LEAGUE OF NATIONS

PROCEEDINGS

of the

INTERNATIONAL CONFERENCE

on the

REPRESSION OF TERRORISM

Geneva, November 1st to 16th, 1937

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Première Partie.

INSTRUMENTS OFFICIELS DE LA CONFÉRENCE

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1. CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU TERRORISME

(y compris les signatures apposées jusqu'au 31 mai 1938.)

. . . . . .

Désireux de rendre de plus en plus efficaces la prévention et la répression du terrorisme, lorsqu'il présente un caractère international,

Ont désigné pour leurs plénipotentiaires :

. . . . . .

Lesquels, après avoir produit leurs pleins pouvoirs trouvés en bonne et due forme, ont convenu des dispositions suivantes :

Article premier.

1. Les Hautes Parties contractantes, réaffirmant le principe du droit international d'après lequel il est du devoir de tout Etat de s'abstenir lui-même de tout fait destiné à favoriser les activités terroristes dirigées contre un autre Etat et d'empêcher les actes par lesquels elles se manifestent, s'engagent, dans les termes ci-après exprimés, à prévenir et à réprimer les activités de ce genre et à se prêter mutuellement leur concours.

2. Dans la présente Convention, l'expression « actes de terrorisme » s'entend des faits criminels dirigés contre un Etat et dont le but ou la nature est de provoquer la terreur chez des personnalités déterminées, des groupes de personnes ou dans le public.

Article 2.

Chacune des Hautes Parties contractantes doit prévenir dans sa législation pénale, s'ils n'y sont déjà prévus, les faits suivants commis sur son territoire s'ils sont dirigés contre une autre Haute Partie contractante et s'ils constituent des actes de terrorisme au sens de l'article premier :

(1) Les faits intentionnels dirigés contre la vie, l'intégrité corporelle, la santé ou la liberté :

a) Des chefs d'Etat, des personnes exerçant les prérogatives du chef d'Etat, de leurs successeurs héréditaires ou désignés;

b) Des conjoints des personnes ci-dessus énumérées;

c) Des personnes revêtues de fonctions ou de charges publiques lorsque ledit fait a été commis en raison des fonctions ou charges que ces personnes exercent.

(2) Le fait intentionnel consistant à détruire ou à endommager des biens publics ou destinés à un usage public qui appartiennent à une autre Haute Partie contractante ou qui relèvent d'elle.

(3) Le fait intentionnel de nature à mettre en péril des vies humaines par la création d'un danger commun.

(4) La tentative de commettre les infractions prévues par les dispositions ci-dessus du présent article.

(5) Le fait de fabriquer, de se procurer, de détenir ou de fournir des armes, munitions, produits explosifs ou substances nocives en vue de l'exécution, en quelque pays que ce soit, d'une infraction prévue par le présent article.

Part I.

OFFICIAL INSTRUMENTS OF THE CONFERENCE.

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1. CONVENTION FOR THE PREVENTION AND PUNISHMENT OF TERRORISM

(showing the Signatures received down to May 31st, 1938).

. . . . . .

Being desirous of making more effective the prevention and punishment of terrorism of an international character,

Have appointed as their Plenipotentiaries :

. . . . . .

Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions :

Article 1.

1. The High Contracting Parties, reaffirming the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape, undertake as hereinafter provided to prevent and punish activities of this nature and to collaborate for this purpose.

2. In the present Convention, the expