freedom as to the treatment of foreign companies.

THE CHAIRMAN replied that this question would be discussed at the next meeting.

M. MAYER *(Austria)* drew attention to a difficulty which did not seem to have been anticipated in the text under discussion. What would be the position if an authorisation had been given a foreign company for a limited period and if the conditions upon which admission had been granted were modified in the case, for instance, of the statutes of a company which had been admitted to the country being changed ?

M. DINICHERT *(Switzerland)*, Rapporteur, pointed out that, if the conditions had been changed, the acquired rights were no longer the same, and that consequently this was a question to be decided by the national courts or by arbitration.

In reply to M. Lychowski, he explained that the words " unless forced to do so " had been withdrawn from the text on the ground that they added nothing to it. If the Committee thought that these words had a substantial signification, they could ask for them to be restored.

M. Dinichert read the following new text for paragraph 6 (formerly 7) :

> " The companies of each of the High Contracting Parties shall enjoy in the territory of the other Parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same circumstances for nationals of the country under Articles 1, 2, 5, 7, 8, 9, 10, 11, paragraphs 3, 4 and 5, and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same circumstances to national companies."

This was the essential paragraph of Article 16, in which reference was made to the various articles in the Convention which were to apply to companies. The Drafting Sub-Committee had re-examined the terms of these articles on the basis of the principle that the treatment of a foreign company should not be more favourable than that enjoyed by a national company. The Drafting Sub-Committee had, in consequence, kept the references to Articles 1, 2, 5, 7 and 8 and had eliminated the reference to Articles 3 and 4, which dealt only with commodities. Article 6 referred only to the admission of persons, and it was therefore useless to mention it. Articles 9 and 10 were applicable, *mutatis mutandis*, to companies as well as to persons. Article 11 applied in part. Article 12 also applied subject to the explanations which had been furnished. Lastly, Article 13 had been suppressed. He had taken the liberty of adding that, in addition to these articles, " the provisions of the Protocol relative thereto " would also apply.

SALIH ZEKAI BEY *(Turkey)* thought the end of paragraph 6 useless. He proposed that it should be explained that only sub-paragraph 1 of paragraph 7 applied to companies.

THE CHAIRMAN pointed out that questions of detail connected with the new text of Article 16 would be settled at the next meeting. The various delegations which had made reservations would then have an opportunity of expounding their points of view at length.

SEVENTH MEETING

Held in Paris on November 27th, 1929, at 9 p.m.

Chairman : Dr. MARTIUS (Germany).
Secretary : M. HUSSLEIN.

15. **Article 16 : Draft Report of the Committee to the Conference** (Annex C, 5).

Paragraphs 1, 2 and 3.

Adopted.

Paragraph 4.

SIR PERCY THOMPSON *(British Empire)* stated that the Sub-Committee on Insurance had submitted certain proposals which were being considered by the British delegation. He regretted that this matter had not yet been settled.

THE CHAIRMAN wondered whether it was possible to contemplate the provisional omission of the passage beginning with the word " including ".

He recalled that the Netherlands delegation had proposed to include in the paragraph insurance and shipping companies and other transport companies, together with companies ensuring communications.

The question might be reserved in so far as concerned insurance companies, but it would be necessary to hold a debate on the question of shipping companies.

M. ITO *(Japan)* recalled that the Sub-Committee instructed to study the question of insurance had not yet finished its work. Nevertheless, the Netherlands proposal might be adopted. If the results obtained by the Insurance Sub-Committee were different from what was expected, the question would be settled in plenary session.

M. MIEZIS *(Latvia)* proposed the omission of the reference to insurance companies, since an endeavour was now being made to find a formula which would apply to all insurance companies. Moreover, insurance companies were even now admitted to foreign countries under the treaties in force.

M. VAN WALREE *(Netherlands)* explained his amendment. By the term "communications" he referred to regular shipping lines. The other transport companies were interested in vessels which belonged to different companies and called occasionally in various ports. It had been thought desirable to have a separate reference to this point.

SIR PERCY THOMPSON *(British Empire)* thought that the difference between companies ensuring communications and transport companies was a more radical one. The first category covered telephone, cable, and wireless companies, while the second included companies engaged in the actual transport of passengers and goods.

M. MAYER *(Austria)* thought that it would be well to say that the enumeration was given as an example and was in no way limitative.

SIR PERCY THOMPSON *(British Empire)* saw no reason for excluding insurance companies even provisionally from paragraph 1 of Article 16.

Even though the Convention might ultimately provide for the exclusion of foreign companies from certain forms of business, it would still be necessary to provide that such companies should be recognised by the parties to the Convention. This would be necessary to enable them, *e.g.*, to appear before the Courts and to enforce their legitimate rights.

THE CHAIRMAN asked the Committee to vote on the Netherlands amendment, seconded by the Japanese delegation.

The amendment of the Netherlands delegation was adopted.

THE CHAIRMAN asked the Committee to consider the question of retaining the reference to insurance companies.

M. MIEZIS *(Latvia)* thought that there was no difficulty for the moment, since the question was confined to that of recognition. The problem, however, would assume a very different aspect when the question of admission arose.

The Committee decided to include the reference to insurance companies and to indicate in the Minutes that the enumeration given was furnished for the sake of example and was in no way limitative.

M. DINICHERT *(Switzerland)*, Rapporteur, said that his report was based on the idea that commercial companies. etc., were to be taken to mean all concerns having a commercial object. The term therefore obviously included hotel companies.

M. MIEZIS *(Latvia)* thought the enumeration valuable, since certain companies were excluded in paragraph 7.

M. PEROUTKA *(Czechoslovakia)* proposed to complete paragraph 2 by the following addition :

"The text adopted shows itself that this enumeration is not limitative."

This proposal was adopted.

Paragraph 5.

SALIH ZEKAI BEY *(Turkey)* hoped that the Committee agreed that only economic companies were intended and that charitable companies, athletic clubs and so forth were not involved. He would therefore urge the omission of the last sentence in this paragraph. It might be replaced by a text on the lines of his amendment indicating that the companies in question were companies formed for purposes of gain.

M. LYCHOWSKI *(Poland)* thought this proposal entirely justified.

M. DINICHERT *(Switzerland)*, Rapporteur, observed that the Committee had had to consider a number of ideas. It had had in particular to enquire whether the companies which it was desired to cover did not all fall within the category of companies established for purposes of gain. It had decided, in the last analysis, that only commercial companies were involved, and this had satisfied

the Turkish delegate. The Committee had arrived at this definition, although it was not a perfect one, as was brought out in the report. This very imperfection, however, clearly indicated that the article referred only to companies established for purposes of gain. He wondered whether it would not be advisable to change the definition and say that only commercial, industrial and financial companies came under the terms of the Convention.

SALIH ZEKAI BEY *(Turkey)* noted that the report itself had stated that the definition was not a perfect one. As an interpretation was needed, it should be clearly said that the Committee intended to refer only to economic and commercial companies.

M. LYCHOWSKI *(Poland)* proposed the addition of a text specifying that it was understood that, in paragraph 1, only joint-stock companies pursuing a purely lucrative aim were involved.

M. DINICHERT *(Switzerland)*, Rapporteur, said that he would indicate in his report that certain joint-stock companies might not pursue a purely economic aim, but that it was clearly understood that the text referred only to joint-stock companies having a purely economic aim.

This proposal was adopted.

Paragraphs 6, 7 *and* 8.

Adopted.

Paragraph 9.

M. ITO *(Japan)* observed that there were certain commercial companies which did not possess legal personality in some countries, but did so in other countries. The problem therefore was very complicated. The recognition of legal personality and the recognition of a moral person were two entirely different matters.

M. DINICHERT *(Switzerland)*, Rapporteur, replied that the question of the recognition of moral personality was reserved.

THE CHAIRMAN had the impression that there was no divergence on points of substance. Legal capacity, both as regards physical persons and moral persons, might be understood in the sense indicated by M. Ito.

M. ITO *(Japan)* said that he would not press his point.

M. MAYER *(Austria)* had the same feeling as M. Ito. It was possible that, if paragraph 2 were suppressed, the courts of a foreign country would consider themselves entitled to examine the constitution of a company.

M. DINICHERT *(Switzerland)*, Rapporteur, replied that there could be no question of this. The courts would be bound by the Convention. The regularity of a company's constitution was to be judged solely on the basis of the laws of the country of residence. It must not, however, be thought that so summary a text as that now under discussion claimed to solve the infinitely diverse problems which might arise.

THE CHAIRMAN read paragraph 2 of Article 16 in the Economic Committee's draft. The legality of a company's constitution was already covered by paragraph 1. As to the capacity to appear in court, many delegations on the Committee were in favour of omitting any reference to it, but hitherto no formal proposal had been made on the subject.

M. MAYER *(Austria)* proposed that, in the French text, the words " et leur capacité d'ester en justice " should be replaced by the words " et leur droit de figurer en justice ".

This proposal was put to the vote and rejected.

Paragraph 9 *was adopted without amendment.*

Paragraph 10.

M. WIJKMAN *(Sweden)* said that the present draft did not, at all points, correspond with the ideas that had been put forward. It was his impression that the majority had been in favour of making a distinction between the admission of foreign companies and their operations. This principle had been admitted. The distinction thus adopted had, however, been suppressed by a roundabout method, and the result had been the establishment for foreign companies of a system different from that which had been adopted in regard to physical persons.

Article 16 could not be applied to companies which had not obtained an authorisation for admission. He urged that the words " whether they have permanent establishments or not " should be omitted from paragraph 6 (formerly 7) of Article 16 and that paragraph 2 should be placed after paragraphs 3 and 4.

THE CHAIRMAN pointed out that the Committee must first take a decision on each of the paragraphs before deciding upon their order.

M. PESCHARDT *(Denmark)* agreed with the Swedish delegate. A distinction must be made between admission and treatment.

SIR PERCY THOMPSON *(British Empire)* suggested that the examination of this point should be held over, pending a decision in regard to paragraph 4, the omission of which he was going to propose.

M. WIJKMAN *(Sweden)* thought that it would be better to solve this question at once, but would not insist.

M. LYCHOWSKI *(Poland)* pointed out that paragraph 3 of Article 16 referred precisely to the operations of companies, without any kind of distinction between the operations of companies which had been formally admitted and those of companies which had not. He wondered whether it would not be advisable to explain this point in the text in order to obviate any misunderstandings which might arise. He reserved his right to revert to this question.

THE CHAIRMAN said that the Committee would, for the moment, take note of the Polish reservation.

M. WIJKMAN *(Sweden)* proposed the omission of the passage reading "applicable to all the operations of foreign companies, without its being necessary to distinguish between operations expressly allowed and those not so allowed".

THE CHAIRMAN suggested that this proposal should also be held over.

Paragraph 11.

SIR PERCY THOMPSON *(British Empire)* suggested an amendment in the second sub-paragraph in order to bring it into conformity with the statement regarding most-favoured-nation treatment made by Sir Sydney Chapman at the fourth meeting of the Committee.

M. DINICHERT *(Switzerland)*, Rapporteur, agreed to this proposal, especially as he had tried in his text to express the essential point of Sir Sydney Chapman's observations.

Paragraph 12.

M. LYCHOWSKI *(Poland)* asked that paragraph 3 (formerly 4) should read as follows :

> "If one of the High Contracting Parties makes the installation . . . subject to previous authorisation, whether revocable or not . . ."

The rest without change.

SIR PERCY THOMPSON *(British Empire)* urged the omission of this paragraph of Article 16. Committee D had decided to delete Articles 17 and 18 which related to most-favoured-nation treatment and reciprocity and the British delegation considered that the paragraph under consideration should be dealt with similarly. He suggested also that paragraph 4 should be deleted.

THE CHAIRMAN recalled the fact that Committee D had adopted the Sub-Committee's opinion in regard to the omission of Articles 17 and 18. It had been decided, subject to the opinion of Committee D, that each Committee would have the right to take a decision from the economic and practical points of view.

M. CHOUMENKOVITCH *(Yugoslavia)* recalled that the Economic Committee had proposed a text for paragraph 4 of Article 16 ("Brown Book", page 54). The Sub-Committee had submitted a new text to which the Polish delegation had proposed an amendment. This new text gave rise to serious objections. All national companies, as well as foreign companies, were subject to the system of previous authorisation which it was in the Government's power to grant or refuse. An authorisation might involve restrictions covering all commercial operations (change of capital, regulation of business in which the company would be allowed to deal, etc.). He wondered whether this system was compatible with the formula now proposed. If it were not, he would have to make certain explicit reservations. He would add, moreover, that, in practice, Yugoslavia, which needed foreign capital, would always grant an authorisation to foreign companies, more particularly banking companies, and would afford them treatment on the same footing as national companies.

M. DE NAVAILLES *(France)* said that the French delegation had submitted a new draft for paragraphs 4, 5 and 6 (Annex C, 6). After the observations which had been exchanged in the

course of the discussion, the French delegation had understood that there were certain legislations which made, not only the permanent establishment, but also the operations, of companies contingent upon a compulsory previous authorisation.

THE CHAIRMAN reminded the Committee that it also had before it the text of paragraph 3 (formerly 4) proposed by the Sub-Committee. Did the French delegation wish to substitute the French amendment for this text ?

M. DE NAVAILLES *(France)* replied in the affirmative.

THE CHAIRMAN asked whether Sir Percy Thompson maintained his proposal to omit both paragraphs 3 and 4, or whether he had any objection to the discussion of paragraph 4 (formerly 5).

SIR PERCY THOMPSON *(British Empire)* replied that paragraph 4 (formerly 5) of the Article dealt with an entirely different point and that he would not, for the moment, press for its deletion.

THE CHAIRMAN said that, in these circumstances, the paragraph was for the moment reserved.

M. PEROUTKA *(Czechoslovakia)* said that, if the French amendment showed clearly that previous authorisation might be contemplated, not only in respect of establishment, but also in respect of operations, the Committee might revert to the Economic Committee's proposal.

THE CHAIRMAN said that he had proposed that paragraph 12 in the report should be reserved. Was there any opposition to this proposal ?

M. DE NAVAILLES *(France)* said that he had placed at the end of his text the question whether reciprocal treatment should be included or not. He had done so for two reasons : first he did not attach any fundamental importance to this clause, and, secondly, the remainder was self-sufficient. He thought that it should first be ascertained whether the Committee could agree on the whole.

M. CARAVALE *(Italy)* wished to put a previous question. Whatever the decision on the new paragraphs 3 and 4, it was understood that they allowed the exaction from foreign companies of previous and revocable authorisation in all cases, even when such authorisation was not required from national companies. If that were so, he would propose a somewhat different wording which would limit this right.

THE CHAIRMAN replied that hitherto no amendment had been submitted in this sense, but it would be more practical to examine the question in committee than in plenary session.

M. CARAVALE *(Italy)* recalled that, during the discussion of the Italian proposal regarding paragraphs 4, 5, and 6 of Article 16, he had stated that the Italian delegation desired a provision to the effect that no authorisations should be required from foreign companies which were not required from national companies. That, in his opinion, was the most liberal principle possible. In view of the opinions that had been expressed, however, the Italian delegation had considered a more moderate form of words in the following sense :

> " Each of the High Contracting Parties shall be entitled to attach conditions to the transaction of certain operations in its territory by companies belonging to the other High Contracting Parties in cases where these operations are, for reasons of public interest, subjected to special regulations or to a system of control or guarantee, even when they are carried on by national companies."

M. DE NAVAILLES *(France)* said that he had submitted two alternative texts (Annex C, 6). He would withdraw text A and would propose text B. As, however, the Italian delegation had made a still more liberal proposal, he wondered whether it would not be well to examine it first.

The CHAIRMAN noted that there were four proposals before the Committee :

(1) The text of the Drafting Committee, which was almost identical with M. de Navailles' text A ;

(2) M. de Navailles' text B, which satisfied those delegations which preferred the original text ;

(3) The British proposal to omit the paragraph, and

(4) The Italian proposal for a more liberal system.

M. PEROUTKA *(Czechoslovakia)* was in favour of text B which might, if necessary, be completed by the addition of part of the Italian proposal, so as to specify that the system of special authorisation could be practised only in the case of foreign companies.

M. RIEDL *(International Chamber of Commerce)* was compelled, on behalf of the International Chamber of Commerce, to uphold the principle of the widest possible liberalism. Article 16, paragraph 2, had been accepted, and the principle had been laid down that companies were to be subject to the legislation of each country. The French delegation's proposal seemed more liberal. It covered the case of installation and also the case of operations without installation, whereas the proposal in the report only covered installation. If Articles 17 and 18, as well as paragraph 3, were omitted, this would be equivalent to stabilising the arbitrary treatment practised in regard to foreign companies which established themselves and developed their operations in a foreign territory. The International Chamber would be glad if the Italian delegation could convert its liberal suggestions into a proposal.

THE CHAIRMAN recalled that the general problem of reciprocity had been held over. The question now under discussion was that of admission in a certain sense. He asked whether Sir Percy Thompson thought that it was practical to vote on the omission of any reference to this question in the present text.

SIR PERCY THOMPSON *(British Empire)* replied that his objection to paragraph 4 was not based on the same grounds as his objection to paragraph 3. His object was to reduce to the strict minimum limitations upon the installation of foreign companies, in order to reduce differences of treatment so far as possible. He would not, however, press his point in regard to paragraph 4.

M. CARAVALE *(Italy)* observed that, in these circumstances, there were only three proposals which, if placed in their logical order, were the following: First, could a Government require authorisation for foreign companies if it did not require one for national companies ? Secondly, should the authorisation relate solely to permanent establishment or could it also relate to the entire operations of the company ? Third, these principles being admitted, could the contracting parties practise reciprocity ? The first of these questions—that with which the Italian proposal was concerned—must be solved first.

M. ITO *(Japan)* supported the Italian amendment.

M. WIJKMAN *(Sweden)* thought that it would first be necessary to decide whether the idea embodied in the text submitted by the Rapporteur was accepted.

M. DE NAVAILLES *(France)* could only support the Italian proposal, which fell in with his views.

The Italian proposal was put to the vote and was rejected by nine votes to five.

M. DE NAVAILLES *(France)* noted that the liberal thesis had been unsuccessful and he submitted his proposal, which was more strict than that of the Economic Committee.

THE CHAIRMAN put to the vote text B of the French proposal.

The text was adopted by ten votes to three in the following form :

> " The High Contracting Parties who make the activities of foreign companies in their territory subject to authorisation, whether these activities take the form of the installation of permanent establishments or any other form, hereby declare that they will not, by granting such authorisations, hinder the activities or establishment of companies engaging in business which they generally allow companies of any other country to conduct under the same circumstances."

Paragraph 5 (formerly 6).

THE CHAIRMAN asked the Committee to discuss paragraph 5 (formerly 6) of the French proposal which was identical with the text proposed by the Rapporteur.

M. LYCHOWSKI *(Poland)* proposed the addition of the words " unless compelled to do so ", so that the wording of the beginning of the paragraph would be as follows : " The High Contracting Parties undertake not to prejudice, unless compelled to do so, the rights acquired by a foreign company . . . ".

M. DE NAVAILLES *(France)* regretted that he could not agree with M. Lychowski, since his amendment would give the States a latitude which they might abuse and would leave matters to be decided at their discretion.

The Polish amendment was put to the vote and was rejected by seven votes to three.

M. WIJKMAN *(Sweden)* proposed that the second sentence in the text proposed should be struck out.

M. DINICHERT *(Switzerland)*, Rapporteur, replied that the paragraph was a reproduction of the text voted by Committee C as the result of a British proposal.

Paragraph 5 *(formerly* 6) *is adopted without amendment.*

Paragraph 6 *(formerly 7).*

SIR PERCY THOMPSON *(British Empire)* pointed out that the words "provided they have received the necessary authorisations for their installation or for the exercise of their activities when such authorisations are required" at the beginning of the paragraph would give rise to difficulties, *e.g.*, in regard to the application of Article 9. It might happen that a foreign company would wish to have access to the courts before it had obtained its authorisation for installation.

M. ITO *(Japan)* thought it would be difficult to accept this passage.

M. WIJKMAN *(Sweden)* thought that the difficulty mentioned by Sir Percy Thompson would not occur since foreign companies would have the right of access in all cases.

M. DINICHERT *(Switzerland)*, Rapporteur, considered that the introduction of this passage was not free from dangers, since it consecrated the principle that everything contained in the Convention would have to be contingent in every country upon previous authorisation. This was an unacceptable proposition, and he would urge its omission, since it would make the Convention entirely unacceptable.

M. DE NAVAILLES *(France)* was prepared to omit this passage which was at variance with his own personal ideas. He had only inserted the passage in order to meet those who held the dissident view.

M. MIEZIS *(Latvia)* pointed out that it was proposed to omit this passage on account of Article 19. It would be difficult, however, to omit it, since the rest of the text mentioned Articles 8, 9 and 10, etc. It would even be preferable to strike out the reference to Article 9 and to keep the sentence in question.

M. LYCHOWSKI *(Poland)* and SALIH ZEKAI BEY *(Turkey)* supported this proposal.

M. WIJKMAN *(Sweden)* thought that all difficulties would be obviated if the proposal of the Drafting Committee (Annex C, 7) were accepted in the following form :

" *Paragraph* 6 *(formerly 7).*

" The companies of each of the High Contracting Parties shall enjoy in the territory of the other High Contracting Parties treatment similar to that provided under the same circumstances to nationals under Articles 1, 2, 5, 7, 8, 9, 10, 11, paragraphs 3, 4 and 5, and under Articles 12 and 15, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that accorded under the same circumstances to national companies."

M. MAYER *(Austria)* thought that all difficulties would disappear if the Committee reverted to the formula in the original draft.

M. LYCHOWSKI *(Poland)* reverted to the proposal of M. Miezis which was to remove from M. de Navailles' text the reference to Article 9, and to substitute for the reference to that article a new paragraph containing no conditions.

M. ITO *(Japan)* confessed that he had not fully understood this proposal. If he represented a Japanese company and wished to buy a table, would he have to obtain authorisation ?

M. DINICHERT *(Switzerland)*, Rapporteur, replied that, not only Article 9, but Articles 5, 10 and 11 as well were involved. He wondered whether it would not be possible to meet all the views expressed by stipulating that nothing prejudiced the right of authorisation granted in the previous articles.

THE CHAIRMAN thought that M. de Navailles' proposal might be adopted if the first three lines were cut out.

SALIH ZEKAI BEY *(Turkey)* proposed that M. de Navailles' proposal should be amended by the omission of the whole of the last part beginning with the words " on the understanding " and by stipulating, in the reference to the articles, that only paragraph 1 of Article 7 was involved.

THE CHAIRMAN proposed that the Committee should take note of this suggestion in the report and should leave the matter in the hands of the General Drafting Committee.

M. CHOUMENKOVITCH *(Yugoslavia)* referred to the passage at the end of the text of M. de Navailles :

> " . . . on the understanding, however, that foreign companies shall not be entitled to make treatment more favourable than that which is accorded under the same conditions to national companies."

This amounted to giving foreign companies all the rights conferred on physical persons under Articles 2, 5, 7, etc.

Supposing a foreign company established itself in a country where national treatment prohibited banks from engaging in various commercial transactions, would such a company under this working have more extensive rights than national companies ?

M. CARAVALE *(Italy)* thought that the wording which had been adopted was not very felicitous. The intention was that Articles 2, 5, etc., must be applied just as if, instead of the words " nationals ", they had contained the word " companies ". This text, however, gave rise to ambiguity. Was the same treatment to be given to foreign companies when there were special exceptions ? Obviously not. The text should be modified so that, when nationals should be excluded, it should be understood that foreign companies were also excluded.

THE CHAIRMAN pointed out that the question whether paragraph 1 of Article 7 was to be kept in the enumeration of the articles would be examined by the Drafting Committee. It was, therefore, useless to deal with the matter.

M. CARAVALE *(Italy)* recalled the text of the British proposal (Annex A, 1). He thought that the present wording should be amended slightly in accordance with the British text and that the references to Article 7, paragraph 1, might perhaps be avoided.

M. DINICHERT *(Switzerland)*, Rapporteur, referred to the passage which he had embodied in his report on this article (Annex C, 7).

Further at the end of the report he had given the following explanation :

> "It was further recognised that the meaning of this stipulation was the same as that of the British proposal to the effect that the articles in question should be regarded as applying to the companies of the Parties, as if these articles referred throughout to companies instead of nationals."

If it were found that the treatment which was granted to foreign nationals conferred on a foreign company, when applied to it, rights superior to those belonging to a national company, it was of course understood that these rights would be reduced to the same level. Under paragraph 2 of Article 7 it followed that foreign companies were, on still stronger grounds, excluded from this privilege. Consequently the present text and commentary should allay any misgiving.

SALIH ZEKAI BEY *(Turkey)* and M. WIJKMAN *(Sweden)* stated that the passage in the report was at variance with their views.

Paragraph 6 *(formerly 7), in the text proposed by the French delegation* (Annex C, 6), *was adopted, the question of Articles* 12 *and* 13 *being held over.*

Paragraph 7 (Annex C, 6).

M. DE NAVAILLES *(France)* explained that, in certain cases, reciprocity appeared to be necessary. It was clear that, when countries made certain activities subject to restrictions, the countries which had a liberal system must necessarily be in a position to take similar action. If the majority were against his text, the French delegation would not press the point and would content itself with a reservation at the time of signature.

THE CHAIRMAN said that a restriction had been expressly introduced, preventing any hindrance to the operations of companies which had been admitted.

The present question was whether paragraph 4 (Draft B in the French text, which had been adopted) excluded the right to take measures of reciprocity as contemplated in paragraph 7.

SIR PERCY THOMPSON *(British Empire)* thought, in view of the position with regard to Articles 17 and 18, that all reference to the reciprocity clause and the most-favoured-nation clause should be omitted and urged the deletion of the paragraph.

THE CHAIRMAN replied that other delegations would probably find it necessary, like the French delegation, to make reservations.

SIR PERCY THOMPSON *(British Empire)* replied that paragraph 4 constituted a categorical engagement which was binding upon the High Contracting Parties. He strongly urged that provisions dealing with reciprocity should not be included.

M. DE NAVAILLES *(France)* admitted that, in appearance, there was an inconsistency between paragraphs 3 and 7. The first said that countries which had the authorisation system must not abuse it ; the second stated that countries which did not have this system and which extended a liberal welcome to foreign companies might, at a specified moment, have to defend themselves against abuse. It therefore granted the right of reciprocity. This was one of the exceptions to paragraph 4. He would not, however, press his point and, if the paragraph were omitted, he would reserve his right to make a declaration at the time of signature.

M. PESCHARDT *(Denmark)* thought that paragraph 7 might be struck out. In this case, however, the Danish delegation would also be forced to make a reservation concerning the admission of foreign companies to Denmark.

The Committee decided to suppress the paragraph by six votes to two.

M. VAN WALREE *(Netherlands)* said that, in this case, the Netherlands delegation would also make a reservation.

Paragraph 12 (Annex C, 5).

M. WIJKMAN *(Sweden)* said that his delegation could not agree to certain provisions of the draft submitted by the Drafting Committee which, moreover, was not in all points in conformity with the ideas expressed by the majority in Committee C.

As he had already pointed out, the majority had expressed itself in favour of a solution which would consist of making a very clear distinction between the provisions relating to the admission of foreign companies and those governing their activities. Delegations which had spoken with conviction in favour of a system which would leave the notion of foreigners outside the Convention, should be the first to admit that the same system must be applied to companies. The structure of Article 16 in the Economic Committee's draft and the first five paragraphs in the present text were identical with the provisions which had been adopted in the first part of the Convention in regard to physical persons ; the admission of foreign companies had been left on one side.

Paragraph 3 dealt with the question of admission in a very hasty manner, but, nevertheless, the principle was admitted. Paragraph 6 of the same article showed that this distinction between the field of admission and the field of the activities of companies which had been admitted had been eliminated by a roundabout method. This amounted to a denial of the principle embodied in paragraph 3, which laid down that the establishment of a company could be subject to authorisation, and the final system arrived at in regard to companies was one which differed from that governing physical persons.

In the case of physical persons, the situation was as follows : Articles 1, 2, 5 and 8 covered, by their very nature, questions which also concerned foreigners who were not established on the territory of one of the High Contracting Parties. Article 7 covered only persons who had been admitted for the purpose of establishment. As to Articles 9, 10, 11 and 12, their application to persons who were not established was stipulated in Article 15. If the idea underlying Article 16 were adhered to, Article 7 could not, it followed, apply to companies which had not obtained authorisation for admission. This idea would be clearly expressed if the words " whether they have a permanent establishment or not " were deleted, and if Article 15 were added to the list of the preceding articles which were to apply also to companies.

Finally, he would refer again to his proposal to place paragraph 2 after paragraphs 3 and 4. In this way the Committee would have a completely logical system which would be in conformity with practical necessities.

THE CHAIRMAN put the proposal to change the order of the paragraphs to the vote.

The proposal was rejected by six votes to five.

As to the last part of paragraph 12, *it was agreed that the statements to be included in the report regarding the fiscal questions concerned should be discussed between Sir Percy Thompson and the Rapporteur.*

Paragraphs 13 *and* 14 (Annex C, 7).

Adopted.

Paragraph 15.

Sub-paragraph 1 : *Adopted.*
Sub-paragraph 2 : *Deleted.*

Paragraphs 16, 17, 18 *and* 19.

Adopted.

Paragraph 20.

Adopted with an amendment proposed by the Turkish delegation. The second sentence to read as follows :

" The principle unanimously agreed to was that the treatment accorded should be that applicable to foreign nationals."

Paragraphs 21, 22, 23, 24, 25.

Adopted.

M. PESCHARDT *(Denmark)* said that it was impossible to levy the same tax on a foreign company as on a national company.

M. DINICHERT *(Switzerland)*, Rapporteur, said that the report did not mention this question.

Danish Reservations (Annex C, 3).

THE CHAIRMAN said that the Danish reservations would be indicated in the report.

British Reservation (Annex A, 1 and " Brown Book " page 82).

SIR PERCY THOMPSON *(British Empire)* stated that, under an old English law known as the Mortmain Act, corporations could not acquire land or lease it for long periods without a licence from the Crown. A general dispensation had, however, been made in favour of most English companies, but it had not been practicable to extend this dispensation to foreign companies. During the last fifty years, only one application by a foreign company for a licence had been refused, so that, in practice, the licence requirement was of very little importance. The British delegation considered it necessary, however, to draw attention to the matter in order that proper provision might be made for it.

THE CHAIRMAN considered that the Committee might insert a passage in the report and state that no objection had been raised to the law in question, but that it had abstained from taking a final decision owing to the position of the work and the impossibility of forming a clear idea of the situation.

SIR PERCY THOMPSON *(British Empire)* replied that this proposal was acceptable, since the terms of Article 10 had not yet been settled.

SALIH ZEKAI BEY *(Turkey)* recalled that his delegation had submitted an almost identical amendment.

M. MIEZIS *(Latvia)* observed that his delegation had drawn attention to certain regulations concerning the incorporation of insurance companies and banks (Annex A, 18). The Egyptian delegation had made a similar reservation (Annex A, 6). This Egyptian reservation referred to Article 8, while the Latvian observation related to Article 16.

THE CHAIRMAN replied that the restrictions as to associated companies had been deleted in Article 8. Article 16 contained nothing on this matter. He had so far received no amendment in the sense of a restriction upon the freedom of the States.

M. PESCHARDT *(Denmark)* added that Committee A had taken a decision providing that no provision in the Convention should affect internal company law.

THE CHAIRMAN thought that in any case it would be dangerous to take a decision at the moment.

COMMITTEE D.

General Provisions — Articles 17 to 27.

FIRST MEETING

Held in Paris on November 25th, 1929, at 3.30 p.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

1. Programme of Work.

THE CHAIRMAN said that the Committee had been asked to examine the articles in Part III of the Convention (General Provisions) together with the Preamble, the Final Act and other questions referred from Committees A, B and C.

2. Examination of the Articles of the Convention: Chapter 1, Articles 17, 18 and 19.

Article 17.

DR. MARTIUS *(Germany)* said it had been proposed to set up a sub-committee to draft the provisions of the arbitration clause in Article 22.

THE CHAIRMAN replied that Article 22 came within the competence of Committee B. When it came up for discussion, the Committee would decide whether the article should be examined in committee or in sub-committee.

DR. MARTIUS *(Germany)* said he would not press the point.

SIR SYDNEY CHAPMAN *(British Empire)* said that his delegation was prepared to accept the first paragraph of Article 17 but not the second, which would permit discrimination.

The least that could be asked of the countries that ratified the Convention was that they should not discriminate against each other : he therefore urged that only paragraph 1 should be retained. He thought, however, that a sub-committee should be set up to examine all the most-favoured-nation clauses in the Convention, which were extremely complicated.

M. BRUNET *(Economic Committee)* said that, in view of the liberal tendencies by which the various delegations were inspired, he thought that paragraph 1 contained its own defence. He would be inclined to criticise the second paragraph on the same lines as Sir Sydney Chapman had done. He thought it would be useful to appoint a sub-committee to examine, for each article, the consequences of each of the exceptions to which reference was made.

SIR SYDNEY CHAPMAN *(British Empire)* suggested that the instructions given to the sub-committee should be drafted in very wide terms.

DR. MARTIUS *(Germany)* supported this suggestion. Furthermore, he thought that it would be useful if the various delegations stated their points of view in plenary committee.

M. MATSUSHIMA *(Japan)* said that his delegation had proposed to add the following words to the second paragraph :

> " . . . provided, however, that any exceptions accorded to the nationals of a particular country shall not involve discrimination detrimental to the interests of the nationals of a third party."

His delegation would, however, accept the reference of the question to a sub-committee.

M. DE SCHLICK *(Hungary)* observed that the system proposed in the article was a combination of national treatment and most-favoured-nation treatment. He was not satisfied with this system.

Being requested by the Chairman to make a definite proposal, M. de Schlick urged that paragraph 1 should be struck out.

M. LINANT DE BELLEFONDS *(Egypt)* recalled that he could not concur in the text except within the limits of the Protocol *ad* Article 17 suggested by his delegation (Annex D, 1).

M. DE SCHLICK *(Hungary)* said that, when he had been asked to make an immediate proposal, the only possible course open to him had been to propose the omission of the first paragraph. He had, however, originally intended to refer the article to the sub-committee.

M. SANDSTROEM *(Sweden)* thought that the best method would be to refer the whole article to the sub-committee for a general study.

SIR SYDNEY CHAPMAN *(British Empire)* proposed that Articles 17 and 18 and the first paragraph of Article 19 should be referred to the sub-committee after a general discussion, the purpose of which would be to give the sub-committee certain guiding principles.

DR. MARTIUS *(Germany)* proposed that the second paragraph of Article 19 should also be referred to the sub-committee which should be asked to study Articles 17, 18 and 19 and to make a report at the next meeting.

THE CHAIRMAN put this proposal to the vote.

The proposal was adopted.

M. MATSUSHIMA *(Japan)* observed that the object of the British amendment to the second paragraph of Article 17 (Annex D, 1) was to obviate any prejudice to the application of the most-favoured-nation treatment. If the sub-committee were to decide against this provision, he would suggest that it should at any rate take into consideration the Japanese amendment so as to prevent the removal of this stipulation from involving measures of discrimination against the nationals of a third State.

DR. MARTIUS *(Germany)* said that, generally speaking, his delegation took the point of view adopted by the Economic Committee. It thought that the most-favoured-nation clause, modified by certain provisions as to reciprocity, was preferable to the most-favoured-nation clause pure and simple.

Further, it intended to submit an amendment to the second paragraph of Article 19.

THE CHAIRMAN said that all amendments submitted in writing and presented during the meeting would be referred to the sub-committee.

SIR SYDNEY CHAPMAN *(British Empire)* recalled that the Convention laid down that national treatment implied the unconditional granting of most-favoured-nation treatment. He agreed with Dr. Martius that every effort should be made to grant national treatment in all cases where this was possible. In certain cases, however, it was not possible to grant it, and this made it desirable to have a most-favoured-nation clause. For instance, in regard to persons, each country remained perfectly free to make certain discriminations against the nationals of another signatory power. Similarly, in regard to companies, the Convention contained no most-favoured-nation provisions, so that a High Contracting Party could grant special treatment to a company of another party and withhold it from a company of a third party. The British Government thought that this situation was most unfortunate, especially since the Convention did not mark any real progress but might be confined more or less to stabilising the existing situation. The British Government, therefore, thought that it was essential to go further and to say that the countries which ratified would not make any discrimination as between themselves. The question was one of primary importance to business interests, whose principal demand was that they should suffer no disadvantages in competition with other foreigners. For this reason the British delegation had submitted an amendment to the effect that, as between the countries which ratified, the most-favoured-nation clause should be applied in all matters covered by the Convention. He thought that the sub-committee should divide the problem into two parts : first, the treatment of persons, companies and products after admission to a country, and, secondly, the ultimate application of the most-favoured-nation clause in regard to admission.

Great Britain attached very particular importance to most favoured treatment, which had been one of the guiding principles of her commercial policy for the last century.

M. NEDERBRAGT *(Netherlands)* explained the system in his country. Generally speaking, the most-favoured-nation clause was applied in the widest possible sense and unconditionally, even in the colonies. One exception was allowed. It was intended to safeguard the Geneva Conventions by preventing certain countries which did not intend to sign these Conventions from profiting from them, nevertheless, owing to the application of the most-favoured-nation clause. Such, provisionally, was the view of the Netherlands Government. If the Economic Committee, which had not yet taken up a position, decided otherwise, the Netherlands Government would concur.

In his opinion, another exception should be made for questions which, owing to their nature, demanded reciprocity.

This principle was admitted in Article 18, paragraph 2 (*b*). Reciprocity was essential throughout the whole fiscal domain, as in the whole domain of international private law. For this reason, the Netherlands Government had proposed an amendment to Article 9.

M. DE SCHLICK *(Hungary)* suggested that the sub-committee should study the question whether, instead of combining the two systems, it would not be better to say what were the provisions

to which the application of the most-favoured-nation clause should relate, and what were the provisions in which equality of treatment should be applied. It should be stated explicitly that questions of international private law were special questions which were governed by bilateral and collective treaties and were to be expressly excluded from the Convention.

M. PERASSI *(Italy)* was unable, for the moment, to give his opinion on the question of substance, but observed that the unconditional and universal granting of the most-favoured-nation clause considerably extended the scope of Article 17.

He had urged that the questions in which the most-favoured-nation clause did not operate should be defined. In principle, he agreed with his colleagues in thinking that the Convention did not cover questions of international private law, but care should be taken to obviate bringing under this heading questions which were not within the field of international private law in the strict sense of the term.

He reminded the Committee that there were bilateral and multilateral conventions concerning security for costs and judicial assistance. It seemed obvious that the clause should operate in respect of both these matters.

In Article 18, paragraph 2 seriously limited the scope of paragraph 1. He wondered whether the freedom of various countries to conclude special agreements between themselves would not be seriously prejudiced if these agreements were compulsorily brought within the scope of the most-favoured-nation clause. He thought it would be difficult to adopt a provision of this kind.

M. SANDSTROEM *(Sweden)* recalled that there were two questions : first, that of defining the scope of the clause, that was to say, interpreting the proposed undertaking to grant most-favoured-nation treatment. This was a fundamental question. It involved the delimitation of the field of application, that was to say, of the matters in which the most-favoured-nation clause would operate, once it had been defined. In this matter, practical necessities would have to be taken into account.

The International Economic Conference, in May 1927, had made the following recommendation :

> "(1) The Conference therefore considers that the mutual grant of unconditional most-favoured-nation treatment as regards Customs duties and conditions of trading is an essential condition of the free and healthy development of commerce between States, and that it is highly desirable, in the interest of stability and security for trade, that this treatment should be guaranteed for a sufficient period by means of commercial treaties.
>
> "(2) While recognising that each State must judge in what cases and to what extent this fundamental guarantee should be embodied in any particular treaty, the Conference strongly recommends that the scope and form of the most-favoured-nation clause should be of the widest and most liberal character and that it should not be weakened or narrowed either by express provisions or by interpretation."

As a result of these recommendations the Economic Committee had decided to study the question of the application of the most-favoured-nation clause only in regard to Customs duties. Its application in other matters was completely new ground which would have to be studied carefully.

The British delegation had explained its attitude in regard to the application of the clause in the matter of the treatment of foreigners and had pronounced quite definitely in favour of the widest possible application. The Swedish delegation welcomed with pleasure this contribution to the elucidation of the problem, but was unable to accept the British proposal without reservations.

He had proposed that Article 18, paragraph 1, sub-paragraph 2, should be struck out (Annex D, 1). The other questions he would discuss in the sub-committee. He accepted at once, however, Sir Sydney Chapman's proposal as to procedure.

DR. MARTIUS *(Germany)* thought that these general questions were of paramount importance. The British proposal (Annex D, 1) was for a stipulation that the most-favoured-nation clause covered all questions regulated by the Convention with certain exceptions. What were these exceptions ? The Hungarian delegate had raised the question whether the system chosen by the Economic Committee was the most appropriate. There were of course a number of systems, among which a choice could be made. In any case, Article 17 merely said that national treatment implied the use of the most-favoured-nation system. The question whether it implied other systems was entirely open.

Reverting to Sir Sydney Chapman's observations, he would point out that there was nothing to prevent countries which had concluded bilateral treaties from selecting the clauses contained in such agreements. The present draft had the advantage that it did not in any way hamper the liberty of the States.

There was one last problem which was raised in the Economic Committee's commentary (" Brown Book ", page 61) and was referred to in the Portuguese amendment to Articles 17 and 18 (Annex D, 1). The question was that of regional agreements. He wished to say frankly that the Economic Committee's commentary approached this problem in far too narrow a spirit and that the Portuguese amendment was conceived in far too wide a spirit.

It was perfectly clear that regional agreements were only admissible in so far as they did not hamper the rights of the other parties and provided that they remained open for their adhesion.

M. SCHUMANS *(Latvia)* observed that Article 18 made provision for *two reservations* in regard to the application of most-favoured-nation treatment. He drew attention to the special

situation of Latvia, which was in negotiation with other countries, in particular Estonia, with a view to the conclusion of a Customs union. All the Latvian treaties of commerce laid down that the stipulations relative to the most-favoured-nation clause did not apply to any exemptions, privileges and special immunities which might apply to Estonia and Lithuania. Article 18, however, did not contain any reservation which would be adequate to cover cases of this kind. He therefore urged that, in studying Article 18, the sub-committee should examine in particular the case of economic Customs unions.

M. NEDERBRAGT *(Netherlands)* said that his Government attached great importance to the most-favoured-nation clause.

He wished to put two questions to Dr. Martius. First, did the German delegation think that, as a general rule, no exceptions should be allowed to the most-favoured-nation clause ? Secondly, did the German delegation agree with the Netherlands delegation in admitting two groups of exceptions in regard to the Geneva Conventions, fiscal conventions of international private law and similar instruments.

The Netherlands never asked for most-favoured-nation treatment as an exception for frontier traffic, but always granted it if requested to do so.

Dr. MARTIUS *(Germany)* hoped that his delegation would be in full agreement with the Netherlands delegation, if not on points of detail, at any rate on principles. The details could be settled later.

M. MATSUSHIMA *(Japan)* said that his delegation was in favour of the application of the most-favoured-nation clause. For this reason he urged the omission of Article 18, paragraph 2, with the object of obviating any discrimination.

M. DINICHERT *(Switzerland)* thought that the ideas which had been expressed might now be reduced to two fundamental considerations. He would therefore add nothing to the discussion but wished to obviate any misunderstanding. Sir Sydney Chapman had advanced the idea that the Sub-Committee might divide its work into two parts : first, most-favoured-nation treatment as applied to persons, companies and goods after admission, and second, most-favoured-nation treatment in the matter of admission. In so far as concerned the admission of companies, he agreed with Sir Sydney Chapman, but in regard to the admission of foreigners, he could not agree with him, since it had been categorically decided that the admission of foreigners was to remain outside the present Convention, and, if this principle were again to be questioned, he would have to make certain formal reservations.

M. FLORES DE LEMUS *(Spain)* said that the Portuguese amendment covered only very special and limited cases which were, however, of vital political importance, so that they could not be ignored without creating uncertainty as to the adherence of Spain to the Convention. There were, for example, conventions which were intended to provide against disputes relating to territorial waters, and the provisions of these conventions would not be applicable to other countries, even upon a reciprocal basis.

M. d'AVILA LIMA *(Portugal)* added that his amendment was in conformity with the clause contained in the great majority of Portuguese treaties. The point at issue was that of special reservations which were peculiar to Portuguese policy in regard to Spain and Brazil. If the amendment were not accepted, his delegation would have to make an explicit reservation.

M. ENGELL *(Denmark)* was able to accept the Portuguese amendment concerning regional agreements, and hoped that the sub-committee would deal with this question, as it was of interest to a number of countries.

The CHAIRMAN replied that the Portuguese amendment concerning regional agreements would also be referred to the sub-committee.

There remained for discussion the proposal by M. Dinichert that the sub-committee's work should be limited to the application of the most-favoured-nation clause to companies alone.

M. DINICHERT *(Switzerland)* said that his argument was founded on Article 6 which he had regarded as adopted. Article 6 laid down that the question of the admission of foreigners lay outside the matters to be settled by the present Convention. It was therefore impossible to regulate a subject which had been expressly and formally excluded from the Convention.

The CHAIRMAN recalled that Committee D had to deal with Article 17 and the following articles and not with Article 6. Article 17 stipulated that the provisions of Part I implied the unconditional granting of most-favoured-nation treatment. It therefore concerned persons, and it would be impossible to restrict the point to be examined by the sub-committee, which, however, might adopt M. Dinichert's point of view.

Sir Sydney CHAPMAN *(British Empire)* did not think it would be difficult to meet M. Dinichert if it were clearly understood that the sub-committee could not deal with any problem which had been placed outside the scope of the Convention by any of its articles.

M. BRUNET *(Economic Committee)* pointed out that the most-favoured-nation clause would operate in respect of Part II to the extent in which Part II referred to the provisions contained in the preceding articles.

THE CHAIRMAN did not agree. Article 17 referred to Part I and not to Part II, which related to companies. It would therefore be for the sub-committee to see whether Part II should be brought within the terms of the article.

M. DINICHERT *(Switzerland)* recalled the provisions of Article 6. The final place of that article in the Convention had been held over, since it was to come within the general reservations. Articles 17 and 18 therefore could not cover this fundamental point of the admission of foreigners. He had no intention of laying down any conditions. He merely wished to point out that it was impossible to impose most-favoured-nation treatment in a matter which had been expressly left outside the Convention. If the Chairman could not consent to the limitation of the sub-committee's terms of reference, he would not insist, but he made the most explicit reservation as to the report to be submitted by the sub-committee.

DR. MARTIUS *(Germany)* wished to reassure his colleagues. Nobody had any intention of raising the question of Article 6 and of reopening that problem.

M. DE NAVAILLES *(France)* thought that it would be easy to achieve agreement. If a general provision relating to the most-favoured-nation clause were introduced, Article 6, which laid down a special provision, would obviously form an exception to the general provisions. There was accordingly no possibility of error.

M. DINICHERT *(Switzerland)* said that he was reassured by this statement.

THE CHAIRMAN said that the sub-committee would accordingly examine Articles 17, 18 and 19 in the light of the general discussion.

3. **Appointment of a Sub-Committee to consider Articles 17, 18 and 19.**

The Committee decided that the Sub-Committee should consist of delegates from the following countries : Germany, Great Britain, Sweden, France, Hungary, Switzerland, Italy, Spain. The Chair would be taken by M. Ito (Japan).

4. **Chapter II : Articles 20 and 21.**

DR. MARTIUS *(Germany)* emphasised the importance of this Chapter. Its relation to Article 4 would have to be determined.

SIR SYDNEY CHAPMAN *(British Empire)* drew attention to the proposals for an additional article submitted by his delegation (Annex A, 1). This article might be placed after Article 21. If it were not inserted, certain difficulties might arise in regard to the obligations of the parties in international law and to the application of the provisions of treaties and agreements which afforded more favourable treatment than that provided for in the Convention.

DR. MARTIUS *(Germany)* said it had been proposed that a small sub-committee of three should study Chapter III. This sub-committee might get into touch with the Sub-Committee of Jurists, with Committee A and with the Drafting Sub-Committee of Committee C on the question of companies.

THE CHAIRMAN noted that Article 20 referred to guarantees of equality as laid down in the previous articles. It was therefore difficult to study that article without knowing what these guarantees might be.

Sub-Committee of Experts.

DR. MARTIUS *(Germany)*, M. DE NICKL *(Hungary)* and M. PERASSI *(Italy)* supported the proposal to set up a sub-committee of experts.

The Committee agreed.

M. LAFER *(Brazil)* thought that a general discussion would in any case be necessary, in order to guide the Sub-Committee.

M. LINANT DE BELLEFONDS *(Egypt)* said that the British amendment, proposing the insertion of new articles, completely altered the spirit of the original text. He wondered, moreover, where these new articles would be inserted.

MR. BECKETT *(British Empire)* replied that the British proposal consisted of two new provisions which had been put forward at this stage owing to the fact that the first of them was in close relation with Article 21.

This question was referred to the Sub-Committee of Experts.

M. LAFER *(Brazil)* pointed out that certain delegations had called for the omission of Article 20. It was therefore impossible to take a decision at once on the draft amendment to that article.

THE CHAIRMAN replied that the proposal to omit the article might not be supported by the other delegations.

M. LAFER *(Brazil)* wished in these circumstances to justify his amendment for an addition to Article 20 (Annex D, 1).

The object of his amendment was to cover acts of unfair competition. The law in the various countries provided severe penalties for acts of unfair competition. The Brazilian delegation held that such acts, and, in particular, dumping, were no less reprehensible in the international field and that the Convention should outlaw them internationally. The object of the amendment was therefore to leave the States, which were the victims of dumping, free to take such measures as they thought fit wherewith to defend themselves.

M. BRUNET *(Economic Committee)* recalled that the question of dumping and anti-dumping measures had been contemplated by Committee B, which had come to the conclusion that these measures were closely connected with the question of Customs and that they consequently lay outside the Convention.

M. LAFER *(Brazil)* said he had not followed the proceedings of Committee B but he had observed that certain measures taken for combating dumping were slow in effect and that there were other stronger and more rapid methods. It would be useful if all countries were left free to take energetic measures, including, in particular, differentiation as to internal taxes in conformity with the special situation in which they were placed.

M. NEDERBRAGT *(Netherlands)* said that the question of dumping was a very important one for his country which now and then suffered from it. He cited the case of a commodity which paid an excise tax in the interior of the country. When this commodity was exported to another country, the latter country objected that the price asked was lower than that in force in the Netherlands and applied to the commodity anti-dumping measures. The answer was that the difference of price was explained by the excise, but the other country maintained its objection. This example showed the complexity of the problem. The definition of the term " dumping " was so vague that a special conference would be required to deal with it. Furthermore, any question of dumping always involved the application or non-application of the most-favoured-nation clause.

He accordingly proposed that the question of dumping should be examined by the Sub-Committee which was to study the most-favoured-nation clause.

SIR SYDNEY CHAPMAN *(British Empire)* said that he did not interpret Article 20 as prohibiting the measures to which the Brazilian delegate referred. In his opinion it would suffice if the Protocol stated that Article 20 did not prejudice any measures which the High Contracting Parties might take against dumping.

M. LAFER *(Brazil)* was not asking for a study of the question, which would be impossible at the present time, but he demanded that, at this Conference, at which the countries were being asked to undertake to give a very wide measure of equality of treatment to foreigners, all countries should be granted the right to take such measures as they might think necessary against dumping.

M. PERASSI *(Italy)* was unable to accept M. Lafer's proposal for reasons of substance, namely, that the question of dumping was very difficult to solve, and also for a reason of form, because this question came within the jurisdiction of Committee B.

M. D'AVILA LIMA *(Portugal)* supported the Brazilian delegate.

M. SANDSTROEM *(Sweden)* urged that the problem should be referred to the Sub-Committee which was studying the most-favoured-nation clause.

THE CHAIRMAN observed that the Committee had before it a perfectly reasonable proposal, namely, the reference of the question of dumping to a small sub-committee, or alternatively to the Sub-Committee which would study Articles 17, 18 and 19.

M. NEDERBRAGT *(Netherlands)* pressed that the question should be referred to the Sub-Committee which was to study the problem of the most-favoured-nation clause. It would perhaps be possible to amalgamate the two sub-committees.

THE CHAIRMAN replied that this would make too large a sub-committee.

M. NEDERBRAGT *(Netherlands)* proposed that, in these circumstances, the same Sub-Committee should be entrusted with the examination of Articles 17-21, especially since it would be dangerous to split up the examination of these articles.

The proposal of M. Nederbragt was adopted by eight votes to four.

The Sub-Committee was instructed accordingly to study Articles 17-21, and to submit a report at the next meeting.

SECOND MEETING

Held in Paris on November 26th, 1929, at 3.30 p.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

5. Examination of the Articles of the Convention : Chapter III, Article 22.

DR. MARTIUS *(Germany)* submitted the German proposal (Annex D, 1) to the effect that a small sub-committee should be appointed to consider the introduction of an arbitration clause into the Convention.

M. DE BEREZELLY *(Hungary)* said that Hungary desired an express declaration on the part of the contracting parties that they would regard the decisions of the Permanent Court of International Justice as final and without appeal, and would undertake to execute its decisions.

M. POZNANSKI *(Poland)*, referring to the terms of the article, said that one of the main questions which the proposed sub-committee would have to discuss would be whether the words " the interpretation or application of this Convention " should be retained. The Polish delegation doubted whether it would be really practical to stipulate that any disputes in regard to the application of the Convention should be submitted to the Permanent Court as well as disputes regarding its interpretation. The procedure involved in bringing a case before the Court was costly and lengthy. The Court should be used therefore only to interpret the Convention. Otherwise it might be overwhelmed with work.

M. BRUNET *(Economic Committee)* observed that the words "interpretation or application of the Convention " were based on the usual formula used for the arbitration clause in all plurilateral and bilateral conventions. The suppression of the word " application " would be dangerous, as it might give the impression that Article 22 had a less extensive scope than the usual clauses of arbitration.

M. DE NAVAILLES *(France)* had no difficulty in accepting the provisions of Article 22. He would have preferred some other machinery for arbitration than the Permanent Court, whose proceedings were lengthy and costly. The usual procedure was to establish provisions whereby one or two arbitrators could be appointed to settle disputes between States. There was no reason, he thought, to depart from the usual practice in this instance.

M. NEDERBRAGT *(Netherlands)* submitted the text of the amendment proposed by his delegation :

> " The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the Parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing Convention, or in virtue of a special agreement to be concluded, the dispute is settled by arbitration or any other means."

The amendment was designed to abolish any difference between States which had adhered to the Statute of the Permanent Court and those which had not. The Netherlands delegation had taken the Geneva Convention on the Traffic in Opium and other Dangerous Drugs of 1925 as a model.

DR. MARTIUS *(Germany)* was prepared favourably to consider the proposal of the Netherlands delegation, which he much preferred to that in the " Brown Book ". Thea mendment, however, did not—in his opinion—cover all cases. It might be useful to follow the procedure laid down in Article 14 of the draft Convention on the Tariff Truce which had been elaborated by the Economic Committee. The main difficulty was to determine what were and what were not justiciable disputes.

THE CHAIRMAN thought that there was no necessity to submit Article 22 to a sub-committee as the German delegation had suggested. It seemed that the text proposed by M. Nederbragt would prove acceptable to the majority of the Committee. The position in regard to the article

appeared to be as follows : The Polish delegation wished to restrict the intervention of the Permanent Court to the interpretation of the Convention ; the German delegation thought that only legal disputes should be referred to the Permanent Court ; the Hungarian delegation wished words to be introduced to the effect that the decision of the Court must be final and irrevocable, and the French and Netherlands delegations preferred to establish the ordinary machinery for arbitration, with a proviso that States should only have recourse to the Court when all else had failed.

DR. MARTIUS *(Germany)* said that the German proposal was not restrictive, but was designed to define the class of disputes which could be settled by the Court. As far as he was concerned, he could accept the Netherlands proposal in principle. It required very careful examination, however, from the drafting point of view.

M. HENNIN *(Belgium)* said that a necessary distinction must be made between those States which had adhered to the Court without reservation, *i.e.*, those which had signed the Optional Clause and those which had not adhered to the clause. The provisions of the second part of Article 22 of the Convention applied only to the latter class of States, for the former were bound by the terms of the Optional Clause to submit all disputes to the Permanent Court.

Whether the Permanent Court was or was not competent to deal with questions of fact as well as of law was outside the terms of reference of the present Conference. Any dispute on this point must be settled either by the Court itself or by the signatories of its Statute.

M. NEDERBRAGT *(Netherlands)* urged the adoption of his amendment on the grounds that it simplified the procedure to be adopted for arbitration. It laid down, as a general rule, that appeal should be had to the Permanent Court, but that this procedure should not be regarded as exclusive. The Polish representative had maintained that recourse to the Court was costly and lengthy. In many treaties to which the Netherlands was a party, a clause was to be found providing for ultimate appeal to the Permanent Court, but he agreed in thinking that it would be unwise to invoke the Court in very simple cases frequently arising regarding the interpretation of a Convention for which a simpler procedure was perfectly adequate. The fact, however, that the Netherlands insisted on inserting a reference to the Court in her commercial treaties showed that she did not consider that institution was too unwieldy for the purpose. The procedure of a the Court could be hastened, both by means of what was known as the summary procedure and by the exclusion of verbal pleas. Further, the cost of the proceedings was borne by the parties, which meant that trivial disputes would not be submitted to the Court unless the parties were prepared to go to considerable expense. The Court should therefore be mentioned as the regular procedure, but a stipulation should be inserted in the article to the effect that the parties to the Convention could adopt another procedure if they so desired.

M. DE NAVAILLES *(France)* agreed with M. Nederbragt. Article 22 would cover the case of all States.

If recourse to the Court could be made summary, and not costly, States would tend to use it.

M. POZNANSKI *(Poland)* said that his suggestion to confine recourse to the Court to questions of interpretation had not been in the nature of a definite proposal. He put it forward solely for practical reasons. The Convention was a plurilateral treaty, and would inevitably give rise to a large number of disputes. Must they all be brought before the Permanent Court ? He thought this to be impossible, for the Court would be overburdened, and delay would therefore be inevitable. The representative of the Netherlands had maintained that recourse to the Court was not costly if the summary procedure were followed. This might be true, but, nevertheless, for trivial disputes the cost would be inevitably higher than was justified. A much simpler and quicker form of arbitration in regard to the application of the Convention should therefore be provided.

SALIH ZEKAI BEY *(Turkey)* said that Turkey had not yet adhered to the Statute of the Permanent Court. He would refer the Committee to the amendment proposed by the Turkish delegation (Annex D, 1).

M. ITO *(Japan)*, Rapporteur, saw no reason for the proposed change. The method of providing for arbitration was traditional and obviously the consent of States to that procedure was necessary. There was no need to say so specifically in the article.

SALIH ZEKAI BEY *(Turkey)* said that it would be better, nevertheless, to state this fact in the article, so as to avoid all possible misunderstanding.

MR. BECKETT *(British Empire)* said that the proposal of the Netherlands met most of the views expressed by the various delegations which had spoken. It formed, he thought, an excellent text for the basis of the article, and was much clearer than the text in the " Brown Book ". The

British delegation was quite ready to accept the Netherlands proposal in principle. Possibly it might meet the point raised by the delegate of Turkey if the article concluded as follows :

" Unless in application of an existing Convention, or in virtue of a special agreement to be concluded, the dispute is settled by arbitration or any other means ".

He hoped that the Polish representative would not insist upon the deletion of the word " application ". The phrase " the interpretation or application of the present Convention " was constantly employed in all treaties, and, in practice, there was not much difference between the two expressions. Any question of application was really one of interpretation, and *vice versa*. The fears expressed that recourse to the Court would be costly and lengthy were, he thought, groundless. The article as drafted by the Netherlands delegation provided for other means of settling disputes, and he felt sure that the good sense of Governments could be relied upon not to bring small and unimportant details before the Permanent Court, but to settle them by other and speedier means.

While there was no objection in principle to stating in the article that the decision of the Court should be final and irrevocable, as was desired by the Hungarian delegation, he saw no necessity for such a phrase, as this idea was implicit and obvious. It was, moreover, expressly stated in Article 60 of the Statute of the Court. To insert it, therefore, in the present article would neither add nor subtract anything.

M. PERASSI *(Italy)* referred to the observations of the Belgian representative, who had pointed out that the States which had accepted the optional clause of the Statute of the Court would not come under the provisions of Article 22, as, according to the terms of the Optional Clause, they would in every case have to resort to the Permanent Court. He could not entirely agree with this view. First, even in relations between States which had accepted the Optional Clause of the Statute without reservation, Article 22 of the Convention which the present Conference was drafting might, as certain delegations had proposed, include certain explanatory provisions concerning the character of the disputes for which the jurisdiction of the Court would be compulsory. Secondly, adherence to the Optional Clause did not exclude States, which had adhered to it, from agreeing between themselves to submit a dispute to arbitration, or even, under a clause inserted in a special convention to resort to other measures for the settlement of any disputes which might arise between them concerning the interpretation or application of the convention. For the same reasons, the provisions of Article 22 of the present Convention concerning the jurisdiction of the Permanent Court would in no way prejudice any special conventions concluded between the different States for the settlement of their disputes.

He would lay special stress on the fact that Article 22 as drafted in the " Brown Book " would involve two very different systems for the settlement of disputes between the contracting parties. It made a clear distinction in the case of a dispute if one of the parties had not adhered to the Statute of the Court. According to the provisions of the first system, the jurisdiction of the Court was compulsory in the sense that, when a dispute between two States could not be settled by diplomatic means, it might be submitted to the decision of the Court by request of one of the parties to the dispute. According to the second system, on the contrary, embodied in the last part of Article 22, a dispute between two States could not be subjected to a procedure involving a compulsory decision unless the two parties agreed to accept this procedure in advance. He did not think it was acceptable to provide for disputes between States one of which was not a signatory of the Statute of the Court a system which would not ensure a compulsory settlement of such disputes, and which would make it depend upon a previous agreement of the parties whether a final decision could be obtained. It was essential that all parties to the Convention should be placed in this respect upon the same footing.

M. DINICHERT *(Switzerland)* said that the matters raised by Article 22 were very serious and complicated. The general principle, however, was clear. All parties to the Convention desired to settle disputes in regard to it by means of arbitration. A form of words must therefore be inserted in the article which would mean the same for every State, and lay the same obligations upon them. He could not agree, therefore, with M. Perassi that certain kinds of disputes should be reserved for the national courts of the parties and should not be submitted to arbitration. To adopt such a system would be to put the contracting parties on a footing of inequality. Even if certain disputes were reserved for the national legislation of States, recourse could still be had to arbitration, for, in that case, the arbitrator would be bound to apply the legislation stipulated.

It was quite true that Article 22 was based on Article 14 of the Convention of 1927 regarding the International Relief Union, which meant that States which had adhered to the Statute of the Permanent Court were bound to have recourse to that Court, and those which had not were bound to have recourse to other means of arbitration. The same idea was contained in the Netherlands proposal. The last sentence, however, of that proposal seemed to him to create a difference of treatment between States which had adhered to the Court and those which had not, and, in his view, it was of the utmost importance for the obligations assumed in Article 22 to be equal for all the contracting States. He thought, therefore, that a Sub-Committee should seek to draft a text in this sense. The representative of the Netherlands had referred to the Opium Convention of 1925. That Convention contained a very perfect example of an arbitration clause covering the case of States which had adhered to the Court and those which had not.

M. BRUNET *(Economic Committee)* drew the attention of the Committee to the arbitration clause which the Economic Committee had inserted in the draft Convention which had been

prepared for the Conference on the Customs Truce. The text of the clause had been approved by the Legal Section of the Secretariat, and it seemed to him that it might be adopted by the Committee.

M. NEDERBRAGT *(Netherlands)* agreed with M. Brunet. He hoped that the Polish delegate would not press his proposal that only disputes concerning the interpretation of the Convention should be submitted to the Permanent Court. He did not think that there would be any risk that the Court would be overburdened with work, for small disputes would not be brought before it but would be settled by other means. In any case, individuals could not appear before the Court but only States.

In regard to the observations of M. Dinichert, he was convinced that there was no uncertainty or omission in the proposal of the Netherlands delegation. If it were adopted, the High Contracting Parties would be bound to follow one of two methods ; either recourse to the Court or recourse to some other means of arbitration. In both cases, however, arbitration would have to be employed.

M. DE NAVAILLES *(France)* agreed in principle with the amendment proposed by the Netherlands delegation.

M. LYCHOWSKI *(Poland)* said that the Polish delegation, as a result of the observations made by various members of the Committee, was prepared to withdraw the suggestion that the words " application of the Convention " should be omitted from the article.

M. DE NAVAILLES *(France)* proposed that the final sentence of Article 22, as proposed by the Netherlands delegation, should read " in virtue of an agreement (*d'un commun accord*) between the Parties, the dispute is settled by arbitration or any other means ".

DR. MARTIUS *(Germany)* and M. NEDERBRAGT *(Netherlands)* supported this amendment.

M. DINICHERT *(Switzerland)* enquired whether all contracting parties would be obliged by the terms of the article as drafted by the Netherlands delegation to have recourse to the Court.

M. NEDERBRAGT *(Netherlands)* replied in the affirmative.

M. DINICHERT *(Switzerland)* said that this was the first occasion that such a stipulation had been inserted in a multilateral convention. He doubted whether it was in accordance with the terms of the Statute of the Court. It was an innovation, and the Committee must very carefully consider whether or not it should be adopted.

M. PERASSI *(Italy)* said that the Permanent Court was accessible, not only to States which had ratified its Statute, but to any other State. There would accordingly be no legal difficulty in accepting the text proposed by the Netherlands delegation. There were precedents for recognising the competence of the Court even in the case of States which had not adhered to its Statute. There was, for example, the case of the International Labour Conventions to which States not Members of the League of Nations were parties. Germany, for instance, before becoming a Member of the League of Nations, had adhered to several International Labour Conventions containing a clause of this character.

SALIH ZEKAI BEY *(Turkey)* was unable to agree with the Netherlands proposal. Turkey could not sign the Convention if the article were drafted in that form, for this would mean that States which had not adhered to the Permanent Court would none the less be required to appear before it. He would propose the adoption of the text in the " Brown Book " together with the small amendment which he had proposed for the last sentence (Annex D, 1).

M. DINICHERT *(Switzerland)* warned the Committee that it might be dangerous to lay down that States should compulsorily come before the Permanent Court even in cases of disputes with a State which had not adhered to its Statute. As was well known, Switzerland was in favour of compulsory arbitration either by means of the Court or by some other means, but he did not think that recourse to the Court should be made compulsory in all cases. He would once more recommend the Committee to consider very carefully the arbitration clause in the Opium Convention. He would urge for practical and other reasons that States not parties to the Court should not be compelled to use it. No unnecessary obstacles should be placed in the way of States which wished to sign the Convention.

THE CHAIRMAN proposed that instructions should be given to the Drafting Committee to introduce a sentence into the text proposed by the Netherlands delegation covering the cases of countries not members of the Court and providing that they might have recourse to another form of arbitration.

M. HENNIN *(Belgium)* would refer to the difference in the position of States which had signed the Optional Clause and States which had not. A second paragraph would in his view have

to be attached to the article laying down that the first part of the article concerned only States which had not adhered to the Optional Clause. In the case of States which had adhered to that clause the provisions of Article 22 would not apply.

THE CHAIRMAN suggested the following addition to the article to meet M. Hennin :

" Nothing in the present Article can affect the obligations arising out of Article 36 of the Statute of the Permanent Court of International Justice."

M. PERASSI *(Italy)* said he could not accept this amendment. He could not agree that a State which had signed the Optional Clause should on that account be deprived of its freedom to adhere to conventions providing for other forms of arbitration. Article 36 of the Statute of the Court could not be interpreted as meaning that all the States which adhered to it must refer in every case to the Permanent Court for the settlement of a dispute. Such States remained free to conclude agreements between themselves under which a certain dispute or category of possible disputes might be settled by other forms of procedure than resort to the Permanent Court.

M. ITO *(Japan)*, Rapporteur, agreed. Countries which had adhered to Article 36 of the Statute of the Court had not thereby undertaken unreservedly to use the Court on all occasions. He would point out that many reservations were attached to the adherence of States to that clause. There was, in many instances, a time-limit and there were other reservations. The clause could not therefore be said either to be definitely or finally binding upon those States which had adhered to it. In his view, such States had a perfect right to conclude other arrangements providing for arbitration if they so desired.

MR. BECKETT *(British Empire)* hoped that M. Hennin would not press for the insertion of the paragraph which he desired. Such an addition to the text would merely cause confusion. He would point out that Belgium had been one of the first States to adhere to the Optional Clause but that fact had not prevented her from subsequently concluding a large number of arbitration treaties. He agreed with M. Perassi and M. Ito that the Optional Clause did not mean that a State was unable to make other arrangements in regard to arbitration if it so desired.

M. HENNIN *(Belgium)* was unable to agree and pressed for the inclusion of a paragraph covering the case of States which had signed the Optional Clause. Though a number of those States had made reservations, as M. Ito had pointed out, others had not done so. The question of the position of States which had signed the Optional Clause had been made the subject of long discussions at the fifth and sixth Conferences at The Hague.

M. DE NAVAILLES *(France)* said that, while the adoption of the proposal of M. Hennin would not, he thought, involve running any risk, it was not necessary, for the reasons given by Mr. Beckett and other members. By the terms of the Netherlands proposal, if a State cited another State to appear before the Court, the second State could not refuse to do so ; but, if two States desired to set up machinery for arbitration in case of disputes between them concerning the Convention, they were perfectly free to do so and this did not mean that they would any the less be compelled to have recourse to the Court if they were cited.

The Committee rejected the proposal of M. Hennin.

M. DE NICKL *(Hungary)* returned to the Hungarian proposal to which his colleague, M. de Berezelly, had referred. Words should be inserted in the article to the effect that the decision of the Permanent Court must be regarded as final and irrevocable.

DR. MARTIUS *(Germany)* pointed out that this was unnecessary. Article 60 of the Statute of the Court contained the provision in question.

THE CHAIRMAN said that it must be made clear that, in cases where States did not have recourse to the Court but to another form of arbitration, the award thus obtained must be regarded as final.

M. ITO *(Japan)*, Rapporteur, in reply to M. de Nickl, said that it would be for the parties to the dispute, when setting up the machinery for arbitration, to agree that the award given should be regarded as final and irrevocable.

M. DE NICKL *(Hungary)* consented to withdraw his amendment.

M. NEMOURS *(Haiti)*, on behalf of the delegations of Venezuela and Cuba, proposed the addition of the following words to Article 22 :

" The provisions of the present article may in no case affect the principle that disputes between a State and foreign nationals must be submitted to the decision of the former's Courts of Justice " (Annex D, 1).

The object of this amendment was to put an end to an unfortunate practice whereby cases pending before the courts of certain Latin-American countries were, on occasion, removed from those courts owing to the summary intervention of the Government of one of the parties to the dispute, which brought diplomatic pressure to bear to the detriment of the administration of justice.

THE CHAIRMAN pointed out that the proposed amendment would greatly change the nature of the article.

M. NEMOURS *(Haiti)* replied that the object of the amendment was solely to protect the courts of certain Latin-American countries.

DR. MARTIUS *(Germany)* was unable to understand the scope of the amendment. He suggested that the delegations which had presented it should discuss the matter with the Rapporteur.

MR. BECKETT *(British Empire)* concluded that the amendment was designed to make certain that all municipal remedies must be exhausted before diplomatic action were taken in the case of a dispute. This was a question which was upon the agenda of the next Hague Conference on International Law, and should, he thought, therefore be left to that Conference.

M. NEMOURS *(Haiti)* said that, as the matter concerned the present Convention, it could scarcely be settled by a forthcoming conference at The Hague, which might not be attended by the same States attending the present Conference.

M. ITO *(Japan)*, Rapporteur, said that, if the amendment meant that before a dispute could be taken before the Permanent Court, or submitted to another form of arbitration, all national means of dealing with it must have been exhausted, then this question, as Mr. Beckett had pointed out, was to be settled at the forthcoming Hague Conference.

M. NEMOURS *(Haiti)* explained that certain Latin-American States desired that Article 22 should cover only disputes between States. What they feared was a repetition of certain unfortunate practices in connection with their courts of justice. A national of a foreign State brought a case into the courts of a Latin-American State, and, before the case was settled, the matter was forcibly taken out of the hands of the court by diplomatic action on the part of the Government of the foreigner concerned. It was to prevent such abuses that his amendment had been designed.

M. DE NAVAILLES *(France)* thought that the fears expressed by M. Nemours were excessive. The cases in which a State would act in the manner described by the representative of Haiti were extremely rare. The Permanent Court was instituted to deal solely with disputes between States. It was true that such disputes might arise out of the disputes of private persons. In that class of dispute, however, the national courts of the contracting party would, in the first instance, be called upon to interpret the provisions of the Convention. It was only if their interpretation was unsatisfactory or unacceptable that the Government of the private person concerned would take the matter before the Permanent Court or before some other form of arbitration.

M. NEMOURS *(Haiti)* replied that, despite the explanations of the French delegate, cases had unfortunately arisen in which the arbitrary action of a foreign Government had prevented the courts of certain Latin-American countries from fulfilling their proper duties.

THE CHAIRMAN said that the question raised by M. Nemours would be submitted to the Drafting Committee, which would be asked to take it into consideration when deciding upon the final form of the article.

M. DE NICKL *(Hungary)* proposed the following text : " . . . provided that, for the settlement of such disputes, no form of international jurisdiction is contemplated ".

This amendment was submitted to the Drafting Committee.

Article 22, as proposed by the Netherlands delegation and amended by the French delegation, was adopted in the following form :

> " The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the Parties to the disputes, to the Permanent Court of International Justice unless, in application of an existing Convention or in virtue of an agreement between the Parties, the dispute is settled by arbitration or any other means."

The text was referred to the Drafting Committee to be put into its final form.

6. **Chapter IV, Articles 23 to 27.**

Articles 23 and 26, with their amendments, were submitted to the Drafting Committee.

M. DINICHERT *(Switzerland)*, referring to Article 27, said he believed that there was an amendment providing States with a possibility of denouncing the Convention only in respect of a particular State. It was important not to lose sight of this amendment.

M. DE NAVAILLES *(France)* said that the amendment in question had been submitted by the French delegation. It was designed as a measure of protection. A State could denounce the Convention in regard to another contracting party if that contracting party did not, in its view, grant proper treatment to its nationals.

M. DINICHERT *(Switzerland)* supported the French amendment.

THE CHAIRMAN said the Drafting Committee would take special note of it.

M. DE NICKL *(Hungary)*, in regard to Article 26, noted that at least six ratifications would be required before the Convention came into force. He proposed that the same procedure as that contained in the Convention on Import and Export Prohibitions and Restrictions should be adopted.

On the proposal of DR. MARTIUS *(Germany)*, *it was decided that the Drafting Committee should examine the question whether States whose adherence to the Convention was necessary before it came into force should be specifically named in the article.*

M. DE BEREZELLY *(Hungary)* said that a question of principle arose in connection with the date of coming-into-force of the Convention. A Convention did not exist until the necessary number of ratifications had been deposited. A definite date had been inserted in Article 23, by which the Convention could be signed, but a definite date should not be inserted in Article 25 for the deposit of ratifications, because the Convention would not exist until the necessary number of ratifications had actually been deposited.

M. ITO *(Japan)*, Rapporteur, said that, while the Hungarian delegate might be theoretically correct, the whole procedure in regard to the adhesion to conventions had recently been changed by the League.

THE CHAIRMAN thought that, in this matter, the Drafting Committee could refer to the Convention on Import and Export Prohibitions and Restrictions which would serve as a model.

7. **Chapter V, Article 28: Appointment of a Sub-Committee.**

THE CHAIRMAN proposed that a small sub-committee, consisting of the representatives of Portugal, Great Britain, Turkey, Belgium, and the Netherlands, should be appointed to consider the colonial clause (Article 28) and the relevant amendments.

The proposal of the Chairman was adopted.

On the proposal of the CHAIRMAN, *a note submitted by the Belgian delegation upon the definition of the term "nationals"* (Annex D, 2) *was sent to the Sub-Committee.*

THIRD MEETING

Held in Paris on November 27th, 1929, at 3.45 p.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

8. **Articles 17, 18 and 19 : Work of the Sub-Committee.**

M. ITO *(Japan)*, Rapporteur, explained the Sub-Committee's action in regard to these articles. There had been two main currents of opinion in the Sub-Committee. Some members had pressed for most-favoured-nation treatment, and some had been in favour of reciprocity. Some members had thought that most-favoured-nation treatment should be a matter to be considered in connection with each article separately, rather than as a general provision applicable to the whole Convention. The Swedish representative had submitted a compromise proposal, which, after long discussion, had been finally rejected. The only solution at which the Sub-Committee felt able to arrive was the deletion of Articles 17 and 18. The representative of Germany had voted against this proposal.

As far as Article 19 was concerned, the Sub-Committee had reached the conclusion that it should be included in the Convention in the form in which it was drafted in the " Brown Book ". The article, however, would have to be revised by the Drafting Committee, because its present wording might be interpreted to mean something contrary to the wishes of its authors. Finally, some members of the Sub-Committee had considered that the article in question was too vaguely worded to be of much use in the Convention, and that it would, in fact, give rise to difficulties of interpretation.

M. STUCKI *(Economic Committee)* would not oppose the suggestion of the Sub-Committee. Since, however, the question was one of principle and affected the general economic policy of the League, he felt it his duty to point out that, while in purely commercial matters the most-favoured-nation clause was of the utmost importance, this was not nearly so much the case in regard to establishment. For that reason, the Economic Committee had not attached any great importance to Articles 17 and 18 regarding the matters with which they dealt as being reserved for the free appreciation of States themselves. Article 17, as originally drafted, had provided most-favoured-nation treatment for all cases in which national treatment was granted, and Article 18 provided for reciprocity. For the remainder of the Convention, most-favoured-nation treatment had not been recommended, but the Economic Committee had thought that reciprocity was the better solution. Several delegations, however, had refused to accept a limitation of the application of most-favoured-nation treatment, and it was thought of far greater importance to obtain the signature and adhesion of those States than to maintain Article 17. The Economic Committee, therefore, did not regret the disappearance of the articles.

Dr. MARTIUS *(Germany)* explained that his delegation had voted for the maintenance of Articles 17 and 18 in the Sub-Committee, and that it still maintained its views. Its reasons were ones of principle. This was the first collective Convention on the treatment of foreigners which had yet been drawn up, and the principle of most-favoured-nation treatment was so important that it would be very unfortunate if it disappeared entirely from the Convention. While it might be true that all the problems to which such treatment gave rise could not be solved by the present Conference, he could not but express the fear that a suitable opportunity to consider them might not occur again in the near future. In his view, the proposal of the Swedish delegate in the Sub-Committee had formed a reasonable compromise. It had, however, been rejected, and consequently the German delegation was compelled to maintain its original point of view, and to vote against the deletion of the articles.

The Committee decided to delete Articles 17 *and* 18 *by ten votes to two.*

Article 19.

The CHAIRMAN recalled that the Sub-Committee had decided to retain this article, but to send it to the Drafting Committee.

Dr. MARTIUS *(Germany)* said that his delegation had proposed the following amendment :

" Delete, from the first and second lines of paragraph 1, the words ' accorded them under the present Convention ', and add, in the third line of paragraph 1 after the word ' formalities ', the words ' in so far as they are not deprived of such faculty under the provisions of the present Convention '."

The amendment was due to a decision taken by Committee A.

M. ITO *(Japan)*, Rapporteur, said that this amendment would be submitted to the Drafting Committee. The Sub-Committee had no objection to it in principle.

The British delegation had proposed to substitute another text for Article 19, paragraph 1, on the ground that the original text might give rise to discrimination. The Sub-Committee had taken the view that this amendment should also be considered by the Drafting Committee.

The Committee decided to refer the German amendment to the Drafting Committee.

Mr. GRIFFITHS *(British Empire)* said that the British delegation desired to change the wording of the phrase " to make no discrimination which might seem to be an unfriendly act ". As had been explained in the Sub-Committee that morning, the word " discrimination " gave rise to several difficulties, and the words " an unfriendly act " had a specialised meaning which rendered them unsuitable for use in the present Convention. The British delegation proposed to substitute the following phrase : " not to act in a manner which might seem to be unfriendly ".

M. STUCKI *(Economic Committee)* said that both the British and German amendments were designed to prevent the article from seeming to authorise discrimination in any form. The matter seemed to him to be one of drafting.

The CHAIRMAN thought that the British amendment might raise a point of substance. There was no doubt, however, that the text should be made clearer and more precise.

M. STUCKI *(Economic Committee)* remained convinced that the question was not one of substance but only of form. He proposed that Sir Sidney Chapman and M. Ito should draft the necessary formula.

M. ITO *(Japan)*, Rapporteur, said that the contention of the British delegation was that the article as at present worded allowed discrimination if it were not unfriendly.

THE CHAIRMAN agreed that great care must be taken not to allow the Convention to be used as a pretext for authorising discriminatory acts. For that reason the meaning of Article 19 must be quite clear and definite.

M. STUCKI *(Economic Committee)* said that there were many instances in which States had a right to practise discrimination, but it would be entirely against the spirit and the letter of the Convention to allow any nation to discriminate between the nationals of other contracting parties.

M. LYCHOWSKI *(Poland)* desired to move an amendment of substance to the article. As at present drafted, Article 19 was so vague as to be almost useless. He would therefore propose the following amendment, in order to prevent any misinterpretation of its terms :

> " The High Contracting Parties undertake, when availing themselves of the faculty to exclude foreigners from the enjoyment of certain rights or to subject the enjoyment of such rights to certain conditions and special formalities, in so far as they are not deprived of such faculty under the provisions of the present Convention, to make no discrimination which might seem an unfriendly act towards the nationals of *one of the High Contracting Parties, on the understanding that, for the purpose of establishing whether the discrimination referred to is to be deemed an unfriendly act, strict account must be taken of the general circumstances in which such discrimination is made.*"

In the view of the Polish delegation it could not be described as an unfriendly act if a State allowed the nationals of one or two other States to practise, for example, as doctors in its territory, but refused this authorisation to nationals of a third State. It should be made clear that in the latter case the refusal to grant the authority was based on general grounds and could not be made the object of a complaint under the Convention. He would reserve his right to raise the matter again in the plenary Conference.

DR. MARTIUS *(Germany)* said that the idea of the Polish delegation was to limit the scope of the measures described by the article as unfriendly. He himself was not in favour of such an attempt. The Polish amendment was, in his opinion, entirely contrary to the text of the " Brown Book ".

M. STUCKI *(Economic Committee)* was also opposed to the Polish amendment because, in his view, it weakened the force of Article 19. The guarantees in that article that there should be no unfriendly treatment were already weak enough, and were more of a moral than a practical character. The Polish amendment would still further reduce their value.

M. LYCHOWSKI *(Poland)* could not agree that this amendment was contrary to Article 19. Its object was to explain the provisions of the article, but not necessarily to restrict it. Provided that the true meaning of the article was made perfectly clear, he was indifferent as to the form of words used. What the Polish delegation objected to was the vagueness of the article.

THE CHAIRMAN pointed out that the Sub-Committee had considered that Article 19 could be dealt with by the Drafting Committee. He therefore proposed that the British and German amendments to the article should be submitted to the Drafting Committee. Could not the Polish proposal, which raised a point of substance, find a place in the Protocol rather than in the Convention itself, after the Committee had adopted the final text of Article 19 as prepared by the Drafting Committee ?

M. LYCHOWSKI *(Poland)* agreed with the suggestion of the Chairman.

The proposal of the Chairman was adopted.

9. **Article 28 : Report of the Sub-Committee** (Annex D, 3).

M. ROMERO SÁNCHEZ *(Venezuela)* submitted the report of the Sub-Committee on Article 28.

On the proposal of DR. MARTIUS *(Germany) the discussion of the report was adjourned till the next meeting.*

10. **Article 20.**

M. ITO *(Japan)*, Rapporteur, said that the representatives of the Economic Committee and of the International Chamber of Commerce had urged the importance of retaining Article 20.

Several proposals to delete it had been defeated in the Sub-Committee. A number of delegations had, however, emphasised the weakness of the article due to the fact that it only settled a small part of the vast problem of indirect taxation. The Sub-Committee had accordingly decided to maintain the article, but to allow exceptions to it. The representatives of Bulgaria, Japan, Turkey, India and Spain had wished to make such exceptions.

The Sub-Committee had also considered a proposal from the delegation of Brazil which had raised a question of great importance in connection with dumping. As, however, no unanimous definition of dumping had been agreed upon, the Sub-Committee had felt that this point should not be raised. Also it had feared that the whole structure of the Convention would be destroyed by the adoption of the Brazilian amendment as, on the pretext of putting an end to dumping, a State might have recourse to arbitrary measures.

M. FLORES DE LEMUS *(Spain)* urged the Committee to bear in mind what was in his view a very significant fact. To a Convention whose object was to lay down the fundamental legal principles governing international economic co-operation, the Spanish Government would have to make an absolute reservation in regard to an article such as that under discussion, because the terms of that article were contrary to the law which governed the situation of the great international capital enterprises established in Spain.

The Spanish law in question had evolved from the Spanish conception of the legal system to be applied to foreigners and from the needs of the great foreign enterprises which had exploited the natural resources of the country.

The Spanish conception of the law governing foreigners was based on the principle that they should enjoy in Spain the benefit of the whole system of private common law on exactly the same footing as Spanish nationals. In the Spanish view, any additional obligation which went beyond the common law could only be imposed on Spaniards, but never on foreigners. It followed, therefore, that if, in order to fulfil this additional obligation, it was necessary to give assistance or extraordinary aid, such assistance and such aid could only be given to Spaniards.

It was well known that the main railway lines in Spain had been constructed by the Rothschild and Pereire financial group. Since that enterprise had been subjected to State control and to certain other obligations restricting its liberty, the big international contractors concerned had been under the necessity of forming Spanish companies.

The same procedure had been followed in the case of Belgian capitalists who had organised the Agricultural Bank, and also for Vickers, Armstrong, who had organised the State shipyards in which the Spanish fleet had been constructed. The same system had also been applied to the English capitalists who had introduced the manufacture of locomotives into Spain.

This system had been erected into a kind of code governing the great modern international capital enterprises in Spain. It had been in order to satisfy the German capitalists who had approached Spain with the object of establishing a dye industry in the country that the law at present allowed the introduction of foreign capital into these Spanish enterprises up to 50 per cent of the total capital subscribed.

If account were taken of the other advantages, such as the technical supervision of the use of patents, accorded to these enterprises, it would be easily understood that the private interests of Spaniards played a very small part in this connection. The reason therefore why he made an absolute reservation in regard to this article of the Convention was mainly in the interests of the international capital invested in Spain. Those interests were regarded by Spain as sacred, for they had been established on Spanish soil and were under the protection of Spanish law. His Government intended to keep faith with those foreigners, and he could assure the Committee that if such an article were included in the Convention, he would be unable to sign it.

The contradiction between the provisions of a Convention whose object was to govern the international action of traders and a national law which was itself the expression of the co-operation of those traders with the nationals of Spain was due to the fact that an attempt had been made to solve in a fragmentary manner the vast and complex problems of administrative protectionism. Such an attempt could not but lead the Conference towards the adoption of hasty solutions contrary to the common interests of the peace of the world. As far as he was concerned, he refused to follow this path.

THE CHAIRMAN noted that the delegations of Bulgaria, Hungary, Turkey, Latvia, Spain and Yugoslavia desired to submit certain exceptions (Annex D, 1). The amendments submitted had all more or less the same object, namely, the encouragement of local industries.

M. MATSUSHIMA *(Japan)* agreed to accept the article provided that Japan was allowed to make an exception.

M. CHOUMENKOVITCH *(Yugoslavia)* was prepared to accept the article provided that the words " as well as the provisions of Article 20 " were inserted in paragraph 1 of the Protocol *ad* Article 1 of the Convention.

Article 20 was adopted.

THE CHAIRMAN then proposed that the various requests for exceptions should be taken, one by one.

Brazilian Amendment (Annex D, 1).

M. LAFER *(Brazil)* said that the Rapporteur, M. Ito, had thought the proposal of Brazil to be very dangerous, since it would be possible, under the guise of adopting measures to combat dumping, for a State to accord unfair treatment to foreigners. He thought, however, that in this respect reliance must be placed on the good faith of the contracting parties. They could not be left without defence against dumping. He would raise the point at the plenary Conference.

Austrian Amendment (Annex D, 1).

M. MAYER *(Austria)* asked that the words introduced into the Protocol *ad* Article 12 should also be included in the Protocol *ad* Article 20.

M. PEROUTKA *(Czechoslovakia)* said that the Austrian amendment raised a question of commercial policy, and he could not agree to it. It seemed to him to be entirely opposed to the terms of Article 20.

M. STUCKI *(Economic Committee)* agreed. If the Austrian amendment were to be accepted, it would be better to delete Article 20 altogether.

M. MAYER *(Austria)* said that the matter had been discussed in Committee B in connection with Article 12. He was prepared to withdraw the amendment provided that it appeared in the Protocol *ad* Article 12.

The Austrian amendment was withdrawn.

Hungarian Amendment (Annex D, 1).

M. DE SCHLICK *(Hungary)* said that the Hungarian delegation was prepared to support the amendment proposed by the Bulgarian Government with the addition of the words " and by laws relative to the award of contracts for public utility services ".

M. STUCKI *(Economic Committee)* said that the Economic Committee had clearly stated what was meant by Article 20. The amendment was compatible with the provisions of Article 20, provided that the legislation in question applied both to national and foreign enterprises established in the territories of the High Contracting Parties.

M. CHOUMENKOVITCH *(Yugoslavia)* supported the Bulgarian amendment. Discrimination in the matter of Government tenders between foreign and national enterprises should not be considered as a violation of the terms of the article.

MR. WRIGHT *(India)* said that the Indian delegation had proposed an amendment similar to that of the Bulgarian delegation. If the Bulgarian amendment were adopted, the Indian delegation would withdraw its own amendment.

M. BLAU *(Fiscal Committee)* said that, in the view of the Fiscal Committee, it would be very regrettable to allow any exception to the terms of Article 20.

M. MATSUSHIMA *(Japan)* supported the Bulgarian amendment.

M. DE NAVAILLES *(France)* thought that the Bulgarian amendment was inacceptable and the Hungarian amendment useless. The former would allow a State to discriminate and the latter was unnecessary. A Government, like a private concern, was perfectly free to place its orders with anyone it pleased.

M. PERASSI *(Italy)* agreed with M. de Navailles.

THE CHAIRMAN put the proposal of Bulgaria to the vote in the following form :

" Insert at the end of the article :'. . . . provided this equality does not affect the stipulations of the law on the encouragement of national industry '."

The amendment was adopted by ten votes to nine.

THE CHAIRMAN put the Hungarian amendment to the vote in the following form :

" . . . and all laws relative to the award of contracts for public utility services."

This amendment was adopted by ten votes to five.

It was understood that both amendments would be submitted to the Drafting Committee, which would determine their final form.

MR. WRIGHT *(India)* withdrew the Indian amendment on the understanding that the Bulgarian and Hungarian amendments would be suitably drafted by the Drafting Committee.

THE CHAIRMAN noted that the Latvian amendment was withdrawn.

Spanish Amendment (Annex D, 1).

M. FLORES DE LEMUS *(Spain)* said that, on the principle that the whole included the part, he could withdraw the Spanish amendment since the adoption of the Bulgarian amendment, which was far wider in scope than his own, had made its maintenance unnecessary. He reserved his right, however, to raise the question at the plenary meeting.

MR. BARRINGTON *(Irish Free State)* wished for an explanation as to the meaning of the final words in the article : " differential regulations affecting production, trade or the level of prices ".

Though the financial measures adopted by Governments—such as a change in the rate of discount—might affect the level of prices, he did not understand how a Government could, simply by regulation, produce such a result. But, even if this were possible, how could a change in the price level affect differentially national and external enterprises operating within a given country ?

THE CHAIRMAN called on M. Stucki to explain the meaning of the article.

M. STUCKI *(Economic Committee)* said that, now that the Bulgarian and Hungarian amendments had been adopted, the Economic Committee attached no further importance to Article 20, which it regarded as useless. The explanation sought by the representative of the Irish Free State would be found on page 63 of the " Brown Book ".

M. POZNANSKI *(Poland)* pointed out that, in view of the adoption of the Bulgarian and Hungarian amendments, the final sentence in Article 20 no longer appeared necessary. He would accordingly propose the deletion of the two last lines of the article.

This proposal was rejected by six votes to one.

M. CHOUMENKOVITCH *(Yugoslavia)* proposed that the words " as well as the provisions of Article 20 " should be inserted in paragraph 1 of the Protocol *ad* Article 1 of the Convention.

This proposal was rejected by seven votes to six.

11. **Application of Certain Articles of the Convention to the Members of the British Commonwealth: Declaration by the British Delegation** (Annex D, 4).

MR. BECKETT *(British Empire)* called attention to a declaration by the British delegation (Annex D, 4). This declaration did not affect those articles in the Convention in which national treatment was given, but those in which most-favoured-nation treatment was given—these had now practically disappeared from the draft Convention—and other articles of the kind in which certain occupations were reserved to nationals. The point was that, if in Great Britain certain professions, for instance that of barrister, were open to nationals of countries like Canada, Australia, etc., the Convention could not be invoked as granting the same privileges to the nationals of any of the other High Contracting Parties.

The principle contained in the second paragraph was the same, except that it referred to persons belonging to the colonies, protectorates or territories under suzerainty or mandate. The principle was one which had always been safeguarded in all international treaties made by Great Britain and had recently been included in the Convention upon international exhibitions signed at Paris in the previous year.

DR. MARTIUS *(Germany)* said that the declarations made by the British delegation had been followed by other delegations. He saw no objection to taking into account the exceptions made in this case. He thought, however, that the special question of mandates, should be reserved.

MR. BECKETT *(British Empire)* agreed with Dr. Martius and suggested that the question of mandates should be discussed on the following day.

MR. BARRINGTON *(Irish Free State)* said that his delegation had made a declaration identical with that of the British Empire, except for a slight modification in the first paragraph.

MR. WRIGHT *(India)* said that he had handed in an identical declaration. He agreed to the British delegate's suggestion with regard to mandates.

MR. McGREER *(Canada)* said that his delegation had also distributed a similar document.

THE CHAIRMAN said that this declaration was of great importance because it gave a special interpretation to certain provisions in the Convention. He asked, however, whether it should not be submitted to the plenary Conference, since it did not appear to concern Committee D. Any discussion on the subject of the declaration should be held in the plenary Conference, since it might give rise to reservations on the part of other Governments. If, therefore, the British delegation agreed, he would abstain from opening a discussion upon it in the Committee and would refer the documents in question to the President of the Conference.

The Committee agreed.

12. **Distinction between " Resident " and " Non-resident " in Article 1, referred to Committee D, by Committee A.**

The Committee decided to refer this question to the Sub-Committee on instructed to study Article 28.

FOURTH MEETING

Held in Paris on November 28th, 1929, at 3.45 p.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

13. **Examination of the Articles of the Convention : Article 19. Text proposed by the Drafting Sub-Committee.**

THE CHAIRMAN said that the Drafting Sub-Committee proposed the following text for Article 19 :

"1. The High Contracting Parties undertake not to avail themselves, without good reason, of the faculty accorded to them under the present Convention to exclude foreigners from the enjoyment of certain rights or to subject the enjoyment of such rights to certain conditions and formalities, it being understood that all character of unfriendliness shall be avoided in the application of the clauses relating to discrimination embodied in the present Convention.

"2. Whenever the present Convention accords to foreigners the benefits of provisions applicable to nationals, the High Contracting Parties undertake not to draft these provision, in such a way that they would, in actual practice, amount to the absolute exclusion of foreigners or lead to a system of differentiation to the detriment of foreigners."

M. ITO *(Japan)*, Rapporteur, was prepared to accept this text, but urged that the last sentence of the first paragraph should be changed to read :

". . . it being understood that all character of unfriendliness shall be avoided in the application of the clauses reserving freedom of action to the High Contracting Parties embodied in the present Convention."

SIR SYDNEY CHAPMAN *(British Empire)* strongly supported the suggestion of M. Ito. The British delegation had originally proposed that most-favoured-nation treatment should apply to the whole Convention. It had been unable, however, to secure the adoption of this proposal, and the compromise achieved stipulated that neither most-favoured-nation treatment nor reciprocity should be mentioned in the Convention. States were to be left free, and hence the word " discrimination " in Article 19 was out of place, because its use might seem to imply that in certain instances the article could be used to justify discrimination. M. Ito had therefore suggested that the word " discrimination " should be omitted.

He would recall that the British delegation had originally proposed to delete the first paragraph of Article 19 because it did not appear to be of any great value. It had, however, willingly consented to maintain the paragraph, provided it were redrafted so as to avoid the use of the word " discrimination ".

DR. MARTIUS *(Germany)* recalled that the German delegation had submitted the following amendment :

"Delete from the first and second line of paragraph 1, the words ' accorded them under the present Convention ', and add, in the third line of paragraph 1, after the word ' formalities ', the words ' in so far as they are not deprived of such faculty under the provisions of the present Convention ' ."

It did not appear to him that the Drafting Committee had taken adequate account of it, although, in principle, it had been accepted by the Committee.

M. LYCHOWSKI *(Poland)* said that the new draft prepared by the Drafting Committee seemed to him to alter very considerably the scope and meaning of the article. He would prefer a return to the original text subject to the German amendment.

SIR SYDNEY CHAPMAN *(Great Britain)* thought that perhaps the best solution would be to delete paragraph 1 of Article 19 entirely. He felt convinced that the High Contracting Parties would not act in an unfriendly manner towards each other.

M. PERASSI *(Italy)* agreed with M. Lychowski as to the radical change made in Article 19. The original object of the article was to prevent States from abusing certain liberties which they retained under the Convention. Moreover, in the new draft, the phrase " without good reason " had been added. What was the exact meaning of that phrase ?

After a further exchange of views, M. ITO *(Japan)*, Rapporteur, and DR. MARTIUS *(Germany)* submitted the following text :

" The High Contracting Parties undertake not to avail themselves, without good reason, of the faculty to exclude foreigners from the enjoyment of certain rights or to subject the enjoyment of such rights to certain conditions or formalities in so far as this faculty is not precluded under the present Convention, it being understood that all character of unfriendliness shall be avoided in the application of the clauses in question."

M. PERASSI *(Italy)* submitted the following text :

" The High Contracting Parties undertake not to avail themselves of the faculty accorded them under the present Convention to exclude foreigners from the enjoyment of certain rights, or to subject the enjoyment of such rights to certain conditions or formalities, *in a manner manifestly unfriendly* towards the nationals of one or more of the High Contracting Parties."

M. LYCHOWSKI *(Poland)* submitted the following text :

" The High Contracting Parties undertake to make no discrimination which might seem to be an unfriendly act towards the nationals of certain High Contracting Parties when availing themselves of the faculty to exclude foreigners from the enjoyment of certain rights, or to subject the enjoyment of such rights to certain conditions or formalities, apart from the cases in which this faculty is already limited by the provisions of the present Convention."

The Committee decided that the Drafting Committee should consider these texts and produce a final draft for submission at the next meeting.

The second paragraph of Article 19 was adopted.

14. **Article 20 : Text proposed by the Drafting Sub-Committee.**

THE CHAIRMAN said that the Drafting Sub-Committee proposed the following text for Article 20 :

" Without prejudice to the provisions of the laws on the encouragement of national industry and of the laws with regard to the awarding of contracts by the public authorities, the High Contracting Parties undertake not to prejudice the guarantees of equality as between national and foreign undertakings as laid down in the preceding articles, by means of exemption from taxes or duties or by differential regulations affecting production, trade or the level of prices."

The text was adopted.

15. **Article 21.**

M. ITO *(Japan)*, Rapporteur, said that the Sub-Committee, after a prolonged discussion, had decided that Article 21 should be maintained unchanged. The amendment proposed by the French delegation (Annex D, 1) had found practically no support in the Sub-Committee, which had been convinced that its adoption would unduly widen the scope of the article.

M. DE NAVAILLES *(France)* desired to press his amendment. The concluding phrase of paragraph 1 of the article should read : " it must nevertheless take vested rights into account ". The reason for his amendment was that vested rights should be respected, and that the text of the Convention should not give the impression that the parties might ignore them.

The amendment was rejected by eleven votes to five.

Article 21 was adopted.

16. **Protocol ad Article 21.**

DR. MARTIUS *(Germany)* proposed the following addition to the Protocol *ad* Article 21 :

" The provisions of paragraph 1 of Article 21 in no way prejudice the provisions of Article 11, paragraphs 4 and 5, or of Article 16, paragraph 4."

He did not wish this to be discussed immediately.

The discussion of this amendment was postponed.

17. **Article 28. Report and Supplementary Report of the Sub-Committee** (Annexes D, 3 and D, 5).

M. D'AVILA LIMA *(Portugal)*, Rapporteur, submitted the report and the supplementary report of the Sub-Committee (Annexes D, 3 and D, 5).

In regard to the reference to mandates, the Sub-Committee had consulted the Mandates Section of the Secretariat and had received the assurance that there was nothing in the proposed text of Article 28 (Annex D, 3) contrary to the Covenant or to the mandates system. He accordingly proposed that the text should be adopted with the words " or mandate ". An interpretation of their meaning should be inserted in the Protocol.

M. NEDERBRAGT *(Netherlands)* wished to raise the general question of the application of the Convention to colonies, protectorates and mandated territories. The Netherlands was anxious to do everything that was possible to apply the Convention to the Netherlands colonies. There were special circumstances, however, in connection with colonies, which would have to be carefully examined. The Sub-Committee had not discussed this matter, and he wished to know whether it would be possible to make a reservation on behalf of colonies. The matter was of great importance, and every effort should be made to bring them into the new arrangement.

M. D'AVILA LIMA *(Portugal)*, Rapporteur, said that the Netherlands representative on the Sub-Committee had not raised the question. The Sub-Committee had not thought it to be its duty to deal with the general problem of the reservations to be made to the Convention, but had confined itself to drafting Article 28.

M. BRUNET *(Economic Committee)* noted that, according to the terms of Article 28, States signing the Convention might do so on behalf of their colonies or not, according as they thought fit. It seemed to him that the question which M. Nederbragt had in mind was whether the States might also formulate reservations on behalf of their colonies regarding the application to those colonies of certain provisions of the Convention. Nothing to this effect was provided in Article 28.

M. NEDERBRAGT *(Netherlands)* agreed. The Netherlands, when signing an international convention, usually signed it for her colonies as well. In the present case his country considered that the draft in the " Brown Book " was an acceptable basis and could be applied in nearly all its clauses to the Netherlands colonies. There were certain difficulties, however, and there therefore appeared to be two possibilities.

If the Conference decided that the whole Convention must be applied to the colonies, the Netherlands would have to study each article to see whether it could be applied to the colonies without change, and, if this could not be done, whether the legislation governing the Netherlands colonies could be changed.

A second possibility was that the Conference might allow countries to make a reservation regarding a number of articles of the Convention, the remainder being applied to their colonies.

If reservations were to be allowed, in what way were they to be made ? The Netherlands delegation was not in favour of a system whereby a country made a reservation at the moment of signature without communicating its terms to the other contracting parties. In such a case, would such a reservation have to be ratified by the other High Contracting Parties ?

THE CHAIRMAN said that Article 28, as at present drafted, did not permit a High Contracting Party to apply the Convention in part only to its colonies. An amendment making this possible would have to be made in the article, if the Conference so desired. The Convention must be applied as a whole, unless an express reservation to the contrary was made at the moment of signature.

M. HENNIN *(Belgium)* agreed with the Chairman. It seemed to him that the question raised by M. Nederbragt covered, not only reservations in respect of colonies, but the general question of reservations to the whole Convention.

MR. BECKETT *(British Empire)* thought that reservations on behalf of colonies were in exactly the same position as those in respect of the mother country. Any reservation which a delegation desired to make would have to be dealt with by the Conference in plenary session, and either allowed or disallowed. He saw no necessity to amend Article 28.

M. NEDERBRAGT *(Netherlands)*, while agreeing with Mr. Beckett, pointed out that he had asked whether he should propose an amendment to the article to cover the case of colonies or whether

he should make a reservation at a later stage. It might, he thought, be better to insert some such amendment as the following in Article 28 of the Convention to cover the case of reservations. The proposal he made was based on a similar article which was to be found in the International Convention on Statistics :

> " The High Contracting Parties who, at the moment of signature, have not made the declaration provided for in paragraph 1, have the right to make reservations in regard to the application to their colonies, etc., of certain stipulations of the Convention. These reservations, however, must be approved by the other High Contracting Parties. Should they desire to adhere to the Convention on behalf of their colonies, etc., at a future date, they may inform the Secretary-General of the League of Nations to this effect. The Secretary-General shall forthwith communicate such reservations to the Governments of all the countries on whose behalf ratifications or accessions have been deposited, and enquire whether they have any objections thereto. If, within six months of the date of the communication of the Secretary-General, no objections have been reserved, the reservation shall be deemed to have been accepted."

M. D'AVILA LIMA *(Portugal)*, Rapporteur, saw no necessity to amend Article 28. He was, in principle, in agreement with M. Nederbragt, but considered that there was no necessity to make a special provision for reservations in regard to colonies in the text of the Convention itself. The usual practice might be followed.

M. PERASSI *(Italy)* thought that reservations concerning colonies could be examined separately from other kinds of reservations. States might be allowed to make special reservations in regard to colonies which might not be admitted in the case of the mother-country.

M. ITO *(Japan)*, Rapporteur, agreed with M. Perassi. It was always possible for a High Contracting Party to make reservations in regard to its colonies. Such reservations could be more readily admitted than those affecting the mother-country. In both cases, however, the Conference must have an opportunity of discussing them, or, if the reservations were made later, some such procedure as that suggested by M. Nederbragt should be followed.

M. DE NAVAILLES *(France)* said that, in general, reservations to a convention made by a High Contracting Party were included in the Final Act which was signed and formed part of the convention. The object of such a proceeding was to enable every State party to the convention to possess knowledge of the reservations made to it. Any reservation, therefore, made by a State at the moment of signature in respect of its colonies would be included in the Final Act. The question, however, was much more delicate and complicated in regard to general reservations. The insertion of such reservations in the Final Act depended on the Conference. He quite agreed with M. Nederbragt that any reservation made after the moment of signature must be communicated to the High Contracting Parties for their ratification. This could be made clear in the Convention somewhat in the manner suggested by the representative of the Netherlands.

M. NEDERBRAGT *(Netherlands)* thanked M. de Navailles. He would emphasise that his Government was strongly against allowing any reservations to a convention to be made which were not known and consented to by the other High Contracting Parties.

THE CHAIRMAN said that personally he thought in a convention of this importance it was impossible to allow any general reservations. In regard to reservations for colonies, Article 28 would have to be amended in the manner proposed by the Netherlands delegation. At present, there was no possibility of making a reservation in regard to a part of the Convention in so far as the colonies of a State were concerned. An amendment to this effect would have to be introduced.

M. BRUNET *(Economic Committee)* agreed with the Chairman in thinking that Article 28 must be amended if it was the intention that a State might adhere on behalf of its colonies to certain articles only of the Convention, or rather that it might exclude from the effects of its adherence certain provisions of the Convention.

M. ITO *(Japan)*, Rapporteur, did not agree with the view of the Chairman. In view of the fact that colonies could be entirely excluded from the Convention, surely it was possible to exclude them from some of the articles.

M. NEDERBRAGT *(Netherlands)* said there were three possible systems. First, a State could sign without being permitted to make a reservation. In that case no change would be necessary in Article 28. Secondly, a State could sign on behalf of its colonies in respect of some articles of the Convention only. Thirdly, it could sign on behalf of its colonies for the whole Convention, but make a number of reservations. He thought the second course would be a dangerous one because, if a State were allowed to sign on behalf of its colonies for only a certain number of articles, it would naturally choose only those articles which were of direct benefit to itself. Under the third system, however, the State would be compelled to make known its reservations clearly at the moment of signature.

DR. MARTIUS *(Germany)* moved that a new article should be inserted to the following effect :

" Without prejudice to Articles 22 and 23 of the Covenant of the League of Nations, the provisions of the present Convention shall be equally applicable to any territories a mandate for which has been entrusted to one of the High Contracting Parties."

He further proposed that the words " or mandate " should be deleted in Article 28.

The reason for the amendment was that the Convention was especially important in so far as mandated territories were concerned and covered problems closely connected with the interpretation of the Covenant of the League. The Sub-Committee had consulted the Mandates Section and had proposed, as a result, a Protocol—the terms of which were before the Committee (Annex D, 3). That Protocol, however, was, in the view of the German delegation, quite unnecessary, for it was impossible to imagine that the terms of the Convention should contradict the terms of the Covenant. As far as the substance of the question was concerned, he would recall that the object of the present Convention, as stated in the Preamble, was to promote " economic co-operation between nations by ensuring easier and more equitable conditions for the establishment and operation of nationals of one country carrying on business in the territory of another ". The Covenant laid down the principle of equality of facilities for trade in mandated territories and also contained a general provision in Article 23 (*e*) safeguarding the equitable treatment of commerce. There was, therefore, nothing whatever to prevent the stipulations in the Convention from being applied to mandated territories, and the German delegation could see no reason why it should not be so applied. At the moment there were many German citizens established in mandated territories and, so far as he was aware, no discrimination was made against them. That being so, why should this fact not be clearly stated in the Convention ? He was aware that this would involve a slight innovation, but there was no reason why the old formula should be invariably followed. Such an article as that proposed by his delegation was in the interests of all Members of the League, especially those who did not possess any very large number of commercial treaties.

SALIH ZEKAI BEY *(Turkey)* entirely agreed with the German delegation's proposal. Equality of treatment was essential in mandated territories.

MR. BECKETT *(British Empire)* said that the German contention was that, by virtue either of Articles 22 or 23 of the Covenant, it would be the duty of the mandated Powers to apply the Convention to their mandated territories. This view might be quite correct, but it inevitably raised difficult questions connected with the construction and interpretation of the Covenant and the texts of the mandates. It was quite impossible for the present Conference to attempt to interpret either. In his view the proposal of the Sub-Committee should give full satisfaction to Dr. Martius because, if his view were correct, the addition in the Protocol made it clear that the terms of the mandates were to be observed. The only omission was that no opinion was expressed as to the correctness or not of the view held by the German delegation.

As it was, the proposal of the Sub-Committee constituted an innovation in international treaties. The British delegation, however, was quite prepared to consult its Government and to ask for instructions to accept it.

M. D'AVILA LIMA *(Portugal)*, Rapporteur, thought that there was no very serious disagreement in substance. It would be impossible to accept the German proposal in its present form, however, for it would make the extension of the Convention to mandated territories automatic. It was, however, in the view of the Sub-Committee, of great importance to maintain a certain degree of elasticity. He quite agreed with Mr. Beckett in thinking that the Conference could not discuss the interpretation or the Covenant or the mandates system. He would point out that the acceptance of the German proposal might mean placing mandated territories in a position of inferiority as compared with the colonies of a country, for the country would be able to make an exception in respect of colonies, but would not be able to do so in regard to mandated territories.

THE CHAIRMAN put the German amendment to the vote.

The German amendment was rejected by eight votes to three.

THE CHAIRMAN asked the Committee to express its opinion regarding Article 28 and the Protocol *ad* Article 28, in so far as they concerned the question of mandates.

The Committee approved the report of the Sub-Committee on the question of mandates.

M. PERASSI *(Italy)* raised objections to the first paragraph of Article 28. The effect of ratification made by a State could not exceed the powers of that State. He thought that the formula adopted in the first paragraph of Article 28 was not quite correct, particularly as regarded protectorates and mandated territories. The ratification of an international convention by a State could not be regarded as having the effect *ipso facto* of extending that convention to a country under mandate, since the countries under mandates, and particularly the countries under A mandate, could not be assimilated to colonies.

M. DE NAVAILLES *(France)* agreed with M. Perassi.

M. ITO *(Japan)*, Rapporteur, said that M. Perassi had raised an old controversy. The tendency of countries possessing colonies was to prefer a positive formula, others to prefer a negative. The interpretation put upon Article 28 by M. Perassi was not universally accepted. For example, no exact international definition of what was meant by the " mother-country " had ever as yet been forthcoming. Its definition depended on the individual legislation of each country.

He was, therefore, in favour of the text proposed by the Sub-Committee.

M. FLORES DE LEMUS *(Spain)* agreed with M. Ito that it was for each country to determine the part of its territory covered by the expression " mother-country ".

M. PERASSI *(Italy)*, in reply to the Chairman, said he desired to maintain his proposal to change the form of paragraph 1 of Article 28 so that it might be positive and not negative in its stipulations.

The proposal of M. Perassi was rejected by six votes to two.

Paragraph 1 of Article 28 was adopted.

M. ITO *(Japan)*, Rapporteur, said that considerable difficulties occurred owing to the use of the word " belonging " in connection with the inhabitants of mandated territories. He suggested the expression " resident " or " domiciled ".

MR. BECKETT *(British Empire)* said that the Sub-Committee had endeavoured to find the best word. It had chosen a word which would bring out the idea that the persons in question really belonged to the colony or mandated territory. He agreed with M. Ito that the expression was inadequate and, if the Drafting Committee could find a better phrase, he felt sure no objections would be raised on behalf of the Sub-Committee. At the moment, however, the Sub-Committee was unable to find a better expression.

Paragraph 2 of Article 28 was adopted.

Article 28, as a whole, was referred to the Sub-Committee.

THE CHAIRMAN, referring to the question of reservation, said that the principle to be adopted in so far as Article 28 was concerned was to make provision for a country signing the Convention to declare at the moment of signature that it did not apply a part of that Convention to its colonies, otherwise it might make an express reservation concerning the application of the whole Convention to its colonies.

The question of reservations was referred to the Sub-Committee on Article 28.

FIFTH MEETING

Held in Paris on November 30th, 1929, at 3.30 p.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

18. Examination of the Articles of the Convention : Article 19 : Revised Text submitted by the Rapporteur.

M. ITO *(Japan)*, Rapporteur, submitted the following revised text of Article 19 and of the Protocol *ad* Article 19 :

" *Article* 19.

" 1. The High Contracting Parties undertake not to avail themselves of the rights accorded to them by the provisions of the present Convention in a manner unfriendly towards the nationals of one or more High Contracting Party.

" 2. Whenever the present Convention accords to foreigners the benefits of provisions applicable to nationals, the High Contracting Parties undertake not to draft these provisions in such a way that they would, in actual practice, amount to the absolute exclusion of foreigners or lead to a system of differentiation to the detriment of foreigners."

" *Protocol* ad *Article* 19.

" The ' unfriendliness ' referred to in the first paragraph of Article 19 shall be appreciated in relation to the general circumstances in which the rights in question were exercised."

DR. MARTIUS *(Germany)* supported the text.

M. LYCHOWSKI *(Poland)* asked the exact meaning of the word " *éventuel* " in thep hrase " *dans l'exercice éventuel des facultés qui leur sont réservées* ".

[This word is not in the English text.] He thought that, according to the text, the exercise of these rights should be normal.

M. ITO *(Japan)*, Rapporteur, explained that certain countries did not use the rights which they possessed. The sentence was meant to cover the case in which the rights which they possessed were in practice exercised.

THE CHAIRMAN pointed out that the text proposed by M. Ito differed considerably from Article 19, approved in principle by the Committee, which had covered the exercise of clearly defined rights. The present text was a compromise adopted to satisfy the German and Japanese delegations.

M. ITO *(Japan)*, Rapporteur, explained that the present text had been adopted because it would cause the adhesion of as large a number of States as possible. It was a *pis aller* and all that it was intended to do was to express a principle.

DR. MARTIUS *(Germany)* urged that the text should be adopted. It was a compromise between four different proposals. To discuss it would mean reopening an endless debate.

M. PERASSI *(Italy)* pointed out to what extent the new draft enlarged the scope of Article 19. The Italian delegation had no objection in principle to the wording proposed by M. Ito, but would emphasise that the new article was much wider in scope than that proposed by the Economic Committee.

MR. BECKETT *(British Empire)* stated that the British delegation was ready to accept the draft of M. Ito, but that it could not accept the draft proposed by the Economic Committee. He suggested that the word " foreigners " should be replaced by the phrase " nationals of the High Contracting Parties ".

THE CHAIRMAN asked the Committee to vote on the text proposed by M. Ito for Article 19, paragraph 1.

The Committee adopted the text proposed by M. Ito for Article 19, *paragraph* 1.

M. LYCHOWSKI *(Poland)* reserved the right to raise the difficulties to which he had already referred at a plenary session of the Conference.

Paragraph 2.

MR. BECKETT *(British Empire)* repeated that the word " foreigners " in this paragraph meant nationals of the other High Contracting Parties.

Article 19, *paragraph* 2, *was adopted.*

M. PERASSI *(Italy)* said that Article 19, paragraph 2 and Article 21, paragraph 2, had the same object. The Drafting Committee should be asked to find out whether it would not be possible to combine these two articles.

M. LYCHOWSKI *(Poland)* was against the proposed combination in view of the fact that he intended to submit a reservation to Article 19, paragraph 1, at the plenary Conference. The vote which would then be taken might be contrary to the article 21 which was to be combined with Article 19.

THE CHAIRMAN noted that Articles 17 and 18, and Article 19, paragraph 1, had been deleted and that the Committee had adopted Articles 20 and 21.

19. **Article 22: Text proposed by the Drafting Sub-Committee.**

THE CHAIRMAN submitted the text of Article 22 as proposed by the Drafting Sub-Committee :

> " The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiation, be referred, at the request of one of the parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing Convention or by joint agreement, the dispute is settled by arbitration or any other means."

He recalled that this text had been discussed at great length in the Sub-Committee. The Sub-Committee had concluded that it was impossible to lay down a special procedure for States which had not adhered to the procedure of the Hague Court, since the divergence was not of form but of substance. The States in question were, in principle, opposed to arbitration and thought that, in matters affecting the security of the State or its sovereignty, some facts were of themselves

justifiable and that, in consequence, a State preserved the right whether or not to submit the case to arbitration. The Turkish amendments (Annex D, 1) was based on these considerations and the Sub-Committee had, for this reason, adopted the text of Article 22 which he had just read.

M. DINICHERT *(Switzerland)* said he had already replied on this point before Article 22 had been sent to the Drafting Committee. He did not intend to submit a counter-proposal. The object of the text was twofold. First, to secure the adoption of compulsory arbitration for all parties to the Convention and, at the same time, to take account of the fact that certain States had not adhered to the Statute of the Court and should therefore be allowed to bring the dispute before another tribunal. With regard to the first point, that was to say, in regard to the establishment of compulsory arbitration for all, he recognised that agreement would be difficult. He was prepared to accept therefore for the moment the compromise text suggested, but wished to state that, if the question of arbitration were to make any progress in the near future, it would be useful to reconsider this article of the Convention.

The text of Article 22 proposed by the Drafting Sub-Committee was adopted.

20. **Article 23 : Text proposed by the Drafting Sub-Committee.**

DR. MARTIUS *(Germany)* said that the German delegation had proposed an amendment to Article 23 (Annex D, 1) which had not been retained by the Drafting Sub-Committee. He was ready to give an explanation with regard to that amendment.

THE CHAIRMAN replied that the Sub-Committee had not had the German amendment before it.

He proposed to discuss the text submitted by the Sub-Committee, while reserving the possibility of discussing the German amendment at a future meeting, if it proved necessary to do so.

The text of Article 23 proposed by the Sub-Committee was as follows :

> " The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date ; it shall remain open for signature until March 31st, 1930, on behalf of any Member of the League of Nations and of any non-Member State which was represented at the Conference of Paris or to which the Council of the League of Nations shall have communicated a copy for this purpose."

Article 23 was unanimously adopted.

THE CHAIRMAN said that the amendment of the German delegation to which Dr. Martius had referred was as follows :

> " Official translations may, at the request and with the assistance of the interested Governments, be drawn up by the Secretariat of the League of Nations and deposited with the Secretary-General. It will be open for the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Convention."

M. PERASSI *(Italy)* observed that the German amendment raised a particularly delicate question. The procedure adopted under the rules of the International Labour Conference as regarded the translations of draft conventions and recommendations adopted by the Conference, could not be cited as a precedent. The present Conference had quite a different character from the Labour Conference. The Labour Conference was a regular part of the machinery of the International Labour Organisation, just as the Assembly was a regular part of the machinery of the League. The present Conference was a diplomatic conference of representatives of States. Two texts would be adopted as having final authority, namely, the French and English texts. It was not possible to recognise as valid translations made outside the Conference and without the assistance of the States participating in the Conference. This was a vital question of principle.

M. STOPPANI *(Secretariat of the League of Nations)* explained that the proposal that the Secretariat should draw up the official translation of a document in any other language than the two official languages of the League could only come from the Assembly. The International Labour Conference, as M. Perassi had explained, was not a diplomatic conference, but part of the machinery of a permanent organisation. The German proposal, in order to be adopted, must take the form of a request submitted to the League of Nations.

DR. MARTIUS *(Germany)* explained that the object of his proposal had merely been to ensure conformity between the bilateral treaties and the collective treaties at present drafted.

He looked at the matter purely from a practical point of view. He thought that it would be possible to adopt a formula like the following : " . . . asks the Council to authorise the Secretary-General to draw up . . . ". He would have preferred to insert a special paragraph in the text of the article to this effect, but he would be content with an insertion in the Protocol. He asked that the Chairman should obtain the views of the Committee on his amendment, which would in no way prejudice the action of the Council.

M. HENNIN *(Belgium)* said he could not associate himself with the amendment proposed by the German delegation. He thought that, legally, it was not admissible for a contracting State to quote a translation as having authority in face of a text signed by the contracting parties. Only the French and English texts signed by the plenipotentaries embodied the exact expression of their intentions, and could therefore be alone regarded as valid.

MR. BECKETT *(British Empire)* admired the tenacity with which the German delegation had on several occasions upheld an amendment of the same kind at various international conferences. He thought, however, that he should point out that it would involve a radical change in the procedure adopted hitherto and that no conference could individually take a decision on such a wide scope.

M. STOPPANI *(Secretariat of the League of Nations)* laid stress on the danger involved in the acceptance of a formula of that sort. He thought that, if the delegations accepted it, it should only be placed in the Final Act.

DR. MARTIUS *(Germany)* said that he would be glad if the Conference would express its opinion on the point.

THE CHAIRMAN recalled the decisive argument advanced by the Italian delegation. Only a translation accepted by all the contracting parties could be considered authentic. Hitherto only the two official texts drafted in French and in English had been unassailable from the legal point of view.

DR. MARTIUS *(Germany)* asked that the question might be referred to the Drafting Committee. He thought that it would be advisable to find a practical way of avoiding textual discrepancies with a view to the application of the Convention, and hoped that the Drafting Sub-Committee would be able to find an agreed formula.

THE CHAIRMAN understood that there would, in any case, only be a passage in the Final Act.

Article 23 was adopted, subject to a decision to be taken on the German amendment by the Drafting Sub-Committee.

21. **Articles 24 and 25 : Texts proposed by the Drafting Sub-Committee** (Annex D, 6).

Adopted.

22. **Article 26 : Text proposed by the Drafting Sub-Committee** (Annex D, 6).

THE CHAIRMAN read the text proposed by the Drafting Sub-Committee for Article 26. This text was the result of very heavy work on the part of the Drafting Sub-Committee, and he hoped that it would give satisfaction.

DR. MARTIUS *(Germany)* thought that provision should be made for a meeting of a Conference to revise the Convention. A clause of that kind existed usually in conventions of the same sort.

M. ITO *(Japan)*, Rapporteur, had no objection to the proposed text, but drew attention to the procedure referred to at the end of paragraph 2 of the article : " If the replies are not so unanimous, all the Members of the League and non-Member States, mentioned in Article 23, shall consider the course to be adopted after being consulted by the Secretary-General of the League ". He would point out that the procedure was one which would be followed before the coming into force of the Convention, and asked what would be the legal situation created thereby.

M. STOPPANI *(Secretariat of the League of Nations)* had no proposal to make on behalf of the Secretariat. The procedure followed in Article 26 was parallel to that found in similar conventions, in particular that on export and import prohibitions and restrictions. The only difference was that in the present text the action to be taken by the Secretary-General was laid down in exact terms, whereas the formula adopted in the Convention on Prohibitions had been less precise. In practice, the Conference to be convened by the Secretary-General after the expiration of the date prescribed for ratification might include other States in addition to the States which had participated in the Convention. Care must be taken not to exclude these States. He thought that the formula adopted in Article 26 was lacking in elasticity, and might have the effect of restricting the Council's action if it wished to invite other States to take part in the Conference.

M. PÉPIN *(France)* thought the idea expressed by M. Stoppani excellent. He considered that the Secretariat might be satisfied with the application of the first sentence in the second paragraph, which prescribed the consultation of other States in addition to the signatory States. This was a system similar to that proposed by M. Stoppani, and would have this additional advantage in application that, if the number of States which ratified the Convention before December 31st was near enough to ten, these countries would form a sufficiently large group to secure the adhesion of the others and thus effect something durable.

M. STOPPANI *(Secretariat of the League of Nations)* would prefer the adoption of a more simple formula, such as " the Secretary-General will consult the States " instead of " will enquire of the Members of the League of Nations and non-Member States ".

M. PERASSI *(Italy)* drew attention to the legal bearing of paragraph 2 of Article 26. This paragraph provided for a possible derogation to the procedure prescribed in the first paragraph. If the formula proposed by the Secretariat were adopted, the text would be far less precise.

M. STOPPANI *(Secretariat of the League of Nations)* considered that the words " will consult the States " were preferable, since they gave the Secretary-General latitude to decide himself as to the method of the consultation.

The Committee agreed that Article 26, paragraph 2, should read as follows :

"If on December 31st, 1930, the number of ratifications or definitive accessions required for the entry into force of the Convention have not been received, the Secretary-General of the League of Nations shall consult the Members of the League of Nations and non-Member States on whose behalf ratifications or definitive accessions have been deposited, whether they desire that the Convention shall be put into force between them on a date to be fixed by agreement . . ."

M. NEDERBRAGT *(Netherlands)* thought that the number of ratifications prescribed in paragraph 1 for the States, Members or non-Members, which must have ratified the Convention in due time was at present too high. He proposed that it should be reduced to six.

THE CHAIRMAN noted that the Czechoslovak and Swedish delegations had proposed that the number should be a high one. The British and Hungarian delegations had proposed that it should be kept at ten.

He requested the Committee to take a vote.

The Committee rejected M. Nederbragt's motion, and decided that the number of ratifications necessary to bring the Convention into force should be ten.

Article 26 was adopted with the amendment already approved.

23. **Article 26bis ; Text proposed by the Drafting Sub-Committee** (Annex D, 6).

THE CHAIRMAN read Article 26*bis* which was as follows :

" The High Contracting Parties agree to accept only those reservations to the application of the Convention which are set forth in the Protocol to this Convention and in respect of countries therein named."

M. WIJKMAN *(Sweden)* said that his delegation was opposed to Article 26*bis* and wished to make a reservation with a view to a discussion in the plenary Conference.

M. LYCHOWSKI *(Poland)* wished to make a reservation for the same reasons as the Swedish delegation. He thought that it would be better to reserve the question of Article 26*bis* pending the solution of the question of reservations in plenary session.

THE CHAIRMAN observed that every delegation had the right to make any declaration it wished before the plenary Conference, but that the Committee must decide on a text to serve as a basis for discussion in the plenary Conference. The question of reservations was within the jurisdiction of Committee D, which could not abstain from taking a decision.

DR. MARTIUS *(Germany)* supported this view.

M. DINICHERT *(Switzerland)* recalled the proposal made by Dr. Martius at the morning meeting to refer the question of reservations to a small committee. If this committee met, Article 26*bis* should be referred to it by Committee D. Personally, he would prefer that the text of the article should only be discussed by the Conference after it had been studied by a small committee. It was a difficult question to settle, as the Conference might decide either on the system of special reservations for each State or on a system of general reservations to which each State would be entitled to adhere.

THE CHAIRMAN concluded that the Committee should examine Article 26*bis*, and refer it to the President of the Conference, who would decide on the procedure to be followed.

M. WIJKMAN *(Sweden)* thought that the question of reservations should be referred to a later meeting of the Conference.

M. LYCHOWSKI *(Poland)* pointed out that various delegations would not have time to confer with their Governments on the reservations to be made in the Convention. For this reason he

supported the Swedish delegation's proposal that the question of reservations should be held over for a later meeting of the Conference.

M. NEDERBRAGT *(Netherlands)* recalled the proposal which he had made that morning at the plenary Conference concerning reservations, when he had given the reasons for which he thought that it would be advisable to discuss the question at a special conference. The President of the Conference had replied that this question would be discussed in plenary session on December 2nd. It was, therefore, difficult for him to take part in a vote on Article 26*bis*.

THE CHAIRMAN requested the Committee to take a decision on the text to be referred to the President of the Conference.

Article 26bis *was adopted by ten votes to two.*

It was further decided to refer this text to the President of the Conference who would determine the action to be taken.

SIXTH MEETING

Held in Paris on December 3rd, 1929, at 10 a.m.

Chairman : M. DE MICHELIS (Italy).
Secretary : M. BAUMONT.

24. **Examination of the articles of the Convention Articles 21bis, 21ter, 22, 23 and 28 : Texts submitted by the Drafting Sub-Committee** (Annex D, 7).

THE CHAIRMAN asked the Committee to consider the texts of Articles 21*bis*, 21*ter*, 22 and 28, submitted by the Drafting Sub-Committee.

Articles 21bis, 21ter *and* 22.

Adopted.

Article 23.

THE CHAIRMAN replied that it was necessary to finish the study of the problem submitted to the Committee. Either the German delegation must withdraw its proposal or he would put it to the vote. In any case a decision was necessary.

DR. MARTIUS *(Germany)* said that he maintained his proposal in the following terms :

" The High Contracting Parties request the Council of the League of Nations to authorise the Secretary-General to make arrangements, on the request and with the assistance of the parties concerned, for the preparation of official translations."

THE CHAIRMAN pointed out that the final form of this text would depend on the decision of the Committee. In any case it would be dangerous to adopt a decision in principle.

M. PÉPIN *(France)* observed that the Drafting Sub-Committee had taken a decision on the new proposal submitted at the last meeting. It had been held that it was inadvisable to introduce this provision into the Convention in the form of a suggestion or recommendation (Annex D, 7).

M. NEDERBRAGT *(Netherlands)* urged Dr. Martius to withdraw his proposal, since it was difficult to include a request of that sort in a Convention. The question was a general one which should be dealt with in a general manner.

THE CHAIRMAN put Dr. Martius' proposal to the vote.

The proposal was rejected by eight votes to four.

Article 28, *Paragraphs* 1, 2, 3 *and* 4.

Adopted.

Paragraph 5.

M. PERASSI *(Italy)* asked what was the meaning of this text. What in particular was the meaning of the term " belonging to any colony " ? After the decision which had been taken to refer the continuation of the work to a second Conference, these purely formal clauses had, however, no practical importance. He would therefore refrain from discussing the point.

M. ITO *(Japan)*, Rapporteur, replied that the Drafting Sub-Committee had been unable to agree on the substance of the paragraph. After a long discussion, it had had to content itself—for lack of a better term—with the expression adopted. In any case, the paragraph could be struck out without loss.

M. PERASSI *(Italy)* added that the Conference would subsequently undertake a fresh examination of the final text of the Convention. He therefore proposed that this text, which was not clear, should be struck out.

M. DINICHERT *(Switzerland)* observed that, if it were decided to drop the text, the Conference would have the appearance of saying that it did not desire the reciprocity which was laid down.

THE CHAIRMAN replied that the real question was as follows : It was impossible to interpret the Convention as inapplicable in the matter of reciprocity. He took the case of a country which refused to extend the application of the Convention to its colonies. A *ressortissant* born in the mother-country and residing only a short time in a colony could not, when he came to Europe, benefit by the Convention. This was a very complicated problem.

SALIH ZEKAI BEY *(Turkey)* asked whether the Committee held that the inhabitants of the territories under mandate were not nationals of the countries exercising the mandate.

MR. STRANG *(British Empire)*, in reply to the Chairman, said that his delegation regarded the inhabitants of territories under mandate as *ressortissants* of the mandatory Power.

DR. MARTIUS *(Germany)* proposed that the paragraph should be kept, subject to the reservation of the question of mandates.

M. HENNIN *(Belgium)* supported this proposal. It was essential to determine the meaning of the term " nationals ". He observed that, owing to the impossibility of reaching a conclusion, the Sub-Committee had adopted the words "to the nationals of any High Contracting Parties belonging to any colony, protectorate, etc." and had abandoned the term " *originaires* " in consequence of the Netherlands delegate's observations. Without wishing to go into the question of principle, he would strongly press the necessity of keeping the paragraph.

M. PERASSI *(Italy)* said that he had desired to put aside the question of principle. He would not press for the omission of the paragraph.

The Committee decided, by eight votes to five, to maintain the paragraph.

Protocol ad *Article* 28.

Adopted at the previous meeting.

25. **Article 28 : Proposal of the Netherlands Delegation : Decision of the Sub-Committee** (Annex D, 8).

The decision of the Sub-Committee was unanimously approved.

26. **Proposal by the Australian Delegation for an Additional Article in the Protocol** (Annex D, 9).

MR. BARRINGTON *(Irish Free State)* observed that the Australian proposal had nothing in common with the declaration made by the Irish delegation and by the delegations of Canada and India.

THE CHAIRMAN thought that this point involved a reservation on which it was for the plenary Conference to take a decision.

The Committee agreed.

27. **Report of the Committee to the Conference : Part I** (Annex D, 10).

THE CHAIRMAN thanked M. Ito, Rapporteur, for his report.

M. ITO *(Japan)*, Rapporteur, observed that the result of the discussions held since December 2nd had not yet been embodied in his report. He would correct and complete it so as to bring it up to date in conformity with the proposals and suggestions made during the discussions.

Articles 17 *and* 18, *Points* 1, 2 *and* 3.

Adopted.

Point 4.

M. LINANT DE BELLEFONDS *(Egypt)* observed that the Committee had decided to strike out Articles 17 and 18. There was, accordingly, no need to examine the Egyptian proposal (Annex D, 1).

M. BRUNET *(Economic Committee)* said that, in view of the decision to adjourn the Conference, he would particularly emphasise the passage in the report explaining that, in the view of other delegates, the suppression of Articles 17 and 18 appeared to be necessary, because there had not been time to discuss the complicated questions involved. In present circumstances, this passage, in his opinion, far exceeded all others in importance. It appeared to imply that, if there had been sufficient time, these articles would have been the subject of a more thorough discussion which would not perhaps have resulted in their being suppressed. It was to be hoped that such would be the result when the question came up for discussion at the second session of the Conference.

M. ITO *(Japan)*, Rapporteur, agreed and promised to strengthen the statement in the report.

Article 19, *Points* 1 *to* 10.

Adopted.

Protocol ad *Article* 19.

Adopted.

Article 20, *Point* 1.

Adopted.

Point 2.

MAJOR FUHRMAN *(Australia)* asked that it should be indicated that, when the Bulgarian amendment had been submitted, the other delegations had withdrawn those which they had submitted.

M. BRUNET *(Economic Committee)* did not think that it was quite correct to refer to numerous requests for exceptions put forward in respect of this article. There had, in reality, been only a number of amendments proposed.

THE CHAIRMAN regretted that he was obliged to leave the meeting with Dr. Martius in order to attend the Drafting Sub-Committee. He wished first to thank the Committee for the valuable aid it had given him. He excused himself for having shown haste on certain occasions. He had been urged to finish the work as rapidly as possible.

M. FLORES DE LEMUS (Spain), (Vice-Chairman), *took the Chair.*

Points 3 *and* 4.

Adopted.

Article 21, *Points* 1 *to* 5.

Adopted.

Article 22, *Point* 1.

Adopted.

Point 2.

SALIH ZEKAI BEY *(Turkey)* said that, as the countries which had adhered to the Optional Clause might make reservations, the Committee would unanimously agree that countries which had not adhered to the Protocol would, *a fortiori*, be entitled to make reservations.

M. ITO *(Japan)*, Rapporteur, said he had made special allowance for this situation. As to the position of those States which had made no exceptions, there was no need to say that, if they remained silent, their rights remained intact. If, however, the Turkish delegate preferred to make any express statement, he would have no objection.

The present text was as follows :

> "The Swiss delegation pointed out that the adoption of this text would reduce the possibility of obtaining the signature of certain countries which had not acceded to the Statute of the Court, as the text provided for the compulsory jurisdiction of the Court."

He would make an addition to the effect that the Swiss delegation's proposal had been referred for examination to the Drafting Committee.

M. DINICHERT *(Switzerland)* pointed out that the Turkish and Swiss delegations had asked that the principle of arbitration should be laid down as compulsory. No such stipulation appeared in the report.

M. ITO *(Japan)*, Rapporteur, replied that this observation, which had been submitted by M. Dinichert, had been referred to the Drafting Committee for consideration.

SALIH ZEKAI BEY *(Turkey)* supported M. Dinichert's observation. It was the Drafting Committee which had refused to accept the amendment. It would now be necessary for the Committee to take a decision. Personally he would ask for the insertion on page 3 of the report of the following declaration :

> " The Turkish delegation stated that, while fully appreciating the value of the Permanent Court of International Justice, its Government, not being a party to the Protocol of December 16th, 1920, found it impossible to agree to the text proposed by the Sub-Committee."

He would add that his country was prepared to conclude bilateral arbitration treaties, as it had already done with a number of countries.

M. ITO *(Japan)*, Rapporteur, said he would include this observation in his report.

Point 2 was adopted.

Points 3, 4 and 5.

M. ITO *(Japan)*, Rapporteur, recalled the proposal of the Venezuelan delegation. He would confer with that delegation in order to obtain a more exact definition of the scope of its proposal. The Drafting Committee, with the assistance of the delegation, would endeavour to find a better wording which would be examined by the Conference at its second session.

Points 3 and 4 were adopted.

It was decided to strike out point 5, on the ground that it overlapped with point 7.

Points 6 and 7.

Adopted.

Article 23, Points 1, 2 and 3.

Adopted.

Point 4.

M. ITO *(Japan)*, Rapporteur, said that he would change this passage so as to take account of the decision which had been adopted that day on the German proposal concerning official translations.

M. PEROUTKA *(Czechoslovakia)* observed that, in consequence of the changes in procedure which had been adopted, it would be necessary to delete the date indicated in the article. The idea which it had been desired to express was that the time-limit for signature should be four months.

THE CHAIRMAN thought that the date should be left blank in view of the state of the work.

M. MAYER *(Austria)* supported this proposal.

M. NEDERBRAGT *(Netherlands)* said that the question was one of small importance, but he would prefer to leave the present text, so as to crystallise the result of the Committee's work, more especially since the discussion now in progress would normally have taken place before the decision which had been taken on the previous day and which had resulted in the adoption of an entirely new procedure.

M. PÉPIN *(France)* proposed the following text :

> " The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date, and may be signed as from this date within a time-limit of four months."

M. POZNANSKI *(Poland)* was prepared to agree to this text, but wished to be able to make up his mind on the following paragraphs. It would therefore be simpler to leave all dates blank, in accordance with the decision taken on the previous day by the plenary Conference.

M. PERASSI *(Italy)* added that the texts submitted to the Committee had been prepared with an eye to a definite situation. The present situation was completely different. It was therefore evident that the dates proposed in the present text would have to be brought into line with the date on which the Convention would be signed.

M. ITO *(Japan)*, Rapporteur, agreed. If, however, the present text were preserved, it would show the structure of the draft which had been discussed.

The Committee decided to keep the text as it stood.

Articles 24 *and* 25.

Adopted.

Article 26, *Points* 1, 2, 3 *and* 4.

Adopted.

Article 26bis, *Points* 1, 2 *and* 3.

Adopted.

M. ITO *(Japan)*, Rapporteur, said that he still had to make a report on Articles 21*bis*, 21*ter*, 28, and the German proposal on the Protocol *ad* Article 21. Furthermore, certain delegations had submitted proposals concerning clauses for the revision of the Convention. He would take into account these various proposals and request any delegations which desired to bring forward fresh proposals to be good enough to communicate them to him, in order that he might include them in his draft report which would be distributed forthwith.

THE CHAIRMAN proposed that the Committee should leave it to M. Ito to include in his draft report all the modifications in question.[1]

This proposal was adopted.

M. DINICHERT *(Switzerland)* wished to mention the question of partial denunciation which would be discussed, among many others, at the second session.

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[1] Part II of the report of M. Ito is printed as Annex D, 11.

C. REPORTS OF THE COMMITTEES TO THE CONFERENCE.

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1. Report of Committee A on Articles 1 and 2, 5 to 11, and 15.
2. Report of Committee B on Articles 3, 4, 12, 13 and 14.
3. Report of Committee C on Article 16.
4. Report of Committee D on Articles 17 to 28, New Articles and Miscellaneous Proposals.

REPORT OF COMMITTEE A. TO THE CONFERENCE ON ARTICLES 1 AND 2, 5 TO 11, AND 15.

INTRODUCTION

1. Committee A studied separately each of the various texts referred to it for consideration. It has discussed the amendments and suggestions submitted by the various delegations in regard to each of the texts and has adopted, in most cases, new or remodelled drafts which are submitted for the approval of the Conference.

2. The purpose of the present report is to show not only the proposed new drafts, but also the considerations which led the Committee to modify the texts, the meaning of the provisions which certain delegations did not consider sufficiently clear and, finally, the reasons why various amendments or suggestions were withdrawn or referred to other Committees of the Conference for examination.

CHAPTER I.

PREAMBLE.

Rapporteur : M. POLITIS (Greece).

3. The Committee was not directly concerned with the text of the Preamble. During the discussion of Article 1, however, the opinion was expressed that there was a discrepancy between the text of this article and that of the Preamble, as the former referred, not only to the activities of foreigners allowed to establish themselves in the country, but also to those of foreigners not established there, whereas the latter referred only to the first of these two cases.

4. It was pointed out, however, that this interpretation was wrong, because the third paragraph of the Preamble did, in fact, cover both cases.

5. Should it appear necessary, however, to modify the text of this part of the Preamble, the work should be entrusted to Committee D and to the Drafting Committee.

CHAPTER II.

ARTICLE 1 AND THE PROTOCOL *ad* ARTICLE 1.

Rapporteur : M. POLITIS (Greece).

Article 1.

6. In reply to a question by the Turkish delegation, it was made clear that the term "nationals" referred only to natural persons. It did not include juridical persons, which were dealt with in Article 16. If any definition of commercial companies and associations whose purposes were not the making of profits appeared necessary, it should be dealt with when Article 16 was under consideration, and this was a matter for Committee C.

7. The question was also raised whether the term "nationals" covered not only the citizens of a State properly so called, but also in a general way, all its nationals, including natives of its colonies. The question was reserved for examination at the same time as Article 28, which provides for the application of the Convention to colonies, etc.

8. The question was also raised whether in the application of Article 1 a distinction should not be made between the nationals who resided in a country and those who did not. This question was referred for examination to Committee D, which was dealing with the general provisions of the Convention.

9. The Hungarian delegation, with the concurrence of the representatives of the International Chamber of Commerce, proposed that the persons enjoying the rights conferred under Article 1 should be entitled to exercise these rights either in person or through fit and proper agents appointed by them at their discretion. It was agreed, however, that this question came under Article 8 and its consideration was postponed until the discussion on that article.

10. Certain delegations (Japan, Norway, International Chamber of Commerce) which considered that foreigners should not be granted anything beyond national treatment, desired to omit from the first line of the text the words "even if not resident" or to supplement the text by adding that foreigners would be entitled to exercise the rights in question only "subject to the same conditions" or "to the same extent" as nationals, or, alternatively, to replace the term "when conducting similar operations" at the end of the first paragraph by the words "in similar cases". It was thought, however, that the idea of national treatment as the maximum that could be accorded to foreigners was so clearly expressed in the second sentence of paragraph 1 that it was unnecessary to modify the text of the draft. These amendments were therefore withdrawn.

11. The Swedish delegation stated that it accepted the rule of national treatment subject to reserving the requirement that a deposit must be paid in Sweden by foreign traders who wished to settle in the country, in the same way as by Swedish traders resident abroad. As this question was relevant to the provisions of Article 7, its examination was postponed until that article was discussed.

12. The Spanish delegation asked that it should be understood that the provisions of Article 1 did not apply to certain special advantages which were, or might be, granted exceptionally to national enterprises when these advantages were not such as to enable these national enterprises to compete unfairly with foreign enterprises already established in the country. The question is connected with the provisions of Article 20, and it was therefore referred to Committee D which was responsible for the study of this clause.

13. On the other hand, the Committee accepted two amendments proposed by the British delegation, the first to delete as unnecessary the word "even" in the fourth line of the text of the draft, and the other to substitute, at the beginning of the second paragraph, so as to avoid all misunderstanding, the words "shall not be prevented from advertising" for the words "shall be free to advertise".

14. The British delegation also proposed to add after the word "concession", in line 5, the words "licence or permit". The Committee was at first inclined to accept this amendment : but it was obliged to reconsider its original decision when it was pointed out that the adoption of these terms would seriously disturb the general intention of the draft by making too wide a breach in the liberal principle of granting national treatment to foreigners. The Committee took the British delegation's proposal into account to some extent at least, and agreed to add the words "licence or permit" after the words "to any condition" in lines 6 and 7 of the text. This addition in no way modifies the substance of the text, since the use of the generic term "condition" in the draft would apply to every condition to which nationals were subject, and therefore to a "licence" or permit".

15. As a result of these modifications, Article 1 would read as follows :

> "1. Nationals of the High Contracting Parties may, even if not resident in the territory of the other High Contracting Parties, conduct commercial transactions of every kind therein and, in particular, sell goods, make purchases, take orders, deliver goods on order and carry out work on order, except in cases in which, under the laws of the territory in question, nationals are required to obtain a Government concession for the conduct of such business or execution of such work. Provided they conform in each of these activities to the laws and regulations of the country, they shall not be subject to any condition, *licence*, *permit*, or charge other, or more burdensome, than those to which nationals of the country are subject when conducting similar activities.
>
> "2. Similarly, the nationals referred to in the preceding paragraph *shall not be prevented* from advertising in any form for the purposes of the business referred to above, provided such advertising conforms to the laws and ordinances of the country, under the same conditions as nationals without having to pay in this respect any taxes or duties other, or higher, or more burdensome, than those paid by nationals".

Protocol ad *Article* 1.

16. The British delegation proposed that, in paragraph 1, the word "particular" should be inserted before the word "contracts". After a discussion, it did not, however, insist upon this amendment.

17. It further proposed that a provision be added to the Protocol stipulating that it be "understood that nothing in the Convention shall impose on any High Contracting Party any obligation in respect of the rules of membership of industrial, commercial and similar associations and organisations of a voluntary nature". The Committee considered this reservation to be superfluous, however, and the British delegation withdrew it, subject to the condition that it should be mentioned in the present report.

18. The question was raised whether, under paragraph 1 of the Protocol, contracts concluded between a contractor and his sub-contractors were included in the exception, or whether, on the contrary, they were subject to no restrictions.

The Committee was of the opinion that no modification of the text was necessary, since the situation was quite clear. If the contract required the contractor to deal only with nationals, he would have to comply with this obligation ; but if the contract had nothing to say on this point, the contractor would be free to deal with foreigners also.

19. The concluding passage of paragraph 1 gave rise to a question of interpretation. It was asked whether the exception provided for in regard to contracts concluded by the public authorities by way of tender applied in all cases, or whether any distinctions had to be made.

It was recognised that this exception should apply in all cases, since contracts concluded by public authorities were to be regarded in all cases as equivalent to Government concessions.

In these circumstances the Committee considered it preferable, in order to avoid all ambiguity, to delete at the end of the paragraph the words "these contracts being regarded as equivalent to Government concessions".

20. The second paragraph gave rise to a long discussion. Various amendments were proposed by a large number of delegations (Austria, British Empire, Egypt, Estonia, Turkey), whereas others desired that this text should be simply omitted. Many delegations were of opinion that it would be impossible to exempt the granting of licences, authorisations or permits arising out of the control of imports and exports from all conditions regarding establishment, residence or registration. A Sub-Committee was instructed to seek a formula which would reconcile the various divergent points of view. On the basis of the general principle of equality of treatment between nationals and foreigners, and taking into account the practice followed in this matter in several countries, the Committee unanimously agreed upon the following text, to replace the second paragraph of the Protocol :

> "Notwithstanding the provisions of Article 1, if, according to the operation of the laws of the country, the granting of licences, authorisations or permits arising out of the control of imports and exports is, in the case of nationals, subject *de jure* or *de facto* to conditions as regards establishment, residence or registration, the same conditions shall be equally applicable to foreigners."

21. The new text of the Protocol *ad* Article 1 would therefore read as follows :

> "1. The provisions of Article 1, paragraph 1, shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by public authorities by way of tender.
>
> "2. *Notwithstanding the provisions of Article* 1, *if, according to the operation of the laws of the country the granting of licences, authorisations or permits arising out of the control of imports and exports is, in the case of nationals, subject* de jure *or* de facto *to conditions as regards establishment, residence or registration, the same conditions shall be equally applicable to foreigners.*"

CHAPTER III.

Article 2 and the Protocol *ad* Article 2.

Rapporteur : M. Politis (Greece).

Article 2.

22. Upon the proposal of the British delegation, it was agreed that the wording of this text should conform to that used in the second paragraph of Article 1, and that the words "shall not be prohibited from participating" should be substituted for the words "shall be free to participate". It was also proposed to add in the second line, after the words "of any other High Contracting Party", the qualifying phrase "in conformity with the laws and regulations of the country".

23. The new draft of Article 2 would therefore read as follows :

> "Nationals of each of the High Contracting Parties shall *not be prohibited* from participating, in the territory of any other High Contracting Party, *in conformity with the laws and regulations of the country*, as exhibitors, vendors or buyers under the same conditions as nationals in public markets or fairs not expressly reserved to nationals or to nationals of a group of neighbouring States."

Protocol ad *Article* 2.

24. At the request of the German delegation the Committee decided to reserve until Article 28 came up for discussion the question whether the words "or mandate" at the end of the first paragraph should be retained.

25. With regard to paragraph 2, the Czechoslovak delegation thought that it should be made clear whether the words "a group of neighbouring States" referred only to adjacent countries or whether they would also include groups the composition of which was determined by the nature of the exhibition, *e.g.*, exhibitions dealing with tourist traffic, ethnographic exhibitions covering a specific geographical region, river navigation exhibitions, etc.

It was pointed out that the question of exhibitions did not come within the terms of the Convention which dealt only with markets and fairs.

It was agreed, however, that the words "a group of neighbouring States" should be understood in the widest possible sense, but that they should not, in any circumstances, be interpreted in any arbitrary or improper manner.

26. It was further observed that the "free admission" mentioned in paragraph 3 obviously did not apply to the free admission of goods *into the country*.

27. The text of the Protocol *ad* Article 2 therefore remains unchanged, subject to the reservation regarding the words "or mandate" and with the exception of the omission from paragraph 2 of the words "of the Convention", which were considered superfluous. The proposed text therefore reads :

"1. The provisions of Article 2 shall not preclude the organisation by a High Contracting Party in his territory of markets and fairs reserved for nationals of his colonies, protectorates or territories under his suzerainty *(or mandate)*.

"2. In applying the provisions of Article 2, under which certain markets or fairs may be reserved for nationals of a group of neighbouring States, the High Contracting Parties undertake to make no discrimination which might appear unfriendly towards the nationals of other High Contracting Parties or their goods.

"3. The words 'under the same conditions' are understood by the High Contracting Parties to mean free admission and equality of charges without prejudice to any regulations which the High Contracting Parties reserve the right to establish for goods admitted to fairs or markets."

CHAPTER IV.

Article 5 and the Protocol *ad* Article 5.

Rapporteur : M. Politis (Greece).

Article 5.

28. The question as to the persons to whom the provisions of this article should apply gave rise to a prolonged discussion during which various systems were advocated.

According to the Draft Convention the provisions of this article were to apply to the nationals of one of the High Contracting Parties in whatever country their industrial or commercial operations might be conducted. The British delegation—supported by the representatives of the International Chamber of Commerce—proposed that the advantages provided for should be confined to the nationals of any High Contracting Party who engage in industry or business in the territories "of any party".

On the other hand, the proposal was made that the nationality of the persons covered by this article should not be taken into account, and that its provisions should be applied to manufacturers or traders established in the territory of one of the High Contracting Parties, even if they were subjects of a non-contracting State. The principle, embodied in Article 10 of the Convention for the Simplification of Customs Formalities, signed at Geneva on November 3rd, 1923, was quoted in support of this system, which, moreover, would be in the economic interest of the country in which the business was carried on.

But it was objected that this would be going too far, because the point at issue here was mainly the treatment of the nationals of the respective contracting parties.

29. The Committee concurred in this view, and agreed to modify the text in the sense proposed by the British delegation, and to say, in accordance with the wording suggested by the International Chamber of Commerce, that these provisions should apply to the "nationals of one of the High Contracting Parties who engage in industry or business in the territory of any of the High Contracting Parties".

30. In adopting this wording, however, the Committee did not intend to give the article a restrictive sense. Although the undertaking assumed under Article 5 towards other contracting countries regarding manufacturers or traders established in their territory only applies formally to the latter if they are nationals of a contracting country, this does not imply a recommendation not to permit a trader or manufacturer established in the country of one of the contracting parties, but a national of a non-contracting party, to engage in business in any other contracting country.

31. According to the draft, establishment in the territory of one of the High Contracting Parties was to be proved by the presentation of an identity card delivered by the authorities of the country in which the industry or business was carried on.

The British delegation pointed out that the formality of identity cards was not required in all countries, and it should not, therefore, be made an essential condition. It proposed an amendment to this effect which corresponds exactly to the suggestion made on this point by the International Chamber of Commerce.

32. It was argued that, although the possession of identity cards was not invariably necessary, the person concerned should in any case be required to prove that he was in fact established in one of the contracting countries.

It was further argued that the idea of such proof was clearly implied in the expression "who engage" used in the wording referred to above (paragraph 29). The Committee merely added that the exercise of the right referred to in Article 5 was granted "subject, if necessary, to the presentation of an identity card".

33. In these circumstances the Yugoslav delegation withdrew the amendment it had submitted to the effect that proof must be brought not only of legal capacity to engage, but also of the fact that the person in question was actually engaged in an industry or trade, since the wording adopted covers the case which it had in mind.

34. During the discussion as to the nationality of the persons to be covered by this provision, it was clearly recognised that this question concerned only manufacturers or traders established in a contracting country and not any commercial travellers they might employ ; for the latter, nationality and place of settlement are, in any case, irrelevant.

35. Regarding the last part of paragraph 1 of this article, in which it is stated that the persons coming under this provision shall not require a special authorisation for any of the activities referred to, the Swedish delegation suggested that it might be advisable to reserve to the High Contracting Parties the right to require an authorisation for foreign travellers if such authorisation were required from national commercial travellers.

The Committee was of opinion that, according to the spirit of the Convention, a previous authorisation should never be required in the case of commercial travellers.

36. It was agreed, however, that if, according to the laws of the country, the exercise of a trade, such as the trade in jewellery and articles of precious metals or in arms, was subject to the obtaining of a licence, any foreign firm which sent its traveller to that country would, in any case, be required to obtain the necessary licence for itself, even if it did not need an authorisation for the traveller.

37. Several delegations (Germany and France) submitted amendments to supplement the text at the end of the first paragraph regarding samples.

The Committee considered that this subject was outside the scope of the Convention. It is rather within that of the Convention on Customs Formalities, whose provisions, in this connection, might perhaps be supplemented when the Economic Committee prepares a new Convention to supplement that of 1923.

38. The Polish delegation desired to add in the sixth line of the first paragraph the word "public" before the words "places of sale", so as to make it quite clear that the operations in question are not those conducted in private premises.

The Committee was of opinion that this addition was unnecessary since the expression "places where goods are on sale" obviously implies places open to the public.

39. The Polish delegation would also have liked to replace in the same line the word "producers" by the word "manufacturers", not only because this is the word used later on in the text in regard to orders, but particularly to remove any impression that foreign traders or their travellers were authorised to make purchases from persons other than traders or manufacturers.

It was pointed out that this change of wording would restrict the meaning which the authors wished to give the text. It would amount to the recognition of a monopoly in favour of merchants and to the detriment of producers, which would be contrary to the freedom of trade and competition. The intention was that the text should apply both to merchants and producers as regards both purchases and the taking of orders. If it seemed necessary to establish uniformity of terms between the two parts of the sentences, it would be preferable to employ the term "producers" in both cases, it being understood that this term did not include persons working at home on another person's account.

Taking this view, the Committee decided to maintain the word "producers" in the sixth line and to substitute this expression for "manufacturers" in the next line.

40. According to the Netherlands delegation, some doubt was possible as to the meaning of the last sentence of paragraph 1 as it stood in the draft, since, whereas reference is made in the first sentence to the nationals of the High Contracting Parties and their commercial travellers, the second sentence does not specify whom it means when it says "they shall not require, etc.". To clear up this point, the Netherlands delegation proposed that the word "they" should be replaced by "the said nationals and their commercial travellers".

This amendment was adopted.

41. The exemption from tax or duty provided for at the end of the first paragraph gave rise to a number of objections. Several delegations maintained that it had better be omitted and that national treatment should be stipulated instead. It was decided, after discussion, to adopt this course, inserting before the words "taxes or duties" the word "special", and adding the words "not payable by national business firms or their representatives".

42. As a result of the alterations indicated above, Article 5, paragraph 1, would read as follows:

"Without prejudice to the provisions of Article 1, nationals of one of the High Contracting Parties *who engage in industry or business in the territory of any of the High Contracting Parties may—subject, if necessary, to the presentation of an identity card*—in the territory of the other High Contracting Parties, either in person or by travellers in their employ, purchase from merchants or in places where goods are on sale as well as from producers, the goods in which they deal, or take orders from merchants and *producers* who trade in, or use in their establishment, goods of the same kind as those offered. These nationals and their commercial travellers shall not require special authorisation for any of these activities, nor shall they be obliged to pay, on account of these transactions, any special taxes or duties not payable by national business firms or their representatives, provided they only take with them samples and not goods intended for sale."

43. Paragraph 2 of the text of Article 5 as it stood in the draft encountered no objections and was therefore kept without change.

44. The Hungarian delegation proposed that paragraph 3 of Article 5 should be transferred to the Protocol, and that it should also be made to refer to Article 1.

It was pointed out that the matter of hawking referred to in this paragraph of Article 5 was also covered, apart from any question of Article 1, by Article 7, and that, if the proposed change were adopted, it would be necessary that the proposed provision should cover all three texts.

The Committee was of opinion that it would be for the Fourth Committee and the Drafting Committee to decide finally where paragraph 3 of Article 5 should be inserted, and also the form to be given to that paragraph, taking into account the foregoing observation.

45. The Polish delegation proposed to add, in paragraph 3 of Article 5, after the word "orders", the words "or purchases", but the Committee was of opinion that such an addition would enable States to restrict unduly the freedom of activity of commercial travellers. In view of this decision, the Polish delegation asked for a reservation framed as follows :

"Poland reserves the right, in conformity with her laws and regulations, to prohibit the nationals of the other High Contracting Parties mentioned in Article 5, paragraph 1, and their commercial travellers, from making purchases in her territory from persons not engaged in commerce or industry."

The Committee was of opinion that this request should be held over until the examination of Article 7, in connection with which other similar reservations had been submitted.

Protocol ad *Article* 5.

46. Various amendments to the Protocol *ad* Article 5, paragraph 1, were submitted. The Committee examined the amendment presented by the Danish, Estonian, Finnish, Norwegian and Swedish delegations and decided to propose the insertion in the Protocol of the following provisions :

"The levying, in respect of the operations referred to in Article 5, of a special fee, based on the length of stay of the foreign trader or commercial traveller, shall be permitted to those of the High Contracting Parties who at present adopt this system, on the understanding that the other High Contracting Parties shall be relieved, in relation to these High Contracting Parties, from the obligations arising out of the present Convention as regards the special fee levied on commercial travellers.

"It is understood that no tax or fee of this nature shall be levied in the case of traders who have no intention of soliciting orders or making purchases."

47. It was pointed out, however, by the International Chamber of Commerce that it would be unfair to require from foreign commercial travellers who stay only a short time in the country the payment of special taxes or licence fees as high as those levied on commercial travellers who, in virtue of their licence or the payment of the tax, are entitled to exercise their activities for a whole year, and that it would be expedient in such cases to require from foreign commercial travellers the payment of only a proportion of the said special taxes or fees generally corresponding to the number of months which they actually spend in the country in question.

48. The Committee accepted this suggestion and decided to add to the Protocol a provision reading as follows :

"Nevertheless, if the commercial traveller stays only a short time in the country, he shall be liable, as regards any special tax or licence fee payable by national travellers for one year, only in respect of an amount generally corresponding to the number of months which he actually spends in the country."

49. In the Committee's view, this provision does not apply to any other charges but only to the special fees levied on commercial travellers as such. It was understood further that the said

provision should in no way affect the paragraphs of the Protocol adopted on the proposal of the Danish, Estonian, Finnish, Norwegian and Swedish delegations.

50. The International Chamber of Commerce also suggested a provision to the effect that, even subject to the above limitation, the levying of such taxes or fees should not apply in the case of travellers who, although they travel for commercial purposes, do not intend to solicit orders or to make purchases.

The Committee, however, considered this addition superfluous, as paragraph 2 of the text adopted on the proposal of the above-mentioned delegations must necessarily cover the case in question.

51. The Indian delegation pointed out that, in India, such taxes, if any, were levied on commercial travellers by local (*i.e.*, municipal) authorities, of which there were many hundreds or even thousands, so that control of time regulations would be a practical impossibility ; but, as this was a general question, the Committee decided not to discuss the point, but to hold it over for examination later.

52. The text of the Protocol *ad* Article 5, paragraph 1, would thus read as follows :

"The levying, in respect of the operations referred to in Article 5, of a special fee based on the length of stay of the foreign trader or commercial traveller shall be permitted to those of the High Contracting Parties who at present adopt this system, on the understanding that the other High Contracting Parties shall be relieved, in relation to these High Contracting Parties, from the obligations arising out of the present Convention as regards the special fee levied on commercial travellers,

"It is understood that no tax or fee of this nature shall be levied in the case of traders who have no intention of soliciting orders or making purchases.

"Nevertheless, if the commercial traveller stays only a short time in the country, he shall be liable, as regards any special tax or licence fee payable by national commercial travellers for one year, only in respect of an amount generally corresponding to the number of months which he actually spends in the country."

CHAPTER V.

Article 6 and the Protocol *ad* Article 6.

Rapporteur : M. Politis (Greece).

53. Several amendments were submitted (British Empire, Estonia, France, Hungary, Sweden, Turkey, Venezuela, Yugoslavia). They were subjected to a preliminary examination, during which the question of principle immediately arose as to the exact meaning that should be attributed to the term "admitted into the territory ".

The Economic Committee's intention—brought out in Article 29 of the draft—was that each State should retain the rights it possessed at present in the matter of the admission of foreigners into its territory. It might therefore grant admission or refuse it, or grant it only subject to restrictions. Once admitted, however, foreigners must enjoy the rights provided for in Article 6 on a footing of equality with nationals.

It was pointed out, however, that the text did not take into account the various situations which might arise under the laws of certain countries where the admission of foreigners might be only temporary or might only confer the right of sojourn without that of establishment.

Consequently, it was considered necessary to give more elasticity to the text in order to adapt it to all possible situations.

54. On the other hand, the reservation made at the end of the article with regard to police regulations concerning foreigners should, in the opinion of several delegations, be supplemented by a reservation in regard to measures for the protection and regulation of the home labour market.

55. Other delegations, again, thought that the scope of the provision regarding the right to leave the territory without let or hindrance, and the conditions for the exercise of the right of expulsion reserved to the States, required to be more accurately defined in the Protocol *ad* Article 6.

56. Taking these various points of view into account, the German delegation submitted a new draft of Article 6 and its Protocol, which was referred to a Sub-Committee for consideration.

57. The above-mentioned questions were the subject of a very full discussion in the Sub-Committee, during which it was pointed out that, while Governments could regulate admission as they saw fit, they should not be entitled to impose on foreigners, once they were admitted on their territory, new conditions which were incompatible with the other provisions of the Convention.

58. After discussing various drafts in detail, the Sub-Committee decided upon a wording intended to form a single text to replace Article 6, its Protocol and Article 29. This draft read as follows :

"1. Each of the High Contracting Parties remains free to regulate the admission of foreigners to its territory and to make this admission subject to conditions limiting its duration, or the rights of foreigners to travel, sojourn, settle, choose their place of residence, and move from place to place. These limitations may be imposed either by means of the documents required of foreigners for their admission to the territory (passport, identity card, permit to sojourn, etc.) or through the application of the laws and regulations in force in the country as regards the conditions in which the rights above mentioned may be exercised.

"2. Nationals of any High Contracting Party, admitted into the territory of another, High Contracting Party, shall enjoy therein, provided they comply with the laws and regulations of that Party, the same rights to travel, sojourn, settle, choose their place of residence, and move from place to place, as the case may be, as nationals, without being subject to any conditions or regulations other than those to which nationals are subject with regard to each of the said rights, but without prejudice to the police regulations concerning foreigners and the measures relating to the home labour market.

"3. They may not, after admission, be subjected to conditions, restrictions or prohibitions incompatible with the other provisions of the present Convention.

"4. They shall have the right to leave the territory without let or hindrance unless prevented for reasons of public order or owing to contractual obligations, and without prejudice to the right of expulsion, the normal exercise of which each of the High Contracting Parties reserves to himself in accordance with his legislation and the provisions of international law."

59. The Sub-Committee, moreover, considered that, in order to indicate that it was desirable that Governments should not abuse their rights in the matter of admission and expulsion of foreigners, it would be advisable to insert the following provision in the Final Act :

"Notwithstanding the right reserved to States under Article 6 regarding admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings assumed under the terms of the present Convention."

60. On the Sub-Committee's text being referred to the Committee, the latter made a few slight alterations but maintained its general gist unchanged.

61. Some delegations asked that the words "in particular", which occurred in the original draft referred to the Sub-Committee, should be re-inserted in the fourth line, before the enumeration of the rights accorded to foreigners who had been granted admission.

It was pointed out, however, that these words had been omitted as superfluous, since there did not appear to be any restriction which might be applied to the duration of admission, or to the extent of the privileges attaching thereto, other than those already indicated.

62. The phrase "as the case may be" in the fourth line of paragraph 2 appeared to certain delegations to be somewhat obscure, ambiguous and even dangerous. Some proposed that they should be explained in a Protocol, and others that they should be omitted.

It was explained, however, that these words were essential, in order to reflect in paragraph 2 the different categories of rights which, according to paragraph 1, admission may confer and in order to make it perfectly clear that a foreigner, once admitted, may not necessarily enjoy in all cases all the rights enumerated, but only those compatible with the terms and conditions of his admission. The words "with regard to each of the said rights" occurring at the end of paragraph 2 also relate to this division of rights into categories and were adopted in order to show that national treatment was granted only in respect of rights which had in fact been conferred on the person concerned.

63. As regards paragraph 4, it was recognised that it would be dangerous to allow a restriction upon the right "to leave the country without let or hindrance" on the ground of "contractual obligations". These words were therefore deleted.

64. Moreover, it appeared desirable, in order to prevent possible abuses, to define more accurately the conditions in which the right to leave the country might be withheld for reasons of public order, by stating in the first place, that such refusal of permission might not apply to foreigners in general but only to any individual foreigner concerned in a given case, and further, that such refusal of permission must be validated by a decision of a competent authority given in conformity with the laws of the country and the provisions of international law.

65. At the end of the same paragraph it was proposed to add after "expulsion" the words "or of refusing re-admission" (*refoulement*) in order to allow for the case of a foreigner being turned back merely as a matter of ordinary police regulations on account of having failed to comply with the laws and police regulations regarding foreigners. It was agreed, however, that this addition was superfluous, since the case referred to was covered by the reservation in regard to these regulations, which appears at the end of the second paragraph of the text adopted.

66. It was pointed out that it would be more logical to mention the right of expulsion in connection with the limitations of the rights enjoyed by foreigners admitted to the territory. In view of this observation, the Committee decided to transfer the last sentence of paragraph 4 to the end of paragraph 2.

67. It was proposed that only the second paragraph of the text framed by the Sub-Committee should be included under Article 6, and that the three remaining paragraphs should be put together under Article 29.

It was objected that paragraph 2 would not be properly understood if separated from the first paragraph, which defines admission, and that paragraph 3 could not, in any case, be put under Article 29, as it has nothing to do with admission.

The Committee decided to hold over the question as to where the different paragraphs of the text should be inserted.

68. The Japanese delegation observed that the wording now employed appeared to recognise the right of States to refuse foreigners access to their territory, whereas it had been understood that this question should not be dealt with by the Conference.

In reply, the possibility was suggested of explaining that, in adopting paragraph 1 of the draft, the Conference had confined itself to noting the present *de facto* situation, without intending to sanction it finally *de jure*.

69. Further, the Chinese delegation observed that, as long as unequal treaties were in force in China, this Power would be unable to apply the provisions of paragraph 2 to nationals of the countries benefiting under such treaties.

70. Lastly, the French delegation maintained its previous reservation concerning the protection of the home labour market.

71. Taking into account these various reservations, the Committee adopted the following text and decided to leave open the question as to where it should be finally inserted in the Convention :

"1. Each of the High Contracting Parties remains free to regulate the admission of foreigners to its territory and to make this admission subject to conditions limiting its duration, or the rights of foreigners to travel, sojourn, settle, choose their place of residence, and move from place to place. These limitations may be imposed either by means of the documents required of foreigners for their admission to the territory (passport, identity card, permit to sojourn, etc.), or through the application of the laws and regulations in force in the country as regards the conditions in which the rights above mentioned may be exercised.

"2. Nationals of any High Contracting Party admitted into the territory of another High Contracting Party shall enjoy therein, provided they comply with the laws and regulations of that Party, the same rights to travel, sojourn, settle, choose their place of residence, and move from place to place, *as the case may be*, as nationals, without being subject to any conditions or regulations other than those to which nationals are subject *with regard to each of the said rights*, but without prejudice to the police regulations concerning foreigners, *the measures relating to the home labour market, and the right of expulsion, the normal exercise of which each of the High Contracting Parties reserves to himself in accordance with his legislation and the provisions of international law.*

"3. They may not after admission be subjected to conditions, restrictions or prohibitions incompatible with the other provisions of the present Convention.

"4. They shall have the right to leave the territory without let or hindrance unless individually prevented by a competent authority, in conformity with the laws of the country and with international law."

CHAPTER VI.

Article 7, Paragraph 1 and Protocol *ad* Article 7.

Rapporteur : M. Politis (Greece).

72. The Swedish delegation submitted an amendment proposing that persons who had only been admitted temporarily, without any previous declarations of an activity covered by the said article as the purpose of their stay, should be excluded from the rights provided for in this article.

The delegation did not insist on this proposal, however, after it had been explained that the exclusion proposed would, in this case, be an implied condition of admission and in conformity with Article 6.

73. The same delegation asked whether the provisions of Swedish law requiring foreigners to deposit security for the payment of taxes for a period of three years and to obtain a special permit, as well as to pay a tax leviable also upon Swedes not resident in Sweden for the organisation of public performances or meetings, were compatible with the spirit of the Convention.

The Committee was of opinion that, if the permit referred to might be arbitrarily refused, it could not be considered compatible with the Convention.

The Committee held, however, that the stipulation requiring the deposit of security is not inconsistent with the provisions of Article 7, provided that the amount is kept within reasonable limits and that it is levied for fiscal reasons only.

74. The British delegation submitted an amendment proposing that the words "including the provision of communications and transportation" be inserted after the words "after any transactions of an economic character" in the second line of sub-head (*a*).

The Netherlands delegation made the same proposal with regard to shipping.

It was decided, however, that this addition was superfluous since the transactions referred to were undoubtedly covered by the very wide term "and, in general, any transactions of an economic character".

75. At the request of the Latvian delegation it was agreed that it was not contrary to the spirit of the Convention to make the exercise by a foreigner of any commercial or industrial activity subject to previous authorisation from the Government, municipal or communal authorities which was also required of nationals, or to require branches, subsidiary undertakings or agencies of foreign undertakings to obtain the same authorisation as autonomous undertakings.

76. The same delegation raised two further points relative to the national character of banks, pawnbrokers' shops, and insurance companies, and the nationality of the founders, managers or members of the boards of limited companies ; these were reserved for examination, the former under paragraph 2 of Article 7 and the latter under Article 16 referred to Committee C.

77. The Turkish delegation submitted amendments to the same effect, but subsequently withdrew them.

78. The Netherlands delegation asked that the words in the second and third lines of paragraph 1 "allowed to establish themselves" be deleted on the ground that, in the Netherlands, the condition of establishment was not required ; foreigners had the right to exercise any of the professions covered by the article.

It was agreed, however, that the text should be brought into line with that of Article 6 ; the Committee consequently accepted the insertion in the text of the words "in accordance with Article 6 of the present Convention" after the words "allowed to establish themselves therein", in order to make it clear that Article 7 could only apply to the same category of foreigners as that dealt with in Article 6.

79. The same delegation proposed that the words "identical with those" in the fourth line of sub-head (*b*) be deleted as superfluous.

It was agreed that the word "identical" might, with advantage, be replaced by the words "the same" ; the sentence would then read : "the submission of the same titles or guarantees as those, etc".

80. Another modification was made in the first paragraph, the words "if necessary, subject to reciprocity" being added after the words "or recognised as being equivalent" in the last line of sub-paragraph (*b*) of the text of the draft.

The Committee considered that a definitive provision should be made allowing a State which does not require the submission of the same titles as those it requires from nationals for the exercise of a profession, and which merely requires the submission of equivalent titles, to make the greater facility thus accorded to the nationals of certain contracting countries subject to the condition that the same facilities be granted by the countries whose nationals enjoy these facilities.

Such a provision is the necessary corollary to the clause inserted in sub-head (*b*) of paragraph 1, which leaves it to the discretion of the contracting States to require identical or equivalent titles.

The Committee thought that the amendment proposed would meet the wishes of a certain number of delegations which were anxious that the category of professions or offices which contracting States are entitled to reserve to nationals should be further extended, for instance, in the case of the medical and kindred professions (*professions sanitaires*).

81. The Committee was informed that, in Egypt, special regulations were in force in regard to the exercise of the medical profession, *i.e.*, special examinations were required of doctors who did not possess a diploma issued by the Egyptian universities. The object of these special examinations was to ensure that this category of doctors possessed the requisite standard of knowledge in certain matters which, for reasons of climate, were of particular importance in Egypt. The Committee considered that these provisions of Egyptian law merely constituted a normal use of the right reserved to States under Article 7, paragraph 1, sub-head (*b*), to judge of the equivalence of the titles or guarantees necessary for the exercise of a profession, and that therefore it was not necessary to insert in the Convention a special provision to cover this situation.

82. Having inserted a reservation regarding the conditions for the admission of foreigners, which are dealt with in Article 6, the Committee adopted the text of paragraph 1 of Article 7 as given further on.

ARTICLE 7, PARAGRAPH 2.

Rapporteur : M. PILOTTI (Italy).

83. Having thus modified the text of the draft with regard to paragraph 1 of Article 7, the Committee, when entering upon the examination of paragraph 2, had to consider a proposal by the German delegation designed mainly to avoid an enumeration of a series of activities and professions reserved for nationals, by inserting instead, at the beginning of this paragraph, a general formula which would not expressly state the right of the High Contracting Parties to "prohibit" foreigners from engaging in these activities and professions.

84. A long discussion took place on this subject as a result of which a special Sub-Committee was appointed to consider what changes should be made in the text of the draft to give satisfaction, if possible, to the German delegation and to several others which had the same preoccupations, while not upsetting the balance of the original draft, as certain other delegations feared.

This Sub-Committee was, at the same time, entrusted with making a preliminary examination of all the amendments put forward with the object of defining or extending the right of States to reserve certain activities or functions to nationals, or to make the exercise of these activities by foreigners subject to special conditions.

85. The result of the Sub-Committee's labours was embodied in a report submitted to the Committee.[1]

86. After examining this report, the Committee decided to introduce into the text of Article 7, paragraph 2, several modifications which are explained below. The first of these modifications consists in substituting for the formula that States retain the right to prohibit foreigners from engaging in certain occupations or activities a formula which, while being more correct from the legal point of view, avoids the unfavourable impression which would be created by proclaiming a right of prohibition in a Convention intended to ensure equitable treatment.

87. Two modifications were introduced into sub-head (*a*) of paragraph 2. These are simply points of drafting which, in the Committee's view, constitute improvements. The text of the draft speaks of functions of a judicial, administrative, military or other similar nature. It was preferred to put the words " of a judicial, administrative, military or other nature " in brackets to make it quite clear that these are only quoted as examples. Furthermore, the text of the draft refers to functions which, involving a devolution of the authority of the State..., are reserved to nationals. It was thought preferable to mention more simply functions which involve a devolution of the authority of the State.

88. A third modification has been introduced into sub-head (*a*), which, in the Sub-Committee's opinion, was necessary for clear definition. It thought that, while all forms of employment by public authorities do not strictly involve a devolution of the authority of the State of a mission entrusted by the State, it was nevertheless sufficient for an office to be conferred by the State for it to come under the provisions of sub-head (*a*). It also thought it necessary to provide for the case of offices conferred, not by the State, but by organisations having such close relations with the State that a distinction would not be justified. Certain amendments showed that a number of delegations were concerned with this point.

The formula adopted by the Committee which mentions " administrations under the authority of the State " should be interpreted in the widest sense. This formula was intended to refer not only to a branch of the administration which might make appointments without the intervention of the central authorities but also to any administration endowed with a juridical personality distinct from that of the State, whether it holds its powers from the State or had itself an independent legal status. Such, for example, are independent Government administrations (such as railways in Italy), all public territorial administrations (member States of federations, provinces, communes, etc.), and institutions (religious, educational, professional and other) created and regulated by statute, etc. It was to make it quite clear that all the above-mentioned public territorial administrations were included in the expression "administrations under the authority of the State" that the Committee, at the Austrian delegation's request, added at the end of the paragraph the words "and irrespective of whether or not they possess a territorial character, general or local".

The Netherlands delegation considered it necessary to point out that it accepted neither the principle of the omnipotence of the State nor the principle that the Church is under the authority of the State.

89. As in sub-head (*a*), the Committee, instead of referring in sub-head (*b*) to the professions which it may be desirable, on account of the special responsibilities they entail, to reserve for nationals, preferred to speak of professions which entail special responsibilities.

90. In response to the wish expressed by the Polish and Turkish delegations, supported by the Belgian, Egyptian, Hungarian and Yugoslav delegations, the Committee agreed to the insertion

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[1] See Annex A, 24.

of the words "according to the national laws by which they are governed" in the new text of paragraph 2, sub-head (*b*).

91. As a result of the modifications indicated above, the Committee considered that the amendments submitted by the various delegations with regard to the exercise of professions (indicated generally in the footnote) had become unnecessary.[1]

92. It was suggested in the course of the discussions that sub-head (*c*) regarding monopolies should be supplemented by a mention of Government undertakings not constituting monopolies. This mention has been put in a new sub-head (*d*). Clearly this mention cannot be interpreted as allowing a Government to debar foreigners from engaging in a particular industry on the ground that it possesses industrial establishments of the same kind working in competition with private undertakings. If, for example, a Government owns a printing press organised as a commercial undertaking, and not constituting a monopoly, it retains full freedom to regulate this undertaking as it thinks fit, but it has no power to exclude foreigners from the whole printing industry on the ground of the existence of a Government printing press.

93. The Committee considered that the reasons justifying the exception concerning fishing in territorial waters also held good in regard to the extension of this exception to the exploitation of the riches of these same territorial waters, as requested by the Norwegian delegation, and that inland waters should be included on the same terms as territorial waters.

94. In connection with paragraph 2 (*f*) of Article 7, the British delegation drew attention to a law which prevented foreigners and foreign companies from landing whales or engaging in the manufacture of primary products from whales in Scotland.

The Committee saw no objection to the maintenance of this law.

95. The Austrian and Hungarian delegations expressed the wish that the text should specify that the term "coasting trade" (*cabotage*) only covers the maritime coasting trade, and not river *cabotage*. The principal delegations interested in this question did not succeed in drawing up a text concerning this problem.

Two texts were, however, drawn up for possible insertion in the Protocol *ad* Article 7. They are as follows :

First Text :

"By the provisions of Article 7, paragraph 2, sub-head (*f*), the High Contracting Parties do not intend to lay down any decision on the *de jure* and *de facto* position in regard to local transport on rivers and lakes (river and lake coasting trade)."

Second Text :

"The provisions of Article 7 shall in no way affect the rights and obligations assumed under the international conventions concerning river and lake transport (river and lake coasting trade)."

Each of these texts would leave the text of sub-head (*f*) of paragraph 2 of Article 7 as adopted.

96. The Committee considered that the second text should be inserted in the Protocol. This second text alone is compatible with the general spirit of the Convention and of the Protocol, since the reservation regarding the application of other international conventions is manifestly justified, whereas the first text merely notes that there is, in the Convention, an omission deliberately made by the parties without any indication as to the reason.

97. The Committee also considered that the reasons operating in favour of the acceptance of the reservation concerning service on vessels flying the national flag also applied to the extension of this reservation to aircraft. The latter are therefore mentioned in the text.

98. In response to the expressed desires of several delegations, the Committee decided that States should be entitled to reserve to their nationals the exploitation of public services such as railways and tramways (Netherlands) and industries which form the subject of concessions (Turkey and France). It considered that such cases could be assimilated to some extent, from the standpoint

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[1] Emigration agents or agents of a shipping company engaged in the transport of emigrants (Yugoslavia, document C.I.T.E. 20), doctors (Czechoslovakia, document C.I.T.E. 9 ; Egypt, A. 4 ; Turkey, A. 8 ; Austria, A. 34 ; Yugoslavia, A. 49), dentists (Turkey, document A. 8 ; Yugoslavia, A. 49), veterinary surgeons (Turkey, document A. 8 ; Austria, A. 34), pharmacists (Czechoslovakia, document C.I.T.E. 9 ; Turkey, A. 8 ; Austria, A. 34 ; Yugoslavia, A. 49), pharmaceutical employees (Austria, document A. 34), midwives (Czechoslovakia, document C.I.T.E. 9 ; Austria, A. 34) ; officially authorised civil engineers (Czechoslovakia, document C.I.T.E. 9 ; Austria, A. 34), railway employees (Czechoslovakia, document C.I.T.E. 9), chemists (Turkey, document A. 8), teachers (Turkey, document A. 8), professors (Turkey, document A. 8), responsible managers of newspapers published in the country (Turkey, document A. 8), patent agents (Austria, document A. 34), mining engineers (Austria, document A. 34), civil architects and surveyors (Austria, document A. 34).

of Article 7, to State monopolies and undertakings. This explains the insertion in the article of sub-head (*i*).

99. Lastly, the delegations of France and Yugoslavia proposed that sub-head (*j*) should mention all the industries concerned with national defence. This proposal, however, was considered too far-reaching and the Committee decided, on the Belgian delegation's proposal, simply to insert under this latter the manufacture of arms and munitions of war.

100. A large number of delegations expressed the desire that provisions should be inserted in Article 7 whereby insurance undertakings might be reserved to their nationals (this applies to the delegations of Latvia, Turkey, Belgium, Portugal, Venezuela and Finland), on the grounds that operations of this nature called for special precautions, more particularly in regard to the solvency of the undertaking.

The Committee shared this view.

Although insurance is, as a rule, conducted by companies and it would therefore seem more logical to leave the question to be dealt with by Committee C, Committee A recognised that, in certain countries, individuals had insurance undertakings and that the reasons for enforcing stricter conditions in the case of foreigners were even stronger than when dealing with juridical persons. Hence the provision to be found under sub-head (*k*) of paragraph 2.[1]

101. The Committee considers that, in view of the modifications which it adopted concerning industries or activities which States may reserve to their nationals, the following amendments submitted by the delegations of the countries named hereunder become superfluous :

(*a*) *Note issues* (Portugal) ; *banks of issue* (Venezuela). This is generally a monopoly reserved to the State or to the bank to which a concession has been granted.

(*b*) *Directors, managers or other principal officers* of companies engaged in any of the forms of business referred to under sub-heads (*c*), (*f*), (*h*) (British Empire). The contracting States are free to prohibit the exercise of such occupations or trades absolutely in the case of foreigners, and are thus equally free to limit their restriction to the persons mentioned in the amendment.

(*c*) *Service in roadsteads and on coasts, salvage and maritime assistance, towage (Turkey).* These various activities, in the Committee's opinion, are covered by the general term "internal service in ports".

(*d*) *Maritime and river coasting trade* (Yugoslavia). The term "coasting trade", found under sub-head (*f*) without qualification applies, in the Committee's opinion, both to maritime and river coasting trade.

(*e*) *Natural gases* (India). The Committee considers that the exploitation of natural gases comes within the category of the exploitation of minerals mentioned under sub-head (*h*).

102. The Committee was of opinion, however, that the amendments relating to the matters mentioned below could not be adopted, as the inclusion of these activities in the list of exceptions would make the latter too unwieldy and would involve undue restrictions on freedom of trade. This applies to occupations or industries involving a vital interest of the nation (Yugoslavia), aerial navigation (Japan and Netherlands) and navigation (Venezuela).

103. As regards aerial navigation, it was pointed out that there was a special Convention on the subject, concluded in 1919 ; the Committee considered accordingly that it might perhaps be expedient to bring this point to the notice of Committee D, so that the latter might, if necessary, formulate a provision stating that the Convention does not affect the 1919 Convention or other international conventions relating to other matters which may be connected with the questions dealt with in the Convention to be framed by the Conference.

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[1] The delegations of the British Empire and Portugal proposed that it should be specified that "industrial assurance", *i.e.*, the business of effecting insurance upon human life, premiums in respect of which are payable at the residence of the insured person at very brief intervals, should come within the category of operations not covered by paragraph 1.

The Italian and Czechoslovak delegations asked that mention should be made of industrial insurance in regard to accident and sickness.

The question of insurance was also dealt with by Committee C in connection with companies engaging in insurance business. A Sub-Committee appointed for this purpose jointly by the two Committees proposed that the following clause should be inserted in the Protocol *ad* Article 16 :

"It is understood that the High Contracting Parties remain free :

"(*a*) To make the activities of foreign insurance undertakings in their territory subject to previous authorisation involving conditions and guarantees other than those required of national undertakings, provided that these conditions and guarantees shall in no case be such as to prevent the said insurance undertakings from carrying on their business in normal economic circumstances ;

"(*b*) To reserve to national undertakings the right to engage in life insurance business having a character of social insurance, the premiums for which are payable to collectors and at short intervals and also workmens' accident, old-age and sickness insurance."

The Committee approved this text and decided to submit it to the plenary Conference for consideration in connection with the results of the work of Committee C, which dealt with companies.

Meanwhile the following text might be inserted in the Protocol *ad* Article 7 :

"The provisions of Article 7 shall in no way affect the stipulations of the 1919 Convention on Air Navigation."

104. The Venezuelan delegation desired to point out that its amendment reserving navigation to nationals of Venezuela was inspired by the fact that the merchant marine of that country had only reached an early stage in its development and was at a disadvantage as regards competition with foreign companies.

It added that the word "navigation" should be interpreted as applying to maritime and river shipping and to aerial navigation.

105. The adoption of the method of special reservations in regard to certain occupations from which it is desired to exclude foreigners seems preferable to that of unduly extending the list of exceptions contained in paragraph 2 of Article 7, since, in this way, other States, whose legislation in this matter is more favourable to foreigners, are left a free hand in relation to the country which has made the reservation, and are not obliged to make their own legislation more restrictive.

Thus, a State which had acceded to the present Convention might prohibit foreigners from engaging in any form of navigation not governed by international conventions, if it were granted a special reservation regarding this industry.

These considerations apply to the question raised by Venezuela. They apply equally to the questions raised by Portugal, Sweden and Denmark as regards the restrictions provided for by their respective laws concerning the participation of foreigners in shipping undertakings, and, in the case of Portugal, the prohibition for foreign vessels to engage in the transport business between two ports belonging to that State.

106. Several delegations (Czechoslovakia, Latvia, Portugal and Finland) submitted amendments with a view to restricting, in varying degrees, the operations of foreigners in the matter of banks and financial transactions.

As regards the Portuguese amendment, it should be observed that the restrictions to which this amendment refers apply only to the colonies. On the basis of Article 28 of the Convention, Portugal may be given satisfaction without modifying Article 7.

As regards the other amendments, an examination of the legal provisions in force in the countries concerned shows that a general exception regarding the banking industry inserted in paragraph 2 of Article 7 would go much beyond the requirements put forward by these countries themselves. The restrictions which they enforce do not amount to an absolute prohibition for foreigners to engage in the banking industry, which has become so important for world trade. In these circumstances, the most reasonable solution would seem to be to agree, in accordance with the subsidiary request submitted by the Finnish delegation, that all these countries should be permitted to accede to the Convention, subject to a special reservation specifying the restrictions upon foreigners that they intend to maintain in regard to the banking industry.

107. The Turkish delegation had requested that the list of activities mentioned in paragraph 2 of Article 7 should include service in industries enjoying exemption from, or reductions in, taxation, or other facilities. The delegation withdrew its request, however, as its views were met by the new drafting of Article 8.

108. The Turkish delegation had also requested that teaching in schools and hospitals might be reserved. The Committee thought that there was no need to make any special mention of this point in paragraph 2, as the States interested in the question should be able to obtain satisfaction either by the operation of the provisions contained in paragraph 1, sub-paragraph (*b*), requiring special titles or guarantees for the exercise of certain professions, or, in the case of the teaching staff, by the application of sub-head (*a*) of paragraph 2, under which functions involving a mission entrusted by the State may be reserved to nationals.

The Turkish delegation declared, however, that, in its opinion, the text of sub-head (*b*) of paragraph 2 would also be applicable to the case under consideration, inasmuch as this text excludes from the scope of the Convention occupations which, according to the laws of the country concerned, entail special responsibilities in view of the public interest. It reserved the right to raise the question again at a plenary meeting of the Conference.

109. The Committee was informed that the Swedish Government's anxiety to reserve to nationals hunting on Government land was due to the fact that, from time immemorial, this occupation has afforded the population its principal means of livelihood.

The Committee regarded this situation as a very special one which the Conference might have to take into account by granting Sweden the benefit of a special reservation.

The same applies as regards the special provisions of the Swedish law concerning timber floating, under which guarantees may be required from foreigners not domiciled in the country as security for damage that they may cause to the banks of the rivers on which the timber-floating is carried on.

110. The German delegation, being of opinion that the text of paragraph 2 of Article 7 was calculated to create uncertainty in regard to the exercise of a number of activities by foreigners, expressly reserved the right to submit to the Conference amendments with a view to changing the situation created by the text adopted by the Committee.

PROTOCOL *ad* ARTICLE 7.

Rapporteur : M. POLITIS (Greece).

111. With regard to paragraph 1, the Finnish and Latvian delegations proposed that it should be stated that foreigners require a special permit for the exercise of any profession.

The Committee was of opinion that such a condition would be incompatible with the principles underlying the Convention. It agreed, however, that a special reservation in this connection might be submitted subsequently.

112. The Indian delegation asked that it should be understood that foreign industries could be subjected to conditions calculated to encourage the development of national industry.

It was pointed out that this question would be examined subsequently in connection with alleviations from the provisions of the Convention to be granted to certain countries.

113. With regard to paragraph 3, the Estonian delegation submitted an amendment proposing that the first sub-paragraph be deleted and that the initial sentence of the second sub-paragraph be modified accordingly. In its opinion, the latter provision, which alone makes it possible to accept the principles laid down in Article 7, would preclude any necessity of inserting in the Convention the stipulation regarding the declaration in the first sub-paragraph, the effect of which would be rendered completely inoperative by the provisions of the second sub-paragraph.

The delegation did not insist, however, after it had been explained that the two sub-paragraphs were necessary, since the first referred to foreign workers already admitted and assimilated to other foreigners, whereas the second was a compromise and reserved the right to regulate the home labour market. If the first sub-paragraph were deleted, the second would become superfluous. It was necessary, therefore, to retain both.

114. Upon the Italian delegation's proposal, and in order to harmonise with the following paragraph, the Committee decided to add, in the third line of the first paragraph, after "admitted to their territory", the words "and residing there either temporarily or permanently".

115. A German amendment, to delete the words "employees or other salaried persons" in paragraph 2, was rejected.

116. In order to meet the desire expressed by the Czechoslovak delegation, the Committee agreed to substitute at the end of the same text, as being synonymous, the word "*statuer*" for the words "*se prononcer*".

117. The German delegation proposed that a new paragraph be added specifying that, if foreigners were permitted to engage in one of the activities referred to in the second paragraph of the article, this activity, in application of paragraph 1, should be placed on a footing of complete equality with the similar activity of nationals and that the provisions or conditions to be observed should be the same for all foreigners.

The Committee was of opinion that, since the exclusion of foreigners from the exercise of the professions or activities enumerated in paragraph 2 of the article was authorised, countries could not be prohibited from giving foreigners access to them, subject to conditions to be determined by these countries, but without distinction of nationality.

118. The Japanese delegation suggested that a clause be inserted in the Protocol *ad* Article 7 to the effect that the provisions of this article applied also to studies and to education.

This suggestion was supported by other delegations, but it was observed that some countries could not assume the obligation of allowing access to their schools to all foreigners and, further, that intellectual relations were outside the scope of the Convention.

119. The Committee finally decided, upon the suggestion of several delegations, that paragraph 3 of the Protocol should form a special article whose place in the Convention would be determined by the Drafting Committee. The text of this article would read as follows :

> "The High Contracting Parties agree that the provisions of the present Convention regarding the treatment of foreigners shall apply to manual workers, employees and other salaried persons admitted to their territory *and residing therein either temporarily or permanently* in the same way as to any other alien.
>
> "It has not been their intention, however, to regulate by the present Convention the conditions and guarantees affecting the temporary sojourn or permanent establishment of

foreign manual workers and of employees and other salaried persons or *to lay down any decision* as to the measures which certain States are obliged to take to protect their own labour market."

120. The British delegation had asked that an additional provision be inserted in the Protocol *ad* Article 7. The Committee, however, considered that the measures taken with a view to preventing unfair competition in connection with the use by foreigners of assumed names for the exercise of any professions, occupations, activities or trade were not incompatible with the provisions of the Convention.

The British delegation therefore did not insist upon the insertion of its amendment in the Protocol.

121. As a result of the adjustments indicated in the present chapter, the text of Article 7 and the Protocol *ad* Article 7 would read as follows :

Article 7.

"1. In the territories of each of the High Contracting Parties, and subject to the observance of their laws and regulations, nationals of the other High Contracting Parties allowed to establish themselves therein *in conformity with Article 6 of the present Convention*, shall be placed on terms of complete equality *de jure* and *de facto*, with nationals as regards :

"(*a*) The conduct of all commercial, industrial and financial activities, and, in general, any activities of an economic character, without any distinction being drawn in this connection between undertakings operating independently and those which operate as branches, subsidiary undertakings or agencies of undertakings situated in the territory of the above-mentioned High Contracting Parties ;

"(*b*) The exercise of occupations which the laws of the said High Contracting Parties allow their nationals to carry on freely, or, in the case of professions for which special titles or guarantees are required, the exercise of these professions, subject to the submission of the same titles or guarantees as are required of nationals or are recognised as being equivalent, *if necessary subject to reciprocity*, by the High Contracting Party concerned.

"2. *The provisions of the previous paragraph shall not apply to the exercise, in the territory of any of the High Contracting Parties, of the professions, occupations, industries and trades hereinafter specified :*

"(*a*) Public functions, charges or offices *(of a judicial administrative, military or other nature)* which involve a devolution of the authority of the State or a mission entrusted by the State, *or the holders of which are chosen either by the State or by the administrations under the authority of the State, even if these are endowed with juridical personality and irrespective of whether or not they possess a territorial character, either general or local ;*

"(*b*) Professions such as those of barrister, solicitor, notary, authorised broker *(agent de change)* and professions or offices *which, according to the national laws by which they are governed, entail special responsibilities in view of the public interest ;*

"(*c*) Industries or trades forming the subject of a State monopoly or monopolies exercised under State control ;

"(*d*) *State undertakings ;*

"(*e*) Hawking and peddling ;

"(*f*) Fishing in territorial *and inland waters*, and *the exploitation of the riches of such waters*, the coasting trade, pilotage and the internal services of ports ;

"(*g*) Service in vessels *or aircraft* flying the national flag ;

"(*h*) The exploitation of minerals and hydraulic power ;

"(*i*) *The operation of public services and of industries forming the subject of concessions ;*

"(*j*) *The manufacture of arms and munitions of war.*

"(*k*) *Direct and indirect insurance operations carried out by individual underwriters.*

Protocol ad *Article 7.*

"1. The declaration made above in connection with Articles 3 and 4 shall also, as regards State monopolies, apply to Article 7.

"2. The provisions of Article 7 shall in no way affect the rights and obligations arising out of the international conventions concerning river and lake transport (river and lake coasting-trade).

"3. The provisions of Article 7 shall in no way affect the stipulations of the Convention of October 13th, 1919, on air navigation.

CHAPTER VII.

Article 8 and Protocol *ad* Article 8.

Rapporteur : M. Politis (Greece).

122. The Committee had a large number of amendments to consider. It readily agreed to the Swedish delegation's proposal to substitute in the fifth line, for the words "without being subject to any restrictions whatever" [1], the words "without being subject to restrictions other or stricter than those authorised by the present Convention", an amendment which, indeed, had already been suggested by the Economic Committee (see "Brown Book", page 40).

123. But certain delegations (Czechoslovakia, Estonia and Latvia) would have preferred Article 8 to be omitted, as they considered that this article would prejudice the protection of the home labour market, which was particularly essential to new States in order to safeguard their economic development, and, further, that it would restrict the influence of Governments over certain key industries.

This view was strenuously opposed by other delegations, which regarded Article 8 as a clause of vital importance without which the Convention would lose a great deal of its value.

This opinion was shared by the majority of the delegations. The Committee therefore decided to maintain Article 8 in principle.

124. At the Egyptian delegation's request, it was made clear that this provision could not be interpreted as forbidding contracting countries to require limited companies formed under the local law to reserve part of their capital for subscription in the country, and a certain number of administrative posts to nationals.

125. The same delegation, supported by other delegations, proposed the deletion at the end of the article of the reference to the freedom "to employ in an administrative or technical capacity" persons of any nationality. In its opinion such freedom, if granted without limit, would gravely prejudice the protection of the home labour market, especially if it was to be applied in favour of persons not yet admitted to the territory.

126. Other delegations declared that they could not accept Article 8 as a whole unless it was stated in the Protocol that "the measures which certain States have taken to protect their home labour market and which concern foreign manual workers, employees and other salaried persons, apply also to the persons employed in an administrative or technical capacity referred to in Article 8" (Austria), or unless it was stipulated that the provision "shall be subject to any temporary derogations or restrictions in regard to certain specified undertakings which may be necessary in the public interest" (Italy), or unless it was specified that the provision did not preclude a contracting country "from requiring the nationals of other High Contracting Parties established in its territory to employ as administrative or technical employees and as workers a reasonable proportion of nationals of the said territory" (Egypt).

Similar reservations were requested by a number of other delegations (British Empire, Bulgaria, Czechoslovakia, Luxemburg, Poland, Roumania, Turkey, Yugoslavia).

127. In view of this situation, the Chairman of the Committee proposed, in order to facilitate the discussion, that Article 8, and paragraph 2 of its Protocol as they stood, should be retained, but that the first paragraph of the Protocol should be replaced by a new wording for the purpose of giving to the provisions of the article the elasticity desired by certain countries. This paragraph would provide that, in view of the essential importance for the success of foreign companies, of admitting persons who were to perform certain functions in those undertakings, the contracting States would undertake not to exercise their right of refusing admission to foreigners or of expelling them with the intention of rendering the guarantees laid down in Article 8 inoperative ; it would be added, further, that these provisions would not preclude the application, in certain countries or in certain cases, of general regulations providing for the allocation to nationals of a reasonable proportion of the subsidiary posts.

128. The system thus proposed encountered numerous objections : it was considered by some to be vague, complicated and still too wide, and was regarded by others as ambiguous and too narrow according to their view. It was held, generally speaking, that the proposal did not adequately satisfy the wishes of certain countries as regards the protection of the home labour market.

129. This long discussion brought out the tendency of the majority of the Committee as regards three points, namely : (1) To include in the Convention a text providing as far as possible for the protection of the home labour market ; (2) not to allow the provision of Article 8 to affect the freedom of States as regards the admission of foreigners to their territory ; and (3) to limit the restriction, proposed to be placed by this article upon measures for the protection of the home labour market, to freedom in respect of the choice of the higher personnel of foreign undertakings but not of their subordinate staff. As regards these three points, certain delegations insisted

[1] These words were accidentally omitted in the English text of the " Brown Book ".

upon the necessity of maintaining the rule as it stood in the preliminary draft Convention, so as not to put obstacles in the way of foreign undertakings in the territory of the High Contracting Parties.

130. The Committee left it over to a later stage to meet the first point by inserting in the Convention a special article of the same tenor as the third paragraph of the Protocol *ad* Article 7. It appointed a Sub-Committee to frame a text which should meet the other two tendencies apparent in the Committee. The Sub-Committee's conclusions were subsequently adopted by the Committee in the terms cited below.

131. It was recognised that the question of the admission of foreigners, as provided for in Article 6, was in no way affected by Article 8. Every State retains the right, even in the case set forth in Article 8, to refuse foreigners admission to its territory.

It was understood, however, that the Final Act would embody the recommendation proposed in connection with Article 6, namely :

> "Notwithstanding the freedom reserved to States under Article 6 as regards admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings entered into under the terms of the present Convention."

132. The discussion turned chiefly on the question of the extent to which Article 8 should restrict measures for the protection of the home labour market.

There was no great difficulty as regards the personnel for the management of establishments and for the regulation of their business.

The position was different in the case of the subordinate staff (administrative or technical employees) and of partners (*associés*).

133. The Sub-Committee had considered the possibility in this last-named case of allowing an exception limited to cases in which the employment of such staff was, in fact, essential for the success or proper working of the undertaking concerned.

It was represented, however, that the question of determining, in any given case, whether the employment of the person selected was really essential might lead in practice to many difficulties.

Failing a more satisfactory formula, the Sub-Committee, in deference to the anxiety of certain countries to reserve subordinate posts in principle to their nationals, had decided, though only by a very small majority, in favour of omitting in the text all mention of these posts.

134. The question was again discussed before the Committee, The Netherlands delegation, supported by the German and Danish delegations, proposed to insert in the text, after the words "for the management of their establishments", the words "for any position of personal trust", in order to leave a limited place, apart from managers properly so called, for the higher personnel or subordinate personnel.

135. The Belgian delegation supported this proposal in principle, but asked that it should be further defined by adding after the words "shall be free to appoint . . . persons . . . for the management . . . and for the regulation of their business", the words "and also a limited number of administrative collaborators indispensable, in fact, for the proper working of their undertakings".

136. In both these forms the amendment met with practically the same opposition as had been shown before, both in the Committee and in the Sub-Committee, towards conceding any freedom to choose foreigners, even in a limited proportion, for subordinate posts. The Committee was very divided and was obliged to take a roll-call vote on each of the two proposals.

137. After having rejected the Netherlands amendment by seventeen votes to twelve, with one abstention, it adopted the Belgian amendment by eighteen votes to ten.

The German and Netherlands delegations, when voting for this amendment, reserved the right to make a declaration before the Conference in order to define their position.

138. The Polish delegation, supported by other delegations, then proposed that the text adopted should be restricted still further by adding, at the end, the words "if none are available in the national labour market".

On being put to the vote this proposal was adopted by fifteen votes to thirteen.

139. The whole of the text of this double addition was then adopted by eighteen votes to eight, with two abstentions.

140. When voting against the text, the German delegation declared that they would not be in a position to recommend their Government to sign a Convention containing such a text, as the words in question would constitute a serious obstacle to the liberal and rational development of international economic relations.

141. The Netherlands delegation announced their intention of requesting the Conference to revert to the original wording of Article 8 of the draft, adding that, if the Conference maintained the text adopted by the Committee, they could not recommend their Government to sign the Convention.

142. When deciding to omit from Article 8 all mention of subordinate posts, the Sub-Committee thought that it would, at all events, be expedient to state in the Final Act the desirability of authorising the employment, irrespective of nationality, of the subordinate staff necessary for the proper working of the undertaking concerned. In view of the wording adopted by the Committee, however, this recommendation became superfluous.

143. The effect of the wording adopted was that the choice of the subordinate staff was only free within strictly defined limits, whereas that of the persons responsible for the "management of their establishments" or for the "regulation of their business" was not subject to any condition; in other words, there was no necessity to enquire in every case whether their employment was indispensable for the success and proper working of the undertaking in question, since it is obvious that the posts referred to must, by definition, be of this nature.

144. By "management", however, the Committee meant the post of general manager, if any, or in the absence of such post and according to circumstances, the managers of the various technical or commercial departments of the establishment in question. The German delegation would have wished that this term should be given a wider scope allowing, according to circumstances, of the free choice of the managers of the various departments, not only in the absence of a post of general manager, but even where such a post exists. The majority of the Committee, however, were against this proposal.

145. It was proposed that the words "in the capacity of representatives invested with powers of attorney" should be added after the term "transaction of their business". While considering that the text refers chiefly to representatives invested with powers of attorney, the Committee nevertheless thought that it would be preferable not to mention them, in order to avoid difficulties of interpretation, and also not to restrict the scope of the text.

The Turkish delegation declared that the Turkish law regarding the encouragement of home industries was not, in their view, affected by the provisions of Article 8, because it established reciprocal obligations and advantages without making a distinction between home industries and foreign industries established in the country.

146. In order to render more comprehensive the expression previously adopted by the Committee, viz, "restrictions other or stricter than those authorised by the present Convention", the Sub-Committee proposed that it should be replaced by the following phrase : "regulations other than those provided for in the present Convention". It was observed, however, that this wording was not sufficiently clear. Ultimately the following wording was agreed upon : " . . . regulations incompatible with the provisions of the present Convention".

147. Finally it was considered desirable, in order to make the restriction placed upon measures for the protection of the home labour market more acceptable to the countries which were particularly anxious to ensure this protection, to add to Article 8 a second paragraph to the effect that, in applying their laws and regulations on the protection of the home labour market, the High Contracting Parties undertake to allow the choice of nationals of other High Contracting Parties for the posts referred to in the first paragraph.

148. The Committee therefore proposes that the Protocol *ad* Article 8 be omitted and that this article be drafted as follows :

> "Nationals of one of the High Contracting Parties who are established in the territory of another High Contracting Party or who, without being established in that territory, do nevertheless conduct their business therein, shall be free to appoint at their discretion, for the management of their establishments *or* for the regulation of their business, such persons as they may judge fit and proper *and also a limited number of administrative or technical collaborators indispensable, in fact, for the proper working of their undertakings, if none are available in the national labour market, without being subject to regulations incompatible with the provisions of the present Convention.*
>
> "*In applying their laws and regulations on the protection of the home labour market, the High Contracting Parties undertake to allow the appointment of nationals of the other High Contracting Parties to the posts referred to in the preceding paragraph.*"

CHAPTER VIII.

Article 9 and Protocol *ad* Article 9.

Rapporteur : M. Pilotti (Italy).

Article 9.

149. A Sub-Committee was appointed to make a supplementary examination of Article 9 of the draft Convention. It had received very definite terms of reference ; it was not called upon

to revise the provisions contained in this article, or to modify their meaning or scope, but simply to find a new wording which would make it possible to avoid any enumeration of the subjects which it did not cover, in particular "security for costs" and "free judicial assistance".

150. It must be stated at the outset that this programme proved impossible to carry out in its entirety. The Sub-Committee came to the conclusion that the formula upon which it decided after laborious discussions still required an enumeration of the reserved subjects, but that this enumeration could be reduced to two items, "security for costs" and "judicial assistance", and could be embodied in a Protocol to Article 9.

151. The Sub-Committee's first task was to gain an absolutely clear idea of the meaning of the general provision laid down in the first paragraph of this article. It recognised that this clause referred neither to the existence nor to the extent of what might be called material rights, such as the right of acquiring immovable property, etc., these matters being dealt with in Article 10, but that it had two objects in view :

(1) To ensure to foreigners, as regards the security of their persons and property, the same protection as that provided for nationals by the laws and institutions of the country ;

(2) To permit them, in order to exercise or substantiate the patrimonial and other rights to which they are entitled, to have recourse to the courts or to the administrative tribunals or authorities in all cases in which the laws of the country allow this to nationals.

152. The object of the rule to be embodied in Article 9, paragraph 1, being thus determined with more clearness and precision than in the Economic Committee's draft, the enumeration of the subjects to which it does not apply became unnecessary.

153. To achieve the desired result, several formulæ were proposed. The one which obtained the largest measure of support, without, however, commanding a majority, is as follows :

"The nationals of each of the High Contracting Parties shall have access in the territory of the other High Contracting Parties to the same means of legal and judicial action in respect of the safeguarding of their persons and property, and in respect of the exercise of their rights, as nationals."

This text would have the advantage of making it quite clear that Article 9, paragraph 1, cannot be interpreted as having any connection with Article 10, which deals with material rights and the extent of these rights. The words "protection" contained in the Economic Committee's text might create the impression that Article 9 also dealt with the extent of these rights and interests.

154. The majority of the members of the Sub-Committee were of opinion that a text, the terms of which were so markedly different from the Economic Committee's draft, was open to one serious objection : it would give the impression that such a considerable change in the form of Article 9 must reflect a change in its meaning and scope, and hence that the Economic Committee's draft had undergone a fundamental alteration.

155. In view of this consideration, the majority of the Sub-Committee agreed upon a text which reproduced the original draft with a very slight modification.
It was as follows :

"Nationals of each of the High Contracting Parties shall enjoy in the territory of the other High Contracting Parties, legal and judicial protection of their persons, property, rights and interests on a footing of equality with nationals."

156. The object of replacing the words "the same treatment as nationals" in the original draft by the words "on a footing of equality with nationals" was to make it clear that foreigners would be entitled to claim as effective a protection as was accorded to nationals, but that the details of the procedure to be followed in their case, both in judicial and in administrative matters, might be somewhat different.

157. Apart from the above-mentioned reason, namely, the Sub-Committee's desire to emphasise beyond all possible doubt its intention of adhering to the Economic Committee's idea, a second consideration may be quoted in support of the text adopted by the Sub-Committee.
The exceptions to the general principle laid down in paragraph 1 of Article 9 are those which have a direct bearing on the capacity of foreigners to maintain their rights at law ; the reservations must refer only to this point. This makes it possible to delete from the list of reservations the majority of those proposed in the amendments, as, for example, the plea of *lite pendente*, the probative value of commercial books, literary and artistic property, questions concerning the legal capacity of individuals, the enforcement of judgments and arbitral awards, extradition, etc. The only exceptions to be maintained are free judicial assistance and security for costs, these being mentioned in a Protocol, the terms of which will be reproduced at the end of the present report.

158. Paragraph 2 of Article 9 was also considered by the Sub-Committee, which proposes that it should be drafted as follows :

"Accordingly, they shall have free access to the Courts as plaintiffs or defendants. They shall be entitled to appear before the competent administrative authorities and to have recourse to the latters' assistance for the safeguarding of their rights and interests in all cases in which nationals enjoy this right. Nationals of the High Contracting Parties shall be entitled to choose, for the defence of their interests before the Courts and all administrative tribunals or authorities, any barrister, solicitor, notary or other person authorised to practise by the national laws of the country."

159. This new draft offers the following advantages : (1) It shows more clearly that paragraph 2, the paragraph in question, is a corollary to the general principle enunciated in paragraph 1, and merely indicates the chief cases in which that principle is applicable. This is the reason for the insertion of the word "accordingly" at the beginning of the proposed draft ; (2) it states specifically that not only shall the foreigner have access to the administrative authorities in the case of disputes and litigation, but that he may apply to them for assistance in the protection of his person and the safeguarding of his property and interests in all cases in which nationals themselves possess this right.

160. Paragraph 3 would be omitted entirely.

161. The Committee having adopted its Sub-Committee's proposals and report, the text of Article 9 would thus read as follows :

"Nationals of each of the High Contracting Parties shall enjoy in the territory of the other High Contracting Parties, legal and judicial protection of their persons, property, rights and interests on a footing of equality with nationals.

"Accordingly, they shall have free access to the Courts as plaintiffs or defendants. They shall be entitled to appear before competent administrative authorities and to have recourse to the latters' assistance for the safeguarding of their rights and interests in all cases in which nationals enjoy this right. Nationals of the High Contracting Parties shall be entitled to choose, for the defence of their interests before the Courts and all administrative tribunals or authorities, any barrister, solicitor, notary or other person authorised to practise by the national laws of the country."

Protocol ad *Article* 9.

162. In view of the amendments introduced by the Committee in the text of Article 9 and of the reasons which led to their adoption, the Committee proposes that the Protocol *ad* Article 9 be drafted as follows :

"1. The provisions of Article 9 shall not apply to security for costs or to free legal assistance.

"2. It is understood that the right accorded to nationals of the High Contracting Parties to appear before the competent administrative authorities in order to safeguard their rights or interests, in conformity with the laws in force in the territory in question, includes the right to appear before the Customs authorities and in person to pass their goods through the Customs under the same conditions as nationals and without being subject, because they are foreigners, to any formalities or regulations other or more burdensome than those imposed upon nationals.

"3. The provisions of Article 9 shall in no way affect undertakings arising out of the provisions of the Hague Convention of July 17th, 1905, concerning civil procedure, or of any other convention on this matter."

163. This wording of paragraph 3 of the Protocol met with opposition from several delegations and was only agreed to by a majority of the Committee.

CHAPTER IX.

Article 10 and Protocol *ad* Article 10.

Rapporteur : M. Pilotti (Italy).

Article 10.

164. The Netherlands delegation pointed out that paragraph 1 of Article 10, as worded in the Economic Committee's draft, might be interpreted as prejudicing the application of the rules of private international law. Accordingly, it was anxious that the text should clearly show that all questions relating to this branch of law were exclusively reserved to the Hague Conferences. In its view, if paragraph 1 of the draft was maintained, this might lead to confusion which it was essential to avoid. The Committee agreed that the provisions of Article 10 should in no way affect questions relating to private international law and, in consequence, the text of paragraph 1

was slightly amended, so that the beginning of the paragraph would now read : "The nationals of each of the High Contracting Parties shall be treated on a footing of equality with nationals as regards, etc. . . . ". This formula has the advantage, moreover, of being similar to that adopted for Article 9.

165. The Hungarian delegation observed that it appeared dangerous to mention patrimonial rights in the text of paragraph 1, as this term covers a very vast field which comes within the scope of private international law, and that such questions should not be dealt with in the Convention. It proposed, therefore, with the support of the Japanese and Turkish delegations, that the text of paragraph 1 be modified as follows :

> "Nationals of each of the High Contracting Parties shall have the right of acquiring, possessing or leasing . . . "

and to replace the words "in this régime of equality", in the last line, by the words "in this respect". This proposal, however, was not accepted by the Committee.

166. In view of this decision, the Hungarian delegation then submitted an amendment proposing the insertion, after the text adopted by the Committee for paragraph 1 of Article 10, of the following provision :

> "It is understood that the present Convention shall in no way affect existing conventional obligations which may guarantee treatment more favourable than that laid down in the articles in this Convention."

The delegation pointed out, in support of its request, that the Economic Committee's original draft contained an Article 18, but that Committee D had decided to omit this article on the understanding that it would examine each of the provisions of the Convention, with a view to determining to what extent it would be expedient to apply to them the principle which the said Article 18 extended to all the articles of the Convention. The delegation laid special stress on the importance which it attached to this request.

167. This further proposal of the Hungarian delegation was not, however, adopted, but it was understood that the reasons which gave rise to it would be brought to the notice of Committee D.

168. On the other hand, the Committee did adopt the proposal of the Egyptian delegation to delete the words in brackets in the text of the draft, as it was convinced that the Economic Committee had simply wished to retain a clause found in almost all commercial treaties, which did not, however, contain a similar enumeration.

169. The Austrian delegation expressed the view that the words "disposing of the same", in lines 3 and 4, implied that the disposal of movable and immovable property only was concerned. It would have been preferable, in its view, to frame the article so as to include also all the rights mentioned in it. It proposed, accordingly, to substitute the word "disposa" for the words "disposing of the same" but the Committee did not accept this amendment, as it considered that the words "of the same" (French text : "*en*") referred to patrimonial rights as well as to the right of acquiring, leasing and possessing property.

170. The delegations of Roumania, Turkey, Denmark, Sweden, Norway, Finland, Estonia, Hungary and Latvia, supported by the Indian delegation, asked that an exception to the principle of equality might be made as regards the right of acquiring immovable rural property, on the ground that the laws in their countries contained provisions whereby foreigners might be precluded from acquiring such property, or, as was the case in Denmark, that the Constitution empowered the Government to take measures to this effect.

The Austrian delegation supported this suggestion, although restrictions of this nature were not found in Austrian law. Since, however, the Austrian Code demanded reciprocity in the matter of the acquisition of immovable rural property, the Austrian delegation proposed a simplified formula so as to avoid the difficulties resulting in actual practice from the fact that the various Federal States applied the rule of reciprocity in a different manner.

171. This request was strongly opposed by other delegations which considered that the integral principle of equality laid down in paragraph 1 of Article 10 constituted one of the most essential guarantees in the Convention. They added that nearly every treaty contained a similar clause and that the proposed limitation would be a retrograde step.

172. The Committee agreed, however, that a reservation, drafted somewhat on the following lines, might be made in favour of the above-mentioned delegations :

> "The High Contracting Parties, which at present preclude foreigners from acquiring immovable rural property, may continue to do so on the understanding that the other High Contracting Parties shall be relieved of their obligations in this matter laid down in Article 10

in so far as concerns the nationals of the High Contracting Parties which make use of this reservation."

173. This idea of reciprocity, however, was opposed by certain delegations which thought it preferable to adhere to the operation of the most-favoured-nation clause, as this, in their view, would avoid all discussion as well as the bargaining to which the system of reciprocity might give rise.

174. It was pointed out that Australian law forbids foreigners to acquire or lease State lands, either directly or indirectly. The Australian delegate accordingly asked for the insertion of a special paragraph authorising the contracting parties to maintain such a prohibition.

175. It was pointed out that the State, as the owner of the lands, obviously had complete liberty as regards their disposal and that, in practice, the Australian law was therefore not contrary to the provisions laid down in the paragraph.

176. Certain delegations showed an anxiety to protect their national artistic inheritance and wished accordingly to retain the right to prohibit foreigners from acquiring property of historic or artistic importance. They added, further, that the provisions laid down in their laws in this connection applied equally to foreigners and nationals. The Committee thought, therefore, that an explicit reservation was unnecessary, if the provisions in question applied to foreigners and nationals alike, since both would be subject equally to the same régime in the matter.

177. The text of paragraph 2 of the article was accordingly left unchanged.

178. The Japanese delegation expressed a desire that the Protocol should state that the term "movable property" (*biens mobiliers* and *objets mobiliers*) in paragraphs 1 and 2 included securities such as shares, bonds, etc. On receiving an assurance that this was actually the interpretation placed on these words by the Committee, the delegation withdrew its amendment, subject to the condition that this interpretation should be mentioned in the present report.

179. The Venezuelan delegation proposed that the words "or simply in the general interest" be added at the end of paragraph 3. The Committee was of opinion, however, that the effect of this addition would be to grant to the States an unrestricted right to preclude foreigners from acquiring immovable property or undertakings ; this amendment was therefore rejected.

180. The Estonian delegation pointed out that the text of paragraph 3, as drafted by the Economic Committee, referred only to the acquisition of immovable property or undertakings, whereas the principle of equality laid down in paragraph 1 applied also to the right of possessing or leasing. It proposed therefore, with the support of the Yugoslav delegation, the insertion of the words "possession and enjoyment".

181. Accepting this view, the Committee adopted the amendment.

182. The Yugoslav delegation requested the deletion of the word "certain" in the third line of paragraph 3, on the ground that it would make the scope of the paragraph indefinite.

This proposal was prompted by the Yugoslav Government's desire, in conformity with its present law, to reserve the right to make the acquisition of immovable property by foreigners subject to previous authorisation, not only within a frontier zone of 50 kilometres but also in any other part of its territory, for reasons of security or national defence, for example in the case of immovable property situated in the vicinity of a fort or powder magazine.

The Yugoslav delegation thought that the inclusion of the word "certain" might make it possible to raise the question whether the Yugoslav law was in conformity with the provision under discussion.

183. This view was supported by the Estonian delegation, and the Committee agreed to delete the word "certain".

184. The Yugoslav delegation also proposed that the words "according to the laws of the country" be added after the words "or national defence" in paragraph 3 as amended. They argued that this addition would have the advantage of making it perfectly clear that, in matters of security and national defence, the sovereignty of States must remain absolute and that no international jurisdiction may be called upon to examine the legitimacy of measures taken by a Government for reasons of security or national defence.

185. It was pointed out that the words "for reasons of security and national defence" were intended as a restriction upon the reservation contained in the clause in question and that the

addition of the words proposed would render this restriction practically inoperative, and, further, that the point raised was relevant rather to the discussions on Article 22.

In view of these explanations, the Yugoslav delegation did not insist upon its proposal.

186. The Polish, Norwegian and Swedish delegations explained that, under the provisions of their national legislation, the acquisition, possession or leasing of immovable property was, in the public interest, subject, in the case of foreigners, to previous authorisation. They therefore requested that a clause to this effect be added to paragraph 3 of the article ; but it was pointed out that the plea "in the public interest" alone did not appear sufficiently definite to prevent States from abusing the right thus reserved to them. Accordingly, the Committee, while adopting the principle underlying the proposal of the above-mentioned delegations, desired to define and limit its effects by stressing the point that the conditions under which authorisations for the acquisition of immovable property or undertakings are granted must be laid down in the laws and regulations of the country.

187. The British delegation, supported by the Turkish delegation, requested that it should be clearly indicated in the text of paragraph 4 that the term "the vital economic resources of the country" included systems of communication. They pointed out that the Economic Committee had undoubtedly had in mind such means of communication as the telephone, telegraph and wireless systems when it drafted its text.

188. Other delegations, however, objected to this proposal and urged that the insertion of these words in the text would limit its scope.

189. The Committee decided to include in the Protocol *ad* Article 10 a special paragraph defining the scope of the words "vital economic resources of the country".

190. The Japanese delegation explained that the National Bank of Issue and certain other Japanese banks provided in their Statutes—which were approved by the State—that their shares could not be transferred to foreigners. In view of these considerations it asked that the words "or when the vital interests of the State were menaced" be inserted after the words "to a currency crisis" in the text of paragraph 4.

191. It was pointed out that the situation to which the Japanese delegation had drawn attention was not a temporary one, such as was contemplated in paragraph 4, and that it would therefore be difficult to bring it within the scope of the article. On the other hand, although in the case referred to the institutions concerned were under the control of the State, it was nevertheless true that, fundamentally, these were private organisations which enjoyed complete liberty as regards the framing of their Statutes.

192. The Committee was of opinion that there was nothing in the provisions of Article 10 to prevent the inclusion, in the Statutes of undertakings placed under special Government control, of a clause prohibiting shareholders from transferring their shares.

193. In order to avoid any misinterpretation of the provision in the second sentence of the first paragraph of the Protocol, prohibiting the contracting parties from making property "the subject of any special taxation merely on the grounds of its exportation", the Italian delegation asked that it be stated that this provision did not prevent the levying of Customs duties on the export of goods which would normally be subject to such duties.

194. As the Committee had no doubt that this was the proper interpretation, the Italian delegation withdrew the amendment, provided the point was mentioned in the report.

195. The Latvian delegation, supported by the Greek and Polish delegations, submitted amendments proposing that paragraph 3 of the Protocol *ad* Article 10 be deleted, on the grounds that the prohibition contained in this clause was based on political considerations, whereas the Draft Convention was based mainly on economic considerations.

196. The Committee adopted this view and decided accordingly to delete paragraph 3 of the Protocol from the draft.

197. It did not, however, agree to the Mexican delegation's request that the right of prohibition should be extended to zones of 100 kilometres along the land frontiers and 50 kilometres along the coasts.

198. Several delegations (British Empire, Italy, Greece, Egypt, Sweden, Norway, and Estonia) pointed out that their laws contained provisions for the protection of the national flag under which more or less extensive restrictions, according to the State concerned, were imposed with respect to the acquisition of ships and shares in ships. These delegations, therefore, asked that a special paragraph dealing with this matter should be added to the Protocol.

199. This request was agreed to by the Committee. The text adopted, however, gave rise to several observations. The Austrian delegation was somewhat reluctant to accept it, because it appeared to allow States to prohibit absolutely the acquisition of national ships by foreigners, whereas all that was involved was the possibility of allowing States to determine the conditions under which ships which had passed, wholly or partially, into the possession of foreigners might continue to fly the national flag. The German delegation supported this view.

The Japanese delegation desired that the possibility of applying a régime of reciprocity in this matter should be recognised.

The Committee, however, considered that the text it had adopted covered the considerations put forward by these delegations.

200. The Committee also recognised the necessity of extending this new provision in the same measure to aircraft.

201. Taking into account the foregoing considerations and decisions, the Committee submits the text of Article 10 and the Protocol relative thereto in the following form :

Article 10.

"1. The nationals of each of the High Contracting Parties *shall be treated on a footing of equality* with nationals as regards patrimonial rights, the right of acquiring, possessing or leasing, movable and immovable property, and the right of disposing of the same, under the same conditions as nationals, no modification or restriction whatsoever of this régime of equality being permitted.

"2. Each of the High Contracting Parties undertakes to allow the nationals of the other High Contracting Parties to export their movable property as well as the proceeds of the sale of their movable or immovable property under the same conditions as nationals. The regulations regarding the foreign currency derived from such exportation, shall not contain any differentiation based on the nationality of the exporter.

"3. The provisions of the present article shall not preclude the right which the High Contracting Parties reserve to themselves to prohibit or subject to previous authorisation, for reasons of security or national defence, the acquisition, possession and enjoyments of immovable property or undertakings by foreigners.

"4. The High Contracting Parties also reserve the right to prohibit the acquisition of immovable property or transferable securities by foreign nationals, if such acquisition is likely to result in the obtaining of undue command of the vital economic resources of the country, or to endanger such resources in exceptional cases, due, for instance, to a currency crisis, provided, however, that no measure consistent with the principle of equality laid down in paragraph 1 of this article be sufficient to safeguard these interests.

"5. *The acquisition of certain immovable property, mines and undertakings by foreigners may also, in the public interest, be made subject to previous authorisation, provided that the conditions under which the authorisations are granted ave defined by the laws or regulations of the country.*"

Protocol ad *Article* 10.

"1. The provision of paragraph 2, concerning the right of foreigners to export their property and the proceeds of the sale of their property, shall not in any way affect the right of each of the High Contracting Parties to refuse to allow exportation until the taxes or duties leviable on the property in question have been paid. The said property, and the proceeds of its sale may not, however, be subject to any special taxation merely on the ground of their exportation.

"2. In the case of an owner's change of residence, or in the case of the sale of movable or immovable property acquired by inheritance, it is understood that the regulations regarding foreign currency may not constitute an obstacle to the free exportation of the proceeds of the sale of such property.

"3. *Notwithstanding the provisions of Article* 10, *it is agreed that the High Contracting Parties may impose such restrictions as they think fit in regard to the acquisition of ships or aircraft flying the national flag and shares in such ships or aircraft.*

"4 *The term "the vital economic resources of the country", used in paragraph* 4 *of Article* 10, *shall be deemed to include systems of communications, such as the telephone, telegraph and wireless telegraphy systems.*"

CHAPTER X.

Article 11 and the Protocol *ad* Article 11.

Rapporteur : M. Pilotti (Italy).

Article 11.

202. The Committee A discussed the text of Article 11 on the basis of a draft framed by a Sub-Committee, comparing this draft with the one prepared by the Economic Committee.

203. The text proposed by the Sub-Committee was worded as follows :

Article 11.

"*Paragraph* 1.—Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative function.

"*Paragraph* 2.—They shall also be exempt in the territory of the other High Contracting Parties, in peace time and in war time, from all compulsory military service, whether in the army, navy or air forces, or in the national guard or militia, and from all compulsory personal services in connection with national defence. They shall similarly be exempt from all exactions, whether in money or in kind, imposed in lieu of personal services.

"*Paragraph* 3.—Nationals of each of the High Contracting Parties established in the territory of another Party shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In cases of requisitioning, fair compensation shall be given. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals.

"*Paragraph* 4.—Nationals of each of the High Contracting Parties may not, in the territory of another Party, be expropriated of their property, or deprived even temporarily of the enjoyment of such property, except for legally recognised reasons of public utility, in accordance with the legal procedure in force and in return for fair compensation."

Protocol.

"*Paragraph* 1.—The exemption referred to in paragraph 1 of Article 11 shall not extend to functions made obligatory by the laws relating to juries.

"*Paragraph* 2.—Paragraph 3 of Article 11 shall not apply to questions concerning the requisitioning of sea-going vessels."

Several members of the Sub-Committee proposed the maintenance of paragraph 5 redrafted as follows :

"*Paragraph* 5.—Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties as regards compensation for damage arising out of the exactions, requisitions, expropriation and temporary deprivations referred to in paragraphs 3 and 4 above, sums equal at least to those which it grants to its own nationals."

* * *

Paragraph 1.

204. The Committee adopted the following text for paragraph 1 :

"Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative function."

This text is a reproduction of the one proposed by the Economic Committee, except for the omission of the words "charge or", which were considered unnecessary and the deletion of which in no way modifies the meaning of the article.

205. To this paragraph 1 was attached a Protocol reproducing an amendment submitted by the British delegation, the provisions of which are frequently found in bilateral conventions. This Protocol is worded as follows :

"The exemption referred to in paragraph 1 of Article 11 shall not extend to functions made obligatory by laws relating to juries."

206. An amendment, proposing that it should be specified that appearance as witness and the duties of guardianship and trusteeship were not included in the exemption provided for in this clause, was rejected. The Committee considered that no doubt was possible in this connection, and that it was unnecessary to add a provision to the text of the Convention to the effect that the principle of exemption did not apply to these duties.

207. For the same reason, it was decided to reject the proposal that, among the functions covered by the exemption, express mention should be made of those of expert and arbitrator.

208. It was pointed out that furthermore, in the cases in which the law could not oblige foreigners to accept public functions, they would naturally remain free to perform them if invited to do so.

Paragraph 2.

209. The following text was adopted for paragraph 2 :

"They shall also be exempt in the territory of the other High Contracting Parties, in peace time and in war time, from all compulsory military service, whether in the army, navy, air forces, national guard or militia, and from all *compulsory personal services in connection with national defence.* They shall similarly be exempt from all exactions, whether in money or in kind, imposed in lieu of personal services."

210. The text proposed by the Economic Committee only referred to military contributions. The Committee considered it necessary, in view of the provisions contained in recent laws on the organisation of national defence, to provide for another category of contributions in addition to that of military contributions proper. These laws provide for the utilisation of certain categories of the civil population for national defence in time of war. They stipulate, for example, that engineers and other technicians may be called upon to serve in arms and munition factories. It seems rational to extend to foreigners, in regard to services of this kind, the régime of exemption which they enjoy in regard to military contributions proper. It was for this reason that the words "compulsory personal services in connection with national defence" were introduced into the text of this article.

211. On the Italian delegation's proposal a Protocol was also attached to this paragraph worded as follows :

"It shall be understood that the provisions of the present Article do not affect questions relative to the acquisition or loss of nationality and the consequences thereof."

Certain legislations stipulate that, when a citizen of a country loses his nationality before having discharged his military obligations, he remains liable for the fulfilment of the latter, although he may have become a foreigner.

In view of the exceedingly small number of cases in which a stipulation of this kind can apply, the Committee felt able to accept the introduction of the Protocol quoted above.

212. Another delegation had proposed the introduction of the following passage at the beginning of paragraph 2 :

"Nationals of one of the High Contracting Parties *who are foreigners in virtue of the laws* of another shall also be exempt from all compulsory military service."

The sole object of this modification was to make it clear that nationality would be determined by the law of the country in which the person called up for military service was resident at the time. It was rejected as unnecessary, since there could be no doubt on this point.

213. Another amendment contained the proposal that it should be decided that exemption from military obligations should not extend to exactions which might temporarily be imposed upon the inhabitants of a country to remedy the effects of public calamities in the case of catastrophes which are not due to war. This proposal was also rejected as unnecessary.

214. The text of Article 11 only mentions military obligations, other obligations quite clearly not being included in its scope. Consequently each State is free to impose on its inhabitants, without distinction as between nationals and foreigners, any obligations it may think expedient in order to remedy catastrophes not resulting from war. It was pointed out that, if events of this kind were expressly mentioned, this would almost inevitably have the effect of compromising the aim which the authors of the amendments had in view. Such an enumeration might create the impression that the principle of exempting foreigners extended to all events which were not explicitly mentioned in the enumeration. The latter would have to be of a lengthy character and one could never be sure of having provided for all the calamities that may afflict a country.

Paragraph 3.

215. Paragraph 3 was adopted in the following form :

"Nationals of each of the High Contracting Parties shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals."

This wording contains two modifications as compared with the text submitted by the Economic Committee : (1) The omission of the words "established in the territory of another Party", which were regarded as unnecessarily restrictive ; (2) the mention of "movable property" among the property subject to requisitioning, whereas it appeared to be excluded in the Economic Committee's draft, which only mentioned "immovable property".

216. The Committee was of opinion that the movable property of foreigners should not be exempt from requisitions.

217. In adding "movable property" to the property subject, if necessary, to requisitioning, the new wording raised the question of sea-going vessels.

218. The Committee considered that, as this was a question raising very special difficulties, it was necessary to add a Protocol to paragraph 3 stating that the proposed Convention contained no provision with regard to this very special matter.

This Protocol read as follows :

"Paragraph 3 of Article 11 shall not apply to questions concerning the requisitioning of sea-going vessels."

219. In reply to a request for information it was stated that this Protocol only applied to vessels and not their cargo.

220. A delegation had proposed to insert after the words "as well as compulsory billeting" the words "and clearing operations and destruction legally ordered by the authorities".

This amendment was rejected as relating to events, which, in so far as they occur in time of war, are outside the scope of the present Convention, and which may be regarded, when occurring in time of peace, as being covered by Article 11.

The matter is therefore left entirely to the laws of the country and to Conventions which may be concluded in regard to it.

221. The question of compensation mentioned in the Sub-Committee's text was discussed in connection with paragraph 5.

Paragraph 4.

222. The text adopted for paragraph 4 was as follows :

"Nationals of any of the High Contracting Parties may not, in the territory of another Party, be expropriated of their property or deprived even temporarily of the enjoyment of such property, except for legally recognised reasons of public utility and in accordance with the legal procedure in force."

As in the case of paragraph 3, the question of compensation was held over until the discussion of paragraph 5.

Paragraph 5.

223. Paragraph 5 was the subject of protracted discussion. In this paragraph the Economic Committee intended to regulate the question of compensation to be granted to the owners of requisitioned or expropriated property. It had laid down the principle that, in matters of compensation for requisitions or expropriation, foreigners should enjoy the same treatment as nationals.

224. Many of the delegations objected to this rule. They pointed out that, in a number of cases in certain countries, either negligible compensation or no compensation at all had been granted for expropriation.

Even though such severe measures might be justifiable when applied to nationals in the national interest, or for reasons of public safety, their application to foreigners would appear inadmissible inasmuch as, in such cases, they were not concerned to the same extent as nationals. Compulsory expropriation without compensation, when applied to foreigners, would appear to constitute an infringement of international law.

225. The delegations which shared this view were therefore of opinion that paragraph 5 should be modified so as to lay down a two fold rule, namely : (1) That foreigners should, in all cases, enjoy the same treatment as nationals, and (2) that, in cases in which national treatment would only imply compensation which was obviously inadequate in view of the requirements of international law, foreigners might invoke international law in order to obtain higher compensation than that granted to nationals. They pointed out, moreover, that the granting of fair compensation to foreigners in such cases is in fact provided for in a large number of bilateral conventions. Their view, however, did not prevail.

226. Other delegations emphasised the disadvantages of abandoning, even partially, the principle of equal treatment for foreigners and nationals. They considered that a choice would have to be made between guarantees of the rights of property on the one hand, and equality of treatment on the other, and that the latter, taken all round, was open to fewer objections.

227. This principle having thus been determined, the Committee decided to leave the Rapporteur to submit a suitable text.

228. Since the solution adopted was in agreement with that proposed by the Economic Committee, the Rapporteur suggests that the text of paragraph 5 of Article 11 in the Economic Committee's draft should be adhered to as it stands. This paragraph would read as follows :

"*Paragraph* 5. Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties, as regards compensation for the exactions, requisitions, expropriation or temporary deprivations referred to in paragraphs 3 and 4 above, treatment equal to that which it grants to its own nationals."

229. Two amendments were proposed, the one providing that, in case of civil war or revolution, foreigners who were nationals of the High Contracting Parties would not be entitled to claim compensation if nationals were not entitled thereto ; the other amendment was to the effect "that in no case shall a foreigner have any means of recourse against a national or against the State other than that provided for under the national laws".

These two amendments, which both refer notably to damage to private property arising out of civil war or riots, were rejected.

The Committee considered that this question lay outside the scope of the Convention, that its regulation would require very careful study, and that it was dangerous to deal with it without more thorough preparation.

230. It was observed, moreover, that these questions were under consideration and were to be dealt with by the Codification Conference at The Hague.

231. Further, several delegations declared that the adoption of paragraph 5 of Article 11 did not solve the question of the responsibility incurred by a State for damage caused to foreign nationals.

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232. The text proposed by Committee A for Article 11 and the Protocol relating thereto is accordingly as follows :

"*Paragraph* 1.—Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative function.

"*Paragraph* 2.—They shall also be exempt in the territory of the other High Contracting Parties, in peace time and in war time, from all compulsory military service, whether in the army, navy or air forces, or in the national guard or militia, and from all compulsory personal services in connection with national defence. They shall similarly be exempt from all exactions whether in money or in kind, imposed in lieu of personal services.

"*Paragraph* 3.—Nationals of each of the High Contracting Parties shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals.

"*Paragraph* 4.—Nationals of any of the High Contracting Parties may not, in the territory of another Party, be expropriated of their property, or deprived even temporarily of the enjoyment of such property, except for legally recognised reasons of public utility, and in accordance with the legal procedure in force.

"*Paragraph* 5.—Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties, as regards compensation for the exactions, requisitions, expropriation and temporary deprivations referred to in paragraphs 3 and 4 above, treatment equal to that which it grants to its own nationals."

"*Protocol.*

"*Paragraph* 1.—The exemption referred to in paragraph 1 of Article 11 shall not extend to duties imposed by the laws relating to juries.

"*Paragraph* 2.—It shall be understood that the provisions of the present article do not affect questions relative to the acquisition or loss of nationality and the consequences thereof.

"*Paragraph* 3.—Paragraph 3 of Article 11 shall not apply to questions concerning the requisitioning of sea-going vessels."

CHAPTER XI.

Article 15

Rapporteur : M. Pilotti (Italy).

233. Committee A adopted, for Article 15, the following text :

"As regards the provisions of Articles 9, 10 and 11, nationals of one of the High Contracting Parties shall enjoy, in the territory of the other High Contracting Parties, the same treatment as they would enjoy if they were established there."

This text differs from the text submitted in the Economic Committee's draft, in that the reference to Articles 12 and 14 is omitted.

234. The reference to Article 12 was deleted at the request of a delegation which did not see its way, from the point of view of taxation, to assimilate the treatment of foreigners not established in the territory of one of the High Contracting Parties to the treatment of foreigners who were so established. The delegation in question pointed out that, under the laws of several States, the régime applicable to nationals not established was not the same as that applicable to nationals who were established, and that it would be impossible to extend to foreign nationals a measure which it had not seemed expedient to adopt in the case of nationals of the country itself.

235. The reference to Article 14 no longer appeared necessary, as Committee B had omitted this article in the text which it framed.

236. The Japanese delegate desired to reserve the right to submit at a plenary meeting an amendment to the terms of Article 15 as adopted.

237. Lastly, the Committee decided to leave it to the Drafting Committee to determine the final form of the text of Article 15, which is somewhat obscure as it stands.

CHAPTER XII.

The Final Act.

238. Committee A decided to adopt for the Final Act the following text :

I.

"The Conference desires to draw attention to the hindrance that may be placed in the way of production and trade by the measures which certain States are obliged to take for the protection of their home labour market.

"It considers that these questions should be made the subject of special laws and agreements, but it is anxious to express its desire that there should gradually be established régimes which, while consistent with national requirements, should be of as liberal a character as possible.

"It expresses the hope that, for this purpose, negotiations will be instituted, as soon as circumstances appear favourable, with a view to permitting as far as possible the exchange of foreign manual workers, employees, and other salaried persons and, in particular with a view to :

"(*a*) Reducing, as far as possible, the restrictions which at present prevent the exchange of technical experts, employees and workers constituting the skilled staff of undertakings, and which prevent practitioners or other persons from going abroad in order to complete their professional training ;

"(*b*) Establishing adequate regulations for the transfer from place to place of itinerant and seasonal labour where this appears desirable ;

"(*c*) Considering the most effective means of protecting the workers against the disadvantages which might attach to their recruitment, transport, placing and employment abroad and against the malpractices of intermediary agents.

"Further, the Conference directs the attention of the International Labour Organisation to these recommendations in so far as they concern it.

II.

"The Conference considers it desirable that the High Contracting Parties should, as far as possible, conform to the terms of the present Convention in any treaties which they may conclude with non-contracting States."

III.

"As regards the freedom enjoyed by States under Article 6 in the matter of admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings entered into under the terms of the present Convention."

This text differs from the text on page 12 of the preparatory document in the following particulars :

Part I.

Paragraph 1.—No change.

Paragraph 2.—In the second line the words "of freedom" have been omitted, the Committee regarding them as superfluous.

Paragraph 3.—At a delegation's request, the word "restoring", in the second line, has been replaced by the word "permitting".

Similarly the expression "free exchange of foreign labour" has been replaced by the expression "exchange of foreign labour".

Sub-paragraph (a).—The word "abolishing" has been replaced by the words "reducing as much as possible".

Sub-paragraph (b).—At a delegation's request the words "where this appears desirable" have been added.

Sub-paragraph (c).—Has been completed by the addition of the words "against the disadvantages which might attach to their recruitment, transport, placing and employment abroad and . . . ".

In addition, the Conference decided to recommend these various resolutions dealing with the conditions regarding the employment of labour to the attention of the International Labour Organisation, in so far as these recommendations concern it.

Part II.

The second Part was adopted without change as it figures in the preparatory document.

Part III.

The Committee adopted the recommendation contained in the report submitted to the Conference on behalf of Committee A by M. Politis (document C.I.T.E. /32 /continuation 4 /page 4). This recommendation applies only to the circumstances in which States may avail themselves of the right accorded them by Article 6 in regard to the admission and expulsion of foreigners.

In pursuance of an observation submitted by the Netherlands delegation, the Committee agreed to state in its report that the proposed Convention should prevail over previous bilateral treaties in so far as it contains more liberal measures in regard to matters already dealt with in these bilateral treaties.

Lastly, the Committee was informed that Committee D requested the insertion of certain provisions in the Final Act. Committee A considered that it would be for the Drafting Committee to make the insertion.

REPORT OF COMMITTEE B TO THE CONFERENCE ON ARTICLES 3, 4, 12, 13, AND 14.

PART I.

Articles 3, 4, and 12 (Paragraph 2).

Rapporteur : M. ENGELL (Denmark), assisted by M. YOUPIS (Greece).

Articles 3, 4 and 12 (paragraph 2) were discussed at length by Committee B and a Sub-Committee which dealt specially with the question.

Several delegations considered that these articles should be omitted, as they were outside the scope of the proposed Convention, and only related to the treatment of goods and not the treatment of foreigners. Some went so far as to say that in their view these provisions would be more in place in commercial treaties, and that, in any case, this very complicated subject, necessitating as it did a great deal of detailed work, should be dealt with at another Conference, particularly as these articles, owing to the opposition of several Governments, had been placed in brackets in the draft, and thus gave the impression that there was the possibility of their being deleted. This consideration led many Governments not to pay special attention to this serious problem, and not to propose all the amendments they might otherwise have submitted.

Other delegations, on the contrary, considering that the differential treatment of foreign goods constituted a serious obstacle to international trade, were anxious to have these articles maintained in the Convention.

In their opinion, the equality of the treatment of individuals, which was formally laid down in the draft Convention, had, as a necessary corollary, equality of treatment between home and foreign goods.

In view of the character of the opposition displayed, and in view of the importance of arriving at a compromise acceptable both to the opponents and supporters of these articles, the Committee decided to take a vote on the principle of maintaining or omitting Articles 3, 4 and 12 (paragraph 2).

Out of forty-seven delegations represented on the Committee, the delegations of the following twelve States pronounced in favour of maintaining the articles :

Belgium	France	Roumania
British Empire	Germany	Spain
Canada	Hungary	Switzerland
Czechoslovakia	Netherlands	Venezuela

The following eleven delegations voted for omitting the articles :

China	India	Poland
Cuba	Italy	Portugal
Denmark	Japan	Salvador
Greece		Sweden

Twenty-four other delegations which were absent at the time of the discussion did not take part in the voting.

After this decision on the question of principle, the Committee entered upon the discussion of each article, taking into account the amendments submitted to it by various delegations.

Several of the delegations which were opposed to the maintenance of these articles in the Convention took part in the discussion of the proposed amendments while pointing out that they reserved their final vote. The Committee unanimously recognised that the final decision must rest with the Conference.

ARTICLE 3.

The Committee made certain alterations in the wording of Article 3 in order to take account of an amendment of the British delegation and of observations put forward by several delegations emphasising the necessity of sometimes applying to foreign goods—for reasons of a technical nature—a treatment which, without being more burdensome in principle, would not be identical with that applied to home goods.

In the first line of the article, the term "*conditionnement*" (omitted in the English text), which was found too vague, was deleted and the drafting of the article was readjusted so as to make the article read as follows :

> " Internal taxes on production, distribution or consumption, which are levied, or which may in future be levied, on goods—no matter on whose behalf—in the territory of one of the

High Contracting Parties, may not, on any grounds, be so levied on the products of the other High Contracting Parties as to involve fiscal charges more burdensome than those imposed on like products of the country itself."

PROTOCOL *ad* ARTICLE 3.

As regards the Protocol, the Committee accepted an amendment by the Netherlands delegation which proposed that the Protocol *ad* Article 12 (paragraph 2) should also be applied to Article 3.

At the German delegation's request, it also agreed to insert in the Protocol a clause specifying that the fiscal charges mentioned in the article covered, not only the rate of taxation, but also the method of levying the taxes.

Lastly, it approved an amendment submitted by the Turkish delegation, under which the Protocol states that Article 3 is not intended by the High Contracting Parties to prejudice the question of the treatment applicable in the contracting States when no national products of a like character exist in those States.

The text of the Protocol *ad* Article 3 would now read as follows :

"The provisions of Article 3 shall also apply to the turnover tax *(taxe sur le chiffre d'affaires, Umsatzsteuer,* etc.). They shall not apply to Customs duties or to the other charges attaching to the import or export of goods.

"The fiscal charges mentioned in the said Article cover, not only the rate of taxation, but also the method of levying the taxes.

"Article 3 is not intended by the High Contracting Parties to prejudice the question of the treatment applicable in the contracting States when no national products of a like character exist in those States."

ARTICLE 4.

In order to take into account an amendment submitted by the British delegation, the text of Article 4 was supplemented by the addition of the following paragraph :

"This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods."

Another paragraph was also added, in conformity with the request of the British and Danish delegations :

"Any measures taken in the matter of marks of origin applicable to imported goods shall not be deemed to conflict with the provisions of Article 4, provided that they are not of a discriminatory nature contrary to the spirit of the Convention."

At the request of the Venezuelan delegation, the Committee declared expressly that transit questions were not covered by the Convention.

The delegations of Estonia and the Netherlands explained certain difficulties raised by Article 4 in regard to their laws.

In Estonia, the law stipulates that certain products of foreign origin may only be offered for sale and sold by undertakings which have procured first or second class licences, no distinction being made as regards the nationality of the holders of such licences.

The Netherlands Law of 1852 makes a distinction in the case of gold and of silver between national and foreign products.

The Committee was of opinion that special cases of this kind, referring to situations peculiar to certain countries, should be submitted to the Conference.

The text adopted by the Committee for Article 4 read as follows. :

"In regulating the freedom of trade, especially as regards the sale, offering for sale, distribution and consumption of goods, no distinction shall be drawn between products of the country itself and products of the other High Contracting Parties.

"This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods.

"Any measures taken in the matter of marks of origin applicable to imported goods shall not be deemed to conflict with the provisions of Article 4, provided that they are not of a discriminatory nature contrary to the spirit of the Convention."

PROTOCOL *ad* ARTICLE 4.

At the request of the Latvian delegation, the Committee decided to insert in the Protocol the following provision, which was based on the Protocol *ad* Article 1 :

"The provisions of Article 4 shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities by way of tender."

PROTOCOL *ad* ARTICLES 3 AND 4.

No modification was made in the Protocol *ad* Articles 3 and 4.

Article 12, Paragraph 2.

The text of paragraph 2 of Article 12 was adopted without modification.

As in the case of Article 4, the Committee, at the request of the Venezuelan delegation, explicitly recognised that transit questions did not come within the scope of the Convention.

Protocol *ad* Article 12, Paragraph 2.

In order to meet the wishes of the Austrian, Bulgarian and Egyptian delegations, the Committee decided to add to the Protocol *ad* Article 12, paragraph 2, the following provision :

> "The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to promote national industry, and for this purpose grant certain facilities in the matter of taxation, irrespective of nationality, to undertakings established in the country which maintain installations therein and employ national products."

The Czechoslovak delegation emphasised the relationship between these provisions and those of Article 20 ; in this connection it was noted that the provisions in question would have to be considered by Committee D.

PART II.

Article 12, Paragraph 2. Articles 13 and 14.

Rapporteur : M. Engell (Denmark).

I. Paragraph 1 of Article 12.

Committee B approved the text of paragraph 1 of Article 12.

The Netherlands delegation pointed out, however, that, with a view to preventing double taxation in the case of its own nationals, the Netherlands Government renounced the right to levy taxes on revenue or capital in respect of taxable subjects situated in another country and already taxed by that country. The Netherlands Government feels that it cannot extend this favour to foreigners unless the State of which such foreigners are nationals grants the same favour to Netherlands nationals established in that country. Otherwise, foreign Governments would have no interest in regulating the question of double taxation with the Netherlands Government.

The Netherlands Government declares accordingly that it can only accept Article 12 subject to a reservation. This reservation might be framed as follows :

> "The Netherlands Government accepts Article 12 subject to the reservation that it cannot undertake to extend to foreign nationals autonomous measures designed to prevent double taxation in the case of its own nationals established in its territory.
>
> "The Netherlands Government is, however, prepared to apply these measures in the case of foreigners established in its territory, if the State of which such foreigners are nationals applies the same measures to Netherlands nationals established in the territory of the said foreign State."

The Committee, considering that the position set forth by the Netherlands delegation was the outcome of essentially liberal measures which it would be sorry to see withdrawn, decided to recommend in principle that this reservation should be allowed.

The delegate of the Spanish Government declared that, for the same reasons, he could only accept the text of Article 12, subject to a similar reservation.

The Netherlands delegation also requested that in the text of Article 12, line 6, the words "like circumstances" should be added after the words "as nationals of the country".

The Chairman having pointed out that this proposal was connected with the exact definition of the word "national", which was being examined by another Committee, the Netherlands Government's amendment was held over, pending the conclusion of the examination in question, and Article 12 was adopted, subject to this reservation.

Lastly, the Swedish delegation pointed out that, as the question of the security required of foreigners as a guarantee for the payment of taxes due by them had not been discussed by Committe B, it reserved the right to discuss it in Committee A.

II. Articles 13 and 14.

Committee B held a preliminary discussion on the substance of Articles 13 and 14 of the draft Convention. Very divergent views having been expressed, the Committee considered that these two articles should first be examined by a sub-committee in which the various opinions expressed in the Committee should, as far as possible, be represented.

The Sub-Committee, after lengthy discussion, framed a draft text, condensing the substance of Articles 13 and 14 into a single article, followed by a draft Protocol to elucidate the terms of that article (document C.I.T.E./Comm. B/20). It should be noted, however, that, even in the Sub-Committee, agreement was not reached on any single text, the British delegate finding himself unable to accept the text framed by the majority of the Sub-Committee and reserving the right to submit to the Conference an amendment, which figures in document C.I.T.E./Comm. B/19.

The text framed by the majority of the Sub-Committee and the text of the amendment submitted by the British delegate, who was a member of this Sub-Committee, were submitted for consideration to Committee B. During the latter's discussion, very divergent views were again expressed, and the decisions taken were in almost every case voted only by a very small majority.

In view of the outcome of these deliberations, several members of Committee B formally expressed their intention of bringing up again before the Conference the text framed as the result of the Sub-Committee's discussions.

In the circumstances, it seemed essential, in order to give an accurate idea of Committee B's conclusions, to set forth in chronological order the different results arrived at, both in the Sub-Committee and in the Committee, and to submit to the Conference, not only the texts adopted by a majority of the Committee, but also those texts which the Committee did not accept.

(a) *Work of the Sub-Committee.*

The Sub-Committee, after considering Articles 13 and 14, framed the following text to replace those articles :

Article 13.

"Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties, whose principal establishment is situated in another territory, to higher taxes or charges, taken as a whole, than those borne in like conditions by its own nationals.

"As regards taxes on capital, on industrial, commercial or agricultural profits or on turnover, each of the High Contracting Parties undertakes not to tax the nationals of the other Contracting Parties, save (according to the nature of the taxes) in respect of the capital which they have invested in its territory or the property which they own therein, the profits accruing to them or the business operations conducted by them within that territory through permanent establishments.

"Such taxation may be levied either directly, on the basis of the factors specified above, or on part of the capital, profits or turnover of the undertaking, in relation to the aforesaid factors or of any other factors fixed or to be fixed under the conditions laid down in the last paragraph of the present article.

"In derogation of the provisions of the preceding articles, and by means of bilateral or other agreements, the High Contracting Parties may decide that maritime or air navigation undertakings are taxable only in the State in which their real centre of control and management is situated.

"The Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements."

Draft Protocol ad *Article* 13.

"The term 'permanent establishment' shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices, warehouses and fixed plant. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.) shall not, for that reason, be deemed to possess a permanent establishment in that country.

"It is understood that the second paragraph of Article 13 only lays down a principle of taxation. As regards the application of this principle, very different rules of assessment may be adopted, either based on the direct determination of the taxable assets or on the basis of the capital, revenues, or profits of the undertaking considered as a whole.

"The provisions of Article 13, both in themselves and applied, *mutatis mutandis*, to companies under Article 16, paragraph 8, do not refer to the taxation of transferable securities.

"As regards the application of the penultimate paragraph of Article 13, it should be stated that, if maritime or air navigation undertakings also engage in other activities independent of navigation (*e.g.*, trade in goods, banking, warehousing), these activities shall respectively be subject to the other provisions of this Convention."

During the discussion which resulted in the framing of this text, the British delegate declared repeatedly that he could not accept the text, unless it was understood that the State in which the centre of management and control of the undertaking was situated could tax the whole of the profits earned by that undertaking. In order that no doubt might remain as regards this right, he submitted the following amendment :

"(1) Omit from, 'or the business' in line six of paragraph 2 to end of paragraph and insert 'from the business operations conducted or controlled by them within

that territory through permanent establishments, or the volume of such operations'.

"(2) Omit the penultimate and last paragraphs of Article 13."

Most of the members of the Sub-Committee were, however, of opinion that the British amendment could not be adopted, though several of them expressed a desire that the centre of management and control should be mentioned in the Protocol in the list of establishments to be regarded as permanent establishments.

This difference of opinion having persisted throughout the discussions, the question was referred to Committee B.

(b) *Work of Committee B.*

The text prepared by the Sub-Committee and the points of view of the majority and minority having been stated in Committee B, certain delegations not represented on the Sub-Committee desired to give their views.

In particular, the Japanese delegation asked that the text of the former Article 14 of the draft Convention be omitted, and signified its acceptance of the text of Article 13 submitted by the majority of the Sub-Committee.

The Swedish delegation also asked that the former Article 14 of the draft Convention be omitted, and wished to see the text of the former Article 13 adopted as it stands in the draft Convention.

The Czechoslovak delegation stated that it could not accept the substance of Articles 13 and 14 under any form whatever. It added that, in principle, it was in favour of the provisions incorporated in the draft Convention, but that it thought that this matter could only be dealt with by means of bilateral agreements.

The Indian delegation declared that it could not, on principle, agree to the inclusion of Article13, even as redrafted by the Sub-Committee, adding that, if the Committee decided to adopt it, the Indian delegation would probably be able to accept the first paragraph, but would press for the following amendment in paragraph 2.

Amendment presented by the Indian Delegation.

"In the second paragraph, after the words 'which they own therein', insert the words 'or the profits which they receive in or bring into that territory or . . . '."

The Committee, being aware that the disagreement noted by the Sub-Committee still persisted, proceeded to put the text prepared by the Sub-Committee to the vote.

To begin with, as certain delegations had expressed the opinion that the whole of the substance of Articles 13 and 14 should be omitted from the draft Convention, the Chairman put paragraph 1 of the text of Article 13, as drafted by the Sub-Committee to the vote ; he added that those who wished that the whole of Articles 13 and 14 be omitted need only vote against the retention of this first paragraph. On this point, ten delegations voted for the retention of paragraph 1 of Article 13 and eight delegations voted against it.

The proposal having been put forward to retain only this first paragraph, the Chairman put to the vote the proposal to omit all the other paragraphs of Article 13 as drafted by the Sub-Committee. Ten delegations voted for the omission of these paragraphs and nine for their retention.

The Italian delegation declared that it had not voted in favour of the above-mentioned text since the latter did not establish a general rule for the taxation of branches of foreign undertakings, but merely granted such branches treatment similar to that accorded to the branches of national concerns whose principal establishment was abroad.

The case of national undertakings having their principal establishment abroad is, however, comparatively rare in practice, and cannot occur in regard to companies.

Moreover, the Italian delegation observed that the text adopted contained neither rules nor recommendations for the prevention of double taxation, whereas the text adopted by the Sub-Committee aimed at preventing double taxation, not, it is true, in respect of nationals, but in respect of foreign undertakings.

The representative of the International Chamber of Commerce asked that it be explicitly placed on record that the omission of all the paragraphs covered by the aforesaid note was only decided upon by a majority of one and expressed his regret at this decision.

Several delegations then explicitly reserved the right to revert at a plenary meeting to the text of this article as drafted by the Sub-Committee and to propose its adoption, subject to certain modifications. The Conference will undoubtedly have to take a decision on this point.

The number of votes recorded shows that many delegations were absent from the Committee at the time of voting.

Article 13 having thus been reduced to its first paragraph, it was proposed that the text of the last paragraph of the article adopted by the Sub-Committee be reinserted, only the words "if necessary" being omitted. This paragraph would thus read as follows :

"The contracting Parties will determine the procedure for the application of the present article, either by the adaptation of their internal legislation or by means of bilateral or multilateral agreements."

This proposal was accepted by ten votes to six.

The Chairman then observed that, in view of the various votes recorded, paragraphs 2, 3 and 4 of the draft Protocol became irrelevant. He proposed, however, to the Committee that paragraph 1 be retained ; this proposal was adopted by five votes to three.

As a result of its discussions, Committee B therefore submits to the Conference, for Article 13 and the draft Protocol relative to Article 13, the following text :

"Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties, whose principal establishment is situated in another territory, to higher taxes or charges, taken as a whole, than those borne in like conditions by its own nationals.

"The High Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements."

Draft Protocol ad *Article* 13.

"The term 'permanent establishment' shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices, warehouses, and fixed installations. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.), shall not, for that reason, be deemed to possess a permanent establishment in that country."

The British delegation observed that, according to the terms of the mutilated text which was the outcome of the different votes in the Committee, the possibility of taxing foreign undertakings was no longer confined to the case of permanent establishments, and hence the statement in the Protocol that an undertaking which had a genuinely independent agent would not be deemed to possess a permanent establishment in the country in which the agent was situated left the said country free to tax independent agents as it pleased and without any limitation.

The Committee agreed that this was so, but was of opinion that only the Conference, by amending the text adopted by the Committee, could supply this deficiency and reincorporate in the text which it adopted part of the substance already contained in the Sub-Committee's draft.

The Committee also had before it observations submitted by the delegation of Halti (document C.I.T.E. /Comm. B /21). These observations, so far as they concern Articles 13 and 14, announce that the delegation of Haiti cannot accept the said articles. The Committee can only transmit them to the Conference.

Lastly, the Committee noted a draft amendment submitted by the Austrian delegation (document C.I.T.E. /Comm. B /12). This draft proposed the insertion in the Protocol of the following provision :

"The High Contracting Parties agree to declare that the provisions of Articles 13 and 14, and of the Protocols relating thereto, shall be applied between them only in the absence of bilateral treaties for the prevention of double taxation relating to the points dealt with in the aforesaid Articles."

The Committee, noting the importance of the problem thus raised, agreed that it might also come up in connection with other provisions of the Convention, although in a somewhat different form. It accordingly proposes that the problem as a whole should be referred to the Committee D, and recommends that the fiscal aspects of the question should be dealt with by the latter in the course of its examination.

TEXT OF ARTICLES 3, 4, 12, 13 AND 14 OF THE DRAFT CONVENTION, ADOPTED BY COMMITTEE B (document C.I.T.E. /29).

Article 3.

Internal taxes on production, distribution or consumption, which are levied or which may in future be levied on goods—no matter on whose behalf—in the territory of one of the High Contracting Parties, may not, on any grounds, be so levied on the products of the other High Contracting Parties as to involve fiscal charges more burdensome than those imposed on like products of the country itself.

Protocol ad *Article* 3.

The provisions of Article 3 shall also apply to the turnover tax *(taxe sur le chiffre d'affaires, Umsatzsteuer,* etc.). They shall not apply to Customs duties or to the other charges attaching to the import or export of goods.

The fiscal charges mentioned in the said Article cover, not only the rate of taxation, but also the method of levying the taxes.

Article 3 is not intended by the High Contracting Parties to prejudice the question of the treatment applicable in the contracting States when no national products of a like character exist in those States.

Article 4.

In regulating the freedom of trade, especially as regards the sale, offering for sale, distribution and consumption of goods, no distinction shall be drawn between products of the country itself and products of the other High Contracting Parties.

This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods.

Any measures taken in the matter of marks of origin applicable to imported goods shall not be deemed to conflict with the provisions of Article 4, provided that they are not of a discriminatory nature contrary to the spirit of the Convention.

Protocol ad *Article* 4.

The provisions of Article 4 shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities by way of tender.

Protocol ad *Articles* 3 *and* 4.

1. The provisions of Articles 3 and 4 shall not preclude the High Contracting Parties from introducing taxes or taking other steps to safeguard their interests in the matter of any State monopolies which they have instituted, or may institute in the future.

2. The High Contracting Parties declare that they have solely in view monopolies, each of which applies only to one or more specific articles.

Article 12.

1. In the matter of taxes and duties of every kind or any other charges of a fiscal nature, irrespective of the authority on whose behalf they are levied, nationals of each of the High Contracting Parties shall enjoy, in every respect, in the territory of the other High Contracting Parties, both as regards their persons and property, rights and interests, including their commerce, industry and occupations, the same treatment and the same protection by the fiscal authorities and tribunals as nationals of the country.

2. In fixing the rates of taxes and duties of every kind levied on commerce and industry, no discrimination shall be made on account of differences in the origin of the goods employed or offered for sale.

Protocol ad *Article* 12.

It is understood that paragraph 2 of Article 12 shall not apply to Customs duties or any other charges connected with the importation or exportation of goods.

The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to promote national industry, and for this purpose grant certain facilities in the matter of taxation, irrespective of nationality, to undertakings established in the country which instal plant therein and employ national products.

Article 13.

Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties, whose principal establishment is situated in another territory, to higher taxes or charges, taken as a whole, than those borne in like conditions by its own nationals.

The High Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements.

Protocol ad *Article* 13.

The term "permanent establishment" shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices, warehouses and fixed plant. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.) shall not, for that reason, be deemed to possess a permanent establishment in that country.

Article 14.

(Omitted.)

Protocol ad *Article* 14.

(Omitted.)

REPORT OF COMMITTEE C TO THE CONFERENCE ON ARTICLE 16.

Rapporteur : M. DINICHERT (Switzerland).

1. The task assigned to Committee C was the study of Article 16 of the Draft Convention, which deals with the treatment of foreign companies and associations.

After a short introductory debate it was decided that the Committee would not have to discuss or rediscuss the text of the provisions referred to the other three Committees, but that it would have to determine, with regard to each of these provisions, whether they were applicable to companies and associations and, if so, in what way. It was agreed, in particular, that the question whether Article 16 should be regarded as applicable to colonies, protectorates, etc., was one for Committee D, to which the colonial clause, Article 28, had been referred. Lastly, the Committee decided to discuss, one after the other, the various paragraphs of the draft of Article 16 drawn up by the Economic Committee of the League of Nations.

2. As regards the first paragraph, the Committee had to consider a proposal that a definition should be given in a first paragraph of the companies and associations to be covered by the Convention, and that a second paragraph should state that these companies and associations should be recognised by the contracting parties as regularly constituted, whereas the Economic Committee's draft combines in a single sentence the definition of the companies and the undertaking to recognise them as regularly constituted.

Leaving on one side the question of form, the Committee was of opinion that the first thing to be done was to seek the most suitable definition of the companies and associations to which the Convention was to apply.

3. The first question to arise concerned the advisability of referring to the seat of the company, having regard to the diversity of the conceptions adopted in this respect by the different legislations. As the notion of the seat of a company is unknown in British law, the maintenance of the condition of the existence of the seat in the country in which the company was constituted would have obliged the British delegation to make a reservation on this point, or to ask that a special clause relative thereto should be introduced into the Protocol.

4. A special Sub-Committee was appointed to elucidate this question and to submit proposals to the Committee on the wording to be given to paragraph 1.

The text proposed by this Sub-Committee and accepted by the Committee with the subsequent addition of the enumeration, which is not intended to be restrictive, after the word "including", was as follows :

> "1. For the purposes of the present Convention, limited liability and other commercial, industrial and financial companies and associations, including insurance companies, shipping and other transport companies, and also companies providing communications, being regularly constituted in accordance with the laws of one of the High Contracting Parties and having their seat in its territory, shall be deemed to be companies of that High Contracting Party.
>
> "2. The companies of each of the High Contracting Parties shall be recognised by the other High Contracting Parties as being regularly constituted."

5. As regards the definition, other ideas were also suggested. For example, it was asked whether the companies and associations it was desired to cover could not all be included under the description of companies for the acquisition of gain. But it was pointed out that certain legislations recognised ordinary companies *(des sociétés simples)* aiming at the acquisition of gain which were not, in reality, commercial companies. The definition given above was therefore adopted, although it is perhaps not perfect in every respect. In the case of limited liability companies, reference is made to the nature of their constitution, whereas, in the case of other companies, their economic character is emphasised. It is also conceivable that limited liability companies may not pursue strictly economic aims, but it is obvious that the above text, strictly speaking, includes only those which do.

6. The Committee was also generally in favour of laying down for the companies to be covered by the Convention the twofold condition of regular constitution, according to the law of one of the contracting countries, and of having their seat in the same country, in spite of the fact that the notion of a seat does not exist in all legislations. To meet this situation the Committee decided, on the Sub-Committee's proposal, to adopt, as a Protocol *ad* Article 16, paragraph 1, the following sentence :

> "In the case of countries under whose laws the conception of the 'seat' of a company does not exist, the condition laid down with regard to this matter, in the first sub-paragraph of paragraph 1, shall not apply."

7. Lastly, the Committee agreed with the Sub-Committee in considering that the words "provided they (the companies) pursue no illicit aims", at the end of paragraph 1 of Article 16 in the Economic Committee's draft, should be deleted, as they in no way concern either the constitution or the recognition of the companies as such, but only the activities which they might carry on in a foreign country. The words in question, if it was desired to maintain them, would be more properly placed in paragraph 3, which deals with these operations : but the discussion to which this phrase gave rise led the Committee to the conclusion that it might be regarded as superfluous even in paragraph 3. Indeed, if the aims which a company desired to pursue were to be generally illicit, the company could hardly come into existence, since it could not be regularly constituted anywhere ; and, if the aims were considered licit in the country of its constitution, but illicit in another, it could not conduct its activities in the latter, because they would be in contradiction with the laws to which the company would be subject.

8. As regards paragraph 2 of Article 16 of the draft, which reads as follows :

> "The legality of their constitution and their capacity to appear in Court as plaintiffs or defendants shall be decided in accordance with their articles of association and according to the law under which they were constituted,"

the Committee had to consider, at the outset, a proposal for the omission of this provision.

It was pointed out during the discussion that the question of the legality of the constitution of companies was already settled in paragraph 1, and it was pertinently observed further that the complex problem of the legal capacity both of natural and legal persons came within the special competence of the Hague International Conferences on Private Law. It was therefore unanimously decided that care should be taken not to encroach on this domain, and it was noted at the same time that the solution contemplated in this draft of paragraph 2 followed that adopted in a number of existing bilateral treaties.

It was pointed out, moreover, that the right to appear in Court, as provided for in the case of individuals in Article 9 of the Convention, would also apply to companies, this being explicitly laid down in the later provisions of Article 16.

In the circumstances the Committee decided to accept the proposal that paragraph 2 be omitted.

9. Paragraph 3 of the draft provides that the activities of companies of one of the Parties shall, so far as they are carried on in the territory of another Party, be subject to the laws of the latter. The Committee, after noting that this was essentially a general principle applicable to all the activities of foreign companies, without its being necessary to distinguish between activities expressly allowed and those not so allowed, approved the following text for the draft, the words "constituted under the laws" being omitted as superfluous :

> "(2) The activities of companies of one of the High Contracting Parties shall, so far as they are carried on in the territory of another Party, be subject to the laws and regulations of the latter."

10. As regards paragraphs 4, 5 and 6 of the draft, the Committee had to consider very divergent proposals. One was for their omission pure and simple, on the understanding that authorisation should not be demanded when not required for national companies. The proposed system of reciprocity in the matter of authorisation was represented as being at once rigid and complicated. In paragraph 4 it was said to appear of a retaliatory nature, whereas paragraph 5 was intended to prevent differential treatment between companies of different countries, and paragraph 6 was designed to safeguard rights acquired in virtue of an authorisation once granted.

Another amendment, while maintaining the right to require previous authorisation, sought to eliminate the reference to measures of reciprocity in this matter. In this connection reference was made to the whole problem of most-favoured-nation treatment and reciprocity, as provided for in the various clauses of the draft Convention relevant to this question. The very involved situation which would result would, it was claimed, be such as to institute a mass of discriminations highly prejudicial to economic relations ; whereas the business world, above all, demands the application of the simple rule of most-favoured-nation treatment in order to ensure to international trade the necessary guarantees in regard to security and stability.

On the other hand it was observed that neither national treatment, which may involve abusive preference in the granting of authorisations to nationals as compared with foreigners, nor unconditional most-favoured-nation treatment, without the assurance of reciprocity, would constitute an ideal solution.

11. On a comparison of the actual text of paragraph 4 as compared with that of paragraph 5 and sub-paragraph 1 of paragraph 7 of the Economic Committee's draft, the first question to arise was what the previous authorisation in question was really to apply to. The intention of the framers of the draft is not clearly apparent from these various provisions. Obviously all the activities of foreign companies, more particularly the exercise of rights of every description, cannot be made subject to the condition of previous authorisation. The Committee accordingly came to the conclusion, after a preliminary discussion, that the authorisation mentioned in paragraph 4 might refer only to the establishment of the foreign company, and it agreed on the following text, which was intended to become paragraph 3 of the article, but was later deleted (see N° 27 below) :

> "If one of the High Contracting Parties makes the setting up in its territory of permanent establishments of companies of another High Contracting Party subject to previous and

revocable authorisation, the latter Party shall have the right to take reciprocal action in regard to companies of the former Party."

12. After a brief examination by the Committee, paragraphs 5 and 6 of the Economic Committee's draft were also referred, along with paragraphs 7 and 8, to a small Drafting Committee, with a view to determining their final form.

13. Adopting the proposals of this Drafting Committee, the Committee decided to maintain the principle of the guarantee mentioned in the draft, the wording of which was amended as follows :

"(3) The High Contracting Parties who make the activities of foreign companies in their territory subject to authorisation, whether these activities take the form of setting up permanent establishments or any other form, undertake that they will not, in allotting such authorisations, hinder the activities or the establishment of companies engaging in business which they generally allow companies of any other country to conduct under similar conditions."

This formula purposely avoids specifying whether the system of authorisations which the Parties may employ must necessarily be applied uniformly to the companies of every country. In any case, there is no intention to oblige the countries to apply equally to their own companies the system of authorisations which they may introduce for foreign companies.

14. The Committee accepted, as being in harmony with the spirit of the provisions of Article 16, the following two declarations by the Austrian delegation :

"(1) It is understood that, in so far as one of the High Contracting Parties under the terms of its legislation makes the activities of national and foreign companies alike subject to previous authorisation, it shall retain the right to consider each case individually.

"(2) It is understood, furthermore, that the fact of one of the High Contracting Parties applying to foreign companies the same provisions as those applicable to the companies of that Party, shall not authorise any one of the other High Contracting Parties to treat the companies of the said High Contracting Party less favourably than its own companies."

15. For paragraph 4, the Committee accepted the wording proposed, which reads as follows :

"(4) The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business in their territory with or without authorisation except in the case of an infraction of the laws of the country. They undertake in particular not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same conditions to national companies."

16. The first sentence in this text corresponds to paragraph 6 of the draft, with an addition to make it clear that no distinction shall be made between activities carried on by a company following upon an express authorisation and activities which it may have been, so to speak, tacitly allowed to carry on, its acquired rights calling for protection in both cases alike.

17. The second sentence provides, in response to the request of one delegation, that fresh measures regulating the activities of foreign companies may, as a matter of course, be taken, when such rules are applicable in the same conditions to companies of the country in question.

18. During the discussion it was emphasised that, if the conditions governing the admission or activities of a company underwent modification, this fresh factor would of course have to be taken into account in evaluating acquired rights.

19. The Committee again adopted the Drafting Committee's proposals concerning the form and tenor of the last paragraph of Article 16, which is intended to combine in one general provision paragraphs 7 and 8 of the draft. The principle unanimously agreed to was that the treatment accorded should be that applicable to foreign nationals, in so far as this was capable of being applied to a company, and subject to the reservation that foreign companies should not be entitled to claim, in respect of the questions governed and the cases covered by the Convention, treatment more favourable than would be accorded to companies of the country in question.

20. The principle having been accepted, it remained to consider which were the articles of the Convention to which reference should be made in order to ensure to foreign companies the treatment which they should be entitled to claim.

In this connection, it was agreed to make reference to Article 1, which was not included in the enumeration in the draft but is certainly applicable to companies as well as individuals, and also to Article 2, but not to mention Articles 3 and 4, which deal not with persons but with goods; it was agreed further to refer to Article 5, and also to Article 7, which was not mentioned in the draft, and Article 8, and to include in the general enumeration Articles 9 and 10, together with paragraphs 3, 4 and 5 of Article 11, excluding paragraphs 1 and 2, which can only apply to individuals.

21. The decision to be taken with regard to Articles 12 and 13 in the form in which they emerged from Committee B's discussions required a careful examination of these articles from the point of view of their applicability to foreign companies.

22. Firstly, as regards Article 13, under which each of the parties is to undertake in its territory not to subject the permanent establishments of nationals of other parties, whose principal establishment is situated in another territory to higher taxes or charges, taken all round, than those borne in like circumstances by its own nationals, it had to be recognised that such a stipulation could not be applied to companies, since the national companies with which the foreign companies had to be placed on a footing of equality as regards taxation could not have their principal establishment in another territory, that is to say, abroad, otherwise they would themselves become foreign companies.

23. As Article 13 had thus to be regarded as inapplicable to companies, it only remained to examine the effect which Article 12 might have on them, stipulating as it does that foreign nationals should be treated on the same footing as nationals of the country in regard to taxes and charges of all kinds.

But the principle of equal treatment with national companies, which ought to be enjoyed by foreign companies in consequence of Article 12 being referred to in Article 16, would only operate in an incomplete and problematical manner, since from the point of view of taxation the position of a branch or agency of a foreign company is not directly comparable with that of a national company which, apart from the possible existence of branches, has its principal establishment in the country itself.

It would therefore be necessary to give a wide and genuinely equitable interpretation to the term "similar treatment" employed in Article 16, this being understood and applied as meaning that, as a general rule, the method of taxing a branch of a foreign company should give approximately the same result as, and involve no heavier burden than, the method of taxing a national company working under the same conditions as the branch of a foreign company.

24. This impossibility of making an exact comparison from the point of view of taxation between foreign and national companies convinced the Committee that it would be desirable, if not essential, for positive and definite rules to be drawn up with regard to the normal method of taxing the branches and agencies of foreign commercial, industrial and agricultural undertakings.

25. In these circumstances, the Committee considered that it was its duty to draw the Conference's serious attention to the manifest inadequacy of the provisions which had been submitted to it from the point of view of the system of taxation applicable to foreign companies, and to urge that the opportunity should be taken of settling this important question in an equitable manner in the proposed Convention, which, in the absence of such a settlement, might lose an appreciable part of its value.

26. The wording which the Committee accordingly adopted, on the proposal of its Drafting Committee, was as follows :

> "(5) The companies of each of the High Contracting Parties shall enjoy in the territory of the other Parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same conditions for nationals under Articles 1, 2, 5, 7, 8, 9, 10, 11, paragraphs 3, 4 and 5, and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same conditions to national companies."

It was further recognised that the meaning of this stipulation was the same as that of the British proposal to the effect that the articles in question should be regarded as applying to the companies of each of the Parties as if the several articles referred throughout to companies instead of nationals.

It was recognised, moreover, that this text did not affect the rights arising out of the Parties' freedom to make the activities of foreign companies in their territory subject to authorisation.

27. It was after the adoption of these various clauses that the Committee reconsidered its previous acceptance of the principle of reciprocity in the matter of authorisation, and decided to delete the provision corresponding to paragraph 4 of the Economic Committee's draft. It was pointed out in particular that after the deletion of Articles 17 and 18 of the draft Convention it was no longer necessary to maintain this vestige of the principle of reciprocity, and that, further, the text adopted for the paragraph would permit of reciprocity being in fact applied without there being any need to say so explicitly.

28. This decision of the Committee nevertheless led certain delegations, including those of Denmark, France and the Netherlands, to state that they would be obliged to make a reservation in this connection.

29. The Danish delegation further made a reservation, to meet all eventualities, with regard to the following two points :

"(*a*) The Danish Government reserves the right to make the admission of companies of another High Contracting Party subject to the same conditions as those applied by that Party in regard to the admission of Danish companies.

"(*b*) The Danish Government reserves the right to prohibit foreign companies from engaging in retail trade."

30. On its side, the British delegation stated that its Government was not in a position to grant foreign companies the absolute right of acquiring or leasing immovable property, and that these companies must always obtain a special licence in order to acquire landed property and, in certain cases, in order to lease such property.

The Committee did not feel able to take a decision on this point, as the discussion of the draft of Article 10 had not yet been concluded by Committee A.

31. Lastly, the Swedish delegation observed that the text finally adopted did not correspond to the general scheme of Article 16 of the draft prepared by the Economic Committee, which, in principle, it would have preferred.

Text of Article 16, adopted by Committee C.

(1) For the purposes of the present Convention, limited liability and other commercial, industrial and financial companies and associations, including insurance companies, shipping and other transport companies, and also companies providing communications, being regularly constituted in accordance with the laws of one of the High Contracting Parties and having their seat in its territory, shall be deemed to be companies of that High Contracting Party.

The companies of each of the High Contracting Parties shall be recognised by the other Contracting Parties as being regularly constituted.

(2) The activities of companies of one of the High Contracting Parties shall, so far as they are carried on in the territory of another Party, be subject to the laws and regulations of the latter.

(3) The High Contracting Parties who make the activities of foreign companies in their territory subject to authorisation, whether these activities take the form of setting up permanent establishments or any other form undertake, that they will not, in allotting such authorisations, hinder the activities or establishment of companies engaging in business which they generally allow companies of any other country to conduct under similar conditions.

(4) The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business in their territory, with or without authorisation, except in the case of an infraction of the laws of the country. They undertake, in particular, not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same conditions to national companies.

(5) The companies of each of the High Contracting Parties shall enjoy, in the territory of the other Parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same conditions for nationals under Articles 1, 2, 5, 7, 8, 9, 10, 11, paragraphs 3, 4 and 5, and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same conditions to national companies.

Protocol *ad* Article 16, Paragraph 1.

In the case of countries under whose laws the conception of the "seat" of a company does not exist, the condition laid down with regard to this matter in the first sub-paragraph of paragraph 1 shall not apply.

REPORT OF COMMITTEE D TO THE CONFERENCE

on Articles 17 to 28, New Articles and Miscellaneous Proposals.[1]

PART I.

Articles 17 to 26.

Rapporteur : M. Ito (Japan).

Articles 17 and 18.

1. The Committee proceeded with the general discussion of the articles relating to most-favoured-nation treatment, after having decided to appoint a Sub-Committee with a view to the preliminary examination of those articles. The general discussion did not give rise to a protracted debate. The British delegation proposed the insertion, in lieu of Articles 17 and 18, of a provision which would ensure the application of most-favoured-nation treatment to persons and companies admitted to the territory of a High Contracting Party and also in the matter of actual admission to its territories. This proposal was not favourably received. Some thought it calculated to extend unduly the scope of most-favoured-nation treatment. Others again held that it referred to a question left outside the scope of the Convention. Lastly, certain other delegations opposed the actual establishment of the general principle of most-favoured-nation treatment in regard to all matters dealt with in the Convention and combined with national treatment.

2. Opinion was divided as regards the scope of paragraph 1 of Article 18. Some regarded this paragraph as calculated to restrict the possibility of concluding special agreements, while others maintained that, on the contrary, the provisions laid down therein would facilitate the conclusion of special agreements on a basis of reciprocity. Further, certain delegations expressed their disapproval of the actual principle of reciprocity embodied in this paragraph.

3. Certain delegations also raised the question of exceptions to most-favoured-nation treatment. These exceptions refer on the one hand to benefits arising out of multilateral Conventions concluded at Geneva and to provisions concerning double taxation and questions of private international law, matters which, by their nature, call for reciprocity. On the other hand reference was made to exceptions of a geographical, historical, social character, such as the Baltic, Scandinavian and Iberian clauses, etc. Certain delegations urged the necessity of interpreting these exceptions in a restrictive sense, as is suggested in the Economic Committee's comments, in order not to nullify the actual effects of the most-favoured-nation clause.

4. When examining these questions, the majority of the Sub-Committee pronounced in favour of omitting Articles 17 and 18. Despite an effort which was made, on the Swedish delegation's proposal, to retain the principle of most-favoured-nation treatment, the Sub-Committee was unable to find a formula which would satisfy the majority of its members. The reasons for omission were of various kinds. Some members considered the deletion of the articles imperative in view of the hostile attitude of certain delegations towards the principle of the most-favoured-nation clause, lest the hands of Governments be tied. Others advocated their omission on the grounds that there had not been time to discuss these complex questions exhaustively. The attitude of others again was explained by their unwillingness to accept provisions laying down principles in these matters.

Adopting the Sub-Committee's proposal the Committee decided to omit Articles 17 and 18.

5. The Egyptian delegation requested the insertion of the following text as a Protocol to Article 17 :

> "Pending the abolition of the privileges and immunities which, in a number of countries, still have the effect that the nationals of certain foreign States are not subject to the territorial sovereignty of the country where they are established, the term 'most-favoured-nation treatment' employed in Article 17, paragraph 1, shall not be deemed to apply to the said privileges and immunities."

Article 17 having been deleted, the Committee did not consider it necessary to examine the Egyptian proposal.

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[1] Revised and completed by M. Ito in accordance with the decision taken by Committee D at its last meeting, see Minutes of Committee D, No. 6.

ARTICLE 19.

1. The Sub-Committee appointed to examine Article 19 recommended its adoption subject to several modifications designed to meet the views of certain delegations. It was pointed out that the original draft of paragraph 1 would give the impression that all measures of discrimination were permitted, provided that they were not prompted by unfriendliness. It was asked further that the expression "faculty *accorded* . . . to exclude foreigners, etc." might not be used.

During the discussion in the Committee, the Polish delegation considered that the wording of the article was too vague and that it might thus give rise to difficulties in regard to its application between the contracting countries ; the delegation asked that the scope of the article might be more clearly defined by means of a provision to be inserted in the Protocol.

2. In the course of the discussion the German, Italian, and Polish delegations respectively submitted drafts to replace paragraph 1 of the original text of the draft.

The Committee accordingly instructed the Drafting Committee to prepare a new text, taking into account the various observations and proposals submitted.

It was noted that it would be very difficult to find a text acceptable to certain delegations, if the original text of paragraph 1 in the Economic Committee's draft was taken into account.

3. In these circumstances, the Japanese delegation proposed the following text to replace paragraph 1 of Article 19 :

> "The High Contracting Parties undertake not to avail themselves of the rights reserved to them under the provisions of the present Convention, in a manner unfriendly towards the nationals of one or more of the High Contracting Parties."

4. The Japanese delegation's proposal is only a statement of a principle of equity which, in the opinion of the delegation, would not encounter opposition from the countries represented at the Conference, unless they were desirous of employing unfriendly measures in regard to other countries.

5. During the discussion in the Committee it was pointed out that the above proposal, instead of being an amendment, was a fresh proposal to take the place of paragraph 1 of Article 19.

At the Polish delegation's request, it was explained that the term "*exercice éventuel*" in the French text covered the eventuality of these reserved rights actually being exercised.

The Japanese proposal was adopted by a large majority of the Committee, the Polish delegation alone voting against it.

6. The Chairman then put the original text of paragraph 1 to the vote. The Committee rejected this text by a majority vote.

7. On the proposal of the Polish delegation, the Committee adopted the following provisions to be inserted in the Protocol *ad* Article 19, paragraph 1 :

> "The 'unfriendliness' referred to in the first paragraph of Article 19 shall be appreciated with reference to the general conditions under which the rights in question have been exercised."

8. Certain delegations suggested that it would be expedient to examine the relation which might exist between Article 19 as adopted by the Committee and Article 21.

9. The text of Article 19 would now read as follows :

> "(1) *The High Contracting Parties undertake not to avail themselves of the rights reserved to them under the provisions of the present Convention in a manner unfriendly towards the nationals of one or more of the High Contracting Parties.*
>
> "(2) Whenever the present Convention provides that *in the territory of any High Contracting Party*, the nationals of the other High Contracting Parties shall be subject to the *régime applicable* to nationals, *the High Contracting Party* concerned shall not *establish this régime* in such a way as to include conditions the application of which *would result* in the absolute expulsion of nationals of the other High Contracting Parties or *would lead to* a system of differentiation to the detriment of such nationals."

Protocol ad *Article* 19.

> "*The 'unfriendliness' referred to in the first paragraph of Article* 19 *shall be appreciated with reference to the general conditions under which the rights in question have been exercised.*"

ARTICLE 20.

1. The examination of this article was entrusted to the Sub-Committee, the great majority of whose members recognised its importance in the general scheme of the Convention. The

proposal of two delegations to omit this provision was therefore rejected, but it was pointed out that the article in question only settled a part of the vast problem of indirect protectionism. The Sub-Committee nevertheless recommended the maintenance of the article.

Adopting this recommendation, the Committee decided to maintain Article 20.

2. The Committee proceeded to examine the numerous amendments submitted in connection with this article. It only adopted those presented by Bulgaria and Hungary, Bulgaria proposing to add at the end of the article the following text :

> " . . . provided this equality does not affect the stipulations of the laws for the encouragement of home industries,"

and Hungary recommending the adoption of this text with the following addition :

> " . . . or of the laws relative to the award of contracts concluded by public authorities by way of tender."

In view of the adoption of the Bulgarian and Hungarian amendments the Austrian, Spanish, Latvian, Turkish and Indian delegations withdrew their requests for reservations.

3. The Brazilian delegation submitted a proposal designed to sanction penalties which a High Contracting Party would have the right to impose in regard to the practice of dumping. This proposal raises a problem which is extremely difficult of solution. It was stated that as yet no agreement exists as to what is meant by dumping either in theory or in practice, so that it would be dangerous for the Conference to venture into this domain. It was further observed that a country might employ measures of discrimination on the pretext of defending itself against dumping and that it would thus be able to render the Convention quite valueless. For these reasons the Brazilian delegation's proposal was rejected by the Committee.

4. The Committee adopted the following text for Article 20, which was prepared by the Drafting Committee :

> "*Without prejudice to the stipulations of laws relating to the encouragement of national industries, or to the award of contracts concluded by public authorities by way of tender,* the High Contracting Parties undertake not to prejudice the guarantees of equality between national and foreign undertakings as laid down in the preceding articles by means of exemption from taxes or duties or by differential regulations affecting production, trade or the level of prices."

Article 21.

1. This article was entrusted for preliminary examination to the Sub-Committee. During the latter's discussions, it was pointed out that the provisions of the articles raised very important questions in connection with the international responsibility of States. This problem is a particularly difficult one to solve. The international responsibility of the State is no doubt recognised by international law ; but difficulties arise as soon as any attempt is made to determine the nature and limits of this responsibility, even though the principle is recognised. It was also emphasised that agreement had not yet been reached as to what exactly was meant by acquired "rights". For these reasons it would be preferable, not to insert a clause of this kind in the Convention, but to envisage only the rules of law at present in force, particularly as a Conference at The Hague is shortly to deal with the question. The fear was also expressed that, if Article 21 were accepted as it stood, the result might be in certain cases that foreigners would get more favourable treatment than nationals. Lastly, certain doubts were expressed as to the advisability of giving the Convention retroactive effect as from the date of signature, provision for which is in the text of the draft.

2. On the other hand, the opinion was expressed that, since the principle in itself is just, it would be preferable to have an explicit clause on the subject in the Convention, particularly as the rule as now worded possesses all the necessary elasticity. Its insertion is the more worthy of consideration inasmuch as the article refers only to a specific question. A further argument adduced in favour of insertion was that this clause could not reasonably be relinquished in exchange for the problematical results of a future Conference.

3. The Sub-Committee expressed itself almost unanimously in favour of the actual principle embodied in Article 21. The majority did not concur in the doubts expressed by certain members as to the advisability of inserting such a clause in the Convention.

4. The Sub-Committee also examined an amendment submitted by the French delegation, and was particularly concerned with the possible consequences of making a change in the original text on the lines suggested in the French proposal. The Sub-Committee decided by a big majority to maintain the original text.

5. On the Sub-Committee's proposal, the Committee adopted Article 21 and rejected the French amendment.

Article 21 therefore reads as follows :

"(1) If, after the signing of the present Convention, and within the limits thereof, a High Contracting Party places any restrictions on the previously authorised operations of nationals or companies of the other High Contracting Parties, it must, as far as possible, respect acquired rights.

"(2) In a general manner, the High Contracting Parties undertake to avail themselves of the reservations provided for in the present Convention only in such a way as will cause the least prejudice to international trade."

Article 22.

1. A proposal with a view to the appointment of a special Sub-Committee to examine Article 22 was not adopted.

Certain delegations expressed a wish that the article might be amended so as to re-establish arbitration or conciliation procedure prior to any recourse to the jurisdiction of the Permanent Court of International Justice.

After a somewhat lengthy debate, the Committee adopted as a basis for discussion the following text, proposed by the Netherlands delegation :

"The High Contracting Parties agree that all disputes which may arise between them in regard to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the Parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing convention or in virtue of a special agreement to be concluded, the dispute is settled by arbitration or any other means."

2. The Swiss delegation pointed out that the adoption of this text would reduce the possibility of obtaining the signature of certain countries which have not acceded to the Statute of the Court, as the text provides for the compulsory jurisdiction of the Court.

The Turkish delegation, while expressing its appreciation of the Hague Court, declared that it could not accept the article, as Turkey had not acceded to the Protocol of 1920, but preferred to conclude bilateral arbitration treaties ; such treaties have already been concluded with certain States.

The Belgian delegation also observed that the text was open to the objection that it could be accepted by States which had acceded to the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice (December 16th, 1920), and requested the insertion of the following clause :

"The provisions of the present article shall not affect obligations arising out of Article 36 of the Statute of the Permanent Court of International Justice."

After an exchange of views, the Committee decided that the misgivings expressed in this connection were superfluous, as States, when acceding to the Optional Clause, had the right to make reservations, and, moreover, they could conclude with one another agreements providing for some special method of settling disputes that might arise between them.

3. Various amendments to Article 22 were proposed. The Hungarian delegation asked for the insertion of a provision laying down that the decision or the Court or the arbitral award should be final and without appeal. The Turkish delegation was anxious to make the text more definite by adding a clause permitting of recourse to an arbitrator in virtue of an agreement to submit the dispute to arbitration. The Polish delegation expressed a desire that the article should be confined to disputes relating to the interpretation of the article, but not to its application.

The Committee did not think it necessary to adopt these amendments.

4. The Venezuelan delegation proposed that the following provision should be inserted at the end of Article 22 :

"In no case may the provisions of the present Article affect the principle that disputes between a State and foreign nationals must be submitted to the decision of the former's Courts of Justice."

According to the explanations furnished, this proposal was designed to serve as a guarantee against all intervention by foreign Powers under cover of the provisions of Article 22. It was not clear, however, whether the Venezuelan delegation simply meant that foreigners should avail themselves of the means of recourse existing under the law of the country before appealing to their Government for diplomatic protection, or whether it had a further purpose in view. With the consent of the delegation concerned, it was decided to determine the scope of the proposal.

5. During the discussion of the text proposed by the Drafting Committee, the Swiss delegation expressed again the preoccupations to which it had already referred.

The Committee adopted the text proposed by the Drafting Committee.

6. The text of Article 22 reads as follows :

"*The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the Parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing Convention or by joint agreement, the dispute is settled by arbitration or any other means.*"

ARTICLE 23.

1. The Drafting Committee responsible for the examination of this article submitted to the Committee the following text :

"The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date ; it shall remain open for signature until March 31st, 1930, on behalf of any Member of the League of Nations, and of any non-Member State which was represented at the Conference of Paris or to which the Council of the League of Nations shall have communicated a copy for this purpose."

2. The Committee had to consider a proposal by the German delegation, worded as follows :

"Official translations may at the request and with the assistance of the interested Governments be drawn up by the Secretariat of the League of Nations and deposited with the Secretary-General. It will be open to the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Convention."

3. This proposal was modified by the German delegation in form if not in substance. The purpose which the delegation had in view was that each country should have, in its own language, a text differing as little as possible from the official text. The matter being perhaps one for the Council or the Assembly of the League of Nations to decide, the German delegation would be satisfied if the Conference simply accepted the principle contained in its proposal.

4. Several delegations stated that they were unable to accept the German proposal. Some considered that an official translation of the Convention, if it was to be regarded as authoritative, should have the approval of the plenipotentiary delegates present at the Conference. Others held that the only authentic text was that signed by the plenipotentiaries present at the Conference. Others, again, were of opinion that the question did not come within the competence of the Conference.

5. The Committee endorsed the opinion expressed by the Drafting Committee, which was worded as follows :

"In conformity with the decision taken by Committee D, the Drafting Committee has examined with great care the German delegation's proposal with regard to the preparation of official translations.

"The Committee, while recognising that it was in the interest of a country to have as faithful a translation as possible of the authoritative texts of a Convention, in order to facilitate its application, is unanimously of opinion that the question is not within the competence of an international Conference, whose powers are confined to the preparation of a text in the language or languages regarded as authoritative.

"It will be for each State to arrange for the preparation of an official translation if it thinks it necessary, but this translation cannot have any international value in the relations between the High Contracting Parties.

"In these circumstances, the Committee is of opinion that no wish should be expressed or recommendation made on this point."

6. The text of Article 23, as adopted by the Committee, is as follows :

Article 23.

"The present Convention, of which the French and English texts are both authentic, shall bear this day's date, and, *until March 31st*, 1930, it may be signed on behalf of any Member of the League of Nations, or of any non-Member State which was represented at the Conference *at Paris* or to which the Council of the League of Nations may have communicated a copy of the Convention for this purpose."

ARTICLES 24 AND 25.

On the Drafting Committee's proposal the Committee adopted without opposition the following text for Articles 24 and 25 :

Article 24.

"The present Convention *shall be ratified as soon as possible.* The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall notify this deposit *to all the Members of the League of Nations and all the non-Member States referred to in Article 23.*"

Article 25.

"On and after *April* 1*st*, 1930, the present Convention may be acceded to on behalf of any Member of the League of Nations or any *non-Member* State mentioned in Article 23. Each accession shall be *notified to the Secretary-General* of the League of Nations *who will inform all the Members of the League of Nations and all the non–Member States referred to in Article* 23."

Article 26.

1. The Drafting Committee submitted to the Committee the following text :

"Without prejudice to the provisions of the second paragraph of this article, the present Convention shall come into force two months after the date on which ratification or definitive accessions on behalf of ten Members of the League of Nations or non-Member States referred to in Article 23 have been deposited with or notified to the Secretary-General of the League of Nations.

"If on December 31st, 1930, the number of ratifications or definitive accessions required for the entry into force of the Convention has not been reached, the Secretary-General of the League of Nations shall enquire of the Members of the League of Nations and non-Member States on whose behalf ratifications or definitive accessions have been deposited or notified, whether they are prepared to put the Convention into force between them on a date to be fixed by agreement. If the replies of the said Members of the League of Nations and non-Member States are unanimous in desiring the entry into force of the Convention as aforesaid, the date so agreed upon shall be communicated to the other Members of the League and non-Member States referred to in Article 23, and the latter, if thereafter ratifications or definitive accessions are deposited or notified on their behalf, shall be deemed to have thereby accepted the Convention in the conditions aforesaid. If the replies are not so unanimous, all the Members of the League of Nations and the non-Member States referred to in Article 23 shall consider the course to be adopted after being consulted by the Secretary-General of the League of Nations.

"Every ratification or definitive accession deposited or notified after the entry into force of the Convention shall take effect two months after the date of its deposit or notification."

2. In the course of the discussion, an exchange of views took place as to the advisability of drafting the text in such a way as to leave the Secretary-General of the League of Nations free to choose in what way he should proceed to the consultation provided for in paragraph 2 of the article. The Committee decided to modify the text on these lines.

3. According to the Drafting Committee's text, the number of ratifications or definitive accessions required for the entry into force of the Convention is ten. The number ten was inserted on the proposal of certain delegations.

The Netherlands delegation proposed that this number should be reduced to six, as it considered that ten was too high and would make the bringing into force of the Convention difficult.

The Committee maintained the number ten.

4. The text of Article 26, as adopted by the Committee, is as follows :

"*Without prejudice to the provisions of the second paragraph of this article, the present Convention shall come into force two months after the date on which ratifications or definitive accessions on behalf of ten Members of the League of Nations or non-Member States referred to in Article* 23 *have been deposited with, or notified to, the Secretary-General of the League of Nations.*

"*If on December* 31*st*, 1930, *the number of ratifications or definitive accessions required for the entry into force of the Convention has not been reached, the Secretary-General of the League of Nations shall consult the Members of the League of Nations and non-Member States on whose behalf ratifications or definitive accessions have been deposited or notified as to whether they are prepared to put the Convention into force between them on a date to be fixed by agreement. If the replies of the said Members of the League of Nations and non-Member States are unanimous in desiring the entry into force of the Convention as aforesaid, the date so agreed upon shall be communicated to the other Members of the League and non-Member States referred to in Article* 23, *and the latter, if thereafter ratifications or definitive accessions are deposited or notified on their behalf, shall be deemed to have thereby accepted the Convention in the conditions aforesaid. If the replies are not unanimous, all the Members of the League and non-Member States referred to in Article* 23 *shall consider the course to be adopted after being consulted by the Secretary-General of the League of Nations.*

"*Every ratification or definitive accession deposited or notified after the entry into force of the Convention shall take effect two months after the date of its deposit or notification.*"

PART II.

Articles 27 and 28, New Articles and Miscellaneous Proposals.

Rapporteur : M. Ito (Japan).

ARTICLE 27.

1. When this article was being discussed, several delegations expressed the desire to add to it a clause permitting of partial denunciation of the Convention. Certain delegations submitted proposals on this point. The Committee did not, however, take any decision to this effect.

2. The text of the article therefore remains as drafted by the Economic Committee :

Article 27.[1]

"The present Convention may be denounced on behalf of any Member of the League or non-Member State. The denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other High Contracting Parties, at the same time informing them of the date on which he received it.

"The denunciation shall come into force only in respect of the High Contracting Party who has notified it, and one year after such notification has reached the Secretary-General of the League of Nations. "

ARTICLE 28.

1. The examination of this article and of several observations and proposals relating thereto was entrusted to a special Sub-Committee.

The latter submitted to the Committee for Article 28 the following draft and observations :

"The High Contracting Parties may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, they do not assume any obligations in respect of all or any of their colonies, protectorates, *overseas territories* or territories under suzerainty or mandate, and that the present Convention shall not apply to any territories named in such declaration.

"*No High Contracting Party shall be obliged to accord wholly or in part any of the benefits provided for in the present Convention to nationals of any other High Contracting Party belonging to any colony, protectorate, overseas territory or territory under suzerainty or mandate to which the Convention does not apply.*

"The High Contracting Parties may give notice to the Secretary-General of the League of Nations, at any time subsequently, that they desire that the Convention shall apply to all or any of their territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

"Similarly, the High Contracting Parties may, at any time, declare that they desire that the present Convention shall cease to apply to all or any of their colonies, protectorates, *overseas territories* or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration within one year after its receipt by the Secretary-General of the League of Nations."

Protocol ad *Article* 28.

"*Nothing in Article* 28 *shall be construed as affecting the rights or obligations of mandatory Powers under the Covenant of the League of Nations or under the terms of the mandate or mandates which they exercise*".

Observations.

"The Sub-Committee was unanimously of the opinion that the expression '*ressortissant*' must be interpreted in the wide sense accepted generally and in particular in the Peace treaties.

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[1] Based on Article 9 of the Convention of September 26th, 1927, on the Execution of Foreign Arbitral Awards.

"In particular it must be interpreted as including the *ressortissants* of colonies, protectorates, overseas territories and territories under suzerainty or mandate of the High Contracting Parties. The new second paragraph of Article 28 prevents this interpretation of the word from having an effect which is not reciprocal. At the same time, this paragraph makes it perfectly clear, *a contrario*, that, in principle, the word '*ressortissant*' includes the *ressortissants* of colonies, protectorates, overseas territories and territories under suzerainty or mandate of the High Contracting Parties, and renders unnecessary any definition of this word, which would be a task of considerable difficulty."

2. When the Committee discussed Article 28, a request was put forward for a modification of paragraph 1. Instead of saying that "the High Contracting Parties may, at the time of signature, ratification or accession, declare" that they desire to exclude certain colonies from the scope of the Convention, it was requested that this clause should be given a positive form by saying that the High Contracting Parties may, at the time of signature, accession or ratification, specify the colonies and protectorates to which they desire to apply the Convention. After an exchange of views this proposal failed to meet with the Committee's approval.

3. The Netherlands delegation raised the general question whether a country could declare, either at the time of signature or at the time of accession, that it only intended to apply the provision of the Convention to its colonies or overseas territories subject to certain reservations. When the question raised by the Netherlands delegation was discussed, the Committee came to the conclusion that it did not in any way affect the decision to be taken by the Conference on the general question of reservations to the Convention. Certain delegations considered that the problem raised by the Netherlands delegation could be dealt with in the same way as the reservations submitted by other delegations with regard to certain articles of the Convention. In the opinion of other delegations, the application of the Convention with reservations in regard to colonies was permissible, since the Convention allowed colonies to be completely excluded, and could *a fortiori* be applied to them subject to reservations. It was also observed that Article 28, as drafted, contained no provision relating to the question raised by the Netherlands delegation.

In conformity with the Sub-Committee's opinion, the Committee unanimously adopted the Netherlands delegation's proposal to insert the following additional clause in Article 28 :

"The High Contracting Parties who, at the time of signature, do not make the declaration provided for in paragraph 1, shall be entitled to make reservations with regard to the application of certain provisions of the Convention to their colonies, etc. These reservations, however, must be approved by the other High Contracting Parties. Should they subsequently wish to accede to the Convention in respect of their colonies, etc., they shall notify the Secretary-General of the League of Nations of their intention. The latter shall immediately communicate the reservations to the Governments of all the countries on behalf of whom an instrument of ratification or accession has been deposited, and enquire whether they have any objection. If no country has raised any objection within a period of six months from the date of the said communication, the reservation in question shall be considered as accepted."

4. The German delegation submitted an amendment proposing that it should be stipulated that the Convention applies to territories under mandate ; this amendment was supported by the Turkish delegation. The German delegation claimed that its proposal was justified by the nature of the mandates and the provisions of Article 22 of the Covenant. A discussion took place on this point and the majority of the Committee considered that, as the question concerned the interpretation of articles of the Covenant of the League and of the terms of the mandates, the problem could not be settled by the Conference. For these reasons it was not thought possible to adopt the German proposal.

5. The Japanese delegation drew attention to the difficulties which might occur as regards the application of paragraph 2 of Article 28 in the form proposed by the Sub-Committee, since the term "belonging to" had no definite legal meaning. The members of the Sub-Committee replied that they had realised the difficulties of the problem but they had chosen this term because they could not find a better one. The Drafting Committee submitted a new text replacing the words "belonging to" by the words "native of" ("*originaire*"). The Italian delegation considered, however, that the meaning of this term was not clear and that it might give rise to difficulties ; it proposed the omission of the paragraph. This proposal was supported by the Japanese and Turkish delegations. Nevertheless, the Committee voted in favour of maintaining the text prepared by the Drafting Committee.

6. As regards the interpretation of the term "national" ("*ressortissant*") the Turkish delegation stated that, in its opinion, the nationals of territories under mandate could not be considered nationals of the mandatory countries. The British delegation expressed a contrary opinion.

7. Article 28 reads as follows :

Article 28.

"(1) Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect

of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, and the present Convention shall not apply to any territories named in any such declaration.

"(2) Any such High Contracting Party may give notice to the Secretary-General of the League of Nations, at any time subsequently, that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice two months after its receipt by the Secretary-General of the League of Nations.

"(3) Similarly, any High Contracting Party may, at any time after the expiration of the period mentioned in Article 27, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

"(4) The Secretary-General of the League of Nations shall communicate to all Members of the League of Nations and all non-Member States mentioned in Article 23 every declaration and notification received in virtue of this article.

"(5) *No High Contracting Party shall be obliged to apply the provisions of the present Convention to the nationals of any other High Contracting Party belonging to any colony, protectorate, overseas territory or territory under suzerainty or mandate of the latter High Contracting Party to which the Convention does not apply in conformity with the preceding paragraphs of the present article.*

"(6) *The High Contracting Parties who, at the time of signature, do not make the declaration provided for in paragraph* 1 *shall be entitled to make reservations with regard to the application of certain provisions of the Convention to their colonies, etc. These reservations, however, must be approved by the other High Contracting Parties. Should they subsequently wish to accede to the Convention in respect of their colonies, etc., they shall notify the Secretary-General of the League of Nations of their intention. The latter shall immediately communicate these reservations to the Governments of all the countries on behalf of whom an instrument of ratification or accession has been deposited, and enquire whether they have any objection. If no country has raised an objection within a period of six months from the date of the said communication, the reservation in question shall be considered as accepted.*"

Protocol ad *Article* 28.

"*Nothing in Article* 28 *shall be interpreted as in any way prejudicing the rights and obligations of any mandatory Power under the Covenant of the League of Nations or under the terms of any mandate or mandates exercised by such Power.*"

New Articles.

1. The British delegation proposed the insertion of the following provisions as an *additional* article :

"(1) Nothing in the present Convention shall be held to derogate from the obligations in international law of any High Contracting Party with regard to the treatment of the nationals and companies of any other High Contracting Party.

"(2) The present Convention shall not absolve any High Contracting Party from granting to the nationals and companies of another High Contracting Party any treatment provided for in the terms of any treaty or agreement in force between the two Parties which is more favourable than the treatment provided for in the present Convention."

2. In the British delegation's opinion, the present Convention, although it is called a Convention on the Treatment of Foreigners, by no means covers the whole domain of the treatment of foreigners. As a matter of fact, it only extends to part of it, and it is necessary to emphasise this point by inserting an Article (1) in the Convention in order that no misunderstanding may be possible.

The Sub-Committee unanimously accepted the principle contained in the British amendment (1). It decided, however, that this principle should be explained in the report and that it was not necessary to insert an article to this effect in the Convention. It is therefore understood that the present Convention only lays down rules on the matters covered by its provisions and in no way affects the obligations of the High Contracting Parties in international law.

3. As regards the second paragraph of the British proposal, the Sub-Committee unanimously proposed its adoption. It modified the French translation of the text, however, in order to bring it into line with the English text, which is the original. After accepting the British proposal, the Sub-Committee did not think it necessary to recommend the adoption of the one put forward by the Netherlands delegation (document C.I.T.E. /D / Comm. 15), since its purpose was the same as that of the British proposal.

4. Adopting the opinion of the Sub-Committee, the Committee decided to insert, as an additional article, the following text :

"*Nothing in the present Convention shall be deemed to prejudice any provisions in any other convention, treaty or agreement at any time in force between any of the High Contracting Parties, under the terms of which treatment more favourable than the treatment provided for in the present Convention is, or may be, granted to the nationals or companies of any High Contracting Party.*"

5. The Committee adopted, as a new article, the following text :

"*The present Convention shall not in any way affect rights and obligations arising out of the Covenant of the League of Nations.*"

6. A text was proposed with a view to settling the question of reservations with regard to the present Convention.

The utility of discussing such a proposal in the Committee was discussed. Certain delegations were of opinion that, as the question of reservations was being considered by the plenary conference, it would be better for the Committee not to prejudice the Conference's decisions in the matter, and they asked that the proposed text should not be adopted. Other delegations held the view that the question could usefully be discussed by the Committee, it being understood that any delegation was free to raise the question in the plenary Conference.

After an exchange of views, the Committee adopted the text proposed for transmission to the President of the Conference.

7. The text adopted by the Committee is as follows :

"*The High Contracting Parties agree to accept only the reservations to the application of the Convention which are set forth in the Protocol to this Convention and in respect of the countries therein named.*"

Miscellaneous Proposals.

1. The German delegation requested the insertion of the following provision in the Protocol *ad* Article 21 :

"The provisions laid down in paragraph 1 of Article 21 shall in no way affect the provisions of Article 11, paragraphs 4 and 5, or of Article 16, paragraph 4."

The question was raised as to whether this proposal came within the competence of Committee D. An exchange of views took place, and the Committee decided to examine the proposal after it had agreed on the text of Articles 11 and 16.

2. Certain delegations drew attention to the expediency of inserting a clause providing for the possible revision of the present Convention. No concrete proposal, however, was submitted.

3. The Brazilian delegation expressed the desire that the proposal which it had submitted at the plenary meeting of the Conference should be examined by Committee D. This proposal was as follows :

"The International Conference on the Treatment of Foreigners recommends that, whenever, in the sphere of private international law, the need is felt of an international agreement concerning either the position of foreigners or the problem of the conflict of laws, the method of multilateral treaties be adopted in preference to that of bilateral treaties."

D. ANNEXES

1. Annexes to the Plenary Meetings of the Conference.
2. Annexes to the Minutes of Committee A.
3. Annexes to the Minutes of Committee B.
4. Annexes to the Minutes of Committee C.
5. Annexes to the Minutes of Committee D.

ANNEXES TO THE PLENARY MEETINGS OF THE CONFERENCE.

ANNEX 1

REPORT OF COMMITTEE B ON ARTICLES 3, 4, 12, 13 AND 14 OF THE DRAFT CONVENTION.

The report of Committee B to the Conference will be found on page 444 of the present volume.

ANNEX 2

AMENDMENT SUBMITTED BY THE HUNGARIAN DELEGATION.

ARTICLE 9.

Delete paragraph 1 of this article, and replace it by the following text :

" The nationals of each of the High Contracting Parties shall enjoy in the territory of the other High Contracting Parties, in respect of the protection of their persons and property and the exercise of their rights, the same legal and judicial means of action as nationals."

PROTOCOL *ad* ARTICLE 9.

The following text of the Protocol to be deleted :

" The provisions of Article 9 . . . shall in no way affect the obligations arising out of the provisions of the Hague Convention of July 17th, 1905, regarding civil procedure."

ARTICLE 10.

Delete, from the first and second line of paragraph 1 of Article 10, the following words : " shall be treated on a footing of equality with nationals as regards patrimonial rights " and replace them by the words " shall have the right ".

Further, delete in the last line of the same paragraph the words " this régime of equality " and replace them by the words " in this respect ".

As thus amended, paragraph 1 of Article 10 would read as follows :

" Nationals of each of the High Contracting Parties shall have the right of acquiring, possessing or leasing to others movable property and the right of disposing of the same under the same conditions as nationals, no modification or restriction of any sort being permitted in this respect."

ARTICLE 11.

Insert in the fifth line of paragraph 5 of this article, after the words " of buildings or land ", the following text : " or of movable property. In case of requisition a fair compensation shall be granted ".

Add, at the end of paragraph 4 of this article, the following text : " and against fair compensation ".

Delete paragraph 5 of this article.

ARTICLE ....

Insert in the Convention a general provision to the following effect :

" It shall be understood that the present Convention shall in no way affect any existing conventional obligations which may grant more favourable treatment than that provided for under the terms of the present Convention."

ANNEXES TO THE MINUTES OF COMMITTEE A (A SERIES).

ANNEX A, 1

AMENDMENTS PROPOSED BY THE BRITISH DELEGATION.

ARTICLE 1.

Paragraph 1.

Line 4 : Delete " even ".

Line 5 : After " concession ", insert " licence or permit ".

Paragraph 2.

Line 1 : For words " be free to advertise ", substitute " shall not be prevented by law from advertising ".

ARTICLE 2.

Line 1 : For words " be free to participate ", substitute " shall not be prohibited by law from participating ".

ARTICLE 3.

If Article 3 is retained, *in line* 4, for words " amore burdensome ", substitute " any other ".

ARTICLE 4.

If Article 4 is retained, add a new Protocol provision :

" *Ad* Article 4.

" The provisions of Article 4 shall not prejudice the right of the High Contracting Parties to reserve certain public markets and fairs for the sale or exhibition of national goods, or to impose requirements as to the marking of goods."

ARTICLE 5.

Paragraph 1.

Lines 1 *to* 5 : Delete words :

" Nationals of one of the High Contracting Parties . . . may, in the territory of the other High Contracting Parties ",

and substitute :

" Nationals of the High Contracting Parties engaged in industry or business in the territories of any Party may (subject when required to the production of an identity card issued by the competent authorities in the country where the industry or business is carried on) in the territories of any other Party."

Line 6 : For " from the producers of the goods ", read " from the producers the goods ".

Lines 9 *and* 10 : For words :

". . . in this connection any taxes or duties, provided they only take with them samples and not goods intended for sale."

substitute :

". . . special dues or taxes which are not applicable to national firms and their representatives."

PROTOCOL.

Section V, Paragraph 1.

This paragraph will be unnecessary if the amendment to Article 5 set out above is adopted.

ARTICLE 6.

Line 3 : For " elect their domicile " substitute " select their place of residence ".

Line 4 : After " subject ", insert " in these respects ".

Lines 5 *and* 6 : Delete " but without prejudice to the police regulations concerning foreigners ".

ARTICLE 7.

Paragraph 1 (a).

Line 2 : For " transactions ", substitute " activity ".

Line 2 : After " character ", insert " including the provision of communications and transportation ".

Paragraph 2.

Lines 1 *and* 2 : For " to prohibit foreigners within its territory from engaging ", substitute " to prohibit foreigners from engaging within his territory ".

Add new sub-paragraph :

" *(g)* Industrial assurance business, *i.e.*, the business of effecting assurance upon human life, premiums in respect of which are received by means of collectors and are payable at intervals of less than two months."

Add new paragraph :

" 3. Each of the High Contracting Parties also retains the right to prohibit foreigners from being employed as directors, managers or other principal officers of companies engaged in any of the forms of business referred to in sub-paragraphs *(c)*, *(d)*, *(e)* and *(g)* above."

ARTICLE 10.

Paragraph 4.

Line 3 : After " country ", insert " including systems of communications ".

ARTICLES 10 AND 16.

Insert new Protocol provision :

" *Ad* Article 10, paragraph 1, and Article 16, paragraph 7 :

" Notwithstanding the provisions of Articles 10 and 16, it is agreed that the High Contracting Parties may impose such restrictions as they think fit in regard to the acquisition of ships and shares in ships."

ARTICLE 11.

Paragraph 1.

Line 2 : For words " every kind of judicial or administrative charge or duty ", substitute " all judicial or administrative functions other than those imposed by the laws relating to juries ".

Paragraph 3.

Lines 1 *and* 2 : Delete " established in the territory of the other ".

Line 2 : After " liable ", insert " in the territories of the other Parties ".

ARTICLE 13.

Lines 1 *to* 3 : Delete :

" The High Contracting Parties shall comply . . . in the territory of another High Contracting Party."

and substitute :

" Each of the High Contracting Parties shall comply with the following principles in connection with the taxation of branches or agencies in its territories of business undertakings, where such business undertakings belong to and are managed and controlled by a national of another High Contracting Party resident outside the territories of the former Party. "

Sub-Paragraph (b).

Line 2 : After " conducted ", insert " or controlled " or " or managed ".

Insert new sub-paragraph :

" *(c)* When the taxation is based on volume of business done, it shall be confined to the business operations conducted or controlled within the country."

(" Managed " may be substituted for " controlled ".)

ARTICLE 14.

Paragraph 1.

Line 4 : For " seat ", substitute " the management and control ".

ARTICLE 15.

Line 1 : Delete " 12 and 14 ".

ARTICLE 16.

Paragraphs 1 *and* 2.

Delete paragraphs 1 and 2 and substitute the following :

" (1) For the purposes of this Convention, the companies of a High Contracting Party shall be the limited liability and other companies, partnerships and associations regularly constituted in accordance with the laws of that Party (and carrying on commercial, industrial, financial, transport or any other description of business in his territories).

" (2) The companies of each of the High Contracting Parties shall be recognised by the other High Contracting Parties as being regularly constituted.

" The legality of their constitution and their capacity to appear in Court as plaintiffs or defendants shall be decided in accordance with the law under which they were constituted."

Paragraph 3.

Line 1 : Delete " constituted under the laws ".

Paragraph 4.

Delete paragraph as drafted and substitute :

" Each of the High Contracting Parties may make the carrying-on of operations in his territories by the companies of the other High Contracting Parties, subject to previous and revocable authorisation."

Paragraph 5 *and Second Sub-Paragraph of Paragraph* 7.

See amendment covering Article 16 (paragraph 5 and second sub-paragraph 7), Article 17, Article 18, and Article 19 (paragraph 1).

Paragraph 6.

Lines 2 *and* 3 : For " consequently not to cancel . . . regulations of the country ", substitute :

". . . except in cases where the general laws and regulations of the country have been violated, not to prevent business which was previously permitted or to impose conditions to which the busienss was not previously subject, unless similar measures are applied also to their own companies. "

Paragraph 7.

Insert the following provision in the Protocol :

" The provisions of paragraph 7 of Article 16 shall not preclude the enforcement of laws and regulations to the effect that the acquisition or leasing of immovable property by the companies concerned shall be subject to the issue of a licence by the appropriate authorities."

Paragraph 8.

Delete present paragraph and substitute :

" Articles 1, 2, 5, 7, 8, 11, 12, 13 and 14 of the Convention shall be regarded as applying to the companies of the Parties, as if the several articles referred throughout to companies instead of nationals."

Paragraphs 5 and 7, Sub-Paragraph 2, Article 17, Article 18 and Article 19, Paragraph 1.

Delete these provisions and substitute :

" Each of the High Contracting Parties agrees that the treatment accorded to the nationals and companies of the other High Contracting Parties in respect of all matters, other than those referred to in the following paragraph, shall in no case be less favourable than that accorded to the nationals and companies of the most favoured foreign country.

" Most-favoured-nation treatment may not be claimed in respect of :

" *(a)* The recognition of the equivalence of titles or guarantees required for the exercise of certain professions ;

" *(b)* Privileges arising out of agreements for the avoidance of double taxation."

ARTICLE 19.

Paragraph 2.

Line 1 : After " foreigners ", insert " or foreign companies ".
Line 2 : After " nationals ", insert " or national companies ".
Line 3 : After " foreigners ", insert " or foreign companies ".
Line 4 : After " foreigners ", insert " or foreign companies ".

ARTICLE 26.

Line 2 : For " two ", substitute " ten ".

ARTICLE 27.

Add new paragraph :

" If, as a result of denunciations, the number of High Contracting Parties falls below the number of ratifications necessary to bring the Convention into force, any High Contracting Party may request the Secretary-General of the League of Nations to summon a Conference to consider the situation created thereby. Failing agreement to maintain the Convention, each of the High Contracting Parties shall be discharged from his obligations from the date on which the denunciation which led to the summoning of this Conference shall take effect."

ADDITIONAL ARTICLE FOR CONVENTION.

Article A.

" 1. Nothing in the present Convention shall be held to derogate from the obligations in international law of any High Contracting Party with regard to the treatment of the nationals and companies of any other High Contracting Party.

" 2. The present Convention shall not absolve any High Contracting Party from granting to the nationals and companies of another High Contracting Party any treatment provided for in the terms of any treaty or agreement in force between the two Parties which is more favourable than the treatment provided for in the present Convention."

PROTOCOL 1.

Paragraph 1.

Line 2 : After word " with ", insert " particular ".

Paragraph 2.

Delete paragraph and substitute :

" It is understood that nothing in Article 1 of the Convention shall concern licences or permits arising out of the control of imports and exports."

PROTOCOL.

Section VIII, paragraph 1.

Line 2 : For words " in such a manner as to render ", substitute " with the intention of rendering ".

Paragraph 2.

Line 2 : After " professions ", insert " occupations, industries, or trades ".
add the following words :

" Further, in cases where permission to engage foreigners from abroad is required by law, the provisions of this article shall not preclude any High Contracting Party from imposing conditions generally, or in a particular case, on the admission or employment of such foreigners engaged otherwise than as directors, managers or chief technical officers, or persons of like status."

PROTOCOL.

Section XII.

Line 1 : After " 13 *(b)* ", insert " and *(c)* ".
After " conducted ", insert " or controlled ", or " or managed ".

Additional Protocol Provision (a).

" It is understood that nothing in the Convention shall impose on any High Contracting Party any obligation in respect of the rules of membership of industrial, commercial and similar associations and organisations of a voluntary nature."

FINAL ACT.

Section I.

Sub-paragraph (b) : After " seasonal labour ", insert " where this appears desirable ".
Sub-paragraph (c) : After " considering ", insert " where necessary ".

ANNEX A, 2

OBSERVATIONS OF THE ESTONIAN DELEGATION.

ARTICLE 1.

1. The competent Estonian authorities have already had occasion to express doubts as to the advisability of inserting in the Protocol of the proposed Convention the provisions contained in point 2 of the Protocol *ad* Article 1, paragraph 1. The Economic Committee's note on the observations submitted in this connection by Estonia says that, as the control in question applies to all goods of the kind " whoever the exporter may be ", this practice entails no departure from the principle of equality enunciated in Article 1 as regards " commercial transactions of every kind " for which it is not necessary to obtain a concession.

This note seems to assume that the exportation of the goods in question — butter and eggs — is only subject to control with regard to the quality of the goods and that consequently the export licence is granted to any person on the sole condition that the product to be exported answers to an established standard. As a matter of fact, the laws in question, the texts of which are given in " Preparatory Documents " (page 77), stipulate that " persons and establishments wishing to export dairy produce (or eggs, as the case may be) from Estonia must obtain a licence ". This licence is a pre-requisite condition to any exportation and is considered as a concession which is only granted to persons or establishments resident in the country and having a permanent establishment therein duly entered in the commercial register.

Hence the Estonian authorities' doubts with regard to the divergency between the provisions of the laws in force and those of the draft seem to be justified. If the Conference is nevertheless of the opinion that the adoption of this provision of the draft does not conflict with the existing Estonian practice, a suitable note will have to be inserted in the Minutes or in the instruments adopted by the Conference. Otherwise Estonia could only accept the provision of point 2 of the Protocol *ad* Article 1, paragraph 1, on condition that the Conference permitted a reservation on this point.

" *Reservation.* — The Estonian Government, in accepting the provisions of Article 1, paragraph 1, of the Convention and those of Point 2 of the Protocol *ad* Article 1, paragraph 1, declares that it does so on the understanding that these provisions are in no way incompatible with the system established in Estonia with regard to the exportation of dairy produce and eggs."

ARTICLES 3 AND 4.

2. With regard to the provisions of Articles 3 and 4 of the draft, the competent Estonian authorities desire to confirm the view already expressed by them that these articles referring to the treatment of goods should not be inserted in a convention devoted to the question of the

treatment of foreigners. In anticipation, however, of the possibility of this objection of principle being nevertheless rejected by the Conference, the Estonian delegation thinks it advisable to outline below Estonia's point of view on the substance of the provisions in question.

The Estonian authorities note that there is no material objection to the adoption of Article 3 of the draft. The same is not the case with regard to Article 4, which raises a difficulty of a more or less formal nature. The law in force in Estonia (" Code of Laws of Direct Taxes ", supplement to Article 449, Volume V of the *Statute Book* of the former Russian Empire) stipulates that trade in products of foreign origin may only be carried on by merchants who have procured first or second class licences ; merchants who hold third class licences may only trade in a limited number of foreign products, including sugar, colonial produce, certain haberdashery articles, etc. There therefore exists in Estonia, as regards the offering for sale and the sale of products, a distinction between home and foreign products, but this distinction is purely formal as all are free to procure licences of any category they wish and, consequently, a licence conferring on them the desired authorisation.

No departures have ever been made from the provisions of the said law in bilateral commercial treaties. Thus, upon the conclusion of the Commercial Convention with France, signed at Paris on March 15th, 1929, Estonia consented to insert in this treaty Article 10, with a text corresponding word for word to Article 4 of the Draft Convention on the Treatment of Foreigners, but at the same time it was laid down in the Protocol *ad* Article 10, that " the French Government recognises that the provisions of Article 10 shall not preclude the application of the special provisions which govern the activities of the different categories of Estonian traders ".

Accordingly, Estonia can only adopt the provisions of Article 4 of the draft on condition that a suitable reservation should be inserted in the proposed Convention or in its Protocol, or if this cannot be done, that the Conference should accept such a reservation on the part of Estonia.

" *Reservation.* — The Estonian Government, while accepting Article 4 of the Convention, reserves the right to apply the provisions of its laws which confine the right of offering for sale and of selling all goods of foreign origin to enterprises provided with first and second class licences."

Article 5.

3. Article 5 of the draft Convention deals with the treatment of commercial travellers. The present Estonian law provides in this connection that commercial travellers residing abroad are obliged to pay a certain tax in Estonia (see " Law amending the Laws on the Licence Tax ", paragraph 16, *Official Journal*, No. 44, 1928).

The Estonian authorities are not prepared to recommend the modification of this law, the maintenance of which guarantees the legitimate interests of traders residing in Estonia. That country can therefore only accept Article 5 of the draft on condition that account should be taken in the Convention of this system which is also applied in a number of other countries (Sweden, Finland, etc.).

" *Reservation.* — The Estonian Government, while accepting Article 5 of the Convention, reserves the right to render foreign commercial travellers subject to a a tax on the same footing as Estonian nationals residing abroad."

Article 6.

4. In view of the Economic Committee's explanations with regard to the observations submitted by Estonia on Article 6 of the draft, the Estonian delegation sees no obstacle to the adoption of this article.

Article 7.

5. As regards Article 7 of the draft Convention, the Estonian authorities consider that the first sub-paragraph of paragraph 3 *ad* Article 7 of the Protocol should be omitted, and the first sentence of paragraph 2 modified accordingly. The provision in paragraph 2, which alone makes it possible to accept the principles set down in Article 7, makes the insertion in the Convention of the declaration contained in the first paragraph superfluous, since its effect is rendered entirely nugatory by the provisions of paragraph 2. In these circumstances, the retention of the first paragraph can only give rise to unfortunate misunderstandings. In paragraph 2 — the only one that should be retained — the introductory sentence might be drafted as follows : " The High Contracting Parties declare that it has not been their intention to regulate . . . ".

Article 8.

6. While Article 7 of the draft only calls for the above observations, the delegation does not, however, see its way to accepting Article 8, and proposes that it should be deleted from the text of the draft Convention.

The provisions of Article 8 are such as seriously to restrict the liberty of a State to take the measures it may consider necessary for safeguarding the legitimate interests of its national economy. The reasons for this objection have been very clearly stated in the Czechoslovak Government's observations (letter dated February 11th, 1929, page 73, of the Preparatory Documents), the Estonian delegation therefore need only declare that it does not see its way to accepting this article.

ARTICLE 10.

7. The Estonian authorities have noted with satisfaction that the Economic Committee, in its note on the question raised with regard to paragraph 3 of the clause in the Protocol *ad* Article 10, expressed the opinion that this clause in the draft is not in any way incompatible with the Estonian laws in force.

As regards the British Government's proposal to insert in the Protocol *ad* Article 10, a fourth paragraph on the restrictions which the High Contracting Parties may place upon the acquisition of vessels or of parts of vessels, Estonia recognises the utility of such a stipulation and fully supports the addition of the proposed paragraph.

ARTICLE 11.

8. As the competent Estonian authorities have not found in the explanatory notes by the Economic Committee any mention of the observation submitted by Estonia with regard to paragraph 3 of Article 11, they desire again to draw attention to the amendment to the text which they have already had occasion to propose, *i.e.*, that the end of the first sentence of paragraph 3 should be worded as follows : ". . . as owners, occupiers or *holders* of buildings or land ".

ARTICLE 12.

9. Paragraph 2 of Article 12, taken in connection with Articles 3 and 4, gives rise to the same objections of principle as the latter articles. If, however, their adoption is considered desirable, Estonia will be able to accept it only subject to the reservations which she has already submitted with regard to Article 4.

ARTICLE 14.

10. The Estonian authorities have already had occasion to state that they cannot accept the provisions of Article 14 of the draft. The delegation considers that the inclusion of this article would deprive Estonia of the possibility of acceding to the Convention, however much she may desire to co-operate in the extension of the principles which govern it.

ARTICLE 18.

11. The competent Estonian authorities do not see how paragraph 2 of Article 18 could meet the objections they have previously submitted regarding the necessity of taking into account in the proposed Convention the so-called " Baltic " and " Russian " clauses. In order to avoid any possible misunderstanding, it would therefore be desirable to make it clear in the instruments which the Conference may adopt that each contracting country shall have the right to submit the special reservation which it always embodies in its bilateral agreements.

" *Reservation.* — The Estonian Government declares that it understands that the provisions of the present Convention are in no way incompatible with the special exemptions, immunities and privileges which Estonia has granted or may in future grant to the Baltic States (Finland, Latvia, Lithuania) or to the Union of Soviet Socialist Republics, and which are reserved, in the bilateral conventions already concluded, or to be concluded, by Estonia under the ' Baltic ' or ' Russian ' clauses."

ANNEX A, 3

AMENDMENT PROPOSED BY THE SPANISH DELEGATION.

ARTICLE 1, PROTOCOL.

To be added after Article 1, paragraph 1 :

" It is understood that the provisions of this Article do not apply to the special advantages which are or may hereafter be exceptionally granted by States to one or more national enterprises with a view to the encouragement of national agriculture, industry and commerce in so far as these advantages are not such as to enable the national enterprise to compete unfairly with a foreign enterprise already established at the time of the concession of the said advantages."

ANNEX A, 4

SUGGESTIONS SUBMITTED BY THE INTERNATIONAL CHAMBER OF COMMERCE.

The delegation suggests that Article 1 might be drafted as follows :

" Nationals of the High Contracting Parties may, even if not resident in the territory of the other High Contracting Parties, conduct commercial transactions of every kind and in particular sell goods, make purchases, take orders, deliver goods on order and carry out work on order, unless, under the law of the territory in question, even nationals are required to obtain a Government concession for the conduct of such business or execution of such work. *Further, they shall be entirely free to choose for the conduct of their business or the safeguarding of their interests such persons as they may think fit and proper.* Provided they conform in every operation to the laws and regulations of the country, they shall not be subject to any condition or charge other or more burdensome than those to which nationals of the country themselves are or may be subject *under the same circumstances* when conducting similar operations."

Paragraph 2 of this article might be retained in its present form.

The delegation of the International Chamber of Commerce suggests the following draft texts for Article 3 and the Protocol *ad* Article 5 :

" 1. Without prejudice to the provisions of Article 1, nationals of one of the High Contracting Parties who engage in *industry or business in the territory of any of the other High Contracting Parties may — subject, if necessary, to the presentation of an identity card* — purchase in that country, either in person or by travellers in their employ, from merchants in places where goods are on sale, as well as from the producers, the goods in which they deal, or take orders from merchants or manufacturers engaged in the trade or making use in their establishment of goods of the same kind as those offered. They shall not require a special authorisation for any of these transactions nor shall they be obliged, in this connection, to pay any *special tax or duty which would not be leviable upon national business establishments and their representatives*, provided they only take with them samples and not goods intended for sale."

Paragraphs 2 and 3 of Article 5 might be retained in their present form.

The delegation suggests that the following paragraph might be added in the final Protocol *ad* Article 5 :

" 1. Considering that it would be unfair to require from foreign commercial travellers who stay only a short time in a foreign country the payment of taxes or licence-fees as high as those levied upon national commercial travellers who, in virtue of their licence or the payment of the tax, are entitled to exercise their activities for a whole year, the High Contracting Parties agree that foreign commercial travellers shall be required to pay only an amount corresponding to the number of months which they actually spend in the territory of the country in question.

" Fractions of months shall be reckoned as full months.

" 2. It shall be understood that such a tax or fee may not be levied on travellers who, although they may travel for commercial purposes, do not intend to solicit orders or to make purchases."

ANNEX A, 5

AMENDMENT AND OBSERVATIONS SUBMITTED BY THE AUSTRIAN DELEGATION.

Protocol *ad* Article 1.

Paragraph 1, Sub-Paragraph 2.

The Austrian delegation proposes that paragraph 2 of the Protocol *ad* Article 1 be drafted as follows :

"2. No obligation as regards establishment, residence or registration shall, however, be required for the granting of licences and other formalities arising out of the control of imports or exports, except in cases in which it may be necessary to reserve the grant of import or export licences to nationals with a view to assuring the equitable distribution of a quota, or to supervising the fulfilment of special conditions to which the granting of these licences may be subject."

ARTICLE 7.

Paragraph 2.

The exercise of the professions hereinafter specified is reserved in Austria to Austrian nationals:

Barrister, solicitor for patent cases, notary, stockbroker, mining engineer, civil technician (civil engineer, civil architect, civil surveyor), insurance expert, doctor, veterinary surgeon, technical dentist, pharmaceutical chemist, pharmaceutical employee, midwife.

The Federal Government is of opinion that these reservations are covered by Article 7, paragraph 2, letter *(b)* and would wish to have an assurance that the Conference shares this view.

Paragrap 2, letter (c).

The comments on Article 7, paragraph 2, letter *(c)* explain that the questions of reserved traffic were only referred to incidentally, as the Economic Committee considered that it hardly came within the scope of the Convention and further that it had not referred specifically in the draft Convention to the exceptions and reservations which States might introduce in regard to river coasting trade. In the circumstances it might perhaps be expedient to define the scope of the provision contained in sub-paragraph *(c)* by inserting the word " *maritime* " before the words " coasting trade ".

PROTOCOL *ad* ARTICLE 7.

Paragraph 3.

The measures which certain States have taken to protect their home labour market and which concern foreign workers, employees, and other wage-earners, apply also to the persons employed in an administrative or technical capacity referred to in Article 8.

The Austrian delegation proposes accordingly that paragraph 3 of the Protocol *ad* Article 7 should form a special section of the Protocol entitled : ad *Articles 7 and* 8.

ARTICLE 10.

The Bulgarian Government has proposed that the scope of paragraph 1 should be restricted by stipulating that it should not apply to immovable property in villages. The Economic Committee remarked that it would be for the Conference to decide whether a reservation should be made in favour of Bulgaria.

It seems, however, that this proposal might be considered not only from the special point of view of Bulgarian law, but from a general standpoint. The Federal Government has already stated its apprehensions with regard to the exceptions authorised by paragraph 3 of the draft. As a matter of fact, different countries place restrictions on the acquisition of rural property by foreigners, not only in the frontier zone, but also within the country, basing their action on reasons of public interest.

The resulting difficulties might be removed if paragraph 1 were drafted as follows :

" 1. Nationals of all the High Contracting Parties shall be placed on terms of complete equality with the citizens or subjects of any one of the Parties as regards patrimonial rights, the right of acquiring, possessing or leasing to others movable property *and immovable property situated in towns or utilised by industrial undertakings*, and the right of disposing of the same . . ."

This wording might perhaps enable paragraph 3 to be entirely dispensed with.

ARTICLES 12 AND 18.

Paragraph 2.

Under Article 18, paragraph 2, of the draft, most-favoured-nation treatment cannot be claimed in the case of bilateral agreements for the avoidance of double taxation. This exception is justified, because in order to achieve their purpose of preventing the double taxation of persons and establishments having to pay taxes in the two States, these agreements require each State to renounce the right, up to a given point, of levying certain taxes. An extension of treaty provisions of this kind which was not based on reciprocity would therefore undoubtedly be contrary to their spirit and their purpose.

Nevertheless, the derogation to the most-favoured-nation clause provided for in the draft Convention still does not take sufficient account of the nature of treaties dealing with taxation ; and the question of the effect of these treaties on the treatment of nationals remains to be examined. Treaties dealing with taxation, in view of the corresponding system instituted in the other contracting State, often involve, from the point of view of the taxation of nationals, departures from the legal system which each State establishes as a general rule for its own nationals by its autonomous legislation. If the application of the fiscal treaty is confined to the nationals of the two contracting States, these derogations cannot be granted to a national of a third State in virtue of stipulations according them national treatment ; and, indeed, there is no guarantee that the other State which is a Party to the fiscal treaty will apply the same rule in the opposite case. For this reason, it would be necessary not only to exclude the right to enjoy the benefits of fiscal treaties in virtue of the most-favoured-nation clause, but also to stipulate that national treatment exclusively refers to the legal situation of nationals as created by the general autonomous legislation and not to the derogations to this system introduced by fiscal treaties.

An example will illustrate these explanations.

Suppose that the autonomous legislation stipulates that a national of State A residing in that State must pay in State A taxes on income derived from certain foreign sources, for example, foreign mortgages. Now, suppose that State A concludes with State B a treaty on double taxation which stipulates that a national of State A who resides in that State and owns a mortgage on property situated in State B shall not be liable to taxation in State A on this mortgage in State B. State B, as a measure of reciprocity, will grant the same treatment. A national of State C who resides in State A and owns a mortgage in State B may not, although he may have been granted the same treatment as nationals of State A, claim more than the application of the general rules of law (in virtue of which he will thus be taxable in State A in respect of a mortgage on property situated outside State A) ; he will not be entitled to the benefit of the derogation reserved in the same case to the nationals of State A in virtue of the fiscal treaties concluded between States A and B, unless of course these States extend the fiscal treaty even to the nationals of third countries.

It would therefore be desirable to make it quite clear that the principle of equality provided for in Article 12, paragraph 1, only applies to the general system and not to the special exceptions which might result from a bilateral agreement intended to avoid double taxation.

The Austrian delegation therefore proposes that Article 12, paragraph 1, should be supplemented by a clause to be inserted in Protocol as follows :

> " It is understood that bilateral agreements with a view to avoiding double taxation, as well as the exceptional régimes resulting therefrom, remain outside the scope of the present Convention."

ARTICLE 20.

For the reasons set forth in its observations regarding Article 12, paragraph 2 (see " Brown Book "), the Federal Government is of opinion that it should be emphasised that certain exemptions from taxation shall not be regarded as contrary to the principles underlying the Convention.

The Austrian delegation proposes, therefore, that the text of Article 20 be supplemented by the following provision *to be inserted in the Protocol :*

> " The provisions of Article 20 shall not affect any legal provisions which, in order to stimulate industries employing national resources, grant certain facilities in the matter of taxation to undertakings which employ native materials and products for their installation or operation, provided that this system involves no differentiation between nationals and foreigners."

The Protocols proposed *ad* Articles 12 and 20 might, if considered desirable, be combined to form a single provision.

ANNEX A, 6

OBSERVATIONS AND PROPOSALS OF THE EGYPTIAN DELEGATION.

PROTOCOL *ad* ARTICLE 1.

Paragraph 1, *No.* 2.

Egypt endorses the observations submitted by the Austrian Federal Government (page 70 of the Preparatory Documents).

She proposes that No. 2 of the Protocol should be deleted and that No. 1 of the said Protocol should read as follow :

> " The provisions of Article 1, paragraph 1, shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by public authorities as a result of tenders and in connection with the granting of licences and other formalities arising out of the control of imports or exports, which are regarded as equivalent to Government concessions."

ARTICLE 7.

Paragraph 2, *Lit.* (b).

The Egyptian delegation proposes to add the word " doctor " to the list of provisions given in this paragraph, and to modify the wording at the end of this paragraph as follows : " recommends should be reserved to nationals (on the understanding that this reservation shall be limited to what is strictly necessary in the public interest) or be made subject to compliance with differential conditions".

In view of Egypt's climate and of the customs of the working and rural population, the teaching of medicine in Egypt includes subjects which are not taught or which are only taught in an elementary manner in many other countries. It is therefore necessary to require doctors

holding foreign degrees to pass an examination before they can be given a licence to practise. The Egyptian law on the exercise of medicine contains a clause to this effect.

Although the enumerations given in sub-paragraphs *(a)* and *(b)* are intended to be illustrative and not exhaustive, it seems useful, in view of the importance of the doctor's profession, to mention it.

Article 8.

(a) The Egyptian delegation interprets this article as not precluding the possibility of requiring incorporated companies formed under Egyptian law to reserve part of their capital for public subscription in Egypt and a certain number of posts on the board of management to Egyptians. If any doubt exists on this point, it should be cleared up by the addition of asuitable observation in the Protocol *ad* Article 8.

(b) The Egyptian delegation agrees that foreigners should be free to appoint the managers of their establishments without being obliged to take into account the nationality of such persons and also that they should not be obliged to take into partnership persons of any given nationality. It is unable, however, to accept the present text which, by the remark at the end of the article concerning persons " employed in an administrative or technical capacity ", seems to preclude States from requiring that a given proportion of administrative employees or workmen should be nationals.

Article 9.

With regard to this article the Egyptian delegation refers to the declaration which it made on the occasion of the general discussion, and to the note accompanying the letter of the Egyptian Minister for Foreign Affairs to the Secretary-General of the League of Nations, dated September 30th, 1929, which has already been circulated to the members of the Conference (document C.I.T.E. 3).

Article 10.

In view of the provisions of the Egyptian Maritime Code, the Egyptian delegation associates itself with the observations already submitted with regard to the ownership of vessels. It would be prepared to accept the wording of the proposed clause appearing as No. 4 under No. X of the Protocol on page 44 of the Preparatory Documents.

Article 11.

Paragraph 1.

Notwithstanding the Economic Committee's note on page 47 of the Preparatory Documents regarding judicial functions it would seem better, perhaps, to word paragraph 1 of Article 11 somewhat differently.

In Egypt, on account of the special privileges enjoyed by nationals of the Capitulation States, foreigners may be called upon to sit as assessors on mixed tribunals in commercial matters and in penal matters, other than those dealing with simple misdemeanours. In several towns they may also be members of the municipal council and of commissions for the assessment and revision of the tax on buildings. Obviously it is open to persons who do not wish to exercise these functions — which are elective — not to stand for election. Nevertheless, it would seem worth while to modify the wording of paragraph 11 as follows : " may not be compelled to assume any kind of judicial or administrative charge or duty ". The text would thus be adequate without presenting the disadvantages of the present text.

Article 8 and the Protocol *ad* Article 8.

The Egyptian delegation submits the following proposals :

1. In Article 8, last clause but one, delete : " either to employ in an administrative or technical capacity ".

2 To the Protocol *ad* Article 8, add a third paragraph as follows :

> " 3. Nor shall the provisions of this article preclude any one of the High Contracting Parties from insisting in virtue of laws or general regulations, that nationals of the other High Contracting Parties established in its territory shall employ, in an administrative or technical capacity and as workers, a reasonable proportion of nationals of the said territory."

ANNEX A, 7

AMENDMENTS AND OBSERVATIONS SUBMITTED BY THE TURKISH DELEGATIE.

Article 1 and Protocol *ad* Article 1.

Paragraph 1.

It is desirable :

1. To replace the word " concession " by the words " licence or permit " as proposed by the British and Estonian delegations.

2. To add the following clause to the Protocol :

" Nothing in the present Convention shall impose on any of the High Contracting Parties any obligation whatever as regards charitable associations and organisations of all kinds. "

3. To delete the second paragraph *ad* Article 1 as requested by the Austrian delegation (page 70).

Protocol *ad* Article 5.

Paragraph 1.

I am of opinion that it is desirable to insert the words " in accordance with the laws and regulations of the country " after the words " equivalent to permanent residence ".

Article 6.

In order to define more accurately the scope of this article, I would propose the following wording :

" Nationals of any High Contracting Party admitted into the territory of another High Contracting Party shall enjoy therein, provided they comply with the laws and regulations of that Party, the same freedom to travel, sojourn, establish themselves, elect their domicile and move from place to place, as the nationals of the country in question without being subject to any conditions or regulations other than those to which nationals are subject, but without prejudice to the police regulations concerning foreigners in connection with prohibited zones and fortified places, it being understood that, in police matters generally, the absolute sovereignty of the Contracting States shall be unrestricted ; in order that public security or the defences of the country may be fully safeguarded."

Protocol *ad* Article 6.

Since corporate bodies are dealt with separately under II the following paragraph might be added to the Protocol *ad* Article 6 :

" The term ' nationals ' contained in Chapter II of the present Convention shall be understood to apply only to natural persons."

Article 7.

I consider that the following sentence should be added to the end of paragraph 1 *(a)* :

". . . without prejudice, however, to the requirements of local laws regarding the nationality of the said undertakings."

It must be understood that, if the undertakings mentioned in this paragraph have no connection with corporate bodies, to which I have referred in connection with the Protocol *ad* Article 6, the above reservation regarding their nationality no longer applies.

In this connection, I would point out that Turkish law requires foreign undertakings to acquire Turkish nationality if they operate mainly in Turkey.

Similarly, in paragraph 2 *(a)* the word " political " should be inserted between the words " judicial " and " administrative ", and the words " municipal " and " communal " after the word " military ". Further, the words " such as the establishment of schools, hospitals, etc." should be inserted after the words " foreign mission entrusted by the State ".

In paragraph 2 *(b)*, after the word " solicitor ", the words " doctor, pharmacist, veterinary surgeon, dentist, chemist, teacher, professor, editor responsible for newspapers published in the country " should be added.

Further, after the words " in the public interest " the words " and of the service " should be added.

In paragraph 2 *(c)*, after the words " in reserved transport ", the following words should be inserted :

". . . or service in industries enjoying exemption from or reduction of taxation or any other privileges or facilities in accordance with the laws of the country, or which are subject to a Government concession. "

The words " towage, salvage and maritime assistance " should be added after the word " pilotage ", as is frequently done in treaties of commerce.

Add after the word " ports " the words " roadsteads and coasts ".

In paragraph *(d)*, the following words should be added : " as well as the operation of air and wireless services ".

Add at the end of the second paragraph of the article the following words :

" Subject to the provisions of the laws and regulations of the country concerning insurance companies."

ARTICLE 8.

It would seem to me desirable to add the following clause to the beginning of this article, in order to avoid any possible misunderstanding :

> " Subject to the provisions of the preceding article and without prejudice to the stipulations of the laws and regulations of each of the High Contracting Parties regarding encouragement given to home industries and the national economy."

ARTICLE 9.

The words " *parmi les* " seem to be absolutely necessary between the words " *autres* " and " *personnes* ".

ARTICLE 10.

It would be desirable to add the words " in so far as the laws of the country permit " after the words " immovable property " contained in paragraph 1. The Council of the League of Nations is of the same opinion, as will be seen from paragraph 4 of its recommendation.

The words " in accordance with the laws of the country " not being sufficiently definite and being therefore liable to lead to a misunderstanding, it would be preferable to say " in accordance with the laws of the country in which the said property is situated ".

In the third paragraph of the article the words " or of rural property in general " should be added after the word " undertakings ", as requested by the Bulgarian delegation.

The fourth paragraph would be acceptable with the addition proposed by the Economic Committee of the words " including systems of communication".

As regards the Protocol, it appears to be acceptable without reservation.

ARTICLE 11.

Paragraph 3.

It would be desirable to add the words " or civil " between the words " military " and " exactions " in order to cover the possibility of a civil requisition in the event of a public calamity or of compulsory service in pursuance of the decisions of the communal councils.

It would also be preferable to delete the phrase " established in the territory of the other " contained in paragraph 3, since, under Article 10, foreigners will be entitled to acquire property in the territory of any of the High Contracting Parties without being established therein.

The proposed omission is also agreed to by the Economic Committee in its note (page 47 of the Preparatory Documents).

It would also be well to delete the phrase " as owners or occupiers of buildings or land " contained in the same paragraph, which should not have any restrictive meaning.

ARTICLE 14.

I am unable to accept the provisions of this article, since they are in complete contradiction with the sense of the previous article. The Economic Committee expressed the same view when commenting upon the opposition between this article and Article 13 (in No. 1 of the Commentary, page 51) and pointed out at the same time that the exemption did not apply to turnover taxes (page 52, No. 6, fifth paragraph).

ARTICLE 15.

I propose that the reference to Article 14 should be omitted for the reasons stated in connection with the said article.

ARTICLE 28.

I agree with the observation made by the German delegation with regard to extending the application of the Convention to colonies, protectorates and especially to mandated territories, this point having also been included in the recommendation made to the States by the Council of the League of Nations.

ARTICLE 29.

I consider that this article, as it stands, in no way affects the freedom of the High Contracting Parties as regards immigration and the expulsion of foreigners or their freedom as regards persons who are undesirable for political reasons.

With this reservation, I accept the article as it stands.

ANNEX A, 8

OBSERVATIONS SUBMITTED BY THE SWEDISH DELEGATION.

Article 1.

For Article 1, please see observations on Article 7.

Article 5.

Swedish law may seem in contradiction with the text of this article, as the Law of October 23rd, 1908, institutes a special tax on foreign commercial travellers and on Swedish commercial travellers residing abroad.

But this tax is, in reality, only the application of a general principle of the Swedish fiscal system, its special feature being the outcome of practical considerations.

The Swedish delegates consider that a reservation for the maintenance of the tax should be inserted in the Protocol, as suggested in the report made to the International Chamber of Commerce at its Congress held at Amsterdam in 1929. By analogy with the clause contained in Article 9, paragraph 3, with regard to security for costs, the reservation might be confined to the States which at present levy this tax, and the Swedish delegates propose the following text :

> " The levying, in respect of the operations referred to in Article 5, of a fee fixed according to the residence of the foreign trader or commercial traveller and taking the place of a tax, shall be permitted to those of the High Contracting Parties who at present adopt this system (without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealings with the former). "

The Swedish delegates also wish to bring up for discussion the question whether the right should not be reserved of requiring an authorisation for foreign commercial travellers in the event of such authorisation being also required for travellers of the home country. The text of the draft Convention implies, indeed, a departure from the fundamental principle of the equality of treatment.

Articles 6 and 7.

In the opinion of the Swedish delegates, the text of these articles should be made more definite, in order to exclude from the right of establishment and the rights provided for in Article 7 persons who have only been admitted temporarily without any previous declaration of an activity, covered by the said article, as the purpose of their stay.

At the same time, it should be laid down that persons who have obtained admission to a territory by declaring a certain purpose for their residence should not be able to take advantage of their admission to engage, in evasion of the law, in other activities covered by Article 7, than those which were declared at the moment of their temporary admission.

Article 7.

Paragraph 1.

(a) Swedish law requires a foreigner, who wishes to establish himself as a trader or engage in an industry, to deposit security for the payment of taxes and fees for a period of three years, and to obtain a special permit. This provision is very liberally applied, and after having obtained the permit, the foreigner is placed on a footing of complete equality with Swedish traders (Law of June 18th, 1864).

The Swedish delegates are obliged to make a reservation in regard to this principle.

(b) A foreigner residing in Sweden who wishes to organise public performances or meetings or take part therein may, in accordance with the Law of December 31st, 1913, be placed on a footing of equality with Swedes residing in the country on condition that he makes a deposit as above. Foreigners who have not obtained this privilege and Swedes residing abroad must apply for a special permit, and must also, under the Law of October 23rd, 1908, pay a special tax of 5 per cent on the gross proceeds. In the case of players of barrel-organs and similar performers living on voluntary contributions, however, the charge is fixed at 15 crowns per week.

These provisions, which are dictated by the desire to prevent tax evasion, are not directed against foreigners as such, as is proved by the fact that the same conditions are imposed on Swedes residing abroad, and, in the opinion of the Swedish delegates, they cannot therefore be considered as a discrimination forbidden by the Convention.

The Swedish delegates make a reservation with regard to these provisions.

Paragraph 2.

(a) The Swedish delegates consider that hunting should be included, as well as fishing, among the reserved occupations.

(b) Service in national aircraft should be treated in the same manner as service in vessels flying the national flag.

(c) Foreigners are not allowed in Sweden to act as managing shipowners, nor may they engage in maritime shipping with Swedish vessels if their share exceeds one-third.

The Swedish delegates make a reservation with regard to this clause.

(d) Insurance is subject to strict supervision in Sweden. This supervision cannot of its very nature be applied to foreign undertakings, whose supervision is governed by a special law, but this law is in many respects more favourable to foreign undertakings than the general law to Swedish enterprises.

The Swedish delegates consider that a fresh paragraph should be added making a reservation in regard to insurance.

(e) Any foreigner in Sweden who uses the rivers for floating timber, where this is permitted, must, according to the laws in force, deposit a security for the discharge of the obligations incumbent upon him for such floating. Although they consider that a provision of this nature is not incompatible with the text of the Convention, the Swedish delegates explicitly reserve the right to retain it.

Article 8.

The Swedish delegates approve the British Government's suggestion to make the provisions of this article clearer by replacing the word "*quelconque*" at the beginning of the fifth line by the words "*autres ou plus rigoureuses que celles autorisées par la présente Convention*" (other or stricter than those authorised by the present Convention).

Article 10.

Swedish law forbids foreigners to acquire immovable property and mines (which are considered as movable property) and, to a certain extent, shares in companies owning such property, without a special authorisation.

Subject to a reservation on this question of principle, the Swedish delegates submit the following observations on this article :

(a) They agree with the reservation formulated by the Economic Committee regarding ships flying the national flag and propose that this reservation should be so worded as to include national aircraft also.

(b) In their opinion it would be advisable to give a clearer wording to the reservation made under paragraph 4 and in any case to omit the restriction to this reservation *(i.e.*, the words " provided, however, that no measure", etc.).

Since the measure provided for is directed against foreign interests, it would seem neither necessary nor useful to preserve the appearance of safeguarding the principle of equality.

Article 11.

Paragraph 1.

Under Swedish law foreigners as well as Swedish nationals are obliged to assume guardianship. A reservation must be made in respect of a charge of this kind.

Paragraph 3.

The provisions should also apply to movable property.

Paragraph 4.

It would seem desirable that the High Contracting Parties should undertake not to apply the provisions of this paragraph in such a way as to deprive any foreigner, who has been subjected to the measures referred to, of a just and equitable compensation.

Article 12.

If paragraph 2 of this article is deleted, the Swedish delegates would propose that the provision of the Protocol should nevertheless be retained, merely the words " of Article 2 " being omitted.

In regard to special taxes, they would refer to the observations on Articles 5 and 7.

Articles 13 and 14.

The Government experts on double taxation were in favour of the settlement of these questions by bilateral agreements in view of the divergencies existing on this matter in the national legislations.

Several Governments have pointed out that the inclusion in a Convention on the treatment of foreigners of general provisions regarding double taxation might prejudice the settlement which might be arrived at in the matter of fiscal questions.

The Swedish delegates concur in the opinion that it would be better not to include questions of double taxation in the Convention.

ARTICLE 16.

Paragraphs 7 and 8.

If the text proposed by the British Government were adopted, with the additign of Articles 9 and 10, and if the provisions of paragraph 7, sub-paragraph 2, were placed after Article 17, the first sub-paragraph of paragraph 7 might be omitted.

The text would thus be made clearer.

ARTICLE 18.

The first sub-paragraph of paragraph 1 does not specify what provisions are meant by those " not referred to in Article 17 ". The wording adopted would seem to imply that the provisions in question were exclusively those not referred to in paragraph 1 of Article 17.

The Swedish delegates would propose that the second sub-paragraph of paragraph 1 be deleted in view of the difficulty of foreseeing the effect it might have upon treaties of commerce.

ARTICLE 26.

The delegates propose that the conditions and the date of the putting into force of the Convention should be fixed at a later meeting.

Meanwhile they would point out that the number of ratifications on which the coming into force of the Convention will depend should be considerably increased.

ANNEX A, 9

AMENDMENTS PROPOSED BY THE NORWEGIAN DELEGATION.

ARTICLE 1.

First line: Delete the words " even if not resident " and add, at the end of the third line, after the words " on order ", " to the same extent as nationals ".

ARTICLE 7.

Paragraph 2, Sub-Paragraph (c).

First line: After the word " fishing " add " and the exploitation of other riches of the sea ".

Second line: Omit " pilotage ".

Sub-Paragraph (d).

Observation. — Foreigners are also prohibited from acquiring and exploiting movable property, other than minerals and hydraulic power, without a special concession granted by the Norwegian Government.

ANNEX A, 10

PROPOSALS OF THE JAPANESE DELEGATION.

ARTICLE 7.

1. A provision should be inserted in Protocol VII relating to Article 7, paragraph 1, with the meaning that studies or education are within the purview of the provision of the present article.

2. The words " aerial navigation " should be inserted after the words " the internal services in ports ", in paragraph 2, sub-paragraph *(c)*.

ARTICLE 10.

1. The words " patrimonial rights " should either be omitted, or the words " that is to say " should be placed after the words " patrimonial rights ".

2. A new paragraph should be inserted in Protocol 10 with the meaning that the nationals of the High Contracting Parties shall enjoy the right in the territories of the other, to acquire and possess immovable property on condition of reciprocity when the law in the territories in question or the special bilateral agreements require such reciprocity.

3. The words " the whole frontier zone " in paragraph 3, Protocol ad Article 10 should be replaced by the words " all the frontier zones of the whole country ".

ARTICLE 11.

1. Paragraph 1, Article 11, and the word " established " in the first line of paragraph 3 should be omitted.

2. The words " on the same terms as nationals " should be added after the words " in force " in paragraph 4.

SUPPLEMENTARY PROPOSALS OF THE JAPANESE DELEGATION.

ARTICLE 10.

The words " or to menace the vital interest of the State " should be inserted after the words " to a currency crisis ", in the fourth line of paragraph 4, Article 10.

ARTICLE 15.

As it is unavoidable in some matters that treatment might differ on account of the factor of domicile, the Japanese delegation proposes that a provision should be added to this article in the sense that, so far as discriminatory treatment be not given by the High Contracting Parties to the nationals of the other, compared with their own nationals, different treatment given on account of domicile should not be considered as prejudicial to the provisions of the present article.

ARTICLE 28.

The words " overseas territories " should be inserted after the words " protectorates " in both the third and eleventh lines of Article 28.

ANNEX A, 11

OBSERVATIONS AND PROPOSALS SUBMITTED BY THE CZECHOSLOVAK DELEGATION.

ARTICLE 2 AND PROTOCOL *ad* ARTICLE 2.

Paragraph 2.

As a question of interpretation, may the words " a group of neighbouring States " be understood to mean not only adjacent countries but also groups formed for a specific purpose, such as an exhibition referring to tourist traffic, or an ethnographic exhibition covering a specific geographical region, a river navigation exhibition, etc.

ARTICLE 7.

Paragraph 2.

The Czechoslovak Government had the honour to point out in its letter dated February 11th, 1929, No. 19686/29/II-4 (see page 74 of the Preparatory Documents) that, among the cases mentioned under paragraph 2, certain other typical branches of professional activity should be included, in particular banking and financial operations and the professions of doctor, chemist, midwife, officially authorised civil engineer and railway employee. The delegation proposes that these occupations should be included in the list contained in Article 7, paragraph 2, or, if this is impossible, that an interpretation to this effect should be given in the Protocol.

PROTOCOL *ad* ARTICLE 7.

Paragraph 3.

The Czechoslovak delegation proposes that the following words should be inserted in the final sentence " *ni statuer sur les mesures* ", etc., instead of " *ni se prononcer* ", etc.

ARTICLE 8.

The Czechoslovak delegation would draw attention to the reservation which the Government of the Czechoslovak Republic has already put forward in its letters dated January 9th and 11th, 1929, regarding the provisions of Article 8 (see pages 73 and 74 of the Preparatory Documents).

ARTICLE 9.

Paragraph 2.

The Czechoslovak delegation ventures, for the reasons set out in the Czechoslovak Government's letter, dated February 11th, 1929, No. 19696/II-4, to submit for the consideration of the Conference the question whether the capacity of individuals to appear in court should be considered, not only from the point of view of *lex fori*, but also from that of the *lex domicilii* applicable to the person concerned.

Paragraph 3.

The Czechoslovak delegation proposes that the following words : " unless *de facto* reciprocity in the matter of such exemption has been established " should be added at the end of the first sentence, after ". . . providing for exemption ".

The provision of the last sentence of paragraph 3 might be supplemented by mentioning condemnations in legal costs in the text of this article, or in that of the Protocol relative thereto.

ARTICLE 11.

The Czechoslovak delegation ventures to draw the Conference's attention to the fact that the provisions of paragraphs 4 and 5 might be given greater precision by adding the text of the Czechoslovak Government's note of February 23rd, 1929, No. 24579/29/II-4, reproduced on page 74 of the Preparatory Documents.

ARTICLES 13 AND 14.

The Czechoslovak delegation concurs in the opinion expressed by the Government experts at the international meetings which have, up to the present, dealt with the question of double taxation, and in the opinion expressed by several Governments in connection with the present draft, to the effect that it would be preferable to leave these questions to be settled by means of bilateral conventions.

ARTICLE 16.

In order to place natural and legal persons on a completely equal footing, the Czechoslovak delegation proposes to add to the provisions of this article a reservation similar to that contained in Article 10, paragraph 4.

ARTICLE 26.

The delegation considers that the ratification of a larger number of States should be required before the Convention can come into force.

PROTOCOL *ad* ARTICLE 8.

The delegation proposes to insert the following paragraph :

" The right to make admittance of foreign nationals to the occupations mentioned in Article 8 subject to compliance with certain conditions is reserved to those of the High Contracting Parties whose laws at present adopt this system, without prejudice to the right of the other High Contracting Parties to apply reciprocity in their dealings with the former."

ANNEX A. 12

OBSERVATIONS AND AMENDMENTS SUBMITTED BY THE VENEZUELAN DELEGATION.

ARTICLE 4.

Add at the end :

" The present article does not apply to the taxes levied on the transit of foreign goods over the territory or navigable waterways of any of the High Contracting Parties."

ARTICLE 5.

Paragraph 1 :

The last sentence to be supplemented as follows :

" They shall not require a special authorisation for any of these transactions, nor shall they be obliged to pay in this connection any taxes or duties *other than those levied on nationals engaging in the same activities*, provided they only take with them samples and not goods intended for sale."

ARTICLE 6.

Add at the end : " or the laws and regulations on immigration and colonisation ".

ARTICLE 7.

Add a paragraph reading as follows :

" 3. The provisions of the present article shall not preclude the application of the local legal provisions concerning banks, insurance enterprises, navigation, the ownership of vessels and the coasting trade."

ARTICLE 10.

Paragraph 3.

After the words " or national defence " add the words " or simply of general interest ".

ARTICLE 11.

Paragraph 3.

Delete the words " as owners or occupiers of buildings or land ".

ARTICLE 12.

Delete paragraph 2 while retaining in the Protocol *ad* Article 12 modified as follows :

" It is understood that Article 12 shall not apply to Customs duties or any other duties connected with the importation, *transit* or exportation of goods."

ARTICLE 14.

Add the following paragraph :

" 3. The exemption provided for in paragraph 1 shall not apply to transactions carried out or activities engaged in on the territory of any of the High Contracting Parties by nationals of other Parties, such activities and transactions remaining subject to the taxes and charges in force in the territory where they take place."

Delete in the Protocol *ad* Article 14, paragraph 2.

ARTICLE 16.

Paragraph 1.

Add the following paragraph :

" These companies shall nevertheless be obliged to observe the provisions and comply with the limitations imposed on foreign nationals by the local laws with regard to banks, insurance, navigation, the ownership of vessels and the coasting trade."

Paragraph 4.

To be supplemented as follows :

" If one of the High Contracting Parties makes commercial operations conducted in its territory by a company of the other High Contracting Party subject to previous and revocable authorisation, *or to compliance with certain formalities,* the Party concerned shall have the right to take reciprocal action in regard to similar companies of the former Party."

ARTICLE 22.

Add at the end :

" The provisions of the present Article may in no case affect the principle that disputes between a State and foreign nationals must be submitted to the decision of the former's Courts of Justice."

Apart from the amendments mentioned above, the Venezuelan delegation will be obliged to make the following reservations :

" The delegation of the United States of Venezuela accepts the provisions of the present Convention subject to the provisions of Venezuelan law and to the powers of initiative belonging to the public authorities in regard to :

" 1. The autonomy of the Federal States and of the municipalities as regards their fiscal system and the imposition and levying of taxes, subject to the Federal Constitution and the Constitutions of the States (the provisions of the Convention will therefore only be applicable to matters within the competence of the National Government) ;

" 2. Customs duties and taxes leviable on the importation of goods, Venezuela meaning to retain full freedom with regard to the maintenance, establishment or alteration of her duties, taxes and tariffs, whether general or differential, according to the origin or provenance of the goods ;

" 3. The taxes and formalities relating to the transit of goods over the national territory or its navigable waterways.

" In connection with reservation No. 1 it should be pointed out that the taxes and duties levied by the Federal States and by the municipalities are of trifling importance and at a very low rate."

ANNEX A, 13.

DRAFT REPORT OF ARTICLES 1 AND 2 AND THE PROTOCOL AD ARTICLES 1 AND 2 SUBMITTED TO THE CONFERENCE, ON BEHALF OF COMMITTEE A, BY M. N. POLITIS (GREECE).

1. Committee A studied separately each of the various texts referred to it for consideration and discussed the amendments and suggestions submitted by the various delegations in regard to them ; most of these texts have been either entirely redrafted or merely remodelled and are herewith submitted for the approval of the Conference.

2. The purpose of the present report is to submit, at the same time as the proposed new draft, the reasons which induced the Committee to make these changes, the meaning of some of the provisions which certain delegations did not consider sufficiently clear and, finally, the reasons why various amendments or suggestions were withdrawn or referred for consideration to other Committees of the Conference.

Preamble.

3. The Committee was not directly called upon to consider the text of the Preamble. During the discussion of Article 1, however, the opinion was expressed that there was a certain discrepancy between the text of this article and that of the Preamble, as the former referred both to the operations of foreigners allowed to establish themselves in the territory of the High Contracting Parties and to that of foreigners not so established, whereas the Preamble refers only to the first of these two cases.

4. It was pointed out, however, that this interpretation was wrong, since the third paragraph of the Preamble does, in fact, cover both cases.

5. Should it appear necessary, however, to improve the text of this part of the Preamble, the work should be entrusted to Committee D and to the Drafting Committee.

Article 1.

6. In reply to a question by the Turkish delegation, it was stated that the term " national " refers only to natural persons. It does not cover legal entities, which are dealt with in Article 16. If necessary, a definition of commercial companies and associations not for profit could be given when this text comes up for examination by Committee C.

7. The question was also raised whether the term " nationals " covers only the citizens of a State properly so called, or, in a wider sense, all nationals, including natives of that State's colonies. The question was reserved for examination, together with Article 28 relating to the colonial clause.

8. The question was also raised whether, for the application of Article 1, a distinction should not be made between the nationals of a country according to whether they are resident in the country or not. This question was referred for examination to Committee D, which is dealing with the general provisions of the Convention.

9. The Hungarian delegation and the representatives of the International Chamber of Commerce proposed that the persons enjoying the rights conferred under Article 1 should be entitled to exercise these rights either in person or through fit and proper agents appointed by them at their discretion. It was agreed, however, that this question came under Article 8 and should therefore properly be discussed along with that article.

10. Certain delegations (Japan, Norway, International Chamber of Commerce), which consider that foreigners should not be granted anything beyond national treatment, desired to omit from the first line of the text the words " even if not resident " or to supplement the text by adding that these foreigners would be entitled to exercise these rights only " subject to the same conditions " or " to the same extent " as nationals, or, alternatively, to replace the term " when conducting similar operations " at the end of the first paragraph by the words " in similar cases ". It was thought, however, that the idea of national treatment as the maximum that could be accorded to foreigners was sufficiently clearly expressed in the second sentence of paragraph 1 for it to be unnecessary to modify the text of the draft. These amendments were therefore withdrawn.

11. The Swedish delegation pointed out that it accepts the granting of national treatment subject to the payment of the deposit required in Sweden of foreign traders who establish themselves in the country and also by Swedish traders resident abroad. As this question comes under the provisions of Article 7, its examination has been postponed until this text is discussed.

12. On its side, the Spanish delegation asked that it should be understood that the provisions of Article 1 do not apply to the special advantages which are, or may hereafter be, exceptionally granted by States to national enterprises when these advantages are not such as to enable the national enterprise to compete unfairly with foreign enterprises already established in the country. The question is connected with the provisions of Article 20, and it has therefore been referred to Committee D, which is responsible for the study of this clause.

13. On the other hand, the Committee accepted two amendments proposed by the British delegation, the first to delete as unnecessary the word " even " in the fourth line of the text of the draft, and the other to substitute at the beginning of the second paragraph, so as to avoid all misunderstanding, the words " shall not be prevented from advertising ", for the words " shall be free to advertise ".

14. The British delegation also proposed to replace in line 5 the word " concession ", which has a limited technical meaning, by the wider expression " licence or permit ". The Committee was first inclined to accept this amendment : but it was obliged to reconsider its original decision when it was pointed out that the adoption of these terms would seriously disturb the balance of the draft by leaving too wide an opening for the liberal principle of granting national treatment to foreigners. The Committee took the British delegation's proposal into account to some extent at least, and agreed to add the words " licence or permit " after the words " to any condition " in lines 6 and 7 of the text. This addition in no way modifies the substance of the text, since the use of the generic term " condition " in the draft could apply to any condition to which nationals of the country were subject, and therefore to a " licence " or " permit " also.

15. As a result of these modifications, Article 1 would therefore read as follows :

" 1. Nationals of the High Contracting Parties may, even if not resident in the territory of the other High Contracting Parties, conduct commercial transactions of every kind and in particular sell goods, make purchases, take orders, deliver goods on order and carry out work on order, unless under the laws of the territory in question, nationals are required to obtain a Government concession for the conduct of such business or execution of such work. Provided they conform in every operation to the laws and regulations of the country, they shall not be subject to any condition, *licence, permit,* or charge other or more burdensome than those to which nationals of the country are themselves subject when conducting similar operations.

" 2. Similarly, the nationals referred to in the preceding paragraph *shall not be prevented* from advertising in any form for the purposes of the business referred to above, provided such advertising conforms to the laws and ordinances of the country, under the same conditions as that country's nationals without having paid in this respect any taxes or duties higher or more burdensome than those paid by nationals. "

Protocol *ad* Article 1.

16. The British delegation proposed that, in paragraph 1, the word " special " should be inserted before the word " contracts ". It did not, however, insist upon this amendment after it had been pointed out that the exception provided for was to be applied merely to contracts concluded by public authorities which were equivalent to Government concessions.

17. It further proposed that a provision be added to the Protocol stipulating that it " be understood that nothing in the Convention shall impose on any High Contracting Party any obligation in respect of the rules of membership of industrial, commercial and similar associations and organisations of a voluntary nature ". This reservation appeared to be superfluous, however, and the British delegation withdrew it, subject to the condition that it should be mentioned in the present report.

18. The second paragraph gave rise to a long discussion. Various amendments were proposed by a large number of delegations (Austria, British Empire, Egypt, Estonia, Turkey), whereas others desired that this text should be simply omitted. Many delegations are of opinion that it would be impossible to exempt the granting of licences, authorisations or permits arising out of the control of imports and exports from all conditions regarding establishment, residence or registration. A Sub-Committee was instructed to seek a formula which would reconcile the various divergent points of view. On the basis of the general principle of equality of treatment between nationals and foreigners, and taking into account the practice followed in this respect in several countries, the Committee unanimously agreed upon the following text, to replace the second paragraph of the Protocol :

" Notwithstanding the provisions of Article 1, if, according to the operation of the laws of the country, the granting of licences, authorisations or permits arising out of the control

of imports and exports is subject *de jure* or *de facto* to obligations as regards establishment, residence or registration applicable to nationals, these obligations shall be equally applicable to foreigners."

19. The new text of the Protocol *ad* Article 1 would therefore read as follows :

" (1) The provisions of Article 1, paragraph 1, shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities as a result of tenders, these contracts being regarded as equivalent to Government concessions.

" (2) *Notwithstanding the provisions of Article 1, if, according to the operation of the laws of the country, the granting of licences, authorisations or permits arising out of the control of imports and exports is subject* de jure *or* de facto *to obligations as regards establishment, residence or registration applicable to nationals, these obligations shall be equally applicable to foreigners.*"

Article 2.

20. Upon the proposal of the British delegation, it was agreed that the wording of this text should be made concordant with the terms used in the second paragraph of Article 1, by substituting the term " shall not be prohibited by law from participating " for " shall be free to participate ", and by adding to the second line, after the words " of any other High Contracting Party ", the qualifying phrase " in conformity with the laws and ordinances of the country ".

21. The new draft of Article 2 would therefore read as follows :

" Nationals of each of the High Contracting Parties shall *not be prohibited* from participating, in the territory of any other High Contracting Party, *subject to the laws and ordinances of the country*, as exhibitors, vendors or buyers on the same terms as nationals in public markets or fairs not expressly reserved to nationals or to nationals of a group of neighbouring States."

Protocol *ad* Article 2.

22. At the request of the German delegation, the Committee decided to reserve, until Article 28 came up for discussion, the question whether the words at the end of the first paragraph " or mandates " should be retained.

23. With regard to paragraph 2, the Czechoslovak delegation thought that the meaning of the words " a group of neighbouring States " should be more clearly stated, *i.e.*, should it be understood to mean not only adjacent countries but also groups formed for specific purposes, such as exhibitions referring to tourist traffic or ethnographic exhibitions covering a specific geographical region, river navigation exhibitions, etc..

It was pointed out that the question of exhibitions did not come within the terms of the Convention, which dealt only with markets and fairs.

It was agreed that the term " a group of neighbouring States " should be understood in the widest possible sense and that it should not in any circumstances be interpreted in any arbitrary or improper fashion.

24. It was further observed that the " free admission " mentioned in paragraph 3 obviously does not apply to the free admission of goods into the country.

25. The text of the Protocol *ad* Article 2 therefore remains unchanged, subject to the reservation regarding the words " or mandate " and with the exception of the omission from paragraph 2 of the words " of the Convention " which were considered superfluous. The proposed text therefore reads :

" (1) The provisions of Article 2 shall not preclude the organisation by a High Contracting Party in its territory of markets and fairs reserved for nationals of its colonies, protectorates or territories under its suzerainty *(or mandate)*.

" (2) In applying the provisions of Article 2, under which certain markets or fairs may be reserved for nationals of a group of neighbouring States, the High Contracting Parties undertake to make no discrimination which might appear unfriendly towards the nationals of other High Contracting Parties or their goods.

" (3) The words ' on the same terms ' are taken by the High Contracting Parties to mean free admission and equality of charges without prejudice to any regulations which the High Contracting Parties reserve the right to establish for goods admitted to fairs or markets."

ANNEX A, 14.

AMENDMENTS PROPOSED BY THE FRENCH DELEGATION.

ARTICLE 5.

Add at the end of paragraph 1 :

" Samples admitted into the country shall remain subject to the same charges and formalities as samples of national products."

ARTICLE 6.

Add at the end of Article 6 :

". . . and to any measures intended to protect and regulate the national labour market ".

ARTICLE 7.

Modify paragraph 2 *(b)* as follows :

" *(b)*. Professions, such as those of barrister, solicitor, notary, stockbroker and other similar professions or offices, as well as any other professions or offices which it may be desirable, on account of the special responsibility they entail, in the public interest *or for reasons of national security*, to reserve for nationals, *or to make subject to special conditions*. It shall, however, be understood that this reservation or these *restrictions* shall be limited to what is strictly necessary in the public interest *or in that of public security*."

Add to paragraph 2 *(c)* : ". . . coasting trade, pilotage, towage and the internal services in ports . . . "

Add at the end of paragraph 2 *(e)* ". . . or Government concessions for public utility services ".

ARTICLE 21.

Modify the end of paragraph 1 as follows : ". . . nationals or companies of the other High Contracting Parties, it must nevertheless take vested rights into account ".

ANNEX A, 15.

PROPOSALS AND AMENDMENTS SUBMITTED BY THE GERMAN DELEGATION ON NOVEMBER 6TH, 1929.

ARTICLE 5.

Insert new paragraph between paragraphs 1 and 2 :

" Articles in precious metals which are imported by commercial travellers under the temporary admission system, subject to the deposit of the Customs duties, and solely as samples to be offered to customers, and which may not be bought or sold, shall, upon request, be exempt from compulsory stamping against the deposit of an adequate security, the amount of which shall not exceed that of the Customs duties. If the samples are not re-exported within the prescribed time-limit, the security deposited shall be forfeited."

ARTICLE 7.

Omit in sub-paragraph 2 of No. 3 of the Protocol *ad* Article 7 the words " Employees and other wage-earners ".

ARTICLE 8.

Add new paragraph to the Protocol *ad* Article 8 :

" 3. The term ' for the management of their establishments ' shall include the management of each of the various technical or commercial departments of these establishments."

ARTICLE 9.

Replace the present text of paragraph 3 by the following :

" The provisions of paragraphs 1 and 2 shall in no way affect the laws in force in the territory of the High Contracting Parties regarding legal assistance, security for costs, exemption from payment in advance of legal costs and other similar facilities. As regards security for costs, etc. "

ARTICLE 16.

Omit under paragraph 8, the words " defined in paragraph 1 ".

ARTICLE 23.

Add, as second paragraph :

" Official translations may, at the request and with the assistance of the interested Governments, be drawn up by the Secretariat of the League of Nations and deposited with the Secretary-General. It will be open for the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Convention."

The German delegation refers to the observations made in Dr. Martius' speech at the afternoon meeting on November 5th, and to Article 6, paragraph 17, of the Standing Orders of the International Labour Conference (inserted by a resolution of the International Labour Conference during the session held from May 30th to June 8th, 1927) which reads as follows :

" After the adoption of the French and English authentic texts, official translations of the draft Conventions and Recommendations may, at the request of interested Governments, be drawn up by the Director of the International Labour Office and deposited with the Secretary-General of the League of Nations. It will be open to the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Conventions and Recommendations."

PROPOSAL SUBMITTED BY THE GERMAN DELEGATION ON NOVEMBER 8TH, 1929.

ARTICLE 7.

Add the following paragraph to the Protocol *ad* Article 7 :

" It is understood that, if foreigners are permitted to engage in an activity referred to in Article 7, No. 2, this activity in application of No. 1 of this article shall also be placed on a footing of complete equality with the similar activity of nationals, and that any differential provisions or conditions which may be applied shall be the same for all foreigners. "

PROPOSAL SUBMITTED BY THE GERMAN DELEGATION ON NOVEMBER 14TH, 1929.

ARTICLE 7.

Paragraph 2.

Replace paragraph 2 of Article 7 by the following text :

"2. Each of the High Contracting Parties, however, retains the right to reserve to its nationals public functions, charges, and offices of a judicial, administrative, military or other similar nature which involve a devolution of the authority of the State, as well as professions such as those of barrister, solicitor, notary, stockbroker and other similar professions or offices which, in the public interest, entail special responsibilities.

" The right to reserve these occupations to nationals implies the right to make them subject to differential regulations or conditions as regards foreigners. If, however, the exercise of one of these occupations is open to foreigners, such foreigners shall, in application of No. 1 of this article, be placed as regards such occupation on a footing of absolute equality with nationals, and any differential regulations or conditions that may be introduced shall apply equally to all foreigners.

" 3. The High Contracting Parties shall be entirely free to regulate, as they think fit, the industries or trades forming the subject of a State monopoly or monopolies under State control as well as hawking and peddling and itinerant trades.

" 4. Questions of maritime and air navigation and insurance shall be settled by international Conventions and the national laws relative thereto."

ANNEX A, 16.

AMENDMENTS SUBMITTED BY THE DELEGATE OF YUGOSLAVIA.

On behalf of the delegation of the Kingdom of Yugoslavia, I have the honour to submit to the International Conference on the Treatment of Foreigners the following amendments :

Article 1.

Paragraph 1.

The scope of the term " concession " requires definition, *i.e.*, whether it is applied in the wider sense of a permission or authorisation, or whether it is taken in the strictly technical sense, meaning a special privilege granted by a public administration.

Protocol *ad* Article 1.

Paragraph 1.

If Article 20 is not omitted, it should be mentioned in Article 1, paragraph 1 of the Protocol, after the words " paragraph 1 ".

Article 5.

Paragraph 1.

Third line: After the word " engage ", insert the words " or are in fact engaged ".

Article 6.

The term " police regulation " should be more clearly defined ; it should be stated whether it covers general administrative measures or whether it refers exclusively to measures of public security.

Article 7.

Paragraph 2.

After sub-paragraph *(f)*, add another sub-paragraph *(g)* :

" The exercise of any profession or industry involving the vital interests of the nation. "

Sub-Paragraph (h).

" The exercise of the profession of emigration agent or agent of a shipping company engaged in the transport of emigrants. "

Article 8.

Add at the end :

" The High Contracting Parties shall, however, be free to limit, by national regulations, the number of persons of foreign nationality employed in these establishments. Similarly, these provisions shall not affect the legal provisions in force in the country regarding foreign labour and undertakings connected with national defence. "

Article 14.

Add at the end :

". . . permanent representatives or agencies for the sale of tickets and offices for the forwarding of goods shall be subject to the taxes in force in the country in which they are situated. "

Article 20.

This article should be deleted.

ANNEX A, 17.

OBSERVATIONS BY THE LUXEMBURG DELEGATION.

The draft Convention regarding the Treatment of Foreigners prepared by the Economic Committee of the League of Nations is intended to sanction certain principles embodied to some extent in a certain number of international commercial treaties and conventions relating to establishment, and which broadly correspond to the laws in force in the Grand Duchy of Luxemburg. Since the draft constitutes an adequate basis for an international convention, Luxemburg is willing to take part in a diplomatic conference for the purpose of concluding this Convention.

I.

In accordance with Article 5, paragraph 1, of the draft, nationals of one of the High Contracting Parties who prove that they are legally entitled to engage in industry or business in their country, and that they therein pay the lawful taxes and duties may, in the territory of the other contracting parties, either in person or by travellers in their employ, purchase from merchants or in places where goods are on sale, as well as from the producers of goods in which they deal, or take orders from merchants and manufacturers engaged in the trade or making use in their establishment of the goods of the same kind as those offered.

Under Article 1, paragraph 2, of the Luxemburg Law of March 14th, 1896, merchants and their travellers are not allowed to solicit orders, even wholesale, from persons who do not deal in the goods offered, unless the person to whom the offer is made is an artisan who uses the goods in the exercise of his trade. This provision must be interpreted in a restrictive sense, and therefore does not apply to the soliciting of orders from persons who use the goods in question in the exercise of their industry (Decree of the Correctional Court, dated January 26th, 1907).

As regards the soliciting of orders from manufacturers, there is therefore a divergence between the provisions of the proposed Convention and Luxemburg legislation.

II.

Article 7 of the draft places foreigners on terms of complete equality *de facto* and *de jure* with nationals as regards the exercise of professions.

No. VII of the Protocol annexed to the draft Convention specifies that the provisions regarding the treatment of foreigners shall apply to workers, employees and other wage-earners in the same way as to any other foreigner, without, however, affecting the measures which certain States are obliged to take to protect their home labour market.

The Final Act of the draft Convention, however, expresses the hope that, as soon as circumstances appear favourable, negotiations will be instituted with a view to restoring so far as possible, the free exchange of foreign labour and employees and other foreign wage-earners.

The Luxemburg delegation wishes to make express reservations on this subject here and now. Since it may be greatly to the interest of certain countries to transfer their surplus labour to the foreign labour market, the protection of the home labour market may become of vital importance to other countries. The requisite measures of protection, however, will not in any way prejudice production and trade if they are applied judiciously.

III.

Article 8 of the draft lays down that nationals of one of the High Contracting Parties established in the territory of another High Contracting Party, or who, without being established in that territory, do nevertheless conduct their business therein, shall be free to appoint at their discretion, for the management of their establishments and for the transaction of their business, such persons as they may judge fit and proper without being obliged to take into account the nationality of such persons and without being obliged either to employ in an administrative or technical capacity or to take into partnership persons of any given nationality.

In this rigid form, Article 8 may become a danger to intellectual workers, since it does not permit the contracting States to take the measures to protect their private employees which the situation of the labour market may render indispensable in certain countries. It is suggested that, in this respect, employees should be treated on a footing of equality with workmen.

ANNEX A, 18.

OBSERVATIONS AND PROPOSALS SUBMITTED BY THE LATVIAN DELEGATION.

Articles 4 and 20.

In Latvia, the commercial and industrial regulations concerning the sale, circulation and consumption of goods do not, as a rule, make a distinction between home products and products coming from other countries. The legislation in force allows of only one exception to this principle, namely, in the case of contracts given by Government institutions, the latter being permitted in certain cases to give the preference to home products, even if the cost of the latter is higher than that of tenders from abroad. This stipulation only applies to goods supplied to the Government ; the municipalities, communes and private commercial, industrial and transport organisations and undertakings are not obliged to observe it. The reconstruction of home industry, which was completely destroyed during the world war, is assisted neither by subsidies nor cheap credits from the Government, nor by export bounties or special transport tariffs. Hence the Latvian Government has been obliged to reserve certain opportunities, limited though they may be, for encouraging home industry and for remedying in this way the drawbacks of unemployment. This measure, although constituting a discrimination between home products and similar foreign products, is not, in the Latvian Government's opinion, a hostile measure directed against foreign products.

The delegation is of the opinion that a fresh paragraph in the Protocol *ad* Article 4 or 20, permitting such provisions, should be considered.

Article 7.

Latvian law requires, for engaging in any commercial or industrial activity, an authorisation which is granted in the towns by the municipality and in the country districts by the communal institutions. In this matter, no distinction is made between nationals and foreigners, if the latter have residence and labour permits for a minimum period of six months. These permits have a maximum duration of one year and must be renewed every year. It is forbidden to employ foreigners who have not obtained a labour permit. A foreigner may only exercise the trade or profession stated in his labour permit. These provisions do not apply to agricultural labourers in cases in which the Ministry of Social Welfare may consider that there is a dearth of agricultural labour in the country. The residence tax has been abolished in most cases, or varies from 10 to 60 gold francs per annum according to the agreements concluded with the respective countries.

As regards the conduct in Latvia of commercial or industrial operations by the branches, subsidiary undertakings or agencies of foreign undertakings, the existing laws require the same authorisation as for autonomous undertakings, *i.e.*, they must be registered as independent Latvian undertakings in conformity with the laws of the country.

The founders of banks, pawnbrokers' shops and insurance companies must be Latvian citizens. Two at least of the founders of limited companies must be Latvian citizens.

One-third of the members of the board of limited industrial companies, including the chairman, must be Latvian citizens. In the case of other limited companies two-thirds of the directors must be Latvians, including the chairman and deputy-manager.

Only Latvian citizens may found insurance companies and act as managers or as members of the boards of directors or winding-up committees of these companies.

Insurance being subject to strict Government control, foreign insurance companies and their agents are not allowed to do business in Latvia.

The Latvian delegation proposes that a new sub-paragraph containing reservations with regard to insurance should be introduced in Article 7, paragraph 2.

Article 10.

The law concerning the acquisition and possession of immovable property in the towns requires that foreigners should obtain the previous authorisation of the Ministry of Justice. Outside the towns and in the frontier zone foreigners are forbidden to acquire and possess immovable and landed property. Foreigners may lease, utilise and administer immovable property in the towns and country by proxy, except in the frontier zone where the previous authorisation of the Government is necessary in each case.

These measures seem indispensable to the Latvian Government in order to prevent speculative purchases of immovable property and especially of landed property, the present prices of the latter being still much below pre-war prices. As regards the frontier zone, the prohibition is enforced for reasons of national security.

The Latvian delegation proposes :

(1) To amend the Protocol *ad* Article 10, paragraph 3, so that the prohibition for foreigners to acquire and possess immovable property should be extended to include the whole of the frontier zone,

(2) To extend the reservation made in Article 10, paragraph 4, not only to a currency crisis, but also to other exceptional factors having as a consequence a serious fall in the price of landed property.

ANNEX A, 19.

AMENDMENTS PROPOSED BY THE NETHERLANDS DELEGATION.

Protocol *ad* Article 6.

The provisions of Article 6 imply the right to leave the territory without let or hindrance, irrespective of the right of expulsion, the exercise of which each of the High Contracting Parties reserves in the manner sanctioned by ordinary usage. *The right to leave the country without let or hindrance cannot, however, be restricted in the case of a national of any one of the High Contracting Parties in the territory of another High Contracting Party, unless the conduct of such national is contrary to the laws and regulations or prejudicial to the security of the State.*

Article 7.

Paragraph 1, *Sub-Paragraph* 1.

Delete the words " allowed to establish themselves therein ".

Paragraph 1, *Letter* (a).

Insert, after the words " and in general any transactions of an economic character ", the words " including shipping ".

Paragraph 1, *Letter* (b).

Delete the words " identical with those " in the fourth line.

Paragraph 2, *Letter* (c).

After " Fishing in territorial waters ", insert " or other waters included in the territory ".

Article 9.

1. Nationals of each of the High Contracting Parties shall enjoy, in the territory of the other High Contracting Parties, *treatment not less favourable than that enjoyed by nationals* in respect of the legal and judicial protection of their persons, property, rights and interests.

2. They shall enjoy therein, under the same conditions as nationals, the right to appear in Courts as plaintiff or defendant, and to appear before the competent administrative authorities in order to safeguard their rights and interests in conformity with the laws in force in that territory. These laws shall be applied without distinction to nationals and foreigners alike, *on the understanding that the power of the authorities to modify personal status may be greater in respect of nationals than in respect of foreigners.*

Nationals of the High Contracting Parties shall be entitled to choose for the defence of their interests before the Courts or administrative authorities any barrister, solicitor, notary or other persons authorised to practise by the national laws of the country.

3. Security for costs *(cautio judicatum solvi)* may be required by any of the High Contracting Parties which impose this obligation on the nationals of any other High Contracting Party with which the first named has not concluded an agreement providing for exemption. *In the matter of free legal assistance* and when one High Contracting Party applies to any other High Contracting Party for the enforcement of a judgment or arbitral award given in the territory of the first-named Party *these questions* shall be governed by the internal laws of each Party and by such bilateral agreements as they may have concluded for the purpose.

PROTOCOL *ad* ARTICLE 9.

Paragraph 1.

1. *It is understood that no High Contracting Party which has not acceded to a general convention concerning a special subject in which the principle of equality with nationals has been established shall be entitled to equality of treatment in this matter.*

2. *The first paragraph of Article 9 shall not preclude any one of the High Contracting Parties which refuses to extradite its own nationals from complying with extradition demands in respect of nationals of the other High Contracting Parties.*

ARTICLE 10.

Paragraph 1.

Nationals of all the High Contracting Parties shall be placed on terms *not less favourable than* citizens or subjects of any one of the Parties as regards patrimonial rights, the right of acquiring, possessing ol reasing to others movable or immovable property and the right of disposing of the same under the same conditions as nationals, no modification or restriction of any sort being permitted in this régime.

ARTICLE 11.

Paragraph 1.

Add to paragraph 1 the words " with the exception of guardianship, trusteeship and compulsory appearance as a witness ".

Paragraph 2.

(a). Modify the text of the first sentence as follows :

" The nationals of the High Contracting Parties *who are foreigners according to the laws of the other High Contracting Party* shall similarly be exempt in the territory of that Party in peace time and in war time, *from all compulsory personal service.* "

(b). Replace the last words of the paragraph in the French text *" de telles prestations "* by *" de tel service "*.

Protocol ad *Paragraph* 2.

Add to the Protocol *ad* Article 11, paragraph 2, a provision to the following effect :

". . . the words ' all compulsory personal service ' shall be understood to refer to permanent as well as to temporary service, whether military or civil ".

Paragraph 3.

Modify the first sentence of paragraph 3 as follows :

" Nationals of each of the High Contracting Parties . . . shall nevertheless continue to be liable to the charges connected with the ownership of any landed property as well as compulsory billeting, clearing operations and destruction, legally ordered by the authorities, and any other special military exactions or requisitions to which, under the law, all nationals of the country are liable. "

Protocol ad *Paragraph* 3.

Add to the Protocol *ad* Article 11, paragraph 3, the following provision :

" It shall be understood that paragraph 3 of Article 11 does not refer to the requisition of ships. "

Paragraph 5.

Amend this paragraph as follows :

" Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties, as regards compensation for the exactions, requisitions and expropriations or temporary deprivations referred to in paragraphs 3 and 4 above, the treatment laid down by international law and in no case treatment less favourable than that which it grants to its own nationals."

ANNEX A, 20.

OBSERVATIONS BY THE FINNISH DELEGATION.

Article 7.

As regards the right of foreigners to conduct commercial or industrial operations, Finnish legislation is based on a system of concessions.

This system rests on the principle that, in Finland, a guarantee is required from any foreigner who conducts any economic activity that he is capable of depositing a security for the payment of Government and municipal taxes and dues and can appoint a person to represent him before the courts and authorities in cases of dispute.

The Finnish delegation desires to state that these provisions have always been very liberally applied, and to emphasise that, in a country which is less favoured by nature than others, and whose economic life, therefore, can only develop slowly, the right of foreigners to conduct economic activities must be subject to a special authorisation.

It would add that a foreigner, once he has obtained this authorisation, is placed on a footing of complete equality with Finnish traders.

Banking and insurance companies, on the other hand, are subject to a very strict control in Finland. Owing to its very nature, this control cannot be applied in the same way to foreign undertakings ; the supervision of these must therefore be provided for by exceptional measures.

The law in force on these matters is not likely to be amended.

The Finnish delegation accordingly desires to make a reservation regarding the provisions of Article 7 of the draft Convention.

Article 10.

Except in the province of Wiipuri, which is regarded as a frontier zone and in which the acquisition of immovable property is entirely forbidden to foreigners, Finnish legislation only permits the latter to acquire and possess immovable property, including hydraulic power and mines, in virtue of a Government authorisation.

After having obtained the necessary authorisation, foreigners who are not domiciled in the country have to appoint a person to represent them before the courts and authorities.

These general provisions, which have always been applied in a very liberal manner, are based, as the delegation has already had the honour to point out during the general discussion, on the principle of preserving the economic resources of the country for home production, a principle which is laid down in the draft itself.

The Finnish delegation therefore wishes to point out that the principle of equality between foreigners and nationals in this connection cannot be applied under Finnish law. The Finnish delegation is therefore obliged to make a reservation on this article.

ANNEX A, 21.

AMENDMENTS SUBMITTED BY THE ITALIAN DELEGATION.

Protocol *ad* Article 1.

Delete paragraph 2.

Article 7.

Paragraph 2.

Modify the text of sub-paragraph *(b)* as follows : After the words " and other similar professions or offices " insert :

" . . . which each State may consider to entail special responsibilities, in the public interest, and which for that reason should be reserved for nationals. "

Protocol *ad* Article 7.

Paragraph 3.

Insert after the words " wage-earners admitted to their territory " the following words :

". . and residing there either temporarily or permanently."

Article 8.

Add as a fresh paragraph the following :

" The above provision shall be subject to any temporary derogations or restrictions in regard to certain specified undertakings which might be introduced in the public interest."

ARTICLE 10.

Insert, either in the article or in the Protocol, the following provisions :

" It shall be understood that the High Contracting Parties shall be entitled to make the acquisition of ships or aircraft or participation in the ownership of such ships or aircraft subject to any conditions they may consider necessary. "

PROTOCOL *ad* ARTICLE 10.

Paragraph 1, *Second Sentence.*

It should be made clear that the provision beginning with the words : " the said property, however, etc. " shall not prevent the levying, if necessary, of Customs duties on the exportation of certain specified goods.

Paragraph 2.

Delete paragraph 2.

ARTICLE 11.

Paragraph 2.

Insert, after the words " or in the national guard or militia ", the following sentence :

" In so far as such service is not required of them by the State in the territory of which they are residing if, being natives of that State, they are for that reason still subject to military obligations towards that State."

ARTICLE 16.

Delete paragraphs 2, 4, 5 and 6.

Delete also the last part of paragraph 7, which begins with the words : " Nevertheless, it shall not be possible for one of the High Contracting Parties to claim ", etc.

ARTICLE 22.

Insert, after the words " relating to the interpretation or application of this Convention ", the following words :

". . . with the exception of Articles 7, sub paragraphs *(a)* and *(b)*, 19 and 21. "

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In the second paragraph, after the words " gradually be established " modify the text as follows :

". . . régimes which, while consistent with national requirements, should be of as liberal a character as possible. "

In the third paragraph, after the words " as circumstances appear favourable with a view to ", modify the text as follows :

". . . permitting as far as possible the exchange of foreign labour, employees and other foreign wage-earners, and in particular with a view to. "

Modify as follows sub-paragraph *(a)* of paragraph 3 :

". . . reducing so far as possible the restrictions which at present prevent the exchange of technical experts, employees and workers constituting the skilled staff of undertakings, and which prevent practitioners or other persons from going abroad in order to complete their professional training, subject always to the requirements dictated by the public interest. "

ANNEX A, 22.

AMENDMENTS PROPOSED BY THE POLISH DELEGATION.

ARTICLE 6.

Add the following two paragraphs to Article 6 :

" The provisions of this article shall not affect the right which the High Contracting Parties reserve to limit, for reasons of public security and national defence, the freedom of foreign nationals to travel, sojourn, establish themselves, elect their domicile, and move from place to place in frontier zones and fortresses.

" It is understood that, in the case of public danger, restrictions of a temporary nature may be placed on the freedom of foreigners to travel, sojourn, establish themselves, and move from place to place."

PROTOCOL *ad* ARTICLE 6.

In the second line, after the words : " right of expulsion ", add the words "or of refusing admission ".

PROTOCOL *ad* ARTICLES 6 and 7.

Add the following text :

" It is understood that the nationals of all the High Contracting Parties shall enjoy the rights and liberties provided for in Articles 6 and 7 in so far and as long as their activities in the territory of the country to which they have been admitted continue to be in conformity with the declaration made by them at the moment of their admission with regard to the aim of their temporary stay or with regard to their establishment in the said country."

ARTICLE 7.

Paragraph 2 to be modified as follows :

" 2. Each of the High Contracting Parties, however, retains the right to prohibit foreigners within its territory from engaging in certain professions, occupations, industries and trades, or to subject their exercise to compliance with differential formalities or conditions if the exercise of the said activities is reserved to nationals under the laws and regulations in force in the country."

ARTICLE 8.

The text of Article 8 to be modified as follows :

" Without prejudice to the provisions concerning the admission of foreigners, nationals of one of the High Contracting Parties established in the territory of another High Contracting Party, or who, without being established in that territory, do nevertheless conduct their business therein, shall be free on the same footing as nationals to appoint, at their discretion, for the management of their establishments and for the transaction of their business, such persons as they may judge fit and proper.

" Under the same conditions they may also employ, in an administrative and technical capacity in those establishments, such persons as they may choose, subject, however, to the provisions in force in the country for the protection and regulation of the home labour market."

ANNEX A, 23.

DRAFT TEXT SUBMITTED TO COMMITTEE A BY THE SUB-COMMITTEE APPOINTED TO STUDY ARTICLE 6, AND TO DRAW UP A SINGLE TEXT TO REPLACE ARTICLE 6, THE PROTOCOL TO THIS ARTICLE AND ARTICLE 29.

ARTICLE 6.

1. Each of the High Contracting Parties remains free to regulate the entry of foreigners to its territory and make this entry subject to conditions limiting its duration or the freedom of foreigners to travel, sojourn, establish themselves, elect their domicile and move from place to place. These limitations may be imposed either by means of the documents required of foreigners for their entry to the national territory (passport, identity card, residence permit, etc.) or through the application of the laws and regulations in force in the country as regards the conditions for exercising the said right.

2. Nationals of any High Contracting Party admitted into the territory of another High Contracting Party shall enjoy therein, provided they comply with the laws and regulations of that Party, the same freedom to travel, sojourn, establish themselves, elect their domicile and move from place to place, as nationals of the country in question, without being subject to any conditions or regulations other than those to which nationals are subject with regard to each of the said rights, but without prejudice to the police regulations concerning foreigners and the provisions concerning the home labour market.

3. They may not, after admission, be subjected to conditions, restrictions or prohibitions incompatible with the other provisions of the present Convention.

4. They shall have the right to leave the territory without let or hindrance unless individually prevented for reasons of public order and irrespective of the right of expulsion, the exercise of which each of the High Contracting Parties reserves in the manner sanctioned by ordinary usage, according to its legislation and the provisions of international law.

ANNEX A, 24.

REPORT SUBMITTED BY M. PILOTTI ON BEHALF OF THE SUB-COMMITTEE APPOINTED TO EXAMINE ARTICLE 7, PARAGRAPH 2.

ARTICLE 7.

Paragraph 2.

1. The Sub-Committee was requested to study the text of Article 7, paragraph 2, with a view to introducing such modifications as it might think fit in order to take into account the proposals laid before Committee A.

2. The examination of paragraph 2 led the Committee to make two slight changes in paragraph 3, the reasons for which will be given below.

The Sub-Committee also had to consider certain facts which it thought should be taken into account when examining other articles.

As a result of its work the Sub-Committee submits, as an annex to the present report, a new text for Article 7.

3. The first amendment made to paragraph 1 of Article 7 consists in adding the words " in conformity with Article 6 of the present Convention " after the words " allowed to establish themselves therein " which figure in the third line of the text printed in the " Brown Book ".

This addition is intended to comply with the wish expressed by the Sub-Committee responsible for examining Article 6, and its expediency is obvious.

4. The second amendment made to paragraph 1 consists in adding the words " if necessary subject to reciprocity " after the words " recognised as being equivalent ", which figure in the penultimate line of *(b)* in the text of the " Brown Book ".

It seemed necessary to the Sub-Committee to make a formal stipulation that a country which does not require the submission of a title *identical* with the national title for the exercise of a profession, and confines itself to requiring the submission of an equivalent title, may make the greater facilities thus granted to nationals of the contracting countries subject to the condition that the same facilities should be granted in the countries of which the persons concerned are nationals.

This necessity is the logical consequence of the provision inserted in *(b)* of paragraph 1, laying down that the contracting States may choose between requiring identical or equivalent titles.

The Sub-Committee was called upon to deal with this question in connection with the examination of *(b)* of paragraph 2. It thought that the amendment which it proposes to introduce into paragraph 1 would be likely to allay the anxieties of a certain number of delegations, which have expressed a desire for the extension of the category of professions or appointments which the contracting States will be free to reserve for their own nationals. Such is, for example, the case as regards the medical professions.

5. The principal change which the Sub-Committee proposes that you should introduce into paragraph 2 consists in substituting for the formula that States retain the right to prohibit foreigners from engaging in certain occupations a formula which, while being more correct from the legal point of view, avoids the unfavourable impression which would be created by including a right of prohibition in a convention intended to ensure equitable treatment.

6. The first modification made in *(a)* of paragraph 2 is merely a textual one which, in the Sub-Committee's opinion, constitutes an improvement.

7. A second modification has been introduced into *(a)* of paragraph 2 which, in the Sub-Committee's opinion, constitutes a necessary addition. It thought that, while all public functions do not strictly involve a devolution of the authority of the State or a mission entrusted by the State, it was nevertheless sufficient for an office to be conferred by the State for it to come under the provisions of *(a)*.

It also thought it necessary to provide for the case of offices conferred, not by the State, but by organisations having such close relations with the State that a distinction would not be justified.

The Sub-Committee thinks it is the more justified in making this proposal, inasmuch as certain amendments show that a number of delegations were specially interested in this point.

8. The amendment introduced into *(b)* is a purely formal one, like the first amendment to *(a)*.

9. Thanks to the modifications indicated above, the Sub-Committee considers that all the amendments submitted by the various delegations with regard to the exercise of professions have become unnecessary, since, in the Sub-Committee's opinion, the phrase in *(b)* concerning special responsibilities in the public interest does not bear a wide interpretation.

10. It was suggested, in the course of the Sub-Committee's discussions, that *(c)*, regarding monopolies, should be supplemented by a mention of Government undertakings not constituting a monopoly. This mention has been put in a new sub-paragraph *(d)*.

11. The Sub-Committee considered that the reasons justifying the reservation concerning fishing in territorial waters also held good in regard to the extension of this reservation to the exploitation of the riches of these same territorial waters, and that inland waters should be included on the same terms as territorial waters.

12. The Sub-Committee considered that the reasons operating in favour of the reservation concerning service on vessels flying the national flag also applied to the extension of this reservation to aircraft.

13. It was suggested in the course of the Sub-Committee's discussions to omit from the list the exceptions concerning the exploitation of minerals and hydraulic power. These industries have therefore been placed at the end of the list and between brackets.

The reason adduced in favour of this omission was that these industries, in so far as they did not constitute monopolies, might be reserved to nationals to the extent that such a reservation was authorised by Article 10, N^os^ 3 and 4.

14. The Sub-Committee considers that, as a result of the modifications which it proposes regarding industries or occupations, the following amendments will no longer apply :

Service on national aircraft (Turkey, document A.8, and Sweden, document C.I.T.E.7).
Note issues (Portugal, document C.I.T.E.22).
Directors, managers or other principal officers of companies engaged in any of the forms of business referred to in sub-paragraphs *(c), (d), (e), (g)* of paragraph 2 of Article 7 (Great Britain, document C.I.T.E.11).
Internal services in roadsteads and on coasts (Turkey, document A.8).
Operation of wireless service (Turkey, document A.8).
Fishing in waters other than the territorial waters forming part of the territory (Netherlands, document A.26).
Exploitation of the riches of the sea (Norway, document A.37).
Natural gases (India, document A.45).
Maritime and river coasting trade (Yugoslavia, document C.I.T.E.20).

15. On the other hand, the Sub-Committee is of opinion that the occupations mentioned in the amendments enumerated hereunder should not be included in the category of reserved occupations, on the ground that they would make the reservation in question too unwieldy or would restrict the freedom of trade without sufficient justification :

Exercise of any profession or industry involving the vital interests of the nation (Yugoslavia, document C.I.T.E.20).
Exercise of air navigation (Japan, document C.I.T.E.14).
Banks and financial transactions (Czechoslovakia, document C.I.T.E.9 ; Venezuela, document C.I.T.E.16 ; Portugal, document C.I.T.E.22 ; Finland, document A.33).
Service in industries enjoying exemption from, or reduction of, taxation or any other privileges (Turkey, document A.8).
Government concessions for the operation of public utility services (Turkey, document A.8, and France, document A.10).

16. The purpose of certain of the amendments proposed is to reserve navigation entirely, or make it subject to restrictions which go beyond the mere service in national vessels provided for in the text of the draft.

The Committee will have to take a decision on this question.

The amendments referred to are the following :

Shipowners and persons engaged in maritime shipping or acting as managing shipowners, if their share exceeds one-third (Sweden, document C.I.T.E.7 ; Portugal, document C.I.T.E.22).
Navigation (Venezuela, document C.I.T.E.16).
Ownership of vessels (Venezuela, document C.I.T.E.16).
Towage (Turkey, document A.8 ; France, document A.10).
Salvage and maritime assistance (Turkey, document A.8).
Capital and administration of capital in connection with shipping (Portugal, document C.I.T.E.22).

17. Several amendments deal with insurance. The Committee will also be called upon to take a decision on this question.

The amendments referred to are the following :

Insurance (Latvia, document C.I.T.E.21 ; Turkey, document A.8 ; Belgium, document A.11 ; Portugal, document C.I.T.E.22 ; Venezuela, document C.I.T.E.16 ; Finland, document A.33).
Industrial insurance (Great Britain, document C.I.T.E.11 ; Portugal, document C.I.T.E.22).

18. An amendment submitted by the Turkish delegation (document A.8) relates to schools and hospitals. In this case also, the Committee will have to take a decision after the purport of this amendment has been explained.

19. An amendment was submitted by the Swedish delegation (document C.I.T.E.7) concerning hunting. The Sub-Committee understands that the Swedish Government is anxious to reserve to nationals hunting on Government land, which, from time immemorial, has afforded the population its principal means of livelihood. If this is the case, the situation is a very special one which the Conference may have to take into account in whatever form it may consider appropriate.

20. The Norwegian delegation submitted an observation (document A.37) pointing out that, according to Norwegian law, foreigners require a special concession in order to acquire any immovable property.

The Sub-Committee considers that this situation should be considered when Article 10 is under discussion.

TEXT PROPOSED BY THE SUB-COMMITTEE.

Article 7.

1. In the territories of each of the High Contracting Parties, and subject to the observance of their laws and regulations, nationals of the other High Contracting Parties allowed to establish themselves therein, *in conformity with Article 6 of the present Convention*, shall be placed on terms of complete equality, *de jure* and *de facto*, with nationals as regards :

(a) The conduct of all commercial, industrial and financial operations, and, in general, any transactions of an economic character, without any distinction being drawn in this connection between undertakings operating independently and those which exist as branches, subsidiary undertakings or agencies of undertakings situated in the territory of the above-mentioned High Contracting Parties ;

(b) The exercise of occupations which the laws of the said High Contracting Parties allow their nationals to carry on freely, or, in the case of professions for which special titles or guarantees are required, the exercise of these professions, subject to the submission of titles or guarantees identical with those required of nationals, or recognised as being equivalent, *if necessary, subject to reciprocity*, by the High Contracting Party concerned.

2. *The provisions of the previous paragraph shall not apply to the exercise in the territory of one of the High Contracting Parties of the professions, occupations, industries and trades hereinafter specified :*

(a) Public functions, charges or offices *(of a judicial, administrative, military or other nature) which involve* a devolution of the authority of the State or a mission entrusted by the State, *or the holders of which are chosen either by the State or by administrations under the authority of the State and endowed with juridical personality ;*

(b) Professions such as those of barrister, solicitor, notary, stockbroker and other similar professions or offices *which*, in the public interest, *entail* special responsibilities ;

(c) Industries forming the subject of a State monopoly or monopolies exercised under State control ;

(d) State undertakings ;

(e) Hawking and peddling ;

(f) Fishing in territorial and inland waters, and the exploitation of the riches of such waters, the coasting trade, pilotage and the internal services in ports ;

(g) Service in vessels *or aircraft* flying the national flag ;

(h) The exploitation of minerals and hydraulic power.

ANNEX A, 25.

PROPOSAL BY THE PORTUGUESE DELEGATION.

The Portuguese delegation has already had the honour, during the general discussion of the draft Convention on the Treatment of Foreigners, to define its attitude regarding this draft, *i.e.*, it agrees in principle and *ad referendum* with its main provisions, subject to certain reservations and elucidations of the text. It desires again to state its views, in particular with regard to :

Articles 3 and 4 and Paragraph 2 of Article 12.

It agrees with the elimination or further reference of these provisions, proposed by the British and French Governments.

Articles 7 (Paragraph 2) and 16.

The delegation desires to know whether these enumerations are intended to be exhaustive or merely illustrative. Whatever the recognised interpretation of Articles 7 and 16 may be, the delegation requests explanations, or desires to make reservations, as regards the following branches of economic activity :

(a) Protection of merchant vessels flying the national flag, to which Portuguese legislation, like that of Denmark, intends to give full effect, not only in regard to the capital assets themselves, but also to their administration.

(b) *Banking business*, the various aspects of which should be specified, providing special guarantees for the right *to issue* notes, either direct by the State or by means of a concession to one or several legal entities.

(c) *Insurance business* in all its branches, regarding which the Portuguese Government is about to introduce fresh legislation establishing fiscal equality — but no more — between national entities and their foreign competitors.

As regards the substance and intentions of Article 7, the Portuguese delegation supports the following British amendment.

(g) " *Industrial insurance business, i.e.*, the business of effecting insurance upon human life, premiums in respect of which are received by means of collectors and are payable at intervals of less than two months."

Article 10.

The Portuguese delegation would like to know whether it would not be well to add, with regard to the export of capital, a special clause relating to *securities of official bodies*.

Articles 13 and 14.

The Portuguese delegation would suggest — with all due respect to its authors — that the draft of these provisions does not succeed in preventing *double taxation*, so long as the use of capital in another country can imply withdrawal of capital from the seat of management. Therefore, double taxation will necessarily occur, and the same may apply to revenue unless the balance shown at the seat is specific.

If sub-paragraphs *(a)* and *(b)* of Article 13 are accepted, certain explanations should be given to show whether the word *capital* is intended to refer to *nominal* capital, or to capital actually *paid in*, also the text should clearly state whether it refers to *gross* or *net* revenue.

Article 16.

(a) *Vide* observations to Article 7.

(b) Portuguese law requires registration of all foreign commercial corporations, as it does of its own national ones, in order to admit them to the exercise of their business and all legal rights and guarantees.

Articles 17 and 18.

The delegation proposes a new clause or supplementary provision to the following effect :

" *Regional combinations*, determined by special economic conditions, shall not be held to be incompatible with any of the provisions of the present Convention."

Article 20.

The Portuguese delegation would like to know whether a distinction should not be made between *personal taxation* and tax on *real property*.

Article 28.

The Portuguese delegation fully supports the preceding clause as regards *colonies*, and, in virtue of the faculty conferred by that clause, desires to state that the effects of the proposed convention shall never be extended to the colonies without the previous and explicit consent of the mother-country.

ANNEX A, 26.

DRAFT REPORT OF COMMITTEE A, SUBMITTED TO THE CONFERENCE BY M. POLITIS (GREECE), *(Continuation)*.

ARTICLE 5.

28. The question as to the persons to which the provisions of this article should apply gave rise to a prolonged discussion, during which various systems were advocated.

According to the draft Convention, the provisions of this article apply to the nationals of one of the High Contracting Parties in whatever country their industrial or commercial operations might be conducted. The British delegation — supported by the representatives of the International Chamber of Commerce — proposed that the advantages provided for should be reserved to the nationals of one of the High Contracting Parties who engage in industry or business in the territories " of any Party ".

On the other hand, the proposal was made that the nationality of the persons covered by this article should not be taken into account, and that its provisions should be applied to manufacturers or traders established in the territory of one of the High Contracting Parties, even if they were subjects of a non-contracting State. The principle embodied in Article 10 of the Convention on Customs Formalities was quoted in support of this system, which, moreover, would be in the interest of the national economy of the country of domicile.

But it was objected that this would be going too far, because the point at issue here was mainly the treatment of the respective nationals.

29. The Committee concurred in this view, and agreed to modify the text in the sense proposed by the British delegation, and to say, according to the wording suggested by the International Chamber of Commerce, that these provisions should apply to the " nationals of one of the High Contracting Parties who engage in industry or business in the territory of any of the other High Contracting Parties ".

30. In adopting this wording, however, the Committee did not intend to give the article a restrictive sense. Although the undertaking assumed under Article 5 towards other contracting countries regarding manufacturers or traders established in their territory only applies formally to the latter if they are nationals of a contracting country, this does not imply a recommendation not to permit a trader or manufacturer, established in the country of one of the contracting parties, but a national of a third party, to engage in business in any other contracting country.

31. According to the draft, establishment in the territory of one of the High Contracting Parties was to be proved by the presentation of an identity card delivered by the authorities of the country of domicile.

The British delegation pointed out that the formality of identity cards was not required in all countries, and it should not, therefore, be made an essential condition. It proposed an amendment to this effect, which corresponds exactly to the suggestion made on this point by the International Chamber of Commerce.

32. The Committee agreed that, although the possession of identity cards was not invariably necessary, the person concerned should, in any case, be required to prove that he was in fact domiciled in one of the contracting countries.

It considered that the idea of such proof was clearly implied in the term " engaged " used in the wording referred to above (No. 29), and merely added that the exercise of the right referred to in Article 5 was granted " subject, if necessary, to the presentation of an identity card ".

33. In these circumstances, the Yugoslav delegation withdrew the amendment it had submitted to the effect that proof must be brought not only of legal capacity to engage, but also of the fact that the person in question was actually engaged in an industry or trade. The wording adopted covered the case it had in mind.

34. During the discussion of the nationality of the persons covered by this provision, it was clearly recognised that this question concerned only manufacturers or traders established in a contracting country and not any commercial travellers they might employ ; the latter's nationality was, in any case, irrelevant.

35. Regarding the last part of paragraph 1 of this article, in which it is stated that the persons coming under this provision shall not require a special authorisation for any of the transactions referred to, the Swedish delegation suggested that it might be advisable to reserve to the High Contracting Parties the right to require an authorisation for foreign travellers if such authorisation were required from national commercial travellers.

The Committee was of opinion that, according to the spirit of the Convention, a special authorisation should never be required in the case of commercial travellers.

36. It was agreed, however, that if, according to the laws of the country, the exercise of a trade such as the trade in articles of precious metals or in arms was subject to the obtaining of a licence, any foreign firm which sent its traveller to that country would in any case be required to obtain the necessary licence for itself, even if it did not need an authorisation for the traveller.

37. Several delegations (Germany and France) submitted amendments to supplement the text at the end of the first paragraph regarding samples.

The Committee considered that this subject was outside the scope of the Convention. It is rather within that of the Convention on Customs Formalities, whose provisions in this connection might perhaps be completed when the Economic Committee prepares a new Convention to complete that of 1923.

38. The Polish delegation desired to add, in the sixth line of the first paragraph, the word " public " before the word " sale ", so as to make it quite clear that the operations in question were not those conducted on private premises.

The Committee was of opinion that this addition was quite unnecessary, since the expression " places where goods are on sale " obviously implied places open to the public.

39. The Polish delegation would also have liked to replace, in the same line, the word " producers " by the word " manufacturers ", not only because this is the word used later on in the text in regard to orders, but still more so that it should not be thought that foreign traders or their travellers were authorised to make purchases from others than traders or manufacturers.

It was pointed out that this substitution would restrict the meaning which the authors wished to give the text. It would amount to the recognition of a monopoly in favour of merchants and to the detriment of producers, which would be contrary to the freedom of trade and competition. The intention was that the text should apply both to merchants and producers as regards both purchases and the taking of orders. If it seemed necessary to establish a concordance of terms between the two parts of the sentence; it would be preferable to employ the term " producers " in each case.

Taking this view, the Committee decided to maintain the word " producers " in the sixth line and to substitute this expression for " manufacturers " in the next line.

40. According to the Netherlands delegation, some doubt was possible as to the meaning of the last sentence of paragraph 1 as it stood in the draft, since, whereas reference is made in the first sentence to the nationals of the High Contracting Parties and their commercial travellers, the second sentence does not specify whom it means when it says " they shall not require, etc. ". To clear up this point, the Netherlands delegation proposed that the words " they " should be replaced by " the said nationals and their commercial travellers ".

Although it was not absolutely essential, this amendment was adopted.

41. The exemption from tax or duty provided for at the end of the first paragraph gave rise to a number of objections. Several delegations maintained that it had better be omitted and that national treatment should be stipulated instead. It was decided, after discussion, to adopt this course, adding after the words " *any taxes or duties* " the words " not payable by national business firms or their representatives ".

42. As a result of the adjustments indicated above, Article 5, paragraph 1, would read as follows :

> " Without prejudice to the provisions of Article 1, nationals of one of the High Contracting Parties *who engage in industry or business in the territory of any of the High Contracting Parties may — subject, if necessary, to the presentation of an identity card* — in the territory of the other High Contracting Parties either in person or by travellers in their employ, purchase from merchants or in places where goods are on sale as well as from producers, the goods in which they deal, or take orders from merchants and *producers* engaged in the trade or making use in their establishment of goods of the same kind as those offered. These nationals and their commercial travellers shall not require special authorisation for any of these transactions, nor shall they be obliged to pay in this connection any taxes or duties *not payable by national business firms or their representatives* provided they only take with them samples and not goods intended for sale."

Protocol *ad* Article 5.

43. The Hungarian delegation proposed that paragraph 3 of Article 5 should be transferred to the Protocol, which should also contain a reference to Article 1.

It was pointed out that the question of hawking referred to in this paragraph of Article 5 was also covered, as was Article 1, by Article 7, and that, if the proposed transfer were approved, it would be necessary to insert a reference to all three texts.

The Committee was of opinion that it would be for Committee D and the Drafting Committee to decide finally where paragraph 3 of Article 5 should be inserted and also the form to be given to that paragraph, taking into account the foregoing observation.

44. Various amendments to the Protocol *ad* Article 5, paragraph 1, were submitted. The Committee examined the amendment presented by the Danish, Finnish, Norwegian and Swedish delegations and decided to propose the insertion in the Protocol of the following provisions :

" The levying, in respect of the operations referred to in Article 5, of a special fee according to the residence of the foreign trader or commercial traveller shall be permitted to those of the High Contracting Parties who at present adopt this system, on the understanding that the other High Contracting Parties shall be exempt, in relation to these High Contracting Parties, as regards the special fee levied on commercial travellers, from the obligations arising out of the present Convention.

" It is understood that no tax or fee of this nature shall be levied in the case of traders who have no intention of soliciting orders or making purchases."

45. The Committee then adopted, in a slightly modified form, a suggestion of the International Chamber of Commerce. Its adoption involves the addition to the Protocol of a third paragraph framed as follows :

" Considering that it would be unfair to require from foreign commercial travellers who stay only a short time in a foreign country the payment of taxes or licence fees as high as those levied upon national commercial travellers who, in virtue of their licence or the payment of the tax, are entitled to exercise their activities for a whole year, the High Contracting Parties agree that foreign commercial travellers shall be required to pay only an amount corresponding to the number of months which they actually spend in the territory of the country in question."

46. In the Committee's view, this provision does not apply in any way to fiscal charges ; it refers only to the special fees levied on commercial travellers as such. It was understood further that the said provision should in no way weaken the scope of the paragraphs of the Protocol adopted on the proposal of the Danish, Finnish, Norwegian and Swedish delegations.

47. Following on another suggestion of the International Chamber of Commerce, the Committee decided to add to the Protocol a fourth paragraph, framed as follows :

" It shall be understood that such a tax or fee may not be levied on travellers who, although they travel for commercial purposes, do not intend to solicit orders or to make purchases."

48. The Indian delegation pointed out that, in India, the local Governments levied certain taxes on commercial travellers, but, as this was a general question, the Committee decided not to discuss the point, but to hold it over for examination later.

49. The text of the Protocol *ad* Article 5, paragraph 1, would thus read as follows :

" The levying, in respect of the operations referred to in Article 5, of a special fee, fixed according to the residence of the foreign trader or commercial traveller, shall be permitted to those of the High Contracting Parties who at present adopt this system on the understanding that the other High Contracting Parties shall be exempt in relation to these High Contracting Parties, as regards the special fee levied on commercial travellers, from the obligations arising out of the present Convention.

" It is understood that no tax or fee of this nature shall be levied in the case of traders who have no intention of soliciting orders or making purchases.

" Considering that it would be unfair to require from foreign commercial travellers who stay only a short time in a foreign country the payment of taxes or licence-fees as high as those levied upon national commercial travellers who, in virtue of their licence or the payment of the tax, are entitled to exercise their activities for a whole year, the High Contracting Parties agree that foreign commercial travellers shall be required to pay only an amount corresponding to the number of months which they actually spend in the territory of the country in question.

" It shall be understood that such a tax or fee may not be levied on travellers who, although they may travel for commercial purposes, do not intend to solicit orders or to make purchases."

ANNEX A, 27.

DRAFT REPORT OF COMMITTEE A, SUBMITTED TO THE CONFERENCE BY M. POLITIS (GREECE), RAPPORTEUR *(continuation)*.

Article 6.

44. Several amendments were submitted (Estonia, France, British Empire, Hungary, Sweden, Turkey, Venezuela, Yugoslavia). They were subjected to a preliminary examination, during which the question of principle immediately arose as to the exact meaning that should be attributed to the term " admitted into the territory ".

The Economic Committee's intention — reflected in Article 29 of the draft — was that each State should retain the rights it possessed at present in the matter of the admission of foreigners into its territory. It might therefore grant admission or refuse it, or grant it only subject to restrictions. Once admitted, however, foreigners must enjoy the rights mentioned in Article 6 on a footing of equality with nationals.

It was pointed out, however, that the text did not take into account the various situations which might arise under the laws of certain countries where the admission of foreigners might be only temporary, or entail the right of sojourn without that of establishment.

Consequently, it was considered necessary to give more elasticity to the text in order to adapt it to all possible situations.

45. On the other hand, the reservation made at the end of the article with regard to police regulations concerning foreigners should, in the opinion of several delegations, be supplemented by the reservation in regard to the measures adopted to protect and regulate the home labour market.

46. Other delegations thought that the scope of the provision regarding the right to leave the territory without let or hindrance, and the conditions for the exercise of the right of expulsion reserved to the States, required to be more accurately defined in the Protocol *ad* Article 6.

47. Taking these various points of view into account, the German delegation submitted a new draft of Article 6 and its Protocol which has been referred to a Sub-Committee for consideration.

48. The above-mentioned questions were the subject of a very full discussion in the Sub-Committee, during which it was pointed out that, while Governments could regulate admission as they saw fit, they should not be entitled to impose on foreigners, once they were admitted to their territory, new conditions which were incompatible with the other provisions of the Convention.

49. After discussing various drafts in detail, the Sub-Committee decided upon a wording intended to form a single text to replace Article 6, its Protocol and Article 29. This draft reads as follows :

> " 1. Each of the High Contracting Parties remains free to regulate the admission of foreigners to its territory and make this admission subject to conditions limiting its duration or the freedom of foreigners to travel, sojourn, establish themselves, elect their domicile and move from place to place. These limitations may be imposed either by means of the documents required of foreigners for their admission to the national territory (passport, identity card, residence permit, etc.), or through the application of the laws and regulations in force in the country as regards the conditions for exercising the said right.
>
> " 2. Nationals of any High Contracting Party, admitted into the territory of another High Contracting Party, shall enjoy therein, provided they comply with the laws and regulations of that Party, the same freedom, as the case may be, to travel, sojourn, establish themselves, elect their domicile and move from place to place, as nationals of the country in question, without being subject to any conditions or regulations other than those to which nationals are subject with regard to each of the said rights, but without prejudice to the police regulations concerning foreigners and the provisions concerning the home labour market.
>
> " 3. They may not after admission be subjected to conditions, restrictions or prohibitions incompatible with the other provisions of the present Convention.
>
> " 4. They shall have the right to leave the territory without let or hindrance, unless individually prevented for reasons of public order or contractual obligations and irrespective of the right of expulsion, the exercise of which each of the High Contracting Parties reserves in the manner sanctioned by ordinary usage according to its legislation and the provisions of international law."

50. The Sub-Committee, moreover, considered that, in order to show that it was desirable that Governments should not make an improper use of their rights in the matter of admission and expulsion of foreigners, it would be advisable to insert the following provision in the Final Act :

> " Notwithstanding the right reserved to States under Article 6 regarding admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings assumed under the terms of the present Convention."

51. On the Sub-Committee's text being referred to the Committee, the latter made a few slight alterations but maintained the general trend unchanged.

52. Some delegations asked that the words " in particular ", which occurred in the original draft referred to the Sub-Committee, should be reinserted in the fourth line, before the enumeration of the rights accorded to foreigners who had been granted admission.

They withdrew the proposal, however, after it had been stated that these words had been omitted as superfluous, since there did not appear to be any restriction which might be applied to the duration or right of admission other than those already indicated.

53. The term " as the case may be ", in the fourth line of paragraph 2, appeared to certain delegations to be some what obscure, ambiguous and even dangerous. Some proposed that it should be explained in a Protocol, and others that it should be omitted.

These delegations did not insist, however, because it was explained that these words were essential in order to reflect in paragraph 2 the different degrees of liberty which, according to paragraph 1, admission may confer and in order to make it perfectly clear that a foreigner, once admitted, may not necessarily enjoy in all cases all the rights enumerated, but only those compatible with the terms and conditions of his admission. The words " with regard to each of the said rights ", inserted at the end of paragraph 2, also correspond to this qualified position and were adopted in order to show that national treatment was granted only in respect of those reservations which were actually applicable to the person concerned.

54. As regards paragraph 4, it was recognised that it would be dangerous to maintain a restriction upon the right " to leave the country without let or hindrance ", on account of " contractual obligations ". These words were therefore deleted.

55. Moreover, it appeared desirable, in order to prevent possible abuses, to define more accurately the conditions in which the right to leave the country might be withheld for reasons of public order, by stating in the first place, that the impediment must be an individual one, applicable, not to foreigners in general, but to the individual foreigner concerned in a given case, and, further, that this impediment must be recognised by a decision of a competent authority given in conformity with the laws of the country and the provisions of international law.

56. At the end of the same paragraph it was decided to add, after " expulsion ", the words " or of refusing admission ", in order to define more clearly a point which the framers of the text thought might be taken for granted, namely, that a foreigner, once expelled, could not return to the territory without being admitted afresh.

57. It was proposed that only the second paragraph of the text framed by the Sub-Committee should be included under Article 6, and that the three remaining paragraphs should be put together under Article 29.

It was objected that paragraph 2 would not be properly understood if separated from the first clause, which defines admission, and that paragraph 3 could not, in any case, be put under Article 29, as it has nothing to do with admission.

The Committee decided to hold over the question as to where the different paragraphs of the text should be inserted.

58. The Japanese delegation stated that, for reasons of principle, it was unable to accept the draft, which appeared to sanction the right of States to refuse foreigners access to their territory, whereas it was agreed that this question should not be settled by the Conference.

The possibility was suggested of explaining that, in adopting paragraph 1 of the draft, the Conference had confined itself to noting the present *de facto* situation, without intending to sanction it finally *de jure*. The Japanese delegation preferred, however, to maintain its position.

59. Further, the Chinese delegation pointed out that, as long as treaties on an unequal basis were in force in China, this Power would be unable to apply the provisions of paragraph 2 to nationals of the countries benefiting under such treaties.

60. Lastly, the French delegation maintained its previous reservation concerning the protection of the home labour market.

61. Taking into account these various reservations, the Committee adopted the following draft and decided to leave open the question as to where it should be finally inserted in the Convention :

" 1. Each of the High Contracting Parties remains free to regulate the admission of foreigners to its territory and make this admission subject to conditions limiting its duration, or the freedom of foreigners to travel, sojourn, establish themselves, elect their domicile and move from place to place. These limitations may be imposed either by means of the documents required of foreigners for their admission to the national territory (passport, identity card, residence permit, etc.) or through the application of the laws and regulations in force in the country as regards the conditions for exercising the said right.

" 2. Nationals of any High Contracting Party admitted into the territory of another High Contracting Party shall enjoy therein, provided they comply with the laws and regulations of that Party, the same freedom, *as the case may be*, to travel, sojourn, establish themselves, elect their domicile and move from place to place, as nationals of the country in question, without being subject to any conditions or regulations other than those to which nationals are subject *with regard to each of the said rights*, but without prejudice to the police regulations concerning foreigners *and the provisions concerning the home labour market.*

"3. They may not, after admission, be subjected to conditions, restrictions or prohibitions incompatible with the other provisions of the present Convention.

"4. They shall have the right to leave the territory without let or hindrance, unless individually prevented by a competent authority, in conformity with the laws of the country and with international law, and irrespective of the right of expulsion or of refusing admission, the exercise of which each of the High Contracting Parties reserves in the manner sanctioned by ordinary usage according to its legislation and the provisions of international law."

ANNEX A, 28.

REPORT OF THE SUB-COMMITTEE ON ARTICLE 8, PRESENTED BY M. POLITIS (GREECE).

Article 8.

1. The Committee had a large number of amendments to consider. It readily agreed to the Swedish delegation's proposal to insert in the fifth line, after the words " fit and proper ", the words " without being subject to restrictions other or stricter than those authorised by the present Convention ", an amendment which, indeed, had already been suggested by the Economic Committee (see "Brown Book", page 40).

2. But certain delegations (Czechoslovakia, Estonia and Latvia) would have preferred the contents of Article 8 to be omitted, as they considered that this article would hamper the protection of the home labour market, which was particularly essential to new States from the point of view of their economic development.

This view was strenuously opposed by other delegations, which regarded Article 8 as a clause of vital importance without which the Convention would lose a great deal of its value.

This opinion was shared by the majority of the delegations. The Committee therefore decided to maintain Article 8 in principle.

3. At the Egyptian delegation's request, it was stated that this clause could not be interpreted as forbidding contracting countries to require limited companies formed under the local law to reserve part of their capital for subscription in the country and a certain number of posts on the board of management to nationals.

4. The same delegation, supported by other delegations, proposed the deletion at the end of the article of the reference to the freedom " to employ in an administrative or technical capacity " persons of any given nationality. In its opinion such freedom, if granted without limit, would gravely hamper the protection of the home labour market, especially if it was applied in favour of persons not yet admitted to the territory.

5. Other delegations declared that they could not accept Article 8 as a whole unless it was stated in the Protocol that " the measures which certain States have taken to protect their home labour market and which concern foreign workers, employees and other wage-earners, apply also to the persons employed in an administrative or technical capacity referred to in Article 6 " (Austria), or unless it was stipulated that the provision " shall be subject to any temporary derogations or restrictions in regard to certain specified undertakings which might be introduced in the public interest " (Italy), or unless it was specified that the provision did not preclude a contracting country " from requiring the nationals of other High Contracting Parties established in its territory to employ, in an administrative or technical capacity and as workers, a reasonable proportion of nationals of the said territory " (Egypt).

Similar reservations were requested by a number of other delegations (British Empire, Bulgaria, Czechoslovakia, Luxemburg, Poland, Roumania, Turkey, Yugoslavia).

6. In view of this situation, the Chairman of the Committee proposed, in order to facilitate the discussion, that Article 8 should be the ideal to be aimed at, that paragraph 2 of its Protocol should be kept, and that the first paragraph of the Protocol *ad* Article 8 should be replaced by a new wording for the purpose of giving the article the elasticity desired by certain countries.

This paragraph would provide that, in view of the essential importance — from the standpoint of the success of foreign companies — of admission for the purpose of performing certain functions in those undertakings, the contracting States would undertake not to exercise their right of refusing admission to foreigners or taking measures for their expulsion, with the intention of rendering the guarantees laid down in Article 8 inoperative ; it would be added, further, that these provisions would not preclude the application, in certain countries or in certain cases, of general regulations providing for the employment of nationals in a reasonable proportion of the subsidiary posts.

7. The system thus proposed encountered numerous objections : it was considered by some to be vague, complicated and still too wide, and was regarded by others as ambiguous and too narrow. It was held, generally speaking, that the proposal did not adequately satisfy the wishes of certain countries as regards the protection of the home labour market.

8. This long discussion brought out the wishes of the majority of the Committee as regards three points, namely : (1) to include in the Convention a text providing, as far as possible, for the protection of the home labour market ; (2) not to allow the provision laid down in Article 8 to affect the freedom of States as regards the admission of foreigners to their territory ; and (3) to limit the derogation allowed under this article as regards the protection of the home labour market to freedom in respect of the choice of the higher personnel of foreign undertakings, but not of their subordinate staff.

9. The Committee reserved the right to settle the first point in the third paragraph of the Protocol *ad* Article 7.

It appointed a Sub-Committee to frame a text which should embody the other two tendencies apparent in the Committee.

10. The Sub-Committee readily agreed that the question of the admission of foreigners as provided for in Article 6 was in no way affected by Article 8. Every State retains the right, even in the case set forth in Article 8, to refuse foreigners admission to its territory.

The Sub-Committee thought that it would be sufficient to extend to this case the application of the recommendation which it was proposed, in connection with Article 6, to embody in the Final Act, namely :

> " Notwithstanding the freedom enjoyed by the States under Article 6, in the matter of admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings entered into under the terms of the present Convention."

11. The discussion turned chiefly on the question of the extent to which derogations should be allowed, in Article 8, regarding the protection of the home labour market.

There was no difficulty as regards the personnel for the management of establishments and for the transaction of their business.

The position was different in the case of the subordinate staff (administrative or technical employees) and of partners.

12. The Sub-Committee considered the possibility in this last-named case of allowing a derogation limited to cases in which the employment of such staff was actually essential for the success or proper working of the undertaking concerned.

It was pointed out, however, that the question of determining, in any case, whether the employment of the person selected was really essential might lead, in practice, to many difficulties.

Failing a more satisfactory formula, the Sub-Committee, in deference to the anxiety of certain countries to reserve subordinate posts in principle to their nationals, decided in favour of omitting in the text all mention of these posts.

This decision, however, was only voted by a very small majority.

13. The Sub-Committee, on the other hand, was unanimous in its view that it would be expedient to state in the Final Act the desirability of authorising the employment, irrespective of nationality, of the subordinate staff necessary for the proper working of the undertaking concerned.

14. The Sub-Committee therefore proposed that the derogation regarding the protection of the home labour market should be limited to the persons responsible for the " management of their establishments " or for the " transaction of their business " and that the liberty of choosing these persons be accepted unconditionally, in other words, without enquiring, in every case, whether their employment is indispensable for the success and profitable operation of the undertaking in question, since it is obvious that the posts referred to must, according to their very definition, be of this nature.

15. By " management ", the Sub-Committee meant the post of general manager, if any, or, failing such post and according to circumstances, the managers of the various technical or commercial departments of the establishment in question.

16. It was proposed that the words " in the capacity of legal representatives " should be added after the term " transaction of their business ". The majority of the Sub-Committee, while considering that the text refers chiefly to legal representatives, nevertheless thought that it would be preferable not to mention them in order to avoid difficulties of interpretation, and also not to restrict the scope of the text.

17. In order to render it more comprehensive, the Sub-Committee modified the terms adopted by the Committee, *i.e.*, " restrictions other or stricter than those authorised by the present Convention ", and substituted therefor the following sentence : " regulations other than those provided for in the present Convention ".

18. Finally, the Sub-Committee considered it advisable, in order to make the form of the derogation agreed to regarding the protection of the home labour market more acceptable to the countries which were particularly anxious to provide this protection, to add to Article 8 a second paragraph to the effect that, in applying their laws and regulations on the protection of the home labour market, the High Contracting Parties undertook to allow the choice of nationals of other High Contracting Parties for the posts referred to in the first paragraph.

19. The Sub-Committee therefore proposes that the Protocol *ad* Article 8 be omitted and that this article be drafted as follows :

> " Nationals of one of the High Contracting Parties who are established in the territory of another High Contracting Party or who, without being established in that territory, do nevertheless conduct their business therein, shall be free to appoint at their discretion for the management of their establishments *or* for the transaction of their business such persons as they may judge fit and proper without being subject *to regulations other than those provided for in the present Convention.*
>
> *" In applying their laws and regulations on the protection of the home labour market, the High Contracting Parties undertake to allow the appointment of nationals of the other High Contracting Parties to the posts referred to in the preceding paragraph."*

ANNEX A, 29.

REPORT OF THE SUB-COMMITTEE.

ARTICLE 9.

The Sub-Committee appointed to make a supplementary examination of Article 9 of the draft Convention received very definite terms of reference. It was not called upon to revise, if necessary, the provisions contained in this article, or to modify their meaning or scope, but simply to find a new wording which would render as accurately as possible the intentions of the Economic Committee, the original author of the draft. The article was to be couched in terms sufficiently precise to permit of the omission of any enumeration of the subjects which it did not cover, particularly " security for costs " and " free judicial assistance ".

It must be admitted at the outset that this programme proved impossible to carry out in its entirety. The Sub-Committee came to the conclusion that the formula upon which it decided after laborious discussions still required an enumeration of the reserved subjects, but that this enumeration could be reduced to two items, security and judicial assistance, and could be placed in a Protocol *ad* Article 9.

The Sub-Committee's first task was to gain an absolutely clear idea of the meaning of the general provision laid down in the first paragraph of this article. It decided that this clause referred neither to the existence nor to the extent of the rights which might be described as material, such as the right of acquiring immovable property, etc. — questions dealt with in Article 10 — but that it had two objects in view :

(1) To ensure to foreigners, as regards the security of their persons and property, the same protection as that provided for nationals by the laws and institutions of the country ;

(2) To permit them, in order to exercise and claim the patrimonial and other rights to which they were entitled, to have recourse to the courts and administrative authorities in all cases in which the laws of the country allowed this to nationals.

The object of the rule to be inserted in Article 9, paragraph 1, being thus determined with more clearness and precision than in the Economic Committee's draft, the enumeration of the subjects to which it did not apply became unnecessary.

To achieve this result several formulæ were proposed, among which the following obtained the largest measure of support, without, however, commanding a majority.

" The nationals of each of the High Contracting Parties shall have access in the territory of the other High Contracting Parties to the same means of legal and judicial action in respect of the safeguarding of their persons and property, and in respect of the exercise of their rights, as nationals."

This text presents the advantage of making it quite clear that Article 9, paragraph 1, cannot be interpreted as having any connection with Article 17 regarding material rights and the extent of these rights. The word " protection " contained in the Economic Committee's text might create the impression that Article 9 also dealt with the extent of these rights and interests.

The majority of the members of the Sub-Committee were of opinion that a text the terms of which were so markedly different from the Economic Committee's draft was open to one serious objection : it would give the impression that this essential change in the form of Article 9 must reflect a change in its meaning and scope, and hence that the Economic Committee's draft had undergone a fundamental alteration.

In view of this contingency, the majority of the Sub-Committee framed a text which reproduces the original draft with a very slight modification.

It is as follows :

" Nationals of each of the High Contracting Parties in the territory of the other High Contracting Parties shall be accorded legal and judicial protection of their persons, property, rights and interests on a footing of equality with nationals."

The object of replacing the words " the same treatment as nationals " in the original draft by the words " on a footing of equality with nationals " was to make it clear that foreigners would be entitled to claim as effective protection as is accorded to nationals, but that the details of the procedure to be followed in their case, both in judicial and in administrative matters, might be somewhat different.

Apart from the above-mentioned reason, namely, the Sub-Committee's desire to emphasise beyond all possible doubt its intention of adhering to the Economic Committee's idea, a second consideration may be quoted in support of the text adopted by the Sub-Committee.

The exceptions to the general principle laid down in paragraph 1 of Article 9 are those which have a direct bearing on the capacity of foreigners to defend their rights ; the reservations must refer only to this point. This makes it possible to delete from the list of reservations the majority of those proposed in the amendments, as, for example, the plea of *lite pendente*, the probative value of commercial books, literary and artistic property, questions concerning the capacity of individuals, etc. The only exceptions to be maintained are free legal assistance and security for costs, these being mentioned in a Protocol, the terms of which will be reproduced at the end of the present report.

Paragraph 2 of Article 9 was also considered by the Sub-Committee, which proposes that it should be drafted as follows :

" Accordingly they shall have free access to the Courts as plaintiffs or defendants. They shall be entitled to appear before the competent administrative authorities and to have recourse to the latters' assistance for the safeguarding of their rights and interests in all cases in which nationals enjoy this right. Nationals of the High Contracting Parties . . ." (Continuation as in the Economic Committee's draft.)

This new draft offers the following advantages : (1) it shows more clearly that paragraph 2, the paragraph in question, is a corollary to the general principle enunciated in paragraph 1, and merely indicates the chief cases in which that principle is to be applied, thus explaining the insertion of the word " Accordingly " at the beginning of the proposed draft ; (2) it states specifically, not only that the foreigner will have access to the administrative authorities in the case of disputes and litigation, but that he may apply to them for assistance in the protection of his person and the safeguarding of his property and interests in all cases in which nationals themselves possess this right.

Paragraph 3 would be omitted entirely.

The Protocol would be drafted as follows :

" The rule laid down in paragraph 1 of Article 9 is subject to the provisions concerning security for costs and free legal assistance, which shall continue to be governed by the local laws or special conventions concerning these questions."

ANNEX A, 30.

COMMUNICATION BY THE DRAFTING SUB-COMMITTEE (COMMITTEE D) TO COMMITTEE A ON ARTICLES 10 AND 11 (INCLUDING THE PROTOCOL RELATING THERETO).

In response to the desire expressed by the Bureau of the Conference, the Drafting Sub-Committee examined the amendments submitted to Articles 10 and 11 and to the Protocol relating to those articles and decided, in order to facilitate the work of Committee A, to classify them under the following heads, which might be examined in succession and thus expedite the discussion.

Article 10.

1. Amendments with a View to modifying the Régime of Complete Equality.

Netherlands, document A.26.

Paragraph 1. — Nationals of all the High Contracting Parties shall be placed on terms *no less favourable* than citizens or subjects of any one of the Parties as regards *patrimonial rights, the right of acquiring, possessing or leasing to others movable or immovable property* and the right of disposing of the same under the same conditions as nationals, *no modification or restriction of any sort being permitted in this régime.*

2. Amendments with a View to restricting the Right of Acquisition (Rural Property).

Roumania, document A.32.

Add at the end of paragraph 1 the following words : " The provisions of this paragraph *shall not apply to immovable property in rural districts* " (unless paragraph 3 is held to be sufficient to cover the case of States whose constitution contains a provision of this kind).

Turkey, document C.I.T.E.17.

In the third paragraph of this article the words " or of rural property in general " should be added after the word " undertakings ", as requested by the Bulgarian delegation.

Austria, document A.44.

Paragraph 1 should be drafted as follows :

" 1. Nationals of all the High Contracting Parties shall be placed on terms of complete equality with the citizens or subjects of any one of the Parties as regards patrimonial rights, the right of acquiring, possessing or leasing to others movable property and *immovable property situated in towns or utilised by industrial undertakings*, and the right of disposing of the same . . ."

This wording might perhaps enable paragraph 3 to be suppressed.

3. Amendments with a View to the Extension of the Freedom of Exportation.

Portugal, document C.I.T.E.22.

The Portuguese delegation would like to know whether it would not be well to add, with regard to the export of capital, a special clause relating to *securities of official bodies.*

Protocol *ad* Article 10.

4. Amendments concerning the Freedom of Exportation.

Italy, document C.I.T.E.18.

Paragraph 1, *second sentence:* It should be made clear that the provisions beginning with the words " The said property, however, etc." *shall not prevent the levying, if necessary, of Customs duties on the exportation of certain specified goods.*

Paragraph 2 : Delete paragraph 2.

5. Amendments concerning the Extension of Reservations to the Right of Acquisition provided for in Paragraph 3.

A. *Property situated in the Frontier Zone.*

Latvia, document C.I.T.E.21.

The Latvian delegation proposes to amend the Protocol *ad* Article 10, paragraph 3, so that the prohibition for foreigneis to acquire and possess immovable property should |be extended to include the whole of the frontier zone.

Mexico, document A.15.

The Constitution of the United States of Mexico forbids foreigners to acquire ownership over land or water in a zone of 100 kilometres broad along the frontier and 50 kilometres broad along the shore.

The delegation makes a reservation with regard to the limitation placed by paragraph 3 of the Protocol *ad* Article 10 on the right of prohibiting foreigners to acquire property in the frontier zones.

B. *Other Reasons for Exclusion.*

Venezuela, document C.I.T.E.16.

Paragraph 3 : Add " or simply of general interest ".

France (submitted by M. Pépin).

Insert in paragraph 3, after the words " national defence ", " or for the protection of artistic or natural beauties ".

Panama, document C.I.T.E.15.

Paragraph 3, *line* 3 : After the word " security ", insert the word " culture ".

Poland, document A.43.

Text of paragraph 3 to be modified as follows :

" 3. The provisions of the present article do not affect the right of the High Contracting Parties to prohibit, or subject to the obtaining of previous authorisation, the acquisition, possession or renting of certain immovable property. "

6. Amendments concerning the Extension of the Reservations to the Right of Acquisition provided for in Paragraph 4.

Great Britain, document C.I.T.E.11.

Paragraph 4, *line* 3 : After " country ", insert " including systems of communications ".

Turkey, document C.I.T.E.17.

The fourth paragraph will be acceptable with the addition of the words " including systems of communications", proposed by the Economic Committee.

Japan, document A.35.

In the fourth line of paragraph 4 of Article 10, insert, after the words " to a currency crisis ", the words " or to menace the vital interests of the State ".

Latvia, document C.I.T.E.21.

Latvia proposes to extend the reservation of paragraph 4 of Article 10, not only to a currency crisis, but also to other exceptional factors having as a consequence a serious fall in the price of landed property.

Sweden, document C.I.T.E. 7.

It would be advisable to give a clearer wording to the reservation made under paragraph 4 and, *in any case, to omit the restriction* to this reservation *(i.e.*, the words " provided, however, that no measure, etc.").

Since the measure provided for is directed against foreign interests, it would seem neither necessary nor useful to preserve the appearance of safeguarding the principle of equality.

7. Fresh Restrictions to the Right of Acquisition.

A. *Shipping.*

Great Britain, document C.I.T.E. 11.

Articles 10 *and* 16 : Insert in the Protocol the following new clause :

" *Ad* Article 10, paragraph 1, and Article 16, paragraph 7 : ' Notwithstanding the provisions of Articles 10 and 16, *it is understood that the High Contracting Parties shall have the right to impose such restrictions as they think fit in regard to the acquisition of ships and shares in ships* '."

Italy, document C.I.T.E. 18.

Insert, either in the Article or in the Protocol, the following provision :

" It shall be understood that the High Contracting Parties shall be entitled to make the acquisition of ships or aircraft or participation in the ownership of such ships or aircraft subject to any conditions they may consider necessary."

Egypt, document A.4.

In view of the provisions of the Egyptian Maritime Code the Egyptian delegation associates itself with the observations already submitted with regard to the ownership of vessels. It would be prepared to accept the wording of the proposed clause appearing as No. 4 under No. X of the Protocol on page 44 of the Preparatory Documents.

Sweden, document C.I.T.E. 7.

Agrees with the reservation formulated by the Economic Committee regarding *ships flying the national flag* and proposes that *this reservation should be so worded as to include national* aircraft also.

Estonia, document C.I.T.E. 12.

The Estonian authorities have noted with satisfaction that the Economic Committee, in its note on the question raised with regard to paragraph 3 of the clause in the Protocol *ad* Article 10, expressed the opinion that this clause in the draft is not in any way incompatible with the Estonian laws in force.

As regards the British Government's proposal to insert in the Protocol *ad* Article 10, a fourth paragraph on the *restrictions* which the High Contracting Parties *may place upon the acquisition of vessels or of shares in vessels*, Estonia recognises the utility of such a stipulation and fully supports the addition of the proposed paragraph.

B. *Aircraft.*

Sweden, document C.I.T.E. 7.

Agrees with the reservation formulated by the Economic Committee regarding *ships flying the national flag* and proposes that *this reservation should be so worded as to include national aircraft also.*

Italy, document C.I.T.E. 18.

Insert either in the article or in the Protocol the following provision :

" It shall be understood that the Contracting Parties shall be entitled to make the acquisition of ships or aircraft or participation in the ownership of such ships or aircraft subject to any conditions they may consider necessary."

C. *Mines.*

Sweden, document C.I.T.E. 7.

Swedish law forbids foreigners to acquire immovable property and mines (which are considered as immovable property), *and to a certain extent, shares in companies owning such property*, without a special authorisation.

D. *Public Lands.*

Australia, document A.28.

Paragraph 1 : Insert at the beginning of the paragraph the following words : " except as hereinafter provided ".

Add a new paragraph :

" The High Contracting Parties also reserve the right to prohibit foreign nationals from acquiring public lands from the State, either by indirect or direct purchase or lease."

E. *Principle of Reciprocity.*

Japan, document C.I.T.E. 14.

A new paragraph should be inserted in the Protocol, Section X, *ad* Article 10, to the effect that the nationals of the contracting parties shall enjoy the right in the territories of the other party to *acquire and possess immovable property on condition of reciprocity when the law in the territories in question or special bilateral agreements require such reciprocity.*

8. Amendments with a View to giving Greater Precision to the Text.

Japan, document C.I.T.E. 14.

The words " patrimonial rights " in paragraph 2 should either be omitted or the words " that is to say " be inserted after the words " patrimonial rights ".

The words " *the whole frontier zone* " in paragraph 3 *ad* Article 10, Section X of the Protocol, should be replaced by the words " *all the frontier zones of the whole country* ".

Turkey, document C.I.T.E. 17.

The words " in accordance with the laws of the country " not being sufficiently definite and being, therefore, liable to lead to misunderstanding, it would be preferable to say " in accordance with the laws of the country in which the said property is situated ".

9. Other Modifications.

Turkey, document C.I.T.E. 17.

It would be desirable to add the words " in so far as the laws of the country permit " after the words " immovable property " contained in paragraph 1. The Council of the League of Nations is of the same opinion, as will be seen from its recommendation.

Article 11.

1. Amendments regarding Paragraph 1 of Article 11.

A. *Omission of this Paragraph.*

Japan, document C.I.T.E. 14.

Omit paragraph 1 of Article 11.

B. *Modifications.*

Egypt, document A.4.

Modify paragraph 1 as follows :

". . . may not be compelled to assume any kind of judicial or administrative charge or duty. "

Panama, document C.I.T.E. 15.

First line: For " shall be exempt ", substitute " shall not be compelled ".

C. *Reservations and Restrictions.*

Sweden, document C.I.T.E. 7, page 6.

Under Swedish law, foreigners, as well as Swedish nationals, are obliged to assume guardianship.

A reservation should be made in respect of a charge of this kind.

Great Britain, document C.I.T.E. 11, page 4.

Second line: For the words " every kind of judicial or administrative charge or duty ", substitute " judicial or administrative functions other than those imposed by the laws relating to juries ".

2. Amendments regarding Paragraph 2 of Article 11.

A. *Limitation to Military Exemptions.*

Italy, document C.I.T.E. 18.

Insert after the words " or in the national guard or militia ", the following sentence :

". . . in so far as such service is not required of them by the State in the territory in which they are residing, if, being natives of that State, they are, for that reason, still subject to military obligations towards that State. "

B. *Restriction of Exemptions from Personal Service.*

Cuba and Colombia, document A.7.

Add another sub-paragraph to paragraph 2 :

" Nevertheless, they may be obliged, under the same conditions as nationals, to take part in the services organised with a view to combating fires, natural catastrophes and all perils not due to war."

Dominican Republic, document A.14.

The Dominican Republic, having signed in 1928 the Havana Convention on Foreigners, it is necessary to take into account the provisions of Article 3 of the said Convention, which says :

" Foreigners who are domiciled — unless they prefer to leave the country — may be compelled, under the same conditions as nationals, to perform police, fire protection, or militia duty, for the protection of the place of their domicile against natural catastrophes or dangers not resulting from war."

3. Amendments regarding Paragraph 3 of Article 11.

A. *Extension of Paragraph* 3.

Sweden, document C.I.T.E. 7, page 6.

These provisions should also apply to movable property.

Estonia, document C.I.T.E. 12, page 6.

Proposal that the end of the first sentence of paragraph 3 should be worded as follows : ". . . as owners, occupiers or *holders* of buildings or land ".

Venezuela, document C.I.T.E. 16.

Delete the words " as owners or occupiers of buildings or land ".

Turkey, document C.I.T.E. 17, page 2.

It would be desirable to add the words " or civil " between the words " military " and " exactions " in order to cover the possibility of a civil requisition in the event of a public calamity or compulsory public service, in pursuance of the decisions of the communal councils.

It would also be preferable to delete the phrase " established in the territory of the other ", contained in paragraph 3, since, under Article 10, foreigners will be entitled to acquire property in the territory of any of the contracting parties without being established therein.

The proposed omission is also agreed to in the Economic Committee's note (page 47, Preparatory Documents).

It would also be well to delete the phrase " as owners, occupiers, or *holders* of buildings or land " contained in the same paragraph, which should not have any restrictive meaning.

B. *Drafting Amendments.*

Great Britain, document C.I.T.E. 11, page 5.

Lines 1 *and* 2 : Delete " established in the territory of the other ".

Line 2 : After " liable ", insert " in the territories of the other Parties ".

Japan, document C.I.T.E. 14.

Omit the word " established " in the first line of paragraph 3.

4. Amendments referring to Paragraph 4 of Article 11.

Sweden, document C.I.T.E. 7, page 6.

It would seem desirable that the contracting parties should undertake not to apply the provisions of this paragraph in such a way as to deprive any foreigner who has been subjected to the measures referred to of a just and equitable compensation.

Czechoslovakia, document C.I.T.E. 9, page 3.

The Czechoslovak delegation ventures to draw the Conference's attention to the fact that the provisions of paragraphs 4 and 5 might be given greater precision by adding the text of the Czechoslovak Government's note of February 23rd, 1929, No. 24579/29/II-4, reproduced on page 74 of the Preparatory Documents.

5. Additions, New Provisions.

A.

Panama, document C.I.T.E. 15.

Insert, after paragraph 3, Articles 3 and 7 of the Havana Convention.

Colombia and Peru, document A.17.

Add to Article 11, Article 7 of the Havana Convention :

" Foreigners must not mix in political or private activities which are the exclusive province of citizens of the country in which they happen to be ; in cases of such interference, they shall be liable to the penalties established by local law."

B.

Cuba and Colombia, document A.7.

Add the following second sub-paragraph to paragraph 5 :

" In case of civil war or revolution, foreigners who are nationals of each of the High Contracting Parties and who are established in the territory of another may not claim compensation or indemnity if nationals are not themselves entitled to obtain the same."

* * *

The Drafting Sub-Committee reserves the right to examine later, in the case of the amendments which are adopted, whether they should be inserted in the body of the articles or in the Protocol.

ANNEX 30, bis

OBSERVATIONS ON ARTICLES 10 AND 11, SUBMITTED BY THE DANISH DELEGATION.

Article 10.

Under Article 50, paragraph 2, of the Danish Constitution, detailed regulations may be laid down by law to govern the acquisition by foreigners of immovable property in Denmark.

No laws of this kind have yet been passed, but the Danish delegation will be obliged to make a reservation as regards the rights of foreigners to acquire immovable property.

Further, the Danish delegation would draw attention to the observations to Article 1 concerning the rules regarding the right to own vessels registered in Denmark (see Addendum to document C.I.T.E. 1).

Article 11.

The Danish delegation must make a reservation in regard to this article also, since, under Danish law, the exercise of guardianship is compulsory for foreigners as well as for nationals.

ANNEX A, 31.

TEXT PROPOSED BY THE SUB-COMMITTEE FOR ARTICLE 11 AND THE PROTOCOL AD ARTICLE 11.

Article 11.

Paragraph 1. — Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative duty.

Paragraph 2. — They shall also be exempt in the territory of the other High Contracting Parties, in peace time and in war time, from all compulsory military service, whether in the army, navy or air forces, or in the national guard or militia, and from all compulsory personal contributions in respect of services attaching to national defence. They shall similarly be exempt from all exactions, whether in money or in kind, imposed in lieu of personal services.

Paragraph 3. — Nationals of each of the High Contracting Parties shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals.

Paragraph 4. — Nationals of each of the High Contracting Parties may not, in the territory of another Party, be expropriated of their property or deprived even temporarily of the enjoyment of such property, except for legally recognised reasons of public utility, in accordance with the legal procedure in force.

Paragraph 5. — Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties as regards compensation for the exactions, requisitions, expropriation and temporary deprivations referred to in paragraphs 3 and 4 above, treatment equal to that which it grants to its own nationals.

PROTOCOL.

Paragraph 1. — The exemption referred to in paragraph 1 of Article 11 shall not extend to duties imposed by the laws relating to juries.

Paragraph 2. — It shall be understood that the provisions of the present article do not affect questions relative to the acquisition or loss of nationality and the consequences thereof.

Paragraph 3. — Paragraph 3 of Article 11 shall not apply to questions concerning the requisitioning of sea-going vessels.

ANNEX A, 32.

DRAFT REPORT OF COMMITTEE A ON ARTICLE 10 AND THE PROTOCOL AD ARTICLE 10, SUBMITTED TO THE CONFERENCE BY M. PILOTTI (ITALY).

The Netherlands delegation pointed out that paragraph 1 of Article 10 as worded in the Economic Committee's draft might be interpreted as prejudicing the application of the rules of private international law. Accordingly, it was anxious to emphasise in the final draft that all questions attaching to this branch of law were exclusively reserved to the Hague Conferences. In its view, if paragraph 1 of the draft was maintained, this might lead to confusion, which it was essential to avoid. The Committee agreed that the provisions of Article 10 should in no way affect questions relating to private international law, and, in consequence, the text of paragraph 1 was slightly amended so that the beginning of the paragraph would now read as follows :

> ". . . the nationals of each of the High Contracting Parties shall be treated on a footing of equality with nationals as regards, etc. . . ."

This formula has the advantage, moreover, of being like that adopted for Article 19.

The Hungarian delegation observed that it appeared to it dangerous to mention patrimonial rights in the text of paragraph 1 as this term covers a very vast field which comes within the scope of private international law, and such questions should not be dealt with in the Convention. Supported by the Japanese and Turkish delegations, it proposed accordingly that the text of paragraph 1 be modified as follows :

> " Nationals of each of the High Contracting Parties shall have the right of acquiring, possessing or leasing to others, etc."

the words " in this régime of equality ", in the last line, being deleted and replaced by the words " in this respect ". This proposal, however, was not accepted by the Committee.

On the other hand, the latter did accept a proposal by the Japanese delegation to delete the words in brackets in the text of the draft, being convinced that the Economic Committee had simply wished to retain a clause found in almost all commercial treaties which do not contain a similar enumeration.

The Austrian delegation pointed out that the words " of disposing of the same " in lines 3 and 4 implies disposing of movable and immovable property only. It would have been preferable, in its view, to frame the article so as to include also all rights accruing from bonds. It proposed accordingly to substitute for " disposing of the same " the word " disposal " but the Committee did not accept this amendment.

The delegations of Roumania, Turkey, Austria, Denmark, Sweden, Norway and Finland, supported by the Indian delegation, asked that an exception to the principle of equality might be made as regards the right of requiring immovable rural property on the ground that the laws in the above-mentioned countries contained provisions whereby foreigners may be precluded from

acquiring such property, or, as was the case in Norway, that the constitution contained a clause authorising the Government to take measures to this effect.

This request was strongly opposed by other delegations, which considered that the integral principle of equality laid down in paragraph 1 of Article 10 constituted one of the most essential guarantees in the Convention. They added that nearly every treaty contains a similar clause and that the proposed limitation would be a retrograde measure.

The Committee agreed, however, that a reservation might be made in favour of the above-mentioned delegations to be drafted somewhat on the following lines :

> " The right to preclude foreigners from acquiring immovable rural property shall still be reserved in the case of those of the High Contracting Parties who at present adopt the system, on the understanding that the other High Contracting Parties shall be exempt from the obligations laid down in Article 10 in the matter as regards nationals of the High Contracting Parties benefiting under the said reservation."

This idea of reciprocity, however, was opposed by certain delegations which thought it preferable to adhere to the operation of the most-favoured-nation clause, as this, in their view, would avoid all discussion as well as the bargaining to which the system of reciprocity might give rise.

Certain delegations showed an anxiety to protect their national artistic property and wished accordingly to retain the right to prohibit foreigners from acquiring property of historic or artistic importance. They added, further, that the provisions laid down in their laws in this connection applied equally to foreigners and nationals. The Committee thought, therefore, that an explicit reservation was unnecessary if the provisions in question applied to foreigners and nationals alike, since both would be subject equally to the same régime in the matter.

The text of paragraph 2 of the article was accordingly left unchanged.

The Japanese delegation expressed a desire that the Protocol should state explicitly that the expressions " *biens mobiliers* " and " *objets mobiliers* ", in paragraphs 1 and 2, covered securities such as shares, bonds, etc. On receiving an assurance that this was actually the interpretation placed on these words by the Committee, the delegation withdrew its amendment, subject to the condition that the said interpretation should be mentioned in the present report.

The Venezuelan delegation proposed that the words " or simply of general interest " be added at the end of paragraph 3. The Committee was of opinion, however, that the effect of this addition would be to grant the States an unrestricted right to exclude foreigners from the acquisition of immovable property or undertakings ; this amendment was therefore rejected.

The Polish delegation urged that, under the terms of its national legislation, the possession or leasing to others of certain immovable property was subject, in the case of foreigners, to the obtaining of previous authorisation for reasons of public interest. It therefore requested that a clause to this effect be added to paragraph 3 of the article ; it pointed out at the same time that the term " in the public interest " alone did not appear sufficiently definite to prevent States from making improper use of the right thus reserved to them. Accordingly, the Committee, while adopting the Polish proposal, desired to define and weaken its effects by emphasising that the conditions required for the granting of authorisation with a view to the acquisition of immovable property or undertakings must be laid down by the laws and regulations of the country, so that, in practice, the administrations concerned would merely have to ascertain whether these conditions did in fact exist.

The British delegation, supported by the Turkish delegation, requested that it should be explicitly stated in the text of paragraph 4 that the term " the vital economic resources of the country " included means of communication. For this reason these delegations asked that the words in question be inserted in the text. They pointed out that the Economic Committee had undoubtedly had such systems of communication as the telephone, telegraph or wireless in mind when it drafted this text.

Other delegations, however, objected to this proposal and urged that the insertion of these words in the text would limit its scope.

The Committee decided to include in the Protocol *ad* Article 10 a special paragraph defining the scope of the words " vital economic resources of the country ".

The Japanese delegation observed that the National Bank of Issue and certain other Japanese Banks provided in their Statutes — which were approved by the State — that their shares could not be transferred to foreigners. In view of these considerations it asked that the words " or to menace the vital interests of the State " be inserted after the words " to a currency crisis ", in the text of paragraph 4.

It was pointed out that the situation to which the Japanese delegation had drawn attention was not a temporary one such as was contemplated in paragraph 4, and that it would therefore be difficult to bring it within the scope of this article. On the other hand, although, in the case referred to, the institutions concerned were under the control of the State, it was, nevertheless, true that, fundamentally, these were private organisations which enjoyed complete liberty as regards the framing of their Statutes.

The Committee was of opinion that there was nothing in the provisions of Article 10 to prevent the inclusion in the Statutes of enterprises under special Government control of a clause prohibiting shareholders from transferring their securities.

In order to avoid any misinterpretation of the provision in the second sentence of the first paragraph of the Protocol prohibiting the contracting parties from making property " the subject

of any special taxation merely on the grounds of its exportation ", the Italian delegation asked that it be stated that this provision did not prevent the levying, if necessary, of Customs duties on the export of goods which would normally be subject to such duties.

As the Committee did not see any reason to doubt this interpretation, the Italian delegation withdrew the amendment, provided the point was mentioned in the report.

The Latvian delegation, supported by the Greek and Polish delegations, submitted amendments proposing that paragraph 3 of the Protocol *ad* Article 10 be deleted, on the grounds that the prohibition contained in this clause was dictated by political reasons, whereas the draft Convention was based mainly on economic considerations.

The Committee adopted this view and decided accordingly that paragraph 3 of the Protocol, as worded in the draft, be deleted.

It did not, however, agree to the Mexican delegation's request that the right to enforce this prohibition be extended to a zone 100 kilometres deep along the frontiers and 50 kilometres deep along the coasts.

Several delegations (British Empire, Italy, Japan, Sweden and Estonia) pointed out that their laws contained provisions for the protection of the national flag under which more or less extensive restrictions, according to the State concerned, were in force regarding the acquisition of ships and shares in ships. These delegations, therefore, asked that a special paragraph be added to the Protocol taking this situation into account.

This request was agreed to by the Committee.

The Committee also recognised the necessity of extending this new provision in the same measure to aircraft.

Taking into account the foregoing considerations and decisions of the Committee, the text of Article 10 and the Protocol relative thereto submitted by the Committee reads as follows :

Article 10.

1. The nationals of each of the High Contracting Parties shall be treated on a *footing of equality* with nationals as regards patrimonial rights, the right of acquiring, possessing, or leasing to others movable or immovable property, and the right of disposing of the same under the same conditions as nationals, no modification or restrictions of any sort being permitted in this régime of equality.

2. Each of the High Contracting Parties undertakes to allow the nationals of the other High Contracting Parties freely to export their movable property and the proceeds of the sale of their movable or immovable property under the same conditions as are applicable to its own nationals. There shall be no differentiation in regulations regarding the foreign exchange derived from such exportation, according to the nationality of the exporter.

3. The provisions of the present article shall not preclude the right which the High Contracting Parties reserve to themselves to prohibit or subject to the obtaining of previous authorisation, for reasons of security or national defence, the acquisition by foreigners of certain immovable property or undertakings.

4. The High Contracting Parties also reserve the right to prohibit the acquisition of immovable property or transferable securities by foreign nationals, if such acquisition is likely to result in the obtaining of undue command of the vital economic resources of the country, or to endanger such resources in exceptional cases, due, for instance, to a currency crisis, provided, however, that no measure connected with the principle of equality laid down in paragraph 1 of this article be sufficient to safeguard these interests.

5. *The obtaining of previous authorisation for the acquisition of certain immovable property, mines or undertakings, may also be required from foreigners for reasons of public interest, provided that the conditions pertaining to the granting of this authorisation are defined by the laws or regulations of the country, and, in cases in which the reservation is applied to mines, provided that the national laws of the High Contracting Parties who desire to avail themselves of the reservation contained this restriction at the time of the signature of the present Convention.*

Protocol *ad* Article 10.

1. The provision of paragraph 2 concerning the freedom of foreigners to export their property or the proceeds of the sale of such property shall not in any way affect the right of each of the High Contracting Parties to refuse to allow exportation until the taxes or duties leviable on such property have been paid. The said property, however, or sums derived from its sale, may not be made the subject of any special taxation merely on the grounds of its exportation.

2. In the case of an owner's change of residence or in the case of the sale of movable or immovable property derived by inheritance, it is understood that the regulations regarding foreign exchange may not constitute an obstacle to the free exportation of the proceeds of the sale of such property.

3. *Notwithstanding the provisions of Article* 10, *it is agreed that the High Contracting Parties may impose such restrictions as they think fit in regard to the acquisition of ships or aircraft and shares in ships or aircraft flying the national flag.*

ANNEX A, 33.

DRAFT REPORT PRESENTED TO THE CONFERENCE BY COMMITTEE A.

Article 11.

Paragraph 1.

The Committee adopted the following text for paragraph 1 :

"Nationals of each of the High Contracting Parties shall be exempt in the territory of the other High Contracting Parties from every kind of judicial or administrative duty."

This text is a reproduction of that proposed by the Economic Committee, except for the omission of the words " charge or ", which were considered superfluous, and the deletion of which in no way modifies the meaning of the article.

To this paragraph 1 was attached a Protocol reproducing an amendment submitted by the British delegation, the provisions of which are frequently found in bilateral conventions. It is worded as follows :

"The exemption referred to in paragraph 1 of Article 11 shall not extend to the duties imposed under the laws relating to juries."

An amendment proposing that it should be specified that the duties of guardianship, trusteeship and compulsory appearance as witness were not included in the exemption stipulated in this clause was rejected.

The Committee considered that no doubt was possible in this connection, and that it was unnecessary to add statements to the text of the Convention to the effect that the principle of exemption did not apply to these duties.

For the same reason, it was decided to reject the proposal that, among the offices covered by the exemption, express mention should be made of those of expert and arbitrator.

It was further pointed out that, while the law could not oblige foreigners to accept public duties, the latter naturally remained free to perform them if invited to do so.

Paragraph 2.

The following text was adopted for paragraph 2 :

"They shall also be exempt in the territory of the other High Contracting Parties in peace time and in war time from all compulsory military service, whether in the army, navy, or militia, and from *all compulsory personal contributions in respect of services attaching to national defence*. They shall similarly be exempt from all exactions, whether in money or in kind, imposed in lieu of personal services."

The text proposed by the Economic Committee only referred to military contributions. The Committee considered it necessary, in view of the provisions contained in recent laws on the organisation of national defence, to provide for another category of contributions than that of military contributions proper. These laws provide for the utilisation of certain elements of the civil population for national defence in time of war. They stipulate, for example, that engineers and other technicians may be called upon to serve in arms and munition factories. It seems rational to extend to services of this kind the same régime of exemption for foreigners as that which foreigners enjoy in regard to military contributions proper. It was for this reason that the words " compulsory personal contributions in respect of services attaching to national defence " were introduced into the text of this article.

On the Italian delegation's proposal a Protocol was also attached to this paragraph worded as follows :

"It is understood that the provisions of the present article do not affect questions of the acquisition or loss of nationality and their consequences."

Certain legislations stipulate that, when a citizen of a country loses his nationality before having discharged his military obligations, he remains liable to fulfil the latter, although he may have become a foreigner.

In view of the exceedingly small number of cases in which a stipulation of this kind can apply, the Committee felt able to accept the introduction of the Protocol quoted above, notwithstanding the gravity of the derogation which it makes to the fundamental principle of the exemption of foreigners from all military burdens.

Another delegation had proposed the introduction of the following passage at the beginning of paragraph 2 :

"Nationals of one of the High Contracting Parties *who are foreigners in virtue of the laws* of another shall also be exempt from all compulsory military service."

The sole object of this modification was to make it clear that nationality would be determined by the law of the country in which the person called up for military service was resident at the time. It was rejected as unnecessary, since there could be no doubt as to this point.

Another amendment contained the proposal that it should be decided that exemption from military obligations should not extend to services which might temporarily be required of the inhabitants of a country to remedy the effects of public calamities in the case of catastrophes which were not due to war. This proposal was also rejected as unnecessary.

The text of Article 11 only mentions military obligations, other kinds of obligations quite clearly not being included in this provision. Consequently, each State is free to impose on its inhabitants, without distinction between nationals and foreigners, any obligations it may think fit to remedy catastrophes not resulting from war.

It was pointed out that, if events of this kind were expressly mentioned, this would almost inevitably have the effect of compromising the aim which the authors of the amendment had in view. Such an enumeration might create the impression that the principle of exempting foreigners extended to all events which were not definitely mentioned in the enumeration. The latter would then have to be a long one, and one could never be sure of having provided for all the calamities which might afflict a country.

Paragraph 3.

Paragraph 3 was adopted in the following form :

> " Nationals of each of the High Contracting Parties shall nevertheless continue to be liable to the charges connected with the ownership of any landed property or movable property, as well as compulsory billeting and other special military exactions or requisitions to which, under the law, all nationals of the country are liable as owners or occupiers of buildings, land or movable property. In no case shall any High Contracting Party impose any of the above charges unless it also imposes them on its own nationals."

This wording contains two modifications as compared with the text submitted by the Economih Committee : (1) the omission of the words " established in the territory of another Party ", whicc were regarded as unnecessarily restrictive ; (2) the mention of " movable property " among the property subject to requisition, whereas the Economic Committee's draft, which only mentioned " immovable property ", appeared to exclude the former.

The Committee was of opinion that the movable property of foreigners should not be exempt from requisitions.

In adding " movable property " to the property subject, if necessary, to requisition, the new wording raised the question of sea-going vessels.

The Committee considered that, as this was a matter raising quite special difficulties, it was necessary to add a Protocol to paragraph 3, stating that the proposed Convention contained no provision with regard to this very special matter.

This Protocol reads as follows :

> " Paragraph 3 of Article 11 shall not apply to questions concerning the requisition of sea-going vessels."

In reply to a request for information it was stated that this Protocol only applied to vessels and not their cargo.

A delegation had proposed to insert after the words " as well as compulsory billeting " the words " and clearing operations and destruction legally ordered by the authorities ".

This amendment was rejected as relating to events occurring in time of war, a type of question with which Article 11 should not deal.

The matter is therefore entirely left to the laws of the country and to the Conventions which might be concluded in this connection.

Paragraph 4.

The text of paragraph 4 is as follows :

> " Nationals of each of the High Contracting Parties may not, in the territory of another Party, be expropriated of that property nor deprived, even temporarily, of the enjoyment of such property, except for legally recognised reasons of public utility in accordance with the legal procedure in force."

Paragraph 5.

Paragraph 5 was the subject of a protracted discussion. In this paragraph the Economic Committee intended to regulate the question of compensation to be granted to the owners of requisitioned or expropriated property. It had laid down the principle that, in matters of compensation for requisitions or expropriations, foreigners should enjoy equal treatment with nationals.

Many delegations objected to this rule. They pointed out that in a number of cases certain countries had granted for expropriation either negligible compensation or no compensation at all.

Although such severe measures might be justifiable when applied to nationals in the public interest, or for reasons of public welfare, the application of such measures to foreigners would appear inadmissible, inasmuch as in such cases they were not concerned to the same extent as nationals. Compulsory expropriation without compensation, when applied to foreigners, would appear to constitute an infringement of international law

The delegations which shared this view were therefore of opinion that paragraph 5 should be modified in such a way as to lay down a twofold rule, namely : (1) that foreigners should in all cases enjoy equal treatment with nationals, and (2) that in cases in which equal treatment with nationals would involve the granting of compensation which was obviously inadequate in view of the requirements of international law, foreigners might invoke international law in order to obtain higher compensation than that granted to nationals. It was pointed out, moreover, that the granting to foreigners in such cases of more favourable treatment than that enjoyed by nationals was in fact provided for in a great number of bilateral conventions. This point of view, however, did not prevail.

Other delegations emphasised the disadvantages of abandoning, even if only partially, the principle of equal treatment for foreigners and nationals. They considered that a choice must necessarily be made between the laws guaranteeing the rights of property on the one hand, and equality of treatment on the other, and that the latter, taken all round, presented fewer disadvantages.

This principle having thus been determined, the Committee decided to leave the Rapporteur to submit a suitable wording.

Since the solution adopted was in agreement with that proposed by the Economic Committee, the Rapporteur suggested that the text of paragraph 5 of Article 11 as worded in the Economic Committee's draft should be reverted to as it stands. This paragraph reads as follows :

> " 5. Each of the High Contracting Parties shall accord to the nationals of the other High Contracting Parties, as regards compensation for the exactions, requisitions, expropriation or temporary deprivations referred to in paragraphs 3 and 4 above, treatment equal to that which it grants to its own nationals."

Two amendments were proposed, the one providing that, in case of civil war or revolution, foreigners who were nationals of the High Contracting Parties would not be entitled to claim compensation if nationals were not entitled thereto ; the other amendment was to the effect " that in no case shall a foreigner have any recourse against a national or against the State other than that provided for under the national laws ".

These two amendments, which both refer notably to the damage inflicted on private property in civil war or riots, were rejected.

The Committee considered that these were matters which lay outside the scope of the Convention, that their regulation would require very careful study, and that it was dangerous to deal with them without more thorough preparation.

It was observed, moreover, that these questions were under consideration and were to be dealt with by the Codification Conference at The Hague.

One delegation, moreover, stated that the adoption of paragraph 5 of Article 11 would not solve the question of the responsibilities incurred by a State in respect of damage inflicted upon foreign nationals.

ANNEX A, 34.

DRAFT REPORT ON ARTICLE 7 AND THE PROTOCOL AD ARTICLE 7, PRESENTED TO THE CONFERENCE BY COMMITTEE A.

Article 7, Paragraph 1.

Rapporteur: M. Politis (Greece).

72. The Swedish delegation submitted an amendment proposing that persons who had only been admitted temporarily without any previous declaration of an activity covered by the said article as the purpose of their stay should be excluded from the rights provided for in this article.

The delegation did not insist on this proposal, however, after it had been explained that the exclusion proposed was a prerequisite of admission and consequently came under the provisions of Article 6.

73. The same delegation asked whether the provisions of Swedish law requiring foreigners to deposit security for the payment of taxes for a period of three years and to obtain a special permit, as well as to pay a tax leviable also upon Swedes not resident in Sweden for the organisation of public performances or meetings, were compatible with the spirit of the Convention.

The Committee was of opinion that regulations requiring foreigners in order to exercise any commercial activity in Sweden to obtain the permit referred to, which might be arbitrarily refused, could not be considered compatible with the Convention.

74. The British delegation submitted an amendment proposing that the words " including the provision of communications and transportation " be inserted after the words " after any transactions of an economic character ", in the second line of sub-paragraph *(a)*.

The Netherlands delegation made the same proposal with regard to shipping.

It was decided, however, that this addition was superfluous, since the transactions referred to were undoubtedly covered by the very wide term "and in general any transactions of an economic character ".

75. At the request of the Latvian delegation it was agreed that it was not contrary to the spirit of the Convention to make the exercise by a foreigner of any commercial or industrial activity subject to a previous authorisation from the municipal or communal authorities which was also required of nationals, or to require branches, subsidiary undertakings or agencies of foreign undertakings to obtain the same authorisation as autonomous undertakings.

76. The same delegation raised two further points relative to the national character of banks, pawnbrokers' shops, and insurance companies, and the nationality of the founders, managers or members of the boards of limited companies ; these were reserved for examination, the former under paragraph 2 of Article 7 and the latter under Article 16, referred to Committee C.

77. The Turkish delegation submitted amendments to the same effect, but subsequently withdrew them.

78. The Netherlands delegation asked that the words in the second and third lines of paragraph 1 " allowed to establish themselves " be deleted on the ground that, in the Netherlands, the condition of establishment was not required ; foreigners had the right to exercise any of the professions covered by the article.

It was agreed, however, that the text should be brought into line with that of Article 6 ; the Committee consequently accepted the insertion in the text of the words " in accordance with Article 6 of the present Convention " after the words " allowed to establish themselves therein ", in order to make it clear that Article 7 could only apply to the same category of foreigners as that dealt with in Article 6.

79. The same delegation proposed that the words " identical with those ", in the fourth line of sub-paragraph *(b)*, be deleted as superfluous.

It was agreed that the words " identical " might with advantage be replaced by the words " the same " ; the sentence would then read : " the submission of the same titles or guarantees as those, etc. ".

80. Another modification was made in the first paragraph and the words " if necessary, subject to reciprocity " were added after the words " or recognised as being equivalent ", in the last line of sub-paragraph *(b)* of the text of the draft.

The Committee considered that a formal provision should be made allowing a State which does not require the submission of the same titles as those it requires from nationals for the exercise of a profession, and which merely requires the submission of equivalent titles, to make the greater facility thus accorded to the nationals of certain contracting countries subject to the condition that the same facilities be granted by the countries whose nationals enjoy these facilities.

Such a provision is the necessary corollary to the clause inserted in sub-paragraph *(b)* of paragraph 1 which leaves it to the discretion of the contracting States to require identical or equivalent titles.

The Committee thought that the amendment proposed would meet the wishes of a certain number of delegations which were anxious that the category of occupations or offices which contracting States are entitled to reserve to nationals should be further extended, for instance, in the case of the sanitary professions

81. The Committee was informed that, in Egypt, special regulations were in force in regard to the exercise of the medical profession, *i.e.*, special examinations were required of doctors who did not possess a diploma issued by the Egyptian universities. The object of these special examinations was to ensure that this category of doctors possessed the requisite standard of knowledge in certain matters which, for reasons of climate, were of particular importance in Egypt. The Committee considered that these provisions of Egyptian law merely constituted a normal use of the right reserved to States under Article 7, paragraph 1, sub-paragraph *(b)*, to judge of the equivalence of the titles or guarantees necessary for the exercise of a profession, and that therefore it was not necessary to insert in the Convention a special provision to cover this situation.

82. Subject to the reservation contained in Article 7 regarding the conditions for the admission of foreigners, the Committee adopted the text of paragraph 1 of Article 7 as given further on.

Article 7, Paragraph 2.

Rapporteur : M. Pilotti (Italy).

83. Having thus modified the text of the draft of paragraph 1 of Article 7, the Committee, when entering upon the examination of paragraph 2, had to consider a proposal by the German delegation, the chief effect of which was to modify this paragraph in such a way as to avoid an enumeration of a series of activities and professions reserved for nationals and to replace it by a general formula inserted at the beginning of this paragraph and not expressly stating the right of the contracting parties to " prohibit " foreigners to engage in these activities and professions.

84. A long discussion took place on this subject as a result of which a special sub-committee was appointed to consider what changes should be made in the text of the draft to give satisfaction, if possible, to the German delegation and to several others which had the same preoccupations, while not upsetting the balance of the original draft as certain other delegations feared.

This Sub-Committee was, at the same time, entrusted with making a preliminary examination of all the amendments put forward with the object of defining or extending the right of States to reserve certain activities or functions to nationals, or to make the exercise of these activities by foreigners subject to special conditions.

85 The result of the Sub-Committee's labours was embodied in a report submitted to the Committee.

86. After examining this report the Committee decided to introduce into the text of Article 7, paragraph 2, several modifications which are explained below. The first of these modifications consists in substituting for the formula that States retain the right to prohibit foreigners from engaging in certain occupations or activities, a formula which, while being more correct from the legal point of view, avoids the unfavourable impression which would be created by proclaiming a right of prohibition in a Convention intended to ensure equitable treatment.

87. Two modifications were introduced into sub-paragraph *(a)* of paragraph 2. These are simply points of drafting which, in the Committee's view, constitute improvements. The text of the draft speaks of functions of a judicial, administrative, military or other similar nature. It was preferred to put the words " of a judicial, administrative, military or other nature " in brackets to make it quite clear that these are only quoted as examples. Furthermore, the text of the draft refers to functions which, involving a devolution of the authority of the State, are reserved to nationals. It was thought preferable to mention more simply functions which involve a devolution of the authority of the State.

88. A third modification has been introduced into sub-paragraph *(a)* which, in the Sub-Committee's opinion, constitutes a necessary addition. It thought that, while all public functions do not strictly involve a devolution of the authority of the State or a mission entrusted by the State, it was nevertheless sufficient for an office to be conferred by the State for it to come under the provisions of sub-paragraph *(a)*.

It also thought it necessary to provide for the case of offices conferred not by the State but by organisations having such close relations with the State that a distinction would not be justified. Certain amendments showed the preoccupation of a number of delegations on this point.

The formula adopted by the Committee which mentions administrations under the authority of the State should be interpreted in the widest sense. This formula was intended to refer, not only to a branch of the administration which might make appointments without the intervention of the central authorities, but also to any administration endowed with a juridical personality distinct from that of the State, whether it holds its powers from the State or has itself a public law standing. Such, for example, are the independent Government administrations (Post Office in Great Britain, railways in Italy), all the public territorial administrations (States members of federations, provinces, communes, etc.) and religious, educational, professional and other corporations, etc. It was to make it quite clear that all the above-mentioned public territorial administrations were included in the expression " administrations under the authority of the State " that the Committee, at the Austrian delegation's request, added at the end of the paragraph the words " and irrespective of whether or not they are of a general or local territorial character ".

89. As in sub-paragraph *(a)*, the Committee, instead of referring in *(b)* to the professions which it may be desirable on account of the special responsibilities they entail to reserve for nationals, preferred to speak of professions which entail special responsibilities.

90. Thanks to the modifications indicated above, the Committee considered that all the amendments submitted by the various delegations with regard to the exercise of professions had become unnecessary.

91. It was suggested in the course of the discussions that sub-paragraph *(c)*, regarding monopolies, should be supplemented by a mention of Government undertakings not constituting monopolies. This mention has been put in a new sub-paragraph *(d)*. Of course, this mention cannot be interpreted as allowing a Government to debar foreigners from engaging in a particular industry on the ground that it possesses industrial establishments of the same kind working in competition with private individuals. If, for example, a Government owns a printing press organised as a commercial undertaking, and not constituting a monopoly, it retains full freedom to regulate this undertaking as it thinks fit, but it has no power to exclude foreigners from the whole printing industry on the pretext that there is a Government printing press.

92. The Committee considered that the reasons justifying the reservation concerning fishing in territorial waters also held good in regard to the extension of this reservation to the exploitation of the riches of these same territorial waters, as requested by the Norwegian delegation, and that inland waters should be included on the same terms as territorial waters.

93. The Austrian and Hungarian delegations expressed the wish that the text should specify that river " *cabotage* " as well as the maritime coasting trade should be included in the enumeration contained in paragraph 2. The principal delegations interested in this question did not succeed, however, in drawing up a text covering this point, and the Committee, in order not to delay its

work, confined itself to leaving the solution to the Plenary Conference, although it agreed that the rights conferred on certain States represented at the Conference by existing international conventions should be respected. Two texts were, however, drawn up for possible insertion in the Protocol *ad* Article 7. They are as follows:

First text:

"By the provisions of Article 7, paragraph 2 *(f)*, the High Contracting Parties do not intend to lay down any decision on the *de jure* and *de facto* position in regard to local transport on rivers and lakes (river and lake '*cabotage*')."

Second text:

"The provisions of Article 7 shall in no way affect the *de jure* position which is the outcome of the international conventions concerning river and lake transport (river and lake '*cabotage*')."

Each of these texts would leave the text of sub-paragraph *(f)* of paragraph 2 of Article 7 as adopted.

94. The Committee also considered that the reasons operating in favour of the acceptance of the reservation concerning service on vessels flying the national flag also applied to the extension of this reservation to aircraft. The latter are therefore mentioned in the text.

95. In response to the wishes expressed by several delegations, the Committee decided that States should be entitled to reserve to their nationals the exploitation of public services such as railways and tramways (Netherlands) and industries which form the subject of concessions (Turkey and France). It considered that such cases could be assimilated to some extent, from the standpoint of Article 7, to State monopolies and undertakings. This explains the insertion in the article of sub-paragraph *(i)*.

96. Lastly, the delegations of France and Yugoslavia proposed that sub-paragraph *(j)* should mention all the industries concerned with national defence. This proposal, however, was considered too far-reaching and the Committee decided, on the Belgian delegation's proposal, simply to insert under this sub-paragraph the manufacture of arms and munitions of war.

97. A large number of delegations expressed the desire that provisions should be inserted in Article 7 whereby insurance undertakings might be reserved to their nationals (this applies to the delegations of Latvia, Turkey, Belgium, Portugal, Venezuela and Finland), on the grounds that operations of this nature called for special precautions, more particularly in regard to the solvency of the undertaking.

The Committee shared this view.

Although insurance is as a rule conducted by companies and it would therefore seem more natural to leave the question to be dealt with by Committee C, Committee A recognised that, in certain countries, individuals had insurance undertakings and that the reasons for enforcing stricter conditions in the case of foreigners were even stronger than when dealing with juridical persons. Hence the provision to be found under sub-paragraph *(k)* of paragraph 2.

98. The delegations of the British Empire and Portugal urged strongly that it should be specified that "industrial assurance" — that is, life assurance — the premiums for which are payable at the residence of the insured person at very brief intervals, should come within the category of operations not covered by paragraph 1.

99. The Committee agreed to this request, supplementing it, on the proposal of the Italian and Czechoslovak delegations respectively, by mentioning industrial insurance in regard to accident and sickness.

100. The Committee considers that, in view of the modifications which it adopted concerning industries or operations which States may reserve to their nationals, the following amendments submitted by the delegations of the countries named hereunder will no longer apply:

(a) *Note issues* (Portugal); *Banks of Issue* (Venezuela).

This is generally a monopoly reserved to the State or to the bank to which a concession has been granted.

(b) *Directors, managers or other principal officers of companies* engaged in any of the forms of business referred to under sub-paragraphs *(c)*, *(f)*, *(h)* (British Empire).

The contracting States are free to prohibit the exercise of such occupations or trades absolutely in the case of foreigners, and are thus equally free to limit their restriction to the persons mentioned in the amendment.

(c) *Service in roadsteads and on coasts, salvage and maritime assistance, towage* (Turkey).

These various operations, in the Committee's opinion, are covered by the general term "internal service in ports".

(d) *Maritime and river coasting trade* (Yugoslavia).

The term " coasting trade " found under sub-paragraph *(f)*, without qualification, applies, in the Committee's opinion, both to maritime and river coasting trade.

(e) *Natural gases* (India).

The Committee considers that the exploitation of natural gases comes within the category of the exploitation of minerals mentioned under sub-paragraph *(h)*.

101. The Committee was of opinion, however, that the amendments relating to the undermentioned questions could not come within the category of reserved operations as the inclusion of these particular operations in the reservation would make the latter too unwieldy and would involve undue restrictions on freedom of trade. This applies to occupations or industries involving a vital interest of the nation (Yugoslavia), aerial navigation (Japan and Netherlands), and navigation (Venezuela).

102. As regards aerial navigation, it was pointed out that aviation was governed by a special convention concluded in 1919 ; the Committee considered accordingly that it might perhaps be expedient to bring this point to the notice of Committee D, so that the latter might, if necessary, formulate a provision stating that the Convention does not affect the 1919 Convention or other international conventions relating to other matters which may be connected with the questions dealt with in the said Convention to be framed by the Conference.

103. The Venezuelan delegation desired to point out that its amendment reserving navigation to nationals of Venezuela was inspired by the fact that the merchant marine of that country had only reached an early stage in its development and was at a disadvantage as regards competition with foreign companies.

It added that the word " navigation " should be interpreted as applying to maritime and river shipping and to aerial navigation.

104. Several delegations (Czechoslovakia, Venezuela, Portugal and Finland) submitted amendments with a view to restricting, in varying degrees, the operations of foreigners in the matter of banks and financial transactions.

105. The Turkish delegation had requested that the list of operations mentioned in paragraph 2 of Article 7 should include service in industries enjoying exemption from, or reductions in, taxation or other facilities. It was explained however, that this request was unnecessary, as the question is covered by the new wording adopted for Article 8 of the Convention.

106. The Turkish delegation had also requested that the reservation might be extended to teaching in schools and hospitals. The Committee thought that there was no need to make any special mention of this point in paragraph 2, as the States interested in the question should be able to obtain satisfaction either by the operation of the provisions contained in paragraph 1, sub-paragraph *(b)*, requiring special titles or guarantees for the exercise of certain professions, or, in the case of the teaching staff, by the application of sub-paragraph *(a)* of paragraph 2, under which functions involving a mission entrusted by the State may be reserved to nationals.

107. The Committee was informed that the Swedish Government's anxiety to reserve to nationals hunting on Government land was due to the fact that, from time immemorial, this occupation has afforded the population its principal means of livelihood

The Committee regarded this situation as a very special one which the Conference might have to take into account by granting Sweden the benefit of a special reservation.

The same applies as regards the special provisions of the Swedish law concerning timber floating under which guarantees may be required from foreigners not domiciled in the country as security for damage that they may cause to the banks of the rivers on which the timber floating is carried on.

Appendix.

Article 7.

Text proposed by the Sub-Committee appointed to examine this Article.

1. In the territories of each of the High Contracting Parties, and subject to the observance of their laws and regulations, nationals of the other High Contracting Parties allowed to establish themselves therein, *in conformity with Article 6 of the present Convention*, shall be placed on terms of complete equality, *de jure* and *de facto*, with nationals as regards :

(a) The conduct of all commercial, industrial and financial operations, and, in general, any transactions of an economic character without any distinction being drawn in this connection between undertakings operating independently and those which exist as branches, subsidiary undertakings or agencies of undertakings situated in the territory of the above-mentioned High Contracting Parties ;

(b) The exercise of occupations which the laws of the said High Contracting Parties allow their nationals to carry on freely, or, in the case of professions for which special titles or guarantees are required, the exercise of these professions, subject to the submission of the same titles or guarantees as are required of nationals or are recognised as being equivalent, *if necessary subject to reciprocity*, by the High Contracting Party concerned.

2. *The provisions of the previous paragraph shall not apply to the exercise in the territory of one of the High Contracting Parties of the professions, occupations, industries and trades hereinafter specified:*

(a) Public functions, charges or offices *(of a judicial, administrative, military or other nature)* which involve a devolution of the authority of the State or a mission entrusted by the State, *or the holders of which are chosen either by the State or by the administrations under the authority of the State even if these are endowed with juridical personality and irrespective of whether they are of a general or local territorial nature;*

(b) Professions such as those of barrister, solicitor, notary, stockbroker and professions or offices *which, under the national laws by which they are governed, entail special responsibilities in view of the public interest;*

(c) Industries or trades forming the subject of a State monopoly or monopolies exercised under State control ;

(d) State undertakings;

(e) Hawking and peddling ;

(f) Fishing in territorial *and inland waters*, and *the exploitation of the riches of such waters*, the coasting trade, pilotages and the internal service in ports ;

(g) Service in vessels *or aircraft* flying the national flag ;

(h) The exploitation of minerals and hydraulic power ;

(i) The operation of public services and industries forming the subject of concessions;

(j) The manufacture of arms and munitions of war;

(k) Direct and indirect insurance operations carried out by individual contractors, including all industrial insurance in respect of life, industrial accidents and sickness for which the premiums are collected at the residence of the insured person and at short intervals.

Protocol *ad* Article 7.

Rapporteur: M. Politis (Greece).

108. With regard to paragraph 1, the Finnish and Latvian delegations proposed that it should be stated that foreigners require a special permit for the exercise of any profession.

The Committee was of opinion that such a condition would be incompatible with the principles underlying the Convention. It agreed, however, that a special reservation in this connection might be submitted subsequently.

109. The Indian delegation asked that it should be understood that foreign industries must be carried on in such a way as to make their development profitable also to nationals.

It was pointed out that this question would be examined subsequently in connection with alleviations from the provisions of the Convention to be granted to certain countries.

110. With regard to paragraph 3, the Estonian delegation submitted an amendment proposing that paragraph 1 be deleted and that the initial sentence of the second paragraph be modified accordingly. In its opinion the latter provision, which allows only for the possibility of accepting the principles laid down in Article 7, would preclude any necessity of inserting in the Convention the stipulation regarding the declaration in the first paragraph, the effect of which would be rendered completely inoperative by the provisions of the second paragraph.

The delegation did not insist, however, after it had been explained that the two paragraphs were necessary, since the first referred to foreign workers already admitted and assimilated to other foreigners, whereas the second was a compromise and reserved the right to regulate the home labour market. If the first paragraph were deleted, the second would become superfluous. It was necessary, therefore, to retain both.

111. Upon the Italian delegation's proposal and in order to establish concordance with the following paragraph, the Committee decided to add in the third line of the first paragraph after " admitted to their territory " the words " and residing there either temporarily or permanently ".

112. A German amendment proposing that in paragraph 2 the words " employees or other wage-earners " be deleted, was rejected.

113. In order to meet the desire expressed by the Czechoslovak delegation, the Committee agreed to substitute at the end of the same text, as being synonymous, the word " *statuer* " for the words " *se prononcer* ".

114. The German delegation proposed that a new paragraph be added specifying that, if foreigners were permitted to engage in one of the activities referred to in the second paragraph of the article, this activity, in application of paragraph 1, should be placed on a footing of complete equality with the similar activity of nationals and that the provisions or conditions to be observed should be the same for all foreigners.

The Committee was of opinion that, since the exclusion of foreigners from the exercise of the professions or activities enumerated in paragraph 2 of the article was authorised, countries could not be prohibited from giving foreigners access to them, subject to conditions to be determined by these countries, but irrespective of nationality.

115. With a view to the granting of facilities to foreign students, the Japanese delegation suggested that a clause be inserted in the Protocol *ad* Article 7 to the effect that the provisions of this article be applied also to studies and to education.

This suggestion was supported by other delegations, but it was observed that some countries could not assume the obligation of allowing access to their schools to all foreigners and, further, that intellectual relations were outside the scope of the Convention.

116. The Committee finally decided, upon the suggestion of several delegations, that paragraph 3 of the Protocol should form a special article whose place in the Convention would be determined by the Drafting Committee. The text of this Article would read as follows :

> " The High Contracting Parties agree that the provisions of the present Convention regarding the treatment of foreigners shall apply to workers, employees and other wage-earners admitted to their territory *and residing therein either temporarily or permanently* in the same way as to any other alien.
>
> " It has not been their intention, however, to regulate by the present Convention the conditions and guarantees affecting the temporary sojourn or permanent establishment of foreign workers and of employees and other foreign wage-earners or *to lay down any decision* as to the measures which certain States are obliged to take to protect their own labour market."

117. The British delegation had asked that an additional provision be inserted in the Protocol *ad* Article 7. The Committee, however, considered that the measures taken with a view to preventing unfair competition in connection with the use by foreigners of borrowed names for the exercise of any professions, occupations, activities or trade were not incompatible with the provisions of the Convention.

The British delegation therefore did not insist upon the insertion of its amendment in the Protocol.

118. The text of the Protocol *ad* Article 7, as thus amended, would therefore read as follows

> " 1. The above declaration, in connection with Articles 3 and 4, shall also, as regards: State monopolies, apply to Article 7.
>
> " 2. The High Contracting Parties hereby declare that it would be desirable that agreements for the recognition of the equivalence of titles or guarantees to which the practice of certain professions are subject should be concluded between countries in which the necessary guarantees of equivalence would appear to exist."

ANNEX A 35.

ARTICLE 7 : PROPOSALS OF THE RAPPORTEUR.

I.

Paragraph 93.

The Austrian and Hungarian delegations expressed the wish that the text should specify that the term " coasting trade " (" *cabotage* ") only covered the maritime coasting trade, and not river " *cabotage* ". The principal delegations interested in this question did not succeed in drawing up a text concerning this problem.

Two texts were, however, drawn up for possible insertion in the Protocol *ad* Article 7. They are as follows :

First Text :

> " By the provisions of Article 7, paragraph 2, sub-paragraph *(f)*, the High Contracting Parties do not intend to lay down any decision on the *de jure* and *de facto* position in regard to local transport on rivers and lakes (river and lake coasting trade)."

Second Text :

> " The provisions of Article 7 shall in no way affect the obligations assumed under the international conventions concerning river and lake transport (river and lake coasting trade)."

Each of these texts would leave the text of sub-paragraph *(f)* of paragraph 4 of Article 7 as adopted.

The Committee considered that the exception regarding the maritime coasting trade should be limited in the Convention and that the second text should be inserted in the Protocol. This second text alone is compatible with the general spirit of the Convention and of the Protocol, since the reservation regarding the application of other international conventions is manifestly justified, whereas the first text merely notes that there is in the Convention an omission deliberately made by the parties without any indication as to the reason.

It should be added that, if the term " river and lake *cabotage* " applied purely and simply to navigation on inland waters belonging to a single State, the State concerned might prohibit foreigners from engaging in such navigation, as well as, generally, in any other form of navigation not governed by international conventions, provided that State had acceded to the present Convention subject to a special reservation regarding this industry.

The adoption of the method of special reservations in regard to certain occupations from which it is desired to exclude foreigners seems definitely preferable to that of unduly extending the list of exceptions contained in paragraph 2 of Article 7, since in this way other States, whose legislation in this matter is more favourable to foreigners, are left a free hand in relation to the country which has made the reservation, and are not obliged to make their own legislation more restrictive.

II.

Paragraph 102.

As regards aerial navigation, it was pointed out that aviation was governed by a special convention concluded in 1919 ; the Committee considered accordingly that it might perhaps be expedient to bring this point to the notice of Committee D, so that the latter might, if necessary, formulate a provision stating that the Convention does not affect the 1919 Convention or other international conventions relating to other matters which may be connected with the questions dealt with in the Convention to be framed by the Conference.

Meanwhile the following text might be inserted in the Protocol *ad* Article 7 :

" The provisions of Article 7 shall in no way affect the *de jure* position which is the outcome of the 1909 Convention on Air Navigation."

III.

Paragraph 103.

The Venezuelan delegation desired to point out that its amendment reserving navigation to nationals of Venezuela was inspired by the fact that the merchant marine of that country had only reached an early stage in its development and was at a disadvantage as regards competition with foreign companies.

It added that the word " navigation " should be interpreted as applying to maritime and river shipping and to aerial navigation.

The considerations outlined above regarding the possibility for States which have requested that the river coasting trade be excepted (Yugoslavia) to accede to the Convention, subject to a special reservation, apply also to the question raised by Venezuela. It applies equally to the question raised by Portugal as regards the restrictions provided for by her laws regarding the participation of foreigners in shipping undertakings and the prohibition for foreign vessels to engage in the transport business between two ports belonging to Portugal.

IV.

Paragraph 104.

Several delegations (Czechoslovakia, Latvia, Portugal and Finland) submitted amendments with a view to restricting in varying degrees the operations of foreigners in the matter of banks and financial transactions.

As regards the Portuguese amendment, it should be observed that the restrictions to which this amendment refers apply only to the colonies. On the basis of Article 28 of the Convention, Portugal may be given satisfaction without modifying Article 7.

As regards the other amendments, an examination of the legal provisions in force in the countries concerned shows that a general exception regarding the banking industry inserted in paragraph 2 of Article 7 would go much beyond the requirements put forward by these countries themselves. The restrictions which they enforce do not amount to an absolute prohibition for foreigners to engage in the banking industry, which has become so important for world trade. In these circumstances, the most reasonable solution would seem to be to agree, in accordance with the subsidiary request submitted by the Finnish delegation, that all these countries should be permitted to accede to the Convention subject to a special reservation specifying the restrictions upon foreigners they intend to maintain in regard to the banking industry.

ANNEX A 36.

ARTICLE 15 : DRAFT REPORT OF COMMITTEE A TO THE CONFERENCE.

Committee A adopted, for Article 15, the following text :

" As regards the provisions of Articles 9, 10 and 11, nationals of one of the High Contracting Parties shall enjoy, in the territory of the other High Contracting Parties, the same treatment as they would enjoy if they were established there."

This text differs from the text submitted in the Economic Committee's draft, in that the reference to Articles 12 and 14 is omitted.

The reference to Article 12 was deleted at the request of a delegation which did not see its way, from the point of view of taxation, to assimilating the treatment of foreigners not established in the territory of one of the contracting parties to the treatment of foreigners who were so established. The delegation in question pointed out that, under the laws of several States, the régime applicable to nationals not established was not the same as that applicable to nationals who were established, and that it would be impossible to extend to foreign nationals a measure which it had not seemed expedient to adopt in the case of nationals of the country itself.

The reference to Article 14 no longer appeared necessary, as Committee B had omitted this article in the text which it framed.

The Japanese delegate desired to reserve the right to submit, at a plenary meeting, an amendment to the terms of Article 15 as adopted.

Lastly, the Committee decided to leave it to the Drafting Committee to determine the final form of the text of Article 15, which is somewhat obscure as it stands.

ANNEX A, 37.

FINAL ACT : DRAFT REPORT OF COMMITTEE A TO THE CONFERENCE.

Committee A decided to adopt for the Final Act the following text :

I.

" The Conference desires to draw attention to the hindrance that may be placed in the way of production and trade by the measures which certain States are obliged to take for the protection of their home labour market.

" It considers that these questions should be made the subject of special laws and agreements, but it is anxious to express its desire that there should gradually be established régimes which, while consistent with national requirements, should be of as liberal a character as possible.

" It expresses the hope that, for this purpose, negotiations will be instituted, as soon as circumstances appear favourable, with a view to permitting, as far as possible, the exchange of foreign labour and employees, and other foreign wage-earners, and in particular with a view to :

" *(a)* Reducing as far as possible the restrictions which at present prevent the exchange of technical experts, employees and workers constituting the skilled staff of undertakings, and which prevent practitioners or other persons from going abroad in order to complete their professional training ;

" *(b)* Establishing adequate regulations for the transfer from place to place of itinerant and seasonal labour where this appears desirable ;

" *(c)* Considering the most effective means of protecting the workers against the disadvantages which sometimes attach to their recruitment, transport, placing and employment abroad and against the malpractices of intermediary agents.

" Further the Conference directs the attention of the International Labour Organisation to these recommendations in so far as they concern it. "

II.

" The Conference considers it desirable that the High Contracting Parties should, as far as possible, conform to the terms of the present Convention in any treaties which they may conclude with non-contracting States."

III.

"As regards the freedom enjoyed by the States under Article 6 in the matter of admission and expulsion, the Conference recommends that this right should not be exercised in such a way as to weaken the effects of the undertakings entered into under the terms of the present Convention."

This text differs from the text on page 12 of thre Peparatory Document in the following particulars :

PART I.

Paragraph 1.

No change.

Paragraph 2.

In the second line, the words " of freedom " have been omitted, the Committee regarding them as superfluous.

Paragraph 3.

At a delegation's request, the word " restoring " in the second line has been replaced by the word " permitting ".

Similarly, the expression " free exchange of foreign labour " has been replaced by the expression " exchange of foreign labour ".

Sub-paragraph (a).

The word " abolishing " has been replaced by the words " reducing as much as possible ".

Sub-paragraph (b).

At a delegation's request the words " where this appears desirable " have been added.

Sub-paragraph (c).

Has been completed by the addition of the words "against the disadvantages which sometimes attach to their recruitment, transport, placing and employment abroad and . . .".

In addition, the Conference decided to recommend these various resolutions dealing with the conditions regarding the employment of labour to the special attention of the International Labour Organisation in so far as these recommendations concern it.

PART II.

The second part was adopted without change as it figures in the preparatory documents.

PART III.

The Committee adopted the recommendation contained in the report submitted to the Conference on behalf of Committee A by M. Politis (document C.I.T.E./32/Continuation 4, page 4). This recommendation applies only to the circumstances in which States may avail themselves of the right accorded them by Article 6 in regard to the admission and expulsion of foreigners.

In pursuance of an observation submitted by the Netherlands delegation, the Committee agreed to state in its report that the proposed Convention should take precedence over previous bilateral treaties in so far as it contains more liberal measures in regard to matters already dealt with in these bilateral treaties.

Lastly, the Committee was informed that Committee D requested the insertion of certain provisions in the Final Act. Committee A considered that it would be for the Drafting Committee to make the insertion.

ANNEXES TO THE MINUTES OF COMMITTEE B (B Series).

ANNEX B, 1.

ARTICLES 3, 4 AND 12 (PARAGRAPH 2) : SUMMARY OF AMENDMENTS.

The present document does not include the observations put forward by Governments asking for the deletion of these articles ; it confines itself to indicating the textual amendments which have been suggested with regard to the wording of these articles.

ARTICLE 3.

British Delegation.

In line 4, for the words " a more burdensome ", substitute " any other ".

Netherlands Delegation.

As regards the application of Article 3 and Article 12 (paragraph 2), it is understood that they do not apply to Customs duties or other taxes to which goods are subject, solely by reason of their importation or exportation.

Turkish Delegation.

The following sentence should be added at the end of Article 3 :

". . . and, in the absence of similar products of the country itself, than on those of the most favoured nation."

ARTICLE 4.

Venezuelan Delegation.

Add at the end of Article 4 :

" The present Article does not apply to the taxes levied on the transit of foreign goods over the territory or navigable waterways of any of the High Contracting Parties."

Estonian Delegation.

Article 4 raised a difficulty of a more or less formal nature. The law in force in Estonia (Code of Laws on Direct Taxes, supplement to Article 449, Vol. V, of the *Statute Book of the former Russian Empire*) stipulates that trade in products of foreign origin may only be carried on by merchants who have procured first or second class licences ; merchants who hold third class licences may only trade in a limited number of foreign products, including sugar, colonial produce, certain haberdashery articles, etc. There therefore exists in Estonia, as regards the offering for sale and the sale of products, a distinction between home and foreign products, but this distinction is purely formal, as all are free to procure licences of any category they wish, and consequently a licence conferring on them the desired authorisation.

No departures have ever been made from the provisions of the said law in bilateral commercial treaties. Thus, upon the conclusion of the Commercial Convention with France, signed at Paris on March 15th, 1929, Estonia consented to insert in this treaty an Article 10 with a text corresponding, word for word, to Article 4 of the Draft Convention on the Treatment of Foreigners, but at the same time it was laid down in the Protocol *ad* Article 10, that " the French Government recognises that the provisions of Article 10 shall not preclude the application of the special provisions which govern the activities of the different categories of Estonian traders ".

Accordingly, Estonia can only adopt the provisions of Article 4 of the draft on condition that a suitable reservation be inserted in the proposed Convention or in its Protocol, or, if this cannot be done, that the Conference accept such a reservation on the part of Estonia.

Reservation : The Estonian Government, while accepting Article 4 of the Convention, reserves the right to apply the provisions of its laws which confine the right of offering for sale and of selling all goods of foreign origin to enterprises provided with first and second class licences.

ARTICLE 4.

Latvian Delegation.

In Latvia, the commercial and industrial regulations concerning the sale, circulation and consumption of goods do not, as a rule, make a distinction between home products and products coming from other countries. The legislation in force allows of only one exception to this principle, namely, in the case of contracts given by Government institutions, the latter being permitted in certain cases to give the preference to home products, even if the cost of the latter is higher than that of tenders from abroad. This stipulation only applies to goods supplied to the Government ; the municipalities, communes and private commercial, industrial and transport organisations and undertakings are not obliged to observe it. The reconstruction of home industry, which was completely destroyed during the world war, is assisted neither by subsidies nor cheap credits from the Government, nor by export bounties or special transport tariffs. Hence the Latvian Government has been obliged to reserve certain opportunities, limited though they may be, for encouraging home industry and for remedying in this way the drawbacks of unemployment. This measure, although constituting a discrimination between home products and similar foreign products, is not, in the Latvian Government's opinion, a hostile measure directed against foreign products.

The delegation is of the opinion that a fresh paragraph in the Protocol *ad* Article 4 or 20, permitting such provisions, should be considered.

British Delegation.

Add a new Protocol provision :

" *Ad* Article 4.

" The provisions of Article 4 shall not prejudice the right of the High Contracting Parties to reserve certain public markets and fairs for the sale or exhibition of national goods, or to impose requirements as to the marking of goods."

Danish Delegation.

In regard to Article 4, the Danish Government desires to state that, in Denmark, the Ministry of Commerce and Industry, according to Article 14 of Law No. 48, dated March 29th, 1924, dealing with unfair competition and false indications of goods, is authorised, after having submitted the question to commercial, industrial and other organisations for consideration, to decide that certain goods shall not be sold or offered for sale in retail trade unless they are marked with the place of production or origin. If these regulations on merchandise marks are not considered to be in harmony with the provisions of Article 4, the Danish Government regrets that, for this reason, it cannot accept this article without a reservation relative to the regulations in force on this matter. Further, Article 4 has been drawn up in such general terms that it is difficult to judge of its effect, and its adoption might easily cause difficulties, with regard, for example, to the laying down of rules of taxation. This makes it difficult for the Danish Government to accept the article.

Netherlands Delegation.

The Netherlands delegation finds it somewhat difficult to agree to the retention of Article 4, because in its country the treatment accorded to national products is different from that given to foreign products and the delegation is not certain whether such provisions are compatible with the text of the Convention. If this difficulty — set forth below — could be removed by any means, the delegation would be prepared to agree to the retention of this article.

The Law of September 18th, 1852 on the guarantee for articles of gold and silver, makes a distinction between articles of gold and of silver.

The fineness of the latter, if imported from abroad, is not guaranteed ; they are merely stamped in order to show that the legal duties leviable upon them have been paid. As regards imported articles made of gold, no difference is made between these and home-made articles, except as regards the stamp affixed. Imported articles, whatever they may be, are marked exclusively with the stamps used for native articles of small size.

Article 78 of the same law allows the exportation of new articles of gold and silver made in the country, subject to the refunding of nine-tenths of the dues levied for the guarantee. This does not, however, apply to articles made of silver. Imported articles of gold are subject to the same conditions as articles of gold made in the country itself.

ARTICLE 12, PARAGRAPH 2.

Austrian Delegation.

Omit the words " employed or ", or, if the text of paragraph 2 is retained, insert in the Protocol the following text :

" The provisions of Article 12, paragraph 2, shall not affect any legal provisions intended to promote national industry by which certain facilities in the matter of taxation are granted to undertakings which, in making installations *(Investitionen)*, employ native materials and products."

(Vide "Brown Book" of the Conference, pages 70 and 71.)

Egyptian Delegation.

With regard to Article 12, the Egyptian delegation would refer to its statement which was read during the general discussion, and to the note, dated September 30th, 1929, sent by the Egyptian Ministry of Foreign Affairs to the Secretary-General of the League of Nations, which has been distributed to the members of the Conference (document C.I.T.E. 3.).

The Egyptian delegation further supports the suggestion made by the Austrian Government that a clause should be included in the Protocol specifying that certain facilities granted with a view to promoting national industry should not be excluded.

Venezuelan Delegation.

Delete paragraph 2 of Article 12 while retaining the Protocol *ad* Article 12 modified as follows:

" It is understood that Article 12 shall not apply to Customs duties or any other duties connected with the importation, *transit* or exportation of goods."

ARTICLES 3, 4 AND 12, PARAGRAPH 2.

Japanese Delegation.

These articles to be replaced by the following text :

" The High Contracting Parties undertake not to subject foreign goods to any discriminatory treatment incompatible with the provisions of the present Convention, either as regards internal taxation or the distribution of such goods within the country."

The Sub-Committee proposes the insertion in the Protocol ad *Article* 1, *paragraph* 1, of the following text to replace Articles 3, 4 and 12, paragraph 2 :

" In order to give full effect to the principle of equality of treatment laid down in paragraph 1 of Article 1, the High Contracting Parties undertake to abstain from taking measures for the purpose of subjecting the products of the other High Contracting Parties as regards internal taxation, sale, offering for sale, distribution and consumption to any conditions or charges other or more burdensome than those to which national products of the same kind are subject."

ANNEX B, 2.

DOUBLE TAXATION.

OBSERVATIONS SUBMITTED BY THE NETHERLANDS DELEGATION.

The system applied by the Netherlands Government for the prevention of double taxation, apart from the bilateral treaties concluded in the matter, is explained in the note annexed hereto which contains the texts governing the question.

The guiding principle in the autonomous measures mentioned in this note is that a Netherlands national resident in the country shall be exempt from the tax on income or capital in the Netherlands if the source of the income or capital is in another country and if the levying of the tax by the Government of that other country is recognised as just. There is no reason to demand reciprocity in such cases, as the question of whether the foreigner is treated as liberally in his own country by his own Government in the matter of income derived from the Netherlands does not concern the Netherlands Government.

The Minister of Finance has decided to accord the above-mentioned facilities enjoyed by Netherlands nationals to foreigners who have resided in the kingdom for five years, and this without any guarantee of reciprocity, since foreigners who have lived for as long as this in the Netherlands may be considered Netherlands nationals for the purposes of the application of the fiscal laws.

Reciprocity is essential, however, where the assimilation to nationals of other foreigners (resident in the country and having income, for example, derived from another country), is concerned; otherwise, the other Governments would have no interest in regulating the question of double taxation with the Netherlands, as the Netherlands Government would simply be granting full facilities unconditionally. In other words, the Netherlands Government, while treating foreigners with the utmost liberality to the detriment of its treasury would be neglecting the interests of its own nationals abroad, and the latter would continue to suffer under the burden of double taxation.

If the Government is to continue its liberal policy in the matter, foreigners must not be guaranteed national treatment unless it is agreed that the condition required for such treatment shall not be deemed to be fulfilled if the Government of the foreigner applying for such treatment refuses to accord treatment on equal or similar terms to Netherlands nationals. Accordingly a clause on the following lines should be inserted either in the Convention or in the Protocol :

" It is understood that, if a Government, in application of a principle which all Governments should recognise, exempts its own nationals living in the country from the tax

on income or capital derived from abroad, another Government may not claim such exemption for its nationals if it does not itself apply this principle on equal or similar terms."

* * *

Appendix

MINISTERIAL DECREE OF APRIL 17TH, 1928.

(Netherlands Official Journal, No. 76, of April 18th, 1928.)

ARTICLE 1.

1. When a Netherlands national residing in the Kingdom is subject, in respect of :

Immovable property situated abroad ;
A mortgage on immovable property situated abroad ;
A trade or profession carried on abroad ;
A post carrying with it salary or wages paid by a foreign public body ;
Payment of pension or retired pay in respect of a post carrying with it salary or wages paid by a foreign public body ;

to a tax on revenue or capital levied by the foreign State :

(a) The amount of the tax payable, assessed in conformity with Articles 37 and 38 of the Law on Taxation of Revenue of 1914, and Article 3 of the Law on the Defence Tax II, shall be reduced by the amount of the tax, assessed on the same basis as the revenue, on such part of his revenue as is constituted by the yield of the immovable property, mortgage, trade or profession or the periodical payment due to him ;

(b) The amount of the tax payable, assessed ln conformity with Article 10 of the Law on Taxation of Capital of 1892 and of Article 3 of the Law on the Defence Tax I, shall be deducted from the tax, assessed on the same basis, in respect of such part of the capital as is constituted by the immovable property or a claim thereon, or by the mortgage, or is invested in the trade or profession, so that the value of the share in the yield of a trade or profession carried on abroad shall be considered as capital invested in the trade or profession.

2. When the taxpayer has debts constituting a mortgage on his immovable property, the yield on the immovable property shall be reduced, when assessing the tax to be deducted, by the annual amount of the income due, and the sale value shall be reduced by the cash value of the debts.

3. When the taxpayer has debts arising directly out of a trade or profession carried on abroad, the value of the capital invested in such trade or profession shall be reduced, when assessing the amount of the tax to be deducted, by the cash value of the debts.

4. When immovable property is situated partly in the Netherlands and partly abroad, the part situated abroad shall be regarded as a separate property.
When a trade or profession is carried on both in the Netherlands and abroad, the exercise of the said trade or professian shall be regarded as a separate occupation.

5. When a taxpayer comes under paragraph 1 in respect of several sources of income, the parts of his income referred to in *(a)* and the parts of his capital referred to in *(b)* shall be combined for the purpose of tax assessment.

ARTICLE 2.

These measures apply also to foreigners residing in the Netherlands who :
(a) Have resided in the Netherlands during the last five fiscal years previous to the fiscal year in question, or
(b) Are nationals of the State which grants Netherlands subjects residing in its territory exemption from double taxation under equal or analogous conditions.

Note. — Exemption from double taxation is granted in virtue of Article 2 *(b)* quoted above to foreigners residing in the Netherlands who are nationals of Canada, the United States of America, the Union of South Africa and Austria.

* * *

ARTICLE 4 OF THE CONVENTION.

The Netherlands delegation finds it somewhat difficult to agree to the retention of Article 4, because in its country the treatment accorded to national products is different from that given

to foreign products and the delegation is not certain whether such provisions are compatible with the text of the Convention. If this difficulty — set forth below — could be removed by any means, the delegation would be prepared to agree to the retention of this article.

The Law of September 18th, 1852, on the guarantee for articles of gold and silver, makes a distinction between articles of gold and of silver.

The fineness of the latter, if imported from abroad, is not guaranteed ; they are merely stamped in order to show that the legal duties leviable upon them have been paid. As regards imported articles made of gold, no difference is made between these and home-made articles, except as regards the stamp affixed. Imported articles, whatever they may be, are marked exclusively with the stamps used for native articles of small size.

Article 78 of the same law allows the exportation of new articles of gold and silver made in the country, subject to the refunding of nine-tenths of the dues levied for the guarantee. This does not, however, apply to articles made of silver. Imported articles of gold are subject to the same conditions as articles of gold made in the country itself.

ANNEX B, 3.

ARTICLES 13 AND 14 : DRAFT TEXT SUBMITTED FOR THE CONSIDERATION OF COMMITTEE B.

Article 13.

Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties whose principal establishment is situated in the territory of another High Contracting Party to higher taxes or charges, taken all round, than those borne in like circumstances by its own nationals.

As regards taxes on capital, on industrial, commercial or agricultural profits or on turnover, each of the High Contracting Parties undertakes not to tax the nationals of the other contracting parties, save (according to the nature of the taxes) in respect of the capital which they have invested in its territory or the property which they own therein, the profits accruing to them or the business operations conducted by them within that territory through permanent establishments.

Such taxation may be levied either directly, on the basis of the factors specified above, or on part of the total capital, profits or turnover of the undertaking, in relation to the aforesaid factors or of any others factors fixed or to be fixed under the conditions laid down in the last paragraph of the present article.

In derogation of the provisions of the preceding articles, and by means of bilateral or other agreements, the High Contracting Parties may decide that maritime or air navigation undertakings are taxable only in the State in which their real centre of control and management is situated.

The High Contracting Parties will, if necessary, determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements.

Article 14.

The provisions of Article 14 shall not affect the bilateral or other agreements under which shipping and air navigation undertakings are taxable only in the State in which their real centre of control and management is situated.

DRAFT PROTOCOL AD ARTICLES 13 AND 14 OF THE DRAFT CONVENTION.

The term " permanent establishment " shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices and warehouses. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.) shall not, for that reason, be deemed to possess a permanent establishment in that country.

It is understood that the second paragraph of Article 13 only lays down a principle of taxation. As regards the application of this principle, very different rules of assessment may be adopted, either based on the direct determination of the taxable assets or on the basis of the capital, revenues, or profits of the undertaking considered as a whole.

The provisions of Article 13, both in themselves and applied, *mutatis mutandis*, to companies under Article 16, paragraph 8, do not refer to the taxation of transferable securities.

As regards the application of the penultimate paragraph of Article 13, it should be stated that, if maritime or air navigation undertakings also engage in other independent navigation activities *(e.g.*, trade in goods, banking, warehousing), these activities shall respectively be subject to the other provisions of this Convention.

ANNEX B, 4.

PROTOCOL AD ARTICLES 13 AND 14: PROPOSAL OF THE AUSTRIAN DELEGATION.

The insertion in the Convention of the provisions laid down in Articles 13 and 14 and the Protocols *ad* Articles 12 and 13 might lead to a conflict of laws in the case of those of the contracting parties which have already agreed, or may at some future date agree, to conclude a bilateral agreement for the prevention of double taxation. The Convention concerning the treatment of foreigners is obviously not intended to derogate from existing bilateral agreements or to prejudice the conclusion of future agreements. The texts of these bilateral agreements, however, will not always be concordant with the provisions inserted in the Convention concerning the treatment of foreigners, even if the terminology of these provisions is brought into line with the model texts framed by the experts in the matter of double taxation. The co-existence of two texts which are not absolutely identical might involve difficulties in regard to interpretation. The general part of the comments shows that the purpose of Articles 13 and 14 is to settle certain questions of special importance, more particularly between those of the contracting parties which will probably not succeed in quickly concluding bilateral agreements. Hence, the object of the rules laid down in Articles 13 and 14 is to establish a general régime which shall be applicable in the absence of more detailed bilateral regulations.

It might perhaps be expedient to note this fact in the text of the Convention. Accordingly the Austrian delegation proposes that the following provision be inserted in the Protocol :

" Ad *Articles* 13 *and* 14.

" The High Contracting Parties agree to declare that the provisions of Articles 13 and 14, and of the Protocols relating thereto, shall be applied between them only in the absence of bilateral treaties for the prevention of double taxation relating to the points dealt with in the aforesaid articles."

PROTOCOL *ad* ARTICLE 14.

In pursuance of the Federal Government's proposal, reproduced on pages 52 and 53 and 70 and 71 of the "Brown Book", the Austrian delegation proposes the insertion of the following clause in the *Protocol* ad *Article* 14, *paragraph* 2 :

" Auxiliary operations, such as the operations of agencies engaged in business at places where ships and vessels of a shipping company do not call, shall not be regarded as operations directly connected with those referred to in this paragraph."

ANNEX B, 5.

ARTICLES 3 AND 4 AND ARTICLE 12 (PARAGRAPH 2) : DRAFT REPORT OF COMMITTEE B TO THE CONFERENCE.

Articles 3, 4 and 12 (paragraph 2) were discussed at length by Committee B and a Sub-Committee, which dealt specially with the question.

Several delegations considered that these articles should be omitted, as they were outside the scope of the proposed Convention, and only related to the treatment of goods and not the treatment of foreigners. Some went so far as to say that in their view these articles would be more in place in commercial treaties, and that this very complicated subject, necessitating as it did a great deal of detailed work, should be dealt with at another Conference.

Other delegations, on the contrary, asserting that the taxes imposed on foreigners were generally the heaviest burden they had to bear, were very anxious to have these articles maintained in the Convention.

In view of the character of the opposition displayed, and in view of the importance of arriving at a compromise acceptable both to the opponents and supporters of these articles, the Committee decided to take a vote on the principle of maintaining or omittingr Aticles 3, 4 and 12 (paragraph 2).

Out of forty-seven delegations represented on the Committee, the delegations of the following twelve States pronounced in favour of maintaining the articles :

Belgium	France	Roumania
British Empire	Germany	Spain
Canada	Hungary	Switzerland
Czechoslovakia	Netherlands	Venezuela

The following eleven delegations voted for omitting the articles :

China	India	Portugal
Cuba	Italy	Salvador
Denmark	Japan	Sweden
Greece	Poland	

After this vote on the question of principle, the Committee entered upon the discussion of each article, taking into account the amendments submitted to it by various delegations.

Several of the delegations which were opposed to these articles took part in the discussion on the proposed drafting amendments, while pointing out that they reserved their final vote. The Committee unanimously recognised that the final decision must rest with the Conference.

Article 3.

In order to take account of an amendment by the British delegation, and of observations put forward by several delegations, the Committee made several alterations in the wording of Article 3.

In the first line of the article the term "*conditionnement*" (omitted in the English text), which was found too vague, was deleted at the Belgian delegation's request and the drafting of the end of the article was readjusted so as to make the article read as follows :

> "Internal taxes on production, distribution or consumption, which are at present levied, or which may in future be levied, on goods — no matter on whose behalf — may not, on any grounds, be levied on the products of the other High Contracting Parties in a more burdensome manner than on similar products of the country itself."

Protocol *ad* Article 3.

As regards the Protocol, the Committee accepted an amendment by the Netherlands delegation which proposed that the Protocol *ad* Article 12 (paragraph 2) should also be applied to Article 3.

At the German delegation's request, it also agreed to insert in the Protocol a clause specifying that the fiscal charges mentioned in the article covered, not only the rate of taxation, but also the method of levying the taxes. Lastly, it approved an amendment submitted by the Turkish delegation, and the Protocol provides that Article 3 is not intended by the High Contracting Parties to prejudice the treatment applicable in the contracting States when no national products of a like character exist in those States.

The text of the Protocol *ad* Article 3 would now read as follows :

> "The provisions of Article 3 shall also apply to the turnover tax *(taxe sur le chiffre d'affaires, Umsatzsteuer,* etc.). They shall not apply to Customs duties or to the other charges attaching to the import or export of goods.
>
> "The fiscal charges mentioned in the said article cover not only the rate of taxation, but also the method of levying the taxes.
>
> "Article 3 is not intended by the High Contracting Parties to prejudice the treatment applicable in the contracting States when no national products of a like character exist in those States."

Article 4.

In order to take into account an amendment submitted by the British delegation, the text of Article 4 was supplemented by the addition of the following paragraph :

> "This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods."

Another paragraph was also added in conformity with the request of the British and Danish delegations :

> "Any measures taken in the matter of marks of origin shall not be deemed derogations to the provisions of Article 4, provided that they are not of a discriminatory nature incompatible with the spirit of the Convention."

At the request of the Venezuelan delegation, the Committee declared expressly that transit questions are not covered by the present Convention.

The delegations of Estonia and the Netherlands explained certain difficulties raised by Article 4 as regards their laws.

In Estonia, the law stipulates that goods of foreign origin may only be offered for sale and sold by undertakings which have procured first or second class licences.

The Netherlands Law of 1852 makes a distinction in the case of articles of gold and of silver between national and foreign products.

The Committee was of opinion that cases such as these should be submitted to the Conference.

The text adopted by the Committee for Article 4 reads as follows :

> "In regulating the freedom of trade, especially as regards the sale, offering for sale, distribution and consumption of goods, no distinction shall be drawn between products of the country itself and products of the other High Contracting Parties.
>
> "This provision shall not prejudice the right of the High Contracting Parties to reserve, subject to the conditions laid down in Article 2, certain public markets and fairs for the sale or exhibition of national goods.
>
> "Any measures taken in the matter of marks of origin shall not be deemed derogations to the provisions of Article 4, provided that they are not of a discriminatory nature incompatible with the spirit of the Convention."

Protocol *ad* Article 4.

At the request of the Latvian delegation, the Committee decided to insert in the Protocol the following provision, which is based on the Protocol *ad* Article 1 :

" The provisions of Article 4 shall be subject to any special conditions which the High Contracting Parties may lay down in connection with contracts concluded by the public authorities as a result of tenders."

Protocol *ad* Articles 3 and 4.

No modification was made in the Protocol *ad* Articles 3 and 4.

Article 12, Paragraph 2.

The text of paragraph 2 of Article 12 was adopted without modification.

As in the case of Article 4, the Committee, at the request of the Venezuelan delegation, explicitly recognised that transit questions do not come within the scope of the present Convention.

Protocol *ad* Article 12, Paragraph 2.

In order to meet the wishes of the Austrian, Bulgarian and Egyptian delegations, the Committee decided to add to the Protocol *ad* Article 12, paragraph 2, the following provision :

" The provisions of Article 12, paragraph 2, shall not prejudice any temporary legal provisions which, in countries affected by exceptional circumstances, are intended to promote national industry and for this purpose grant certain facilities in the matter of taxation, irrespective of nationality, to undertakings established in the country which maintain installations therein and employ national products."

ANNEX B, 6.

ARTICLE 12, PARAGRAPH 1, AND ARTICLES 13 AND 14 : DRAFT REPORT OF COMMITTEE B TO THE CONFERENCE.

Article 12, Paragraph 1.

Committee B approved the text of paragraph 1 of Article 12.

The Netherlands Government pointed out, however, that, with a view to preventing double taxation in the case of its own nationals, it renounced the right to levy taxes on revenue or capital in respect of persons liable to taxation who are in another country and are already taxed by that country. The Netherlands Government feels that it cannot extend this favour to foreigners, unless the State of which such foreigners are nationals grants the same favour to Netherlands nationals established in that country. Otherwise, foreign Governments would have no interest in regulating the question of double taxation with the Netherlands Government.

The Netherlands Government declares accordingly that it can only accept Article 12 subject to a reservation. This reservation might be framed as follows :

" The Netherlands Government accepts Article 12 subject to the reservation that it cannot renounce autonomous measures with a view to preventing double taxation in the case of its nationals established in its own territory.

" The Netherlands Government is prepared to apply the same measures in the case of foreigners established in its territory only if the State of which such foreigners are nationals applies the same measures to Netherlands nationals established in the territory of the said foreign State."

The Committee, considering that the position set forth by the Netherlands delegation was the outcome of essentially liberal measures which it would be sorry to see withdrawn, decided to recommend in principle that this reservation should be allowed.

The delegate of the Spanish Government declared that, for the same reasons, he could only accept the text of Article 12 subject to a similar reservation.

Articles 13 and 14.

Committee B opened the discussion on the substance of Articles 13 and 14 of the draft Convention. Very divergent views having been expressed, the Committee was of opinion that these two articles should first be examined by a sub-committee in which the various opinions expressed in the Committee should, as far as possible, be represented.

The Sub-Committee, after lengthy discussion, framed a draft text condensing the substance of Articles 13 and 14 into a single article, followed by a draft Protocol to elucidate the terms of that article (document C.I.T.E./Comm.B/20). It may be noted, however, that, even in the

Sub-Committee, agreement was not reached on any single text, the British delegate finding himself unable to accept a text framed by the majority of the Sub-Committee and reserving the right to submit to the Conference an amendment, which figures in document C.I.T.E./Comm. B/19.

The text framed by the majority of the Sub-Committee and the text of the amendment submitted by the British delegate, who was a member of this Sub-Committee, were submitted for consideration to Committee B. During the latter's discussion, very divergent views were again expressed, and the decisions taken were in almost every case voted only by a very small majority.

In view of the outcome of these deliberations, several members of Committee B formally expressed their intention of bringing up again before the Conference the text framed as the result of the Sub-Committee's discussions.

In the circumstances, it seemed essential, in order to give an accurate idea of Committee B's conclusions, to set forth in chronological order the different results arrived at both in the Sub-Committee and in the Committee, and to submit to the Conference not only the texts adopted by a majority of the Committee but also those texts which the Committee did not accept.

A. *Work of the Sub-Committee.*

The Sub-Committee, after considering Articles 13 and 14, framed the following text to replace those articles. The said text consists of Article 13 to replace Articles 13 and 14 of the draft Convention, and of a draft Protocol *ad* Article 13.

"*Article* 13.

"Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties whose principal establishment is situated in the territory of another High Contracting Party to higher taxes or charges, taken all round, than those borne in like circumstances by its own nationals.

"As regards taxes on capital, on industrial, commercial or agricultural profits or on turnover, each of the High Contracting Parties undertakes not to tax the nationals of the other contracting parties, save (according to the nature of the taxes) in respect of the capital which they have invested in its territory or the property which they own therein, the profits accruing to them or the business operations conducted by them within that territory, through permanent establishments.

"Such taxation may be levied either directly, on the basis of the factors specified above, or on part of the total capital, profits or turnover of the undertaking, in relation to the aforesaid factors or of any other factors fixed or to be fixed under the conditions laid down in the last paragraph of the present article.

"In derogation of the provisions of the preceding articles, and by means of bilateral or other agreements, the High Contracting Parties may decide that maritime or air navigation undertakings are taxable only in the State in which their real centre of control and management is situated.

"The contracting parties will, if necessary, determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements."

"*Draft Protocol* ad *Article* 13.

"The term 'permanent establishment' shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices, warehouses and fixed installations. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.) shall not, for that reason, be deemed to possess a permanent establishment in that country.

"It is understood that the second paragraph of Article 13 only lays down a principle of taxation. As regards the application of this principle, very different rules of assessment may be adopted, either based on the direct determination of the taxable assets or on the basis of the capital, revenues, or profits of the undertaking considered as a whole.

"The provisions of Article 13, both in themselves and applied, *mutatis mutandis*, to companies under Article 16, paragraph 8, do not refer to the taxation of transferable securities.

"As regards the application of the penultimate paragraph of Article 13, it should be stated that, if maritime or air navigation undertakings also engage in other independent navigation activities (*e.g.*, trade in goods, banking, warehousing) these activities shall respectively be subject to the other provisions of this Convention."

During the discussion which resulted in the framing of this text, the British delegate declared repeatedly that he could not accept the text unless it was understood that the State in which the centre of management and control of the undertaking is situated could tax the whole of the profits earned by that undertaking. In order that no doubt might remain as regards this right, he submitted the following amendment :

"(1) Omit from 'or the business' in line six of paragraph 2 of Article 13 to end of paragraph and insert 'from the business operations conducted or controlled by them within that territory through permanent establishments or the volume of such operations'.

"(2) Omit the penultimate and last paragraphs of Article 13."

Most of the other members of the Sub-Committee, however, were of opinion that the British amendment could not be adopted, though several of them expressed a desire that the centre of management and control should be mentioned in the Protocol in connection with the list of establishments to be regarded as permanent establishments.

This difference of opinion having persisted throughout the discussions, the question was referred to Committee B.

B. *Work of Committee B.*

The text prepared by the Sub-Committee and the points of view of the majority and minority having been stated in Committee B, certain delegations not represented on the Sub-Committee desired to give their views. In particular :

The Japanese delegation, which asked that the text of the former Article 14 of the draft Convention be omitted and signified its acceptance of the text of Article 13 submitted by the majority of the Sub-Committee.

The Swedish delegation, which also asked that the former Article 14 of the draft Convention be omitted and wished to see the text of the former Article 13 adopted as it stood in the draft Convention.

The Czechoslovak delegation, which stated that it could not accept the substance of Articles 13 and 14 under any form whatever. It added that, in principle, it was in favour of the provisions incorporated in the draft Convention, but that it thought that this matter could only be dealt with by means of bilateral agreements.

The Indian delegation, which declared that it could not accept the text of Article 13 as drafted by the Sub-Committee, adding that, although in principle it was in favour of omitting this paragraph, it was prepared to accept it if the following amendment were adopted :

> " In the second paragraph after the words ' which they own therein ' insert the words :
>
> " ' . . . or the profits which they receive in, or bring into, that territory or . . . ' "

The Committee, being aware that the disagreement noted by the Sub-Committee still persisted, proceeded to put the text prepared by the Sub-Committee to the vote.

To begin with, as certain delegations had expressed the opinion that the whole of the substance of Articles 13 and 14 should be omitted from the draft Convention, the Chairman put paragraph 1 of the text of Article 13 as drafted by the Sub-Committee to the vote ; he added that those who wished that the whole of Articles 13 and 14 be omitted need only vote against the retention of this first paragraph. On this point, ten delegations voted for the retention of paragraph 1 of Article 13 and eight delegations voted against it.

The proposal having been put forward to retain only this first paragraph, the Chairman put the proposal to omit all the other paragraphs of Article 13 as drafted by the Sub-Committee to the vote. Ten delegations voted for the omission of these paragraphs and nine for their retention.

The representative of the International Chamber of Commerce asked that it be explicitly placed on record that the omission of those paragraphs was decided upon by a majority of only one vote, and expressed his regret at this decision.

Several delegations then explicitly reserved the right to revert at a plenary meeting to the text of this article, as drafted by the Sub-Committee, and to propose its adoption subject to certain modifications. The Conference will no doubt have to take a decision on this point.

The number of votes recorded shows that many delegations were absent from the Committee at the time of voting.

Article 13 having thus been reduced to its first paragraph, one delegation proposed that the last text of the paragraph of the article adopted by the Sub-Committee be reinserted, only the words " if necessary " being omitted. This paragraph would thus read as follows :

> " The Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements."

This proposal was accepted by ten votes to six.

The Chairman then observed that, in view of the various votes recorded, paragraphs 2, 3 and 4 of the draft Protocol became irrelevant. He proposed, however, to the Committee that paragraph 1 be retained ; this proposal was adapted by five votes to three.

As a result of its discussions, Committee B therefore submits to the Conference for addition to the draft Protocol relative to Article 13 the following text :

" *Article* 13.

" Each of the High Contracting Parties undertakes in its territory not to subject the permanent industrial, commercial or agricultural establishments of nationals of other High Contracting Parties whose principal establishment is situated in the territory of another High Contracting Party to higher taxes or charges, taken all round, than those borne in like circumstances by its own nationals.

" The Contracting Parties will determine the procedure for the application of the present article, either by adapting their internal legislation or by means of bilateral or multilateral agreements. "

" *Draft Protocol* ad *Article* 13.

" The term ' permanent establishment ' shall be deemed to include branch establishments, mining and mineral oil undertakings, factories, workshops, agencies, shops, offices, warehouses and fixed installations. Any undertaking which has business relations with a foreign country through a genuinely independent agent (broker, commission agent, etc.) shall not, for that reason, be deemed to possess a permanent establishment in that country."

The Committee also had before it observations submitted by the delegation of Haiti (document C.I.T.E./Comm. B/21). These observations, so far as they concern Articles 13 and 14, announce that the delegation of Haiti cannot accept the said articles. The Committee can only transmit them to the Conference.

Lastly, the Committee noted a draft amendment submitted by the Austrian delegation (document C.I.T.E./Comm. B/12.). This draft proposed the insertion in the Protocol of the following provision :

" The High Contracting Parties agree to declare that the provisions of Articles 13 and 14 and of the Protocols relating thereto shall be applied between them only in the absence of bilateral treaties for the prevention of double taxation relating to the points dealt with in the aforesaid articles."

In view of the importance of the problem thus raised, the Committee realised that it might equally arise in connection with other provisions of the Convention, though in a slightly different form. It proposes therefore, that the whole of the problem be referred to Committee D with the recommandation that, when it comes up for examination, special consideration should be given to the fiscal aspects of the problem.

ANNEXES TO THE MINUTES OF COMMITTEE C (C Series).

ANNEX C, 1.

AMENDMENTS TO ARTICLE 16 PROPOSED BY THE NETHERLANDS DELEGATION.

ARTICLE 16.

Paragraph 1.

Modify the beginning of this paragraph as follows :

" Shareholders and other commercial, industrial and financial companies, including insurance companies, shipping and other transport companies and companies providing communications, having their seat in the territory of one of the High Contracting Parties, etc."

The rest of the paragraph to remain as it stands.

Paragraph 4.

Delete the word " commercial " in the first line.

Paragraph 8.

The Netherlands delegation does not propose to put forward an amendment regarding this paragraph ; it must, however, make a reservation regarding the application of Article 12 to the companies referred to in Article 16. For purely technical reasons the Netherlands cannot grant foreign companies more than most-favoured-nation treatment in fiscal matters. It should be noted, however, that the differential treatment referred to here in no way implies a tendency to treat foreign companies less favourably than national companies.

PROTOCOL *ad* ARTICLE 16, PARAGRAPH 3.

It shall be understood that the High Contracting Parties reserve the right to make the operations of foreign insurance companies subject to certain conditions for the sole purpose of guaranteeing the premium reserve.

ANNEX C, 2.

AMENDMENTS TO ARTICLE 16 SUBMITTED BY THE TURKISH DELEGATION.

ARTICLE 16.

Paragraph 1.

To add the words " companies established for purposes of gain " after the word " shareholders' " at the beginning of the first paragraph of the article. The second paragraph of the comments (page 54) clearly shows that this was also the Economic Committee's intention.

Paragraph 4.

To delete the word " commercial " before the word " operations ".

Paragraph 5.

To modify this paragraph as follows :

" Each of the High Contracting Parties hereby declares that it will not, by granting the authorisations referred to in the above paragraph, hinder the establishment of companies engaged in business which it usually allows companies of all countries to conduct in similar circumstances."

Paragraph 7.

To draft the passage coming after the words " possess or lease " as follows :

" . . . movable property and the immovable property, with the exception of rural estates, necessary for their business, it being understood that the acquisition of immovable property shall not be the company's specific purpose. They shall be entitled to conduct their industry and commerce therein, etc."

PROTOCOL *ad* ARTICLE 16.

In agreement with the proposal made by the Bulgarian Government and in pursuance of the Economic Committee's suggestion (page 57), the delegation of Turkey, proposed the insertion of the following reservation in the Protocol *ad* Article 16 or in the Final Act :

" It is understood that nothing in the present Convention shall affect the legislation of each of the High Contracting Parties laying down the conditions which foreign companies must fulfil and the guarantees and sureties they must provide in order to obtain authorisation to carry on their activities in the country."

ANNEX C, 3.

ARTICLE 16 : SUMMARY OF PROPOSED AMENDMENTS AND OBSERVATIONS.

Paragraph 1.

Great Britain, document C.I.T.E./11, pages 6, 7 and 8 ; "Brown Book", page 56.

Replace the paragraph by the text proposed (see Annex A, 1).

Hungary, "Brown Book", page 56.

Add at the end " or *contra bonos mores* ".

Bulgaria, "Brown Book", pages 56 and 57.

This paragraph is not compatible with certain provisions of the law *(cf.*, Bulgarian amendment to paragraph 3).

Portugal, document C.I.T.E./22, page 3.

Portuguese law requires registration of all foreign commercial companies, as it does of its own national ones.

Venezuela, document C.I.T.E./16, page 1.

Add the paragraph proposed (see Annex A, 12).

Turkey, document C.I.T.E./Comm.A/8, page 2 (Comm.A.23, page 2 ; Referred to Comm.C).

Turkish law requires foreign undertakings to acquire Turkish nationality if they operate mainly in Turkey.

Paragraph 2.

Italy, document C.I.T.E./18, page 2.

Delete the paragraph.

Great Britain, document C.I.T.E./11, page 6 ; "Brown Book", page 57.

Replace the paragraph by the text proposed (see Annex A, 1).

Paragraph 3.

Bulgaria, document C.I.T.E./25, page 2 ; "Brown Book", page 57.

Add at the end the text proposed :

" And also to the observance in all cases of those laying down formalities which these foreign companies must fulfil in the State in which they establish themselves and the guarantees which they must provide in order to be recognised and to obtain authorisation to carry on business."

Great Britain, document C.I.T.E./11, page 6.

Delete " constituted under the laws ".

Egypt, document C.I.T.E./Comm.C/4, page 1.

Foreign companies may be made subject to certain measures of control or to the obligation of retaining part of their property in the country where they conduct their operations.

Paragraph 4.

Italy, document C.I.T.E./18, page 2.

Delete the paragraph.

Great Britain, document C.I.T.E./11, page 6.

Replace the paragraph by the text proposed (see Annex A, 1).

France, "Brown Book", page 57.

Enlarge the scope of this paragraph by specifying that reciprocity may operate in all cases in which authorisation has been granted, whether such authorisation is revocable or not.

Hungary, "Brown Book", page 57.

The paragraph which allows differential treatment in the case of the various contracting parties should be modified.

Venezuela, document C.I.T.E./16, page 3.

Insert after the word " authorisation " the words "or to compliance with certain formalities ".

Denmark, document C.I.T.E./1, Addendum, page 4.

Foreign companies cannot be registered in Denmark unless reciprocal treatment is accorded by the foreign States in question.

Paragraph 5.

Italy, document C.I.T.E./18, page 2.

Delete the paragraph.

Great Britain, document C.I.T.E./11, pages 7 and 8.

Delete the paragraph and replace it by the general text proposed (see Annex A, 1).

Czechoslovakia, "Brown Book", page 57.

It is not clear from Article 16 whether it affects the principle of previous authorisation.

Paragraph 6.

Italy, document C.I.T.E./18, page 2.

Delete the paragraph.

Great Britain, document C.I.T.E./11, pages 7 and 8.

Replace the words " consequently not to cancel . . . regulations of the country " by the text proposed (see Annex A, 1).

Czechoslovakia, document C.I.T.E./9, page 3 ; "Brown Book", page 73.

Add to this paragraph a reservation similar to that contained in Article 10, paragraph 4.

Austria, document C.I.T.E./Comm.C/5, page 1.

Add at the end the words " which are already in force or which may come into force ".

Paragraph 7.

Bulgaria, document C.I.T.E./25, page 3 ; "Brown Book", page 58.

Delete the paragraph.

Mexico, document C.I.T.E./Comm. A/15 ; C.I.T.E./Comm. C/1.

The Mexican delegation makes a reservation with regard to rural estates and the extent of land which may be acquired.

Denmark, document C.I.T.E./1, Addendum, page 4.

The Danish Government is obliged to make a reservation as regards the right of foreigners to acquire immovable property and as regards their right to possess vessels registered in Denmark.

Italy, document C.I.T.E./18, page 2.

Delete the last part of the paragraph beginning with the words " Nevertheless, it shall not be possible ", etc.

Great Britain, document C.I.T.E./11, pages 7 and 8.

Delete the second last paragraph and replace it by the general text proposed (see Annex A, 1).

Sweden, document C.I.T.E./7, page 7.

Delete sub-paragraph 1, provided the text proposed by the British Government with regard to paragraph 8 is adopted and completed. Insert sub-paragraph 2 of paragraph 7 at the end of Article 17.

Japan, document C.I.T.E./Comm. C/6.

Delete from the first sub-paragraph the words " therein exercise their rights and conduct their industry or commerce ". Replace the first part of sub-paragraph 2 by the following text :

" The above-mentioned companies may also, in the territory to which they are admitted, *exercise their rights and conduct their industry or commerce*, and in all cases shall enjoy, after their admission, the same rights as those which are or may be granted in this respect to companies of the same kind of the most favoured nation."

Paragraph 8.

Great Britain, document C.I.T.E./11, page 9 ; "Brown Book", pages 58 and 59.

Replace the text of the paragraph by the text proposed (see Annex A, 1).

Austria, document C.I.T.E./Comm.C/5, page 1.

Mention should also be made of Article 1.

Portugal, document C.I.T.E./22, pages 1 and 2.

Requests explanations or desires to make reservations regarding the merchant marine, banking business and insurance business.

Germany, document C.I.T.E./8, page 2.

Delete the words " defined in paragraph 1 ".

Australia, document C.I.T.E./1, Addendum, page 1.

Australia asks that account should be taken of the following provision of its legislation :

" No company in which more than one-third of the shares are held by aliens shall, without the consent in writing of the treasurer, acquire any mine or interest in a mine or carry on any mining or metallurgical business."

Denmark, document C.I.T.E./1, Addendum, page 4.

Danish law does not allow foreign companies to carry on retail trade. The Danish Government cannot accept national treatment for foreign companies as regards income tax.

Latvia, document C.I.T.E./21, pages 2 and 3 ; document C.I.T.E./Comm.A/23, page 2 ; Referred to Comm.C.

The founders of banks, pawnbrokers' shops and insurance companies must be Latvians. Two at least of the founders of limited companies must be Latvians.

One-third of the members of the board of limited industrial companies, including the Chairman, must be Latvians.

In the case of other limited companies two-thirds of the directors must be Latvians including the chairman and deputy-manager. The manager, members of the board of directors and winding-up committee of *insurance companies* must be Latvians.

Foreign insurance companies and their agents are not allowed to do business in Latvia.

Protocol *ad* Article 16.

Great Britain, document C.I.T.E./11, pages 7 and 8 ; "Brown Book", page 58.

Insert the following provision :

" The provisions of paragraph 7 of Article 16 shall not preclude the enforcement of laws and regulations to the effect that the acquisition or leasing of immovable property by the companies concerned shall be subject to the issue of a licence by the appropriate authorities."

Austria, document C.I.T.E./Comm.C/5, pages 1 and 2 ; 'Brown Book", page 52.

Insert the following clauses :

"1. It is agreed that, as long as one of the High Contracting Parties under the terms of its legislation makes the commercial operations conducted by both national and foreign companies subject to previous authorisation, it shall retain the right to consider each case individually.

" 2. It is understood also that the most-favoured-nation clause mentioned in paragraph 7 of Article 16 shall not entitle the applicant to admission but shall simply entitle him to equality of treatment when admission has been approved or the concession has been granted.

" 3. It is understood, furthermore, that the fact of one of the High Contracting Parties applying to foreign companies the provisions applicable to the companies of that Party, shall not authorise any one of the other High Contracting Parties to treat the companies of the said contracting party less favourably than its own companies."

ANNEX C, 4.

ARTICLE 16 : PARAGRAPHS 4, 5 AND 6 (FORMERLY 5, 6 AND 7) : TEXT PREPARED BY THE DRAFTING COMMITTEE OF COMMITTEE C.

ARTICLE 16.

Paragraph 4 (formerly 5).

The High Contracting Parties who make the installation in their territory of permanent establishments of foreign companies subject to authorisation hereby declare that they will not, by granting such authorisations, hinder the establishment of companies engaging in business which it allows companies of any other country to conduct under similar conditions.

Paragraph 5 (formerly 6).

The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business with or without authorisation, except in the case of an infraction of the laws of the country. They undertake in particular not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same circumstances to national companies.

Paragraph 6 (formerly 7).

The companies of each of the High Contracting Parties shall enjoy in the territory of the other parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same circumstances for nationals of the country under Articles 1, 2, 5, 7, 8, 9, 10, 11 (paragraphs 3, 4 and 5), and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same circumstances to national companies.

ANNEX C, 5.

ARTICLE 16 : DRAFT REPORT OF COMMITTEE C TO THE CONFERENCE, SUBMITTED BY M. PAUL DINICHERT (SWITZERLAND).

PART 1.

1. The task assigned to Committee C was the study of Article 16 of the Draft Convention, which deals with the treatment of foreign companies.

After a short introductory debate, it was decided that the Committee would not have to discuss or re-discuss the text of the provisions referred to the other three Committees, but that it would have to determine with regard to each of these provisions whether they were applicable to companies, and, if so, in what way. It was agreed, in particular, that the question whether Article 16 should be regarded as applicable to colonies, protectorates, etc., was one for Committee D, to which the colonial clause, Article 28, had been referred. Lastly, the Committee decided to discuss, one after the other, the various paragraphs of the draft of Article 16 drawn up by the Economic Committee of the League of Nations.

2. As regards the first paragraph, the Committee had to consider a proposal that a definition should be given in a first paragraph of the companies to be covered by the Convention, and that a

second paragraph should state that these companies should be recognised by the contracting parties as regularly constituted, whereas the Economic Committee's draft combines in a single sentence the definition of the companies and the undertaking to 'recognise them 'as regularly constituted.

Leaving on one side the question of form, the Committee was of opinion that the first thing to be done was to seek the most suitable definition of the companies to which the Convention was to apply.

3. The first question to arise concerned the advisability of referring to the seat of the company, having regard to the diversity of the conceptions adopted in this respect by the different legislations. As the notion of the seat of a company is unknown in British law, the maintenance of the condition of the existence of the seat in the country in which the company was constituted led the British delegation to make a reservation on this point, or to ask that a special clause relative thereto should be introduced into the Protocol.

4. A special Sub-Committee was appointed to elucidate this question and to submit proposals to the Committee on the wording to be given to paragraph 1.

The text proposed by this Sub-Committee and accepted without modification by the Committee was as follows :

> " 1. For the purposes of the present Convention, limited liability and other commercial companies, and industrial and financial 'companies, including . . ., being regularly constituted in accordance with the laws of one of the High Contracting Parties and having their seat in its territory, shall be deemed to be companies of that High Contracting Party.
>
> " The companies of each of the High Contracting Parties shall be recognised by the other contracting parties as being regularly constituted."

5. As regards a definition, other ideas were also suggested. For example, it was asked whether the companies it was desired to cover could not all be included under the description of companies for the acquisition of gain. But it was pointed out that certain legislations recognised ordinary companies aiming at the acquisition of gain which were not in reality commercial companies. The definition given above was therefore adopted, although it is perhaps not perfect in every respect. In the case of limited liability companies, reference is made to the way in which the company is constituted, whereas, in the case of other companies, their economic character is emphasised. It is also conceivable that limited liability companies may not pursue strictly economic aims.

6. The Committee was also generally in favour of laying down for the companies to be covered by the Convention the two conditions of regular constitution according to the law of one of the contracting countries, and of having their seat in the country itself, in spite of the fact that the notion of a seat does not exist in all legislations. To meet this situation the Committee decided, on its Sub-Committee's proposal, to adopt, as a Protocol *ad* Article 16, paragraph 1, the following sentence :

> " In the case of countries under whose laws the conception of the ' seat ' of a company does not exist, the condition laid down with regard to this matter shall not apply."

7. Lastly, the Committee agreed with its Sub-Committee in considering that the words " provided they (the companies) pursue not illicit aims ", at the end of paragraph 1 of Article 16 in the Economic Committee's draft, should be deleted, as they in no way concern either the constitution or the recognition of the companies as such, but only the operations which they might carry on in a foreign country. The words in question, if it was desired to maintain them, would be more properly placed in paragraph 3, which deals with these operations ; but the discussion to which this passage gave rise brought the Committee to the conclusion that it might be regarded as superfluous even in paragraph 3. Indeed, if the aims which a company desired to pursue were to be generally illicit, the company could hardly come into existence, since it could not be regularly constituted anywhere ; and if its aims were considered licit in the country of its constitution but illicit in another, it could not conduct operations in the latter because they would be in contradiction with the laws to which the company would be subject.

8. The question whether express mention should be made in paragraph 1 of insurance, transport and communication companies was reserved until the similar cases to be examined in connection with Article 7 of the Convention should have been settled.

9. Paragraph 2 of Article 16 of the draft was framed as follows :

> " The legality of their constitution and their capacity to appear in Court as plaintiffs or defendants shall be decided in accordance with their articles of association and according to the law under which they were constituted."

The Committee had to consider at the outset a proposal for the omission of this provision.

It was pointed out during the discussion that the question of the legality of the constitution of companies was already settled in paragraph 1, and it was pertinently observed further that the complex problem of the legal capacity both of natural and legal persons came within the special competence of the Hague International Conferences on Private Law. It was therefore unanimously decided that care should be taken not to encroach on this domain, and it was noted at the same time that the solution contemplated in the draft of paragraph 2 corresponded to the solution sanctioned by a number of existing bilateral treaties.

It was pointed out, moreover, that the right of individuals to appear in Court, as provided in Article 9 of the Convention, would also apply to companies, this being explicitly laid down in the later provisions of Article 16.

In the circumstances, the Committee decided to accept the proposal that paragraph 2 be omitted.

10. Paragraph 3 of the draft provides that the operations of companies of one of the parties shall, so far as they are carried on in the territory of the other party, be subject to the laws of the latter. The Committee, after noting that this was essentially a general principle applicable to all the operations of foreign companies, without its being necessary to distinguish between operations expressly allowed and those not so allowed, approved the following text for the draft, the words " constituted under the laws " being omitted as superfluous :

" *Paragraph* 2 (formerly 3).

" The operations of companies of one of the High Contracting Parties shall, so far as they are carried on in the territory of the other party, be subject to the laws and regulations of the latter."

11. As regards paragraphs 4, 5 and 6 of the draft, the Committee had to consider very divergent proposals. One was for their omission pure and simple, authorisation not being demanded when not required for national companies. The proposed system of reciprocity in the matter of authorisation was held to be at once rigid and complicated. In paragraph 4, it was represented as being of a retaliatory nature, whereas paragraph 5 was intended to prevent differential treatment between companies of different countries, and paragraph 6 was designed to safeguard rights acquired in virtue of an authorisation duly granted.

Another amendment, while maintaining the right to require previous authorisation, suggested that measures of reciprocity should not be laid down in the matter. In this connection, reference was made to the whole problem of most-favoured-nation treatment and reciprocity, as provided for in the various clauses of the draft Convention relevant to this question. The very involved situation resulting would, it was claimed, be such as to institute a mass of discriminations highly prejudicial to economic relations. Hence the business world above all demands most-favoured-nation treatment pure and simple as being the only means whereby international trade can obtain the necessary guarantees in regard to security and stability.

On the other hand, it was observed that neither national treatment, which may involve abusive preference in the granting of authorisations to nationals as compared with foreigners, nor unconditional most-favoured-nation treatment, without the assurance of reciprocity, would constitute an ideal solution.

12. In regard to the actual text of paragraph 4 as compared with that of paragraph 5 and sub-paragraph 1 of paragraph 7 of the Economic Committee's draft, the specific question immediately arose as to what the previous authorisation in question was really to apply to. The intention of the framers of the draft is not clearly apparent from these various provisions. Obviously all the operations of foreign companies, more particularly the exercise of rights of every description, cannot be made subject to the condition of previous authorisation. The Committee decided accordingly that the authorisation mentioned in paragraph 4 should refer only to the establishment of the foreign company, and it finally agreed on the following text :

" *Paragraph* 3 (formerly 4).

" If one of the High Contracting Parties makes the installation in its territory of permanent establishments of companies of the other High Contracting Party subject to previous and revocable authorisation, the Party concerned shall have the right to take reciprocal action in regard to similar companies of the former Party."

13. It was agreed further that the various activities in which foreign companies might engage should form the subject of special consideration when paragraph 7 of the draft came up for examination.

14. Paragraph 5 of the draft was accepted without discussion, subject to slight drafting amendments, and now reads as follows :

" *Paragraph* 4 (formerly 5).

" Each of the High Contracting Parties hereby declares that it will not, by granting the authorisation referred to in the above paragraph, hinder the establishment of companies engaged in business which it usually allows companies of all countries to conduct under similar conditions."

15. The Committee accepted, as being in harmony with the spirit of the provisions of Article 16, the following two declarations by the Austrian delegation :

" 1. It is agreed that, as long as one of the High Contracting Parties under the terms of its legislation makes the commercial operations conducted by both national and foreign companies subject to previous authorisation, it shall retain the right to consider each case individually.

" 2. It is understood also that the most-favoured-nation clause, mentioned in paragraph 7 of Article 16, shall not entitle the applicant to admission but shall simply entitle him to equality of treatment when admission has been approved."

16. As regards paragraph 6, which concerns the safeguarding of rights acquired by a company in virtue of admission to the territory of a foreign country, the Committee accepted an amendment specifying that each contracting party should have the right to subject the activities of foreign companies to measures or conditions not previously imposed on them in so far as provisions, legal or other, applicable likewise to national companies were concerned.

ANNEX C, 6.

ARTICLE 16, PARAGRAPHS 4, 5 AND 6 (FORMERLY PARAGRAPHS 5, 6 AND 7) : TEXT PROPOSED BY THE FRENCH DELEGATION.

Article 16.

Paragraph 4 (formerly 5). — *Draft A.*

The High Contracting Parties who make the installation in their territory of permanent establishments of foreign companies subject to authorisation, or who make the activities of such companies conditional on the installation of permanent establishments, hereby declare that they will not, by granting such authorisations, hinder the establishment of companies engaging in business which they generally allow companies of any other country to conduct under the same circumstances.

Paragraph 4 (formerly 5). — *Draft B.*

The High Contracting Parties who make the activities of foreign companies in their territory subject to authorisation, whether these activities take the form of the installation of permanent establishments or any other form, hereby declare that they will not, by granting such authorisations, hinder the establishment of companies engaging in business which they generally allow companies of any other country to conduct under the same circumstances.

Paragraph 5 (formerly 6).

The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business, with or without authorisation, in their territory, except in the case of an infraction of the laws of the country. They undertake in particular not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same circumstances to national companies.

Paragraph 6 (formerly 7).

Provided they have received the necessary authorisations for their installation or for the exercise of their activities when such authorisations are required, the companies of each of the High Contracting Parties shall enjoy in the territory of the other Parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same circumstances for nationals of the country under Articles 1, 2, 5, 7, 8, 9, 10, 11 (paragraphs 3, 4 and 5), and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same circumstances to national companies.

Paragraph 7.

Each of the High Contracting Parties shall be entitled to require an authorisation in the case of the companies of those of the High Contracting Parties who apply to their own companies the régime provided for in paragraph 4 (formerly 5).

ANNEX C, 7.

ARTICLE 16 : DRAFT REPORT OF COMMITTEE C TO THE CONFERENCE, SUBMITTED BY M. PAUL DINICHERT (SWITZERLAND).

Part 2.

13. After a brief examination by the Committee, paragraphs 5 and 6 of the Economic Committee's draft were also referred, along with paragraphs 7 and 8, to a small Drafting Committee with a view to determining their final form.

14. Adopting the proposals of this Drafting Committee, the Committee decided to maintain the principle of the guarantee mentioned in the draft, the wording of which was amended as follows :

" *Paragraph* 4 (formerly 5).

" The High Contracting Parties, who make the installation in their territory of permanent establishments of foreign companies subject to authorisations, hereby declare that they will

not, by granting such authorisations, hinder the establishment of companies engaging in business which they allow companies of any other country to conduct under the same circumstances."

This formula purposely avoids specifying whether the system of authorisations open to the parties must necessarily be applied uniformly to the companies of every country. The intention is not, however, to oblige the countries in all cases to apply also to their own companies the system of authorisations which they may introduce for foreign companies.

15. The Committee accepted, as being in harmony with the spirit of the provisions of Article 16, the following two declarations by the Austrian delegation.

" 1. It is agreed that, as long as one of the High Contracting Parties under the terms of its legislation makes the commercial operations conducted by both national and foreign companies subject to previous authorisation, it shall retain the right to consider each case individually.

" 2. It is understood also that the most-favoured-nation clause mentioned in paragraph 7 of Article 16 shall not entitle the applicant to admission, but shall simply entitle him to equality of treatment when admission has been approved."

16. For paragraph 5 the Committee accepted the wording proposed, which reads as follows :

" *Paragraph* 5 (formerly 6).

" The High Contracting Parties undertake not to prejudice the rights acquired by a foreign company as a result of its having engaged in business with or without authorisation except in the case of an infraction of the laws of the country. They undertake in particular not to subject the activities of foreign companies to conditions not previously imposed on them, except in the case of new measures applicable under the same circumstances to national companies."

17. The first sentence in this text corresponds to paragraph 6 of the draft, with an addition to the effect that no distinction shall be made between the business carried on by a company in virtue of express authorisation and business which it may have been, as it were, tacitly allowed to carry on — acquired rights calling for protection in both cases alike.

18. The second sentence provides, in response to the request of one delegation, that fresh measures may, as a matter of course, be taken with a view to regulating the activities of foreign companies, when such rules are applicable, in the same circumstances, to companies of the country in question.

19. During the discussion it was also emphasised that, if the conditions governing the admission or activities of a company underwent modification, this fresh factor would of course have to be duly taken into account in determining acquired rights.

20. The Committee also adopted the Drafting Committee's proposals concerning the form and tenor of the last paragraph of Article 16, which is to combine, in one general provision, paragraphs 7 and 8 of the draft. The principle unanimously agreed to was that the treatment accorded should be that applicable to nationals, in so far as this was capable of being applied to a company and subject to the reservation that foreign companies should not be entitled to claim, in respect of the questions governed and the cases covered by the Convention, treatment more favourable than would be accorded to companies of the country in question. This is therefore not a reservation which would in any way prejudge the question of most-favoured-nation treatment — this being reserved completely.

21. The principle having been accepted, there still remained the articles of the Convention to be referred to for the purpose of ensuring foreign companies the treatment which they should be entitled to claim.

22. In this connection, it was agreed to refer to Article 1, which was not included in the enumeration in the draft but is certainly applicable to companies as well as individuals, and also to Article 2, but not to mention Articles 3 and 4, which deal not with persons but with products; it was agreed, further, to refer to Article 5 and similarly Article 7 — which was not mentioned in the draft — and Article 8, and to include in the general enumeration Articles 9 and 10, together with paragraphs 3, 4 and 5 of Article 11, excluding paragraphs 1 and 2, which can only apply to individuals.

23. The decision to be taken with regard to Articles 12 and 13 in the form in which they emerged from Committee B's discussions required a careful examination of these articles from the point of view of their applicability to foreign companies.

First, as regards Article 13, under which each of the parties is to undertake in its territory not to subject the permanent establishments of nationals of other parties whose principal establishment is situated in the territory of another party to higher taxes or charges taken all round than those borne in like circumstances by its own nationals, it had to be recognised that such a stipulation could hardly be applied to companies, since the national companies with which the foreign companies had to be placed on a footing of equality as regards taxation could not have their principal establishment in the territory of another party — *i.e.*, abroad — otherwise they would themselves become foreign companies.

As Article 13 had thus to be regarded as inapplicable to companies, it only remained to examine the effect which Article 12 might have on them, stipulating as it does that foreign nationals should be treated on the same footing as nationals of the country in regard to taxes and charges of all kinds.

But the treatment on an equality with national companies which ought to be enjoyed by foreign companies in consequence of Article 12 being referred to in Article 16, would only come into play in an incomplete and problematical manner, since, from the point of view of taxation, the position of a branch or agency of a foreign company is not directly comparable with that of a national company which, apart from the possible existence of branches, has its principal establishment in the country itself.

It would therefore be necessary to give a wide and genuinely equitable interpretation of the term " similar treatment " employed in Article 16, this being understood and applied as meaning that, as a general rule, the taxation of the branch of a foreign company should lead to approximately the same result as, and should not impose a heavier burden on it than, the taxation of a national company working under the same conditions as the branch of a foreign company.

This impossibility of making an exact comparison from the point of view of taxation between foreign and national companies convinced the Committee that it would be desirable, if not essential, for positive and definite rules to be drawn up with regard to the normal method of taxing the branches and agencies of foreign commercial, industrial and agricultural undertakings.

In the circumstances the Committee considered that it was its duty to draw the Conference's serious attention to the manifest inadequacy of the provisions which had been submitted to it from the point of view of the system of taxation applicable to foreign companies, and to urge that the opportunity should be taken of settling this important question in an equitable manner in the proposed Convention, which, in the absence of such a settlement, might lose an appreciable part of its value.

The wording which the Committee accordingly adopted on the proposal of its Drafting Committee is as follows :

" *Paragraph* 6 (formerly 7).

> " The companies of each of the High Contracting Parties shall enjoy in the territory of the other Parties, whether they possess permanent establishments therein or not, treatment similar to that provided under the same circumstances for nationals of the country under Articles 1, 2, 5, 7, 8, 9, 10, 11 (paragraphs 3, 4 and 5), and under Article 12, as well as under the provisions of the Protocol relative thereto, on the understanding, however, that foreign companies shall not be entitled to claim treatment more favourable than that which is accorded under the same circumstances to national companies."

It was further recognised that the meaning of this stipulation was the same as that of the British proposal to the effect that the articles in question should be regarded as applying to the companies of the parties, as if the several articles referred throughout to companies instead of nationals.

ANNEXES TO THE MINUTES OF COMMITTEE D
(D Series).

ANNEX D, 1.

AMENDMENTS PROPOSED TO THE PREAMBLE, TO ARTICLES 17 TO 29 AND TO THE FINAL ACT OF THE CONVENTION.

PREAMBLE.

Germany, document C.I.T.E./D/6.

In paragraph 2 of the Preamble to the draft Convention it is stated " that it is not yet possible in the present state of international relations to proclaim freedom of access to, and freedom to transact business for, the nationals of all other countries ". This paragraph has meanwhile been superseded by the resolution adopted by the Assembly of the League of Nations at its meeting on September 23rd, 1929, in which the Assembly :

> " Expresses the desire that the Economic Committee should obtain information as soon as possible which would enable the Council to decide whether, in what form and to what extent, the problem of the admission of foreigners in its economic aspect might usefully be considered."

In virtue of this resolution, the Council has already instructed the Economic Committee to undertake the examination of the problem mentioned.

In view of this change in the position, the German delegation proposes that paragraph 2 and the word " nevertheless " in paragraph 3 of the Preamble be omitted.

ARTICLE 17.

Egypt, document C.I.T.E./D/4.

Owing to the existence in Egypt of the system of capitulations in favour of a certain number of foreign States, the Egyptian delegation cannot accept Article 17 as it stands. This article might be interpreted as authorising all nations acceding to the Convention to claim the capitulation privileges for their nationals in Egypt. The Egyptian delegation therefore has the honour to propose that Article 17 should be followed by the following Protocol :

> " Pending the abolition of the privileges and immunities which in a number of countries still partly exclude the nationals of certain foreign States from the territorial sovereignty of the country where they are established, the term ' most-favoured-nation treatment ' employed in Article 17, paragraph 1, shall not be deemed to apply to the said privileges and immunities."

ARTICLE 17, PARAGRAPH 2.

Japan, document C.I.T.E./D/7.

The following should be added to paragraph 2 of Article 17 :

> ". . . provided, however, that any exemption of such provisions to the nationals of a particular country shall not incur discrimination detrimental to the interests of the nationals of a third party. "

ARTICLES 17 AND 18.

Portugal, document C.I.T.E./22.

The delegation proposes a new clause or supplementary provision to the following effect :

> " *Regional combinations*, determined by special economic conditions, shall not be held to be incompatible with any of the provisions of the present Convention."

ARTICLE 16, PARAGRAPHS 5 AND 7, SUB-PARAGRAPH 2, ARTICLE 17, ARTICLE 18, AND ARTICLE 19, PARAGRAPH 1.

Great Britain, document C.I.T.E./11.

Delete, and substitute the following text :

> " Each of the High Contracting Parties agrees that the treatment accorded to the nationals and companies of the other High Contracting Parties in respect of all matters, other than those referred to in the following paragraph, shall, in no case be less favourable than that accorded to the nationals and companies of the most favoured foreign country.
>
> " Most-favoured-nation treatment may not be claimed . . ."

(See Sir Sydney Chapman's statement made at the meeting of Committee C on November 22nd, 1929.)

ARTICLE 18.

Austria, document C.I.T.E./D/9.

The Austrian delegation proposes that Article 12, paragraph 1, should be supplemented by a clause inserted in Protocol as follows (see Annex A, 5) :

> " It is understood that bilateral agreements with a view to avoiding double taxation, as well as the exceptional régimes resulting therefrom, remain outside the scope of the present Convention "

ARTICLE 18, PARAGRAPH 1, SUB-PARAGRAPH 2.

Haiti, document C.I.T.E./12.

Haiti requests the deletion of this paragraph.

She considers that the Convention sets up a sufficient body of common law.

She might be prepared to grant more favourable treatment to a State in exchange for definite advantages.

She could not agree to another State's securing the benefit of this privileged situation simply by offering to grant the treatment which it claimed, for this offer might not in practice involve any concrete advantages.

Estonia, document C.I.T.E.12.

The competent Estonian authorities do not see how paragraph 2 of Article 18 could meet the objections they have previously submitted regarding the necessity of taking into account in the proposed Convention the so-called " Baltic " and "Russian " clauses. In order to avoid any possible misunderstanding, it would therefore be desirable to make it clear in the instruments which the Conference may adopt that each contracting country shall have the right to submit the special reservations which it always embodies in its bilateral agreements.

> *Reservations.* — The Estonian Government declares that it understands that the provisions of the present Convention are in no way incompatible with the special exemptions, immunities and privileges which Estonia has granted or may in future grant to the Baltic States (Finland, Latvia, Lithuania) or to the Union of Soviet Socialist Republics, and which are reserved, in the bilateral conventions already concluded or to be concluded by Estonia, under the " Baltic " or " Russian " clauses.

Portugal.

(See the Portuguese amendment to Article 17.)

Great Britain.

(See the British amendment to Article 17.)

Sweden, document C.I.T.E./7.

The first sub-paragraph of paragraph 1 does not specify what provisions are meant by those " not referred to in Article 17 ". The wording adopted would seem to imply that the provisions in question were exclusively those not referred to in paragraph 1 of Article 17.

The Swedish delegates would propose that the second sub-paragraph of paragraph 1 be deleted in view of the difficulty of foreseeing the effect it might have upon treaties of commerce.

Japan, document C.I.T.E./D/7.

Delete sub-paragraph 2 of paragraph 1 of Article 18.

Turkey, document C.I.T.E./D./13.

The liberal principles on which the Economic Committee's draft Convention is based seem to preclude the establishment of special conditions between adjacent States (" Brown Book ", Comments on Article 18, No. 5, page 60).

Apart from the frontier-zone system, which any State may establish with an adjacent State, while the right should be reserved, according to the requirements of national security, not to grant this régime, even subject to reciprocity, to another adjacent State, there should be no exceptions to the general rule laid down in Article 18, since they are not likely to facilitate co-operation between nations on a footing of equality in the economic field.

The exception constituted by the frontier-traffic clause, contained in the majority of commercial conventions, should, however, be mentioned in a Protocol to that article.

Netherlands, document C.I.T.E./D/15.

Add after the words " bilateral agreements " the words " *and unilateral regulations* ".

ARTICLE 19.

Great Britain, document C.I.T.E./11.

Paragraph 1.

See British amendment to Article 17.

Paragraph 2.

For the British amendment C.I.T.E. 11, (see Annex A, 1).

Line 1 : After " foreigners ", insert " or foreign companies ".
Line 2 : After " nationals ", insert " or national companies ".
Line 3 : After " foreigners ", insert " or foreign companies ".
Line 4 : After " foreigners ", insert " or foreign companies ".

ARTICLE 20.

Japan, document C.I.T.E./D/7.

This article should be suppressed.

Yugoslavia, document C.I.T.E./20.

This article should be deleted.

Portugal, document C.I.T.E./22.

The Portuguese delegation would like to know whether a distinction should not be made between *personal taxation* and taxes on *real property*.

Austria, document C.I.T.E./D/8.

For the reasons set forth in its observations regarding Article 12, paragraph 2 (see "Brown Book"), the Federal Government is of opinion that it should be emphasised that certain exemptions from taxation shall not be regarded as contrary to the principles underlying the Convention.

The Austrian delegation proposes, therefore, that the text of Article 20 be supplemented by the following provision *to be inserted in the Protocol :*

" The provisions of Article 20 shall not affect any legal provisions which, in order to stimulate industries employing national resources, grant certain facilities in the matter of taxation to undertakings which employ native materials and products for their installation or operation, provided that this system involves no differentiation between nationals and foreigners."

The Protocols proposed *ad* Articles 12 and 20 might, if considered desirable, be combined to form a single provision.

Brazil, document C.I.T.E./D/3.

Ad Article 20 :

" The principle of equality as between national and foreign undertakings shall not be deemed to be impaired by measures taken by way of penalties by one of the High Contracting Parties in regard to a national, a group of nationals, or a company controlled by nationals of another High Contracting Party, when such national, group or company has practised dumping, consisting chiefly of selling or attempting to sell national products in the territory of another High Contracting Party below cost price."

Bulgaria, document C.I.T.E./25.

Ad Article 20 : Insert at the end :

". . . provided this equality does not affect the stipulations of the law on the encouragement of national industry."

Hungary, document C.I.T.E./D/2.

The Hungarian delegation recommends the adoption of the amendment proposed by the Bulgarian Government *ad* Article 20 with the addition of the following sentence : ". . . and all laws relative to the award of contracts for public utility services ".

Turkey, document C.I.T.E./D/13.

For the reasons given in the course of the examination of the preceding articles, I should prefer this article to begin with the following reservation :

" Subject to the provisions of Article 7, and the Protocol *ad* Articles 12 and 16, and without prejudice to the provisions of the law regarding the encouragement of industry in each contracting country, the High Contracting Parties undertake, etc."

Latvia, document C.I.T.E./21.

In Latvia, the commercial and industrial regulations concerning the sale, circulation and consumption of goods do not, as a rule, make a distinction between home products and products coming from other countries. The legislation in force allows of only one exception to this principle, namely, in the case of contracts given by Government institutions, the latter being permitted in certain cases to give the preference to home products, even if the cost of the latter is higher than that of tenders from abroad. This stipulation only applies to goods supplied to the Government ; the municipalities, communes and private commercial, industrial and transport organisations and undertakings are not obliged to observe it. The reconstruction of home industry, which was completely destroyed during the world war, is assisted neither by subsidies nor cheap credits from the Government, nor by export bounties or special transport tariffs. Hence the Latvian Government has been obliged to reserve certain opportunities, limited though they may be, for encouraging home industry and for remedying, in this way, the drawbacks of unemployment. This measure, although constituting a discrimination between home products and similar foreign products, is not, in the Latvian Government's opinion, a hostile measure directed against foreign products.

The delegation is of the opinion that a fresh paragraph in the Protocol *ad* Article 4 or 20, permitting such provisions, should be considered.

Spain, document C.I.T.E./13.

Committee A referred to Committee D the question raised by the Spanish delegation in connection with Article 1 concerning fiscal exemption for new industries. Committee A regarded this as a special case which should be dealt with when Article 20 was examined.

The Spanish delegation has proposed to add to the Protocol *ad* Article 1 a paragraph in the following terms :

> " It is understood that the provisions of this article do not apply to the special advantages which are, or may hereafter be, exceptionally granted by States to one or more national enterprises with a view to the encouragement of national agriculture, industry and commerce in so far as these advantages are not such as to enable the national enterprise to compete unfairly with a foreign enterprise already established at the time of the concession of the said advantages."

Yugoslavia, document C.I.T.E./20.

Committee A also decided to refer to Committee D for examination an amendment presented by Yugoslavia :

" *Article* 14 : Add at the end :

> " Permanent representatives or agencies for the sale of tickets and offices for the forwarding of goods shall be subject to the taxes in force in the country in which they are situated."

ARTICLE 21.

France, document C.I.T.E./D/1.

Modify the end of paragraph 1 as follows :

> ". . . nationals or companies of the other High Contracting Parties, it must nevertheless take vested rights into account."

ARTICLE 22.

Turkey, document C.I.T.E./D/13.

The Turkish delegation would suggest that the words " or contractual " be inserted after " constitutional ", and, in the last line, after the word " or ", the words " in virtue of an agreement to submit the dispute to arbitration " ; further, the words " court of arbitration " should be replaced by the word " arbitrator ".

Netherlands, document C.I.T.E./D/15.

Article 22 should be amended as follows :

> " The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing convention or in virtue of a special agreement to be concluded, the dispute is settled by arbitration or any other means."

Germany, document C.I.T.E./D/14.

A small sub-committee to be appointed to consider whether the introduction of an arbitration clause into the Convention would be advisable ; what modifications might, if necessary, be introduced into the proposed text, or what other proposal might be put forward in view of the desire of the League of Nations to bring about further progress in the sphere of international justice.

Observations. — In view of (1) the optional clause of the Permanent Court of International Justice, (2) the different bilateral or even multilateral conventions of arbitration and conciliation, and (3) the special arbitration clauses of the different commercial treaties and conventions ; and

In view of the very different legal character of the problems dealt with in the present draft ;

The German delegation is of opinion that the present text of Article 22 should at least be made clearer in order to dispel the misgivings which have already been put forward in connection with the discussion on certain articles of the draft. The solution adopted in Article 14 of the preliminary draft for the Conference on a Customs Truce is based on general ideas the application of which to the present Convention might usefully be examined.

Italy, document C.I.T.E./18.

Insert after the words " relating to the interpretation or application of this Convention " the following words : " with the exception of Articles 7, paragraphs *a)* and *b)*, 19 and 21.

Venezuela, document C.I.T.E./16.

Add at the end of Article 22 :

" The provisions of the present article may in no case affect the principle that disputes between a State and foreign nationals must be submitted to the decision of the former's courts of justice."

ARTICLE 23.

Germany, document C.I.T.E./8.

Add, as second paragraph of Article 23 :

" Official translations may, at the request and with the assistance of the interested Governments, be drawn up by the Secretariat of the League of Nations and deposited with the Secretary-General. It will be open for the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Convention."

The German delegation would refer in this connection to Article 6, paragraph 17, of the Standing Orders of the International Labour Conference, which reads as follows :

" After the adoption of the French and English authentic texts, official translations of the draft Conventions and Recommendations may, at the request of interested Governments, be drawn up by the Director of the International Labour Office and deposited with the Secretary-General of the League of Nations. It will be open to the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Conventions and Recommendations."

ARTICLE 26.

Czechoslovakia, document C.I.T.E./9.

The Czechoslovak delegation considers that the ratification of a larger number of States should be required before the Convention can come into force.

Great Britain, document C.I.T.E./11.

Line 2 : For " two ", substitute " ten ".

Sweden, document C.I.T.E./7.

The Swedish delegates propose that the conditions and the date of the putting into force of the Convention should be fixed at a later meeting.

Meanwhile, they would point out that the number of ratifications on which the coming into force of the Convention will depend should be considerably increased.

ARTICLE 27.

Great Britain, document C.I.T.E./11.

Add new paragraph :

If, as a result of denunciations, the number of High Contracting Parties falls below the number of ratifications necessary to bring the Convention into force, any High Contracting Party may request the Secretary-General of the League of Nations to summon a Conference to consider the situation created thereby. Failing agreement to maintain the Convention, each of the High Contracting Parties shall be discharged from his obligations from the date on which the denunciation which led to the summoning of this Conference shall take effect."

Netherlands, document C.I.T.E./D/15.

The delegation of the Netherlands proposes that, after the words " or non-Member State " in the second line, the words " which is a party to this Convention " should be added.

ARTICLE 28.

Portugal, document C.I.T.E./22.

The Portuguese delegation fully supports the clause as regards *colonies*, and, in virtue of the discretion allowed under that clause, notes that the effects of the proposed Convention shall not be extended to colonies without the previous and explicit consent of the mother-country.

Turkey, document C.I.T.E./17.

The Turkish delegation agrees with the observation made by the German delegation with regard to extending the application of the Convention to colonies, protectorates and especially mandated territories. It would emphasise that this point was included in the recommendation made to the States by the Council of the League of Nations.

ARTICLE 29.

Turkey, document C.I.T.E./17.

The Turkish delegation considers that this article, as it stands, in no way affects the freedom of the contracting parties as regards immigration and the expulsion of foreigners or their freedom as regards persons who are undesirable for political reasons.

With this reservation the delegation accepts the article as it stands.

ADDITIONAL ARTICLE FOR THE CONVENTION :

Great Britain, document C.I.T.E./11.

1. Nothing in the present Convention shall be held to derogate from the obligations in international law of any High Contracting Party with regard to the treatment of the nationals and companies of any other High Contracting Party.

2. The present Convention shall not absolve any High Contracting Party from granting to the nationals and companies of another High Contracting Party any treatment provided for in the terms of any treaty or agreement in force between the two Parties which is more favourable than the treatment provided for in the present Convention.

ADDITIONAL PROTOCOL PROVISION (A).

Great Britain, document C.I.T.E./11.

It is understood that nothing in the Convention shall impose on any High Contracting Party any obligation in respect of the rules of membership of industrial commercial and similar associations and organisations of a voluntary nature.

ADDITIONAL PARAGRAPH TO THE PROTOCOL.

Australia, document C.I.T.E./23.

As regards the application of any or all of the articles of the Convention, the obligations assumed by States signatories having a federal constitution binds only the Federal Governments and not the provincial or State Governments which, under federal constitutions, may possess complete or partial autonomy as regards the treatment of foreigners.

PROTOCOL OR FINAL ACT.

Netherlands, document C.I.T.E./D/15.

The Netherlands delegation thinks it would be well to insert in the Protocol or in the Final Act a clause of a general character which, if inserted in the Protocol, might be worded as follows :

> " The provisions of bilateral conventions, concluded before the date of signature of the present Convention, which are less favourable than those contained in the present Convention, shall automatically lapse as from the date on which the States parties to these conventions accede to the present Convention."

If a clause of this nature is inserted in the Final Act, it should be drafted in the form of a recommendation to the effect that States parties to bilateral conventions containing provisions contrary to those stipulated in the present Convention should modify these provisions by common agreement on the lines of the present Convention.

FINAL ACT : SECTION I.

Great Britain, document C.I.T.E./11.

Sub-paragraph (b) : After " seasonal labour ", insert " where this appears desirable ".

Sub-paragraph (c) : After " considering ", insert " where necessary ".

Italy, document C.I.T.E./A/70.

In the second paragraph, after the words " gradually be established " modify the text as follows :

". . . régimes which, while consistent with national requirements, should be of as liberal a character as possible. "

In the third paragraph, after the words " if as circumstances appear favourable with a view to ", modify the text as follows :

". . . permitting as far as possible the exchange of foreign labour, employees and other foreign wage-earners, and in particular with a view to . . . "

Modify as follows sub-paragraph *(a)* of paragraph 3 :

" Reducing, so far as possible, the restrictions which at present prevent the exchange of technical experts, employees and workers constituting the skilled staff of undertakings, and which prevent practitioners or other persons from going abroad in order to complete their professional training, subject always to the requirements dictated by the public interest."

ANNEX D, 2.

MEANING TO BE GIVEN TO THE WORD " NATIONALS " : NOTE BY THE BELGIAN DELEGATION.

I. — *Introduction.*

At the beginning of the first meeting of Committee A, M. Hennin, on behalf of the Belgian delegation drew attention to the necessity, before discussing the provisions of the draft Convention, of determining the exact meaning to be given to the word " nationals ", which frequently recurs. After a short discussion between several of the delegates, it was decided to refer the question to Committee D for examination.

The Belgian delegation thinks it would be useful to explain to the latter the purport of its observation.

First of all, it should be noted that in all the bilateral and plurilateral conventions concluded until quite recently, nothing was done to define the exact meaning to be given to the word, which is used to designate the persons to whom these conventions are applicable. Thus the words " nationals " or " subjects " or " citizens " of the contracting countries are indifferently used without — it must be admitted — account being taken of the exact legal meaning of the term used.

This lack of precision gives rise to disputes and divergencies of interpretation such as are particularly likely to arise in connection with conventions signed by a large number of States, some of whom may give to one or other of these terms a meaning entirely different from that accepted by others.

II. — *Meanings which can be given to the Word " Nationals ".*

The word " nationals " seems to be open to three interpretations. It may mean :

1. Persons who possess the *nationality* of a country, *i.e.*, those who are " citizens " of a country and who possess, as such, all the rights attaching to this status in the mother-country. Thus a person may be Belgian, French, Dutch, etc. The conditions for possessing this status are fixed in each country by the laws on the rights of citizenship (for example, in Belgium the Laws of May 15th, 1922, and August 4th, 1926, and in France the Law of August 10th, 1927).

In the old treaties, this was undoubtedly the meaning which it was intended to give the word " nationals " when it was employed, although it perhaps did not exactly correspond to the meaning which should be assigned to it from the purely legal point of view.

2. The *subjects* of a country, *i.e.*, not only the citizens, but also those who, without being citizens in the technical sense of the term, have bonds of allegiance with the country.

The natives of the colonies are not as a rule " citizens " of the mother-country, but are " subjects " of the latter. Thus the Congolese are Belgian " subjects " (or " nationals ") without being Belgian " citizens ". Similarly, the natives of certain French colonies are not " Frenchmen " or French " citizens ", though they are French " subjects ".

It would seem that the legal meaning of the word " nationals " is exactly and solely that which has just been indicated.

The scope of the term is therefore wider than that of the word " citizens ". The " citizens " of a country are obviously *all* " subjects " of that country but all the subjects of the country are not necessarily citizens.

3. Lastly, according to a view put forward at the first meeting of Committee A by the Economic Committee of the League of Nations, the term includes foreign " residents " who have had a fixed establishment in the country for a certain length of time. Thus, a Frenchman permanently established in Belgium for a certain length of time would, for the purpose of the application of the Convention, be regarded as a Belgian " national ".

III. — *Observation.*

It should be pointed out that the provisions of Article 28 of the draft Convention are quite outside the question dealt with in the present note. An example will demonstrate this clearly.

Belgium, for instance, might declare that the Convention shall not be applicable to the Congo, a colonial possession. If the term " nationals " simply means " citizens " *(vide supra*, under I), natives of the Belgian Congo cannot claim the benefits of the Convention in the other contracting countries.

If, however, " nationals " is synonymous with " subjects ", natives of the Congo, being Belgian " subjects " will possess this right. The fact that the Convention is not applicable in the territory of the Belgian Congo, or, in other words, that " nationals " or subjects of the other signatory States cannot claim its application there, is of minor importance. In this particular case it is not the " territory " but the " individual " (the Belgian " subject ") that is referred to in the different articles of the Convention.

IV. — *Conclusion.*

In view of the foregoing considerations, it is essential to determine *exactly* what is meant in the Convention by " nationals ", either by means of a new article to be inserted, for example, between Articles 21 and 22 of the draft, or by employing, in each article in which the word occurs, the exact term corresponding to the interpretation decided upon.

The meaning of " subjects " would appear to be most satisfactory from the legal standpoint.

The Belgian delegation, however, is more in favour of an interpretation whereby the word " nationals " would retain the traditional sense of " citizens ".

On the other hand, it feels itself unable to accept the interpretation suggested above (under No. 3). It is inconceivable that a State should conclude a Convention on account of foreigners, even if established in its territory, that is, for persons who are not bound to it by any ties of allegiance.

ANNEX D, 3.

ARTICLE 28 : REPORT OF THE SPECIAL SUB COMMITTEE.

After an exhaustive discussion and after taking into account the amendments submitted and the views exchanged in the course of that discussion, the Sub-Committee decided to maintain the article in its essential form, subject to certain modifications and additions.

The text adopted by the Sub-Committee is as follows (the modifications and additions being underlined) :

" *Article* 28.

" The High Contracting Parties may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, they do not assume any obligations in respect of all or any of their colonies, protectorates, *overseas territories* or territories under suzerainty or mandate, and that the present Convention shall not apply to any territories named in such declaration.

" *No High Contracting Party shall be obliged to accord wholly or in part any of the benefits provided for in the present Convention to nationals of any other High Contracting Party belonging to any colony, protectorate, overseas territory or territory under suzerainty or mandate to which the Convention does not apply.*

" The High Contracting Parties may give notice to the Secretary-General of the League of Nations at any time subsequently that they desire that the Convention shall apply to all or any of their territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

" Similarly, the High Contracting Parties may at any time declare that they desire that the present Convention shall cease to apply to all or any of their colonies, protectorates, *overseas territories* or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration within one year after its receipt by the Secretary-General of the League of Nations. "

" *Protocol* ad *Article* 28.

" *Nothing in Article* 28 *shall be construed as affecting the rights or obligations of mandatory Powers under the Covenant of the League of Nations or under the terms of the mandate or mandates which they exercise.*"

OBSERVATIONS.

The Sub-Committee was unanimously of the opinion that the expression " nationals " must be interpreted in the wide sense accepted generally and, in particular, in the peace treaties.

In particular, it must be interpreted as including the nationals of colonies, protectorates, overseas territories and territories under suzerainty or mandate of the high contracting parties. The new second paragraph of Article 28 prevents this interpretation of the word from having an effect which is not reciprocal. At the same time, this paragraph makes it perfectly clear *a contrario* that, in principle, the word " nationals " includes the nationals of colonies, protectorates, overseas territories and territories under suzerainty or mandate of the contracting parties, and renders unnecessary any further definition of this word, which would be a task of considerable difficulty.

ANNEX D, 4.

ARTICLES 2 AND 7 (PARAGRAPH 2), PROTOCOL *AD* ARTICLES 8, 10, (PARAGRAPHS 3 AND 4), 16 (PARAGRAPH 7) AND 17 : DECLARATION BY THE DELEGATION OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.

The delegation of the United Kingdom wish formally to place on record the following declaration of their interpretation of Articles 2 and 7 (paragraph 2) and of the Protocol *ad* Articles 8, 10 (paragraphs 3 and 4), 16 (paragraph 7) and 17 of the Convention.

1. That nothing in Articles 2 and 7 (paragraph 2) or in the Protocol *ad* Articles 8, 10 (paragraphs 3 and 4), 16 (paragraph 7) and 17 shall prevent the grant of privileges in the United Kingdom of Great Britain and Northern Ireland, a Member of the British Commonwealth of Nations, to British subjects, protected persons or companies belonging to any other Member of the British Commonwealth of Nations, whether the Convention has or has not been ratified or acceded to on behalf of such other Member, without thereby creating any obligation to extend these privileges to nationals of any other High Contracting Party or to the companies of any other High Contracting Party.

2. That the same principle applies in respect of the grant of such privileges, in the territory of any High Contracting Party to which the Convention applies, to nationals of such High Contracting Party who belong to any of its colonies, protectorates, or territories under suzerainty or mandate, whether excluded or not from the operation of the Convention under Article 28.

ANNEX D, 5.

ARTICLE 28 : SUPPLEMENTARY REPORT OF THE SPECIAL SUB-COMMITTEE.

Committee D asked the Sub-Committee appointed to examine the colonial clause (Article 28) to reply to the questions put respectively by Committee A concerning Article 1 (document C.I.T.E./30) and by Committee C with regard to Article 16 (document C.I.T.E./42).

These questions were as follows :

1. " Should a distinction be made in Article 1 between residents and non-residents? "

After careful examination of the question, the Sub-Committee considered that such a distinction would be inexpedient. The result would be to restrict considerably the scope of the provision, which would be undesirable and would be contrary to the views of the Economic Committee. It should be observed, moreover, that in the majority of conventions (for example, that of The Hague of July 17th, 1905, on Civil Procedure) no distinction of the kind is made.

2. " Should Article 16 be regarded as applicable to colonies, protectorates, etc.? "

The Sub-Committee considers that there is no reason for treating Article 16 differently from the other articles of the Convention. Consequently, if a country availing itself of the right provided for in Article 28 declares that the Convention will not be applicable to its colonies, protectorates, etc., it will not be possible to invoke Article 16 in these territories. If it does not make such a declaration, the companies of the High Contracting Parties will be able to avail themselves of the provisions of Article 16 in the said territories.

It does not seem necessary to insert any provision on the subject, since this simply represents the application of a general principle.

If it is desired to avoid any possibility of dispute, the point might, if the Sub-Committee's view is adopted, be mentioned in the general report.

ANNEX D, 6.

ARTICLES 23, 24, 25, 26, 26*bis*, 27 AND FINAL PROVISIONS : TEXT SUBMITTED BY THE DRAFTING SUB-COMMITTEE.

Article 23.

The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date ; it shall remain open for signature until March 31st, 1930, on behalf of any Member of the League of Nations, and of any non-Member State, which was represented at the Conference of Paris or to which the Council of the League of Nations shall have communicated a copy for this purpose.

Article 24.

The present Convention shall be ratified as soon as possible. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who shall notify this deposit to all the Members of the League of Nations and to all the non-Member States mentioned in Article 23.

Article 25.

As from April 1st, 1930, the present Convention may be acceded to on behalf of any Member of the League of Nations or of any non-Member State mentioned in Article 23. Accessions shall be effected by notifications addressed to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League of Nations and to all the non-Member States mentioned in Article 23.

Article 26.

Without prejudice to the provisions of the following paragraph of this article, the present Convention shall come into force two months after the date on which ratifications or definitive accessions on behalf of ten Members of the League of Nations or non-Member States mentioned in Article 23 have been received by the Secretary-General of the League of Nations.

If on December 31st, 1930, the number of ratifications or accessions required for the entry into force of the Convention have not been received, the Secretary-General of the League of Nations shall enquire of the Members of the League of Nations and non-Member States on whose behalf ratifications or definitive accessions have been deposited whether they desire that the Convention shall be put into force between them on a date to be fixed by agreement. If the replies of the said Members of the League of Nations and non-Member States are unanimous in desiring ; the entry in to force of the Convention as aforesaid, the date so agreed upon shall be communicated to the other Members of the League and non-Member States mentioned in Article 23, and the latter, if thereafter ratifications or definitive accessions are deposited on their behalf, shall be deemed to have thereby accepted the Convention in the conditions aforesaid. If the replies are not so unanimous, all the Members of the League and non-Member States mentioned in Article 23 shall consider the course to be adopted after being consulted by the Secretary-General of the League of Nations.

Every ratification or definitive accession deposited or notified after the entry into force of the Convention shall take effect two months after the date of its deposit or notification.

Article 26*bis*.

The High Contracting Parties agree to accept only those reservations to the application of the Convention which are set forth in the Protocol to this Convention and in respect of countries therein named.

Article 27.

The present Convention may not be denounced until five years after the date on which it comes into force. Notice of denunciation shall be given in writing to the Secretary-General of the League of Nations, who shall immediately send certified true copies thereof to the Members of the League of Nations and to the non-Member States referred to in Article 23, mentioning the date on which he received it. The denunciation shall take effect one year after that date.

If, in consequence of denunciations, the number of Members of the League and non-Member States bound by the provisions of the present Convention falls below the number which was required under Article 26 to bring it into force, and if those Members or non-Member States which are still bound do not unanimously decide to keep the present Convention in force, it shall cease to operate one year after the last denunciation received.

Further, in the above-mentioned case, all the Members and non-Member States referred to in Article 23 shall, on consultation by the Secretary-General, consider what steps are to be taken.

Additional Article.

The present Convention shall be registered by the Secretary-General of the League of Nations on the day of its entry into force.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Convention.

Done at Paris this . . . of December, nineteen hundred and twenty-nine, in a single copy which shall remain deposited in the archives of the Secretariat of the League of Nations and certified true copies of which shall be delivered to the Members of the League and to the non-Member States referred to in Article 23.

ANNEX D, 7:

ARTICLES 21*bis*, 21*ter*, 23 AND 28 : TEXT SUBMITTED TO COMMITTEE D BY THE DRAFTING SUB-COMMITTEE.

ARTICLE 21*bis*.

Nothing in the present Convention shall be deemed to prejudice any provisions in any other convention, treaty or agreement at any time in force between any of the High Contracting Parties, under which treatment more favourable than the treatment provided for in the present convention is granted to the nationals or companies of any other High Contracting Party.

ARTICLE 21*ter*.

The present Convention shall not in any way affect rights and obligations arising from the Covenant of the League of Nations.

ARTICLE 23.

Opinion of the Drafting Sub-Committee on the German Delegation's Proposal concerning the Preparation of Official Translations.

In conformity with the decision taken by Committee D, the Drafting Committee has examined with great care the German delegation's proposal with regard to the preparation of official translations.

The Committee, while recognising the importance of each country's having as faithful a translation as possible of the authoritative texts of a Convention in order to facilitate its application, is unanimously of opinion that the question is not within the competence of an international conference whose powers are confined to the preparation of a text in the language or languages regarded as authoritative.

It will be for each State to arrange for the preparation of an official translation if it thinks it necessary, but this translation cannot have any international value in the relations between the High Contracting Parties.

In these circumstances the Committee is of opinion that no request or recommendation should be adopted on this point.

ARTICLE 28.

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate ; and the present Convention shall not apply to any territories named in any such declaration.

2. Any such High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all of the territories named in such notice two months after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may at any time after the expiration of the period mentioned in Article 27 declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall inform all Members of the League of Nations and all non-Member States mentioned in Article 23 of all declarations and notices received in virtue of this article.

5. No High Contracting Party shall be obliged to apply the provisions of the present Convention to the nationals of any other High Contracting Party belonging to any colony, protectorate, overseas territory or territory under suzerainty or mandate of the latter High Contracting Party to which the Convention does not apply in conformity with the preceding paragraphs of the present article.

PROTOCOL *ad* ARTICLE 28.

Nothing in Article 28 shall be interpreted as in any way prejudicing the rights and obligations of any mandatory Power under the Covenant of the League of Nations or under the terms of any mandate or mandates which is exercised by such Power.

ANNEX D, 8.

ARTICLE 28 : PROPOSAL BY THE SPECIAL SUB-COMMITTEE.

Committee D requested the Sub-Committee, which had to deal with Article 28, to examine the Netherlands delegation's proposal to add the following clause to the said article :

> " The High Contracting Parties who, at the time of signature, do not make the declaration provided for in paragraph 1 shall be entitled to make reservations with regard to the application of certain stipulations of the Convention to their colonies, etc. These reservations, however, must be approved by the other High Contracting Parties. Should they subsequently wish to accede to the Convention in respect of their colonies, etc., under the same conditions, they shall notify the Secretary-General of the League of Nations of their intention. The latter shall immediately communicate the reservations to the Governments of all the countries on behalf of whom an instrument of ratification or accession has been deposited, asking them whether they have any objections to put forward. If, within a period of six months from the said communication, no country has raised an objection, the reservations in question shall be considered as accepted."

The Sub-Committee considered on the one hand that it was desirable that the greatest possible number of colonies, etc., should participate in the Convention.

On the other hand, it thought that, in special cases, this result could not be fully achieved unless certain reservations were allowed concerning certain territories.

For this reason, it considers that the text proposed by the Netherlands delegation answers to the end in view, and submits it to Committee D for approval.

ANNEX D, 9.

ADDITION TO THE PROTOCOL : PROPOSAL SUBMITTED BY THE AUSTRALIAN DELEGATION.

On November 12th, 1929, the Australian delegation proposed that the following paragraph should be added to the Protocol Annex D. 1 :

> " As regards the application of any or all of the articles of the Convention, the obligations assumed by States signatories having a federal constitution binds only the Federal Governments and not the provincial or State Governments which, under federal constitutions, may possess complete or partial autonomy as regards the treatment of foreigners."

The delegation now desires to withdraw the foregoing and at the same time to give formal notice that the Government of the Commonwealth of Australia reserves the right without prejudice to make the following or some similar reservation if and when the Convention is signed for and on behalf of the Australian Government :

> " Any obligations accepted by the Commonwealth of Australia under the provisions of the Convention are limited by the extent of the legislative powers conferred by the constitution of the Commonwealth upon the Federal Parliament."

ANNEX D, 10.

DRAFT REPORT OF COMMITTEE D TO THE CONFERENCE, SUBMITTED BY M. ITO (JAPAN).

Part I.

Articles 17 and 18.

1. The Committee proceeded with the general discussion of the articles relating to most-favoured-nation treatment, after having decided to appoint a sub-committee with a view to the preliminary examination of those articles. The general discussion did not give rise to a protracted debate. The British delegation proposed the insertion, in lieu of Articles 17 and 18, of a provision which would ensure the application of most-favoured-nation treatment to persons and companies admitted to the territory of another contracting party and also in the matter of actual admission to its territories. This proposal was not favourable received. Some thought it calculated to extend unduly the scope of most-favoured-nation treatment. Others again held that it referred to a question which had been left outside the scope of the Convention. Lastly, certain other delegations opposed the actual establishment of the general principle of most-favoured-nation treatment in regard to all matters dealt with in the Convention combined with national treatment.

2. Opinion was divided as regarded the scope of paragraph 1 of Article 18. Some regarded this paragraph as calculated to restrict the possibility of concluding special agreements, while others maintained that, on the contrary, the provisions laid down therein would facilitate the conclusion of special agreements on a basis of reciprocity. Further, certain delegations expressed their disapproval of the actual principle of reciprocity embodied in this paragraph.

3. Certain delegations also raised the question of derogations to most-favoured-nation treatment. These derogations refer on the one hand to the exception of benefits arising out of a multilateral Convention concluded at Geneva and to the stipulations concerning double taxation and private international law, matters which, by their nature, call for reciprocity. The discussion also dealt with geographical, historical and social derogations to most-favoured-nation treatment, such as the so-called Baltic, Scandinavian or Iberian clauses, etc. Certain delegations urged the necessity of interpreting these exceptions in a restrictive sense, as noted in the Economic Committee's comments, in order not to nullify the actual effects of the most-favoured-nation clause.

4. When examining these questions, the majority of the Sub-Committee pronounced in favour of omitting Articles 17 and 18. Despite an effort which was made, on the Swedish delegation's proposal, to save the principle of most-favoured-nation treatment, the Sub-Committee was unable to find a formula to satisfy the majority of the members. The reasons in favour of omission were of various kinds. Some members considered the deletion of these articles imperative in view of the hostile attitude of certain delegations towards the most-favoured-nation principle, lest the hands of Governments should be tied. Others advocated their omission on the grounds that there had not actually been time to discuss these complex questions exhaustively. The attitude of others again was explained by their unwillingness to accept regulations laying down principles in these matters.

On the Sub-Committee's proposal, the Committee decided to omit Articles 17 and 18.

Article 19.

1. The Sub-Committee appointed to examine Article 19 recommended its adoption, subject to several modifications designed to meet the views of certain delegations. It was pointed out that the original drafting of paragraph 1 would give the impression that all measures of discrimination were permitted, provided that they were not prompted by unfriendliness. It was asked further that the expression " faculty *accorded* . . . to exclude foreigners, etc." might not be used.

During the discussion in the Committee, the Polish delegation pointed out that the text of the article was too vague and that it might thus give rise to difficulties in regard to application between the contracting States ; the delegation also asked that the scope of the article might be more clearly defined by means of a provision to be inserted in the Protocol.

2. In the course of the discussion, the German, Italian and Polish delegations respectively submitted proposals with a view to replacing paragraph 1 of the original text of the draft.

The Committee accordingly instructed the Drafting Committee to establish a new text with due reference to the various observations and proposals submitted.

It was noted that it would be very difficult to find a text acceptable to certain delegations, if the original text of paragraph 1, as found in the Economic Committee's preliminary draft, was taken into account.

3. In view of this circumstance, the Japanese delegation proposed the following text to replace paragraph 1 of Article 19 :

> " The High Contracting Parties undertake, if and when they avail themselves of the faculties reserved to them under the provisions of the present Convention, not to do so in a manner unfriendly towards the nationals of one or more of the High Contracting Parties."

4. The Japanese delegation's proposal is simply a statement of a principle of equity which, in the opinion of the delegation, would not encounter opposition from the States present at the Conference, unless these States were desirous of employing unfriendly measures in regard to other States.

5. During the discussion in the Committee it was pointed out that the above proposal, instead of being an amendment, constituted a fresh proposal to take the place of paragraph 1 of Article 19.

At the Polish delegation's request, it was explained that the term " if and when they avail themselves " covered the eventuality of these reserved faculties actually being exercised.

The Japanese proposal was adopted by a big majority of the Committee, the Polish delegation alone voting against it.

6. The Chairman then put to the vote the original text of paragraph 1 as found in the preliminary draft Convention. The Committee rejected the text by a majority vote.

7. On the proposal of the Polish delegation, the Committee adopted the following provisions, to be inserted in the Protocol *ad* Article 19, paragraph 1 :

" The ' unfriendliness ' referred to in the first paragraph of Article 19 shall be estimated with due reference to the general conditions under which the faculties have been exercised."

8. Paragraph 2 of Article 19 was accepted by the Committee subject to drafting amendments to be introduced.

9. Certain delegations pointed out that it would be expedient to examine the relation which might exist between Article 19 as adopted by the Committee and Article 21.

10. The text of Article 19 would now read as follows :

" *Article* 19.

" (1) *The High Contracting Parties undertake, if and when they avail themselves of the faculties reserved to them under the provisions of the present Convention, not to do so in a manner unfriendly towards the nationals of one or more of the High Contracting Parties.*

" (2) Whenever the present Convention accords, *in the territory of one of the High Contracting Parties,* to nationals of the other High Contracting Parties the benefit *of the system applicable* to the nationals of the first-named party, *the latter* undertakes not to *establish this system* in such a way as to imply provisions the application of which would amount to the absolute exclusion of nationals of the other High Contracting Parties or *would lead to* a system of differentiation to the detriment of the said nationals. "

" *Protocol* ad *Article* 19.

" *The ' unfriendliness ' referred to in the first paragraph of Article* 19 *shall be estimated with due reference to the general conditions under which the faculties have been exercised.*"

Article 20.

1. The examination of this article was entrusted to the Sub-Committee, the great majority of whose members recognised its importance in the general scheme of the Convention. The proposal of two delegations to omit this provision was therefore rejected, but it was pointed out that the article in question only settled part of the vast problem of indirect protectionism. The Sub-Committee nevertheless recommended the maintenance of the article as it stood.

Adopting this recommendation, the Committee decided to maintain Article 20 unchanged.

2. The Committee proceeded to an examination of the numerous requests for derogations put forward in connection with this article. It only felt able to accept those submitted by Bulgaria and Hungary, Bulgaria proposing to add at the end of the article the following text : " provided this equality does not affect the stipulations of the laws on the encouragement of home industries ", and Hungary recommending the adoption of this text with the following addition : " and of the laws relative to the award of contracts concluded by public authorities as a result of tenders ".

The Austrian, Czechoslovak, Spanish, Latvian, Turkish and Indian delegations withdrew their requests for derogations.

3. The Brazilian delegation had submitted a proposal designed to sanction measures open to a contracting party by way of penalties against the practice of dumping. This proposal raises a problem which is extremely difficult of solution. It was pointed out that as yet no agreement exists as to what is meant by dumping either in theory or in practice, so that it would be dangerous for the Conference to venture into this domain. It was further observed that a country might employ measures of discrimination on the pretext of defending itself against dumping and that it would thus be able to render the Convention quite valueless. For these reasons the Brazilian delegation's proposal was rejected by the Committee.

4. The Committee adopted Article 20 with the following text framed by the Drafting Committee :

" *Article* 20.

" *Without prejudice to the stipulations of the laws on the encouragement of home industries, and of the laws relative to the award of contracts concluded by public authorities as a result of tenders,* the High Contracting Parties undertake not to prejudice the guarantees of equality for national and foreign undertakings as laid down in the preceding articles by means of exemption from taxes or duties or by differential regulations affecting production, trade or the level of prices."

Article 21.

1. This article was entrusted for preliminary examination to the Sub-Committee. During the latter's discussion it was pointed out that the provisions of the article raised very important questions in connection with the international responsibility of States. This problem is a particularly difficult one. The international responsibility of the State is admitted, it is true, under

international law ; but difficulties arise as soon as any attempt is made to determine the nature and limits of this responsibility, even when the principle is recognised. It was also emphasised that agreement had not yet been reached as to what exactly was meant by " acquired rights ". It would be better, accordingly, not to insert a clause of this kind in the Convention, but to envisage only the rules of law at present in force, particularly as a Conference is shortly to deal with the question at The Hague. The fear was also expressed that, if Article 21 was not accepted as it stood, the result might be, in certain cases, that foreigners would get more favourable treatment than nationals. Lastly, certain doubts were expressed as to the advisability of giving the Convention retroactive effect as from the date of signature, a provision laid down in the text of the draft.

2. On the other hand, the opinion was expressed that, since the principle in itself is just, it would be preferable to have an explicit clause on the subject in the Convention, particularly as the rule as now worded possesses all the necessary elasticity. Its insertion is the more worthy of consideration, inasmuch as the article refers only to a specific question. A further argument adduced in favour of insertion was that this clause could not reasonably be relinquished in exchange for the problematical results of a future Conference.

3. The Sub-Committee expressed itself almost unanimously in favour of the actual principle embodied in Article 21. The majority did not concur in the doubts expressed by certain members as to the advisability of inserting such a clause in the Convention.

4. The Sub-Committee also examined an amendment submitted by the French delegation, concentrating chiefly on the possible consequences of making a change in the original text on the lines suggested in the French proposal. The Sub-Committee decided, by a big majority, to maintain the original text.

5. On the Sub-Committee's proposal, the Committee adopted Article 21 and rejected the French amendment.

Article 21 therefore reads as follows :

" *Article* 21.

" 1. If, after signing the present Convention, and within the limits thereof, a High Contracting Party places any restrictions on the previously authorised operations of nationals or companies of the other High Contracting Parties, it must nevertheless as far as possible respect acquired rights.

" 2. Generally speaking, the High Contracting Parties undertake to avail themselves of the reservations provided for in the present Convention only in such a way as will cause least prejudice to international trade."

Article 22.

1. A proposal with a view to the appointment of a special Sub-Committee to examine Article 22 was not adopted.

Certain delegations expressed a wish that the article might be amended so as to re-establish arbitration or conciliation procedure prior to any recourse to the jurisdiction of the Permanent Court of International Justice.

After a somewhat lengthy debate, the Committee adopted as a basis for discussion the following text proposed by the Netherlands delegation :

" The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing convention or in virtue of a special agreement to be concluded, the dispute is settled by arbitration or any other means."

2. The Swiss delegation pointed out that the adoption of this text would reduce the possibility of obtaining the signature of certain countries which had not acceded to the Statute of the Court, as the text provided for the compulsory jurisdiction of the Court.

The Belgian delegation also observed that the text was open to the objection that it could not be accepted by States which had acceded to the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice (December 16th, 1920), and requested the insertion of a clause framed as follows :

" The provisions of the present article shall not affect obligations arising out of Article 36 of the Statute of the Permanent Court of International Justice."

After an exchange of views, the Committee decided that the misgivings expressed in this connection were superfluous ; States which have acceded to the Optional Clause have the right to make reservations, and, moreover, they can conclude with one another agreements providing for some special method of settling disputes that may arise between them.

3. Various amendments to Article 22 were proposed. The Hungarian delegation asked for the insertion of a provision laying down that the decision of the Court or the arbitral award shall be final and without appeal. The Turkish delegation was anxious to make the text more

definite by adding a clause permitting of recourse to an arbitrator in virtue of an agreement to submit the dispute to arbitration. The Polish delegation expressed a desire that the article should be confined to disputes relating to the interpretation of the article, but not to its application.

The Committee did not think it necessary to adopt these amendments.

4. The Venezuelan delegation submitted the following proposal, to be inserted at the end of Article 22 :

> " In no case may the provisions of the present article affect the principle that disputes between a State and foreign nationals must be submitted to the decision of the former's Courts of Justice."

According to the explanations furnished, this proposal was designed to serve as a guarantee against all intervention by foreign Powers under cover of the provisions of Article 22. It was not clear, however, whether the Venezuelan delegation simply meant that foreigners should avail themselves of the means of recourse existing under international law before appealing to their Government for diplomatic protection, or whether it had a further purpose in view. With the consent of the delegation concerned, the proposal was referred to the Drafting Committee, which was instructed to frame a clearer draft.

5. The Drafting Committee proposed for Article 22 the following text :

> " The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing convention or by joint agreement, the dispute is settled by arbitration or any other means."

6. During the discussion of this text, the Swiss delegation reverted again to the preoccupations which it had already expressed.

The Committee adopted the text proposed by the Drafting Committee.

7. The text of Article 22 reads as follows :

" *Article 22.*

> " *The High Contracting Parties agree that all disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred, at the request of one of the parties to the dispute, to the Permanent Court of International Justice unless, in application of an existing convention or by joint agreement the dispute is settled by arbitration or any other means.*"

Article 23.

1. The Drafting Committee responsible for the examination of this article submitted to the Committee the following text :

> " The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date ; it shall remain open for signature until March 31st, 1930, on behalf of any Member of the League of Nations and of any non-member State which was represented at the Conference of Paris or to which the Council of the League of Nations shall have communicated a copy for this purpose."

2. The Committee had to consider a proposal by the German delegation worded as follows :

> " Official translations may at the request and with the assistance of the interested Governments be drawn up by the Secretariat of the League of Nations and deposited with the Secretary-General. It will be open for the Governments concerned to consider such translations as authoritative in their respective countries for the application of the Convention."

3. This proposal was modified by the German delegation in form if not in substance, the purpose which the delegation had in view being that each country should have, in its own language, a text differing as little as possible from the official text. The matter being perhaps one for the Council or the Assembly of the League of Nations to decide, the German delegation would be satisfied if the Conference simply accepted the principle contained in its proposal.

4. Several delegations stated that they were unable to accept the German proposal. Some considered that an official translation of the Convention, if it was to be regarded as authoritative, should have the approval of the plenipotentiary delegates present at the Conference. Others held that the only authentic text was that signed by the plenipotentiaries present at the Conference. Others again were of opinion that the question did not come within the terms of reference of the Conference. With the consent of the delegation concerned, the proposal was referred to the Drafting Committee, which was instructed to insert in the Final Act, if necessary, any text that it might consider to be appropriate.

5. The text of Article 23 as adopted by the Committee is as follows :

" *Article* 23.

"The present Convention, of which both the French and English texts shall be authentic, shall bear this day's date ; it shall remain open *for signature until March* 31*st*, 1930, on behalf of any Member of the League of Nations and of any non-Member State which was represented at the Conference *of Paris* or to which the Council of the League of Nations shall have communicated a copy for this purpose."

ARTICLES 24 AND 25.

On the Drafting Committee's proposal, the Committee adopted without opposition the following text for Articles 24 and 25 :

" *Article* 24.

" The present Convention *shall be ratified as soon as possible.* The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who shall notify this deposit *to all the Members of the League of Nations and to all the non-Member States mentioned in Article* 23. "

" *Article* 25.

" As from *April* 1*st*, 1930, the present Convention may be acceded to on behalf of any Members of the League of Nations or of any *non-Member* State mentioned in Article 23. Accessions shall be effected by *notifications addressed to the Secretary-General* of the League of Nations, *who shall notify their receipt to all the Members of the League of Nations and to all the non-Member States mentioned in Article* 23."

ARTICLE 26.

1. The Drafting Committee submitted to the Committee the following text :

" Without prejudice to the provisions of the second paragraph of this article, the present Convention shall come into force two months after the date on which ratifications or definitive accessions on behalf of ten Members of the League of Nations or non-Member States mentioned in Article 23 have been received by the Secretary-General of the League of Nations.

" If, on December 31st, 1930, the number of ratifications or definitive accessions required for the entry into force of the Convention have not been received, the Secretary-General of the League of Nations shall enquire of the Members of the League of Nations and of non-Member States on whose behalf ratifications or definitive accessions have been deposited whether they desire that the Convention shall be put into force between them on a date to be fixed by agreement. If the replies of the said Members of the League of Nations and non-Member States are unanimous in desiring the entry into force of the Convention as aforesaid, the date so agreed upon shall be communicated to the other Members of the League and non-Member States mentioned in Article 23, and the latter, if thereafter ratifications or definitive accessions are deposited on their behalf, shall be deemed to have thereby accepted the Convention in the conditions aforesaid. If the replies are not so unanimous, all the Members of the League and non-Member States mentioned in Article 23 shall consider the course to be adopted after being consulted by the Secretary-General of the League of Nations.

" Every ratification or definitive accession deposited or notified after the entry into force of the Convention shall take effect two months after the date of its deposit or notification."

2. In the course of the discussion, an exchange of views took place as to the advisability of drafting the text in such a way as to leave the Secretary-General of the League of Nations free to choose in what way he should proceed to the consultation provided for in paragraph 2 of the article. The Committee decided to modify the text on these lines.

3. According to the Drafting Committee's text, the number of ratifications or definitive accessions required for the entry into force of the Convention is ten. The number ten was inserted on the proposal of certain delegations.

The Netherlands delegation proposed that this number should be reduced to six, as it considers that ten is too large a number and would make the entry into force of the Convention difficult.

The Conference maintained the number ten.

4. The text of Article 26 as adopted by the Committee is as follows :

" *Article* 26.

" *Without prejudice to the provisions of the second paragraph of this article, the present Convention shall come into force two months after the date on which ratifications or definitive accessions on behalf of ten Members of the League of Nations or non-Member States mentioned in Article* 23 *have been received by the Secretary-General of the League of Nations.*

" *If, on December* 31*st*, 1930, *the number of ratifications or definitive accessions required for the entry into force of the Convention have not been received, the Secretary-General of the League of Nations shall consult the Members of the League of Nations and non-Member States on whose behalf ratifications or definitive accessions have been deposited as to whether they desire*

that the Convention shall be put into force between them on a date to be fixed by agreement. If the replies of the said Members of the League of Nations and non-Member States are unanimous in desiring the entry into force of the Convention as aforesaid, the date so agreed upon shall be communicated to the other Members of the League and non-Member States mentioned in Article 23, *and the latter, if thereafter ratifications or definitive accessions are deposited on their behalf, shall be deemed to have thereby accepted the Convention in the conditions aforesaid. If the replies are not unanimous, all the Members of the League and non-Member States mentioned in Article* 23 *shall consider the course to be adopted after being consulted by the Secretary-General of the League of Nations.*

" Every ratification or definitive accession deposited or notified after the entry into force of the Convention shall take effect two months after the date of its deposit or notification."

ARTICLE 26*bis*.

1. The following text was submitted to the Committee for discussion :

" The High Contracting Parties agree to accept only those reservations to the application of the Convention which are set forth in the Protocol to this Convention and in respect of the countries therein named."

2. A debate arose as to the utility of discussing such a proposal in the Committee. Certain delegations were of opinion that, as the question of reservations was to go before the plenary Conference, it would be better for the Committee not to prejudice the Conference's decisions on this point, and they asked that the proposed text should not be adopted. Other delegations were of opinion that the question could usefully be discussed by the Committee, it being understood that any delegation was free to raise the question in the plenary Conference.

After an exchange of views, the Committee adopted the text proposed for transmission to the President of the Conference.

3. The text adopted by the Committee is as follows :

" *Article* 26bis.

" The High Contracting Parties agree to accept only those reservations to the application of the Convention which are set forth in the Protocol to this Convention and in respect of the countries therein named."

Note. — Part II of the report of M. Ito, covering Articles 27 and 28, based on the discussion of these articles in the Committee, was not submitted to the Committee. It will be found in the final report of Committee D, which was noted by the Conference at its meeting of December 3rd, 1929.

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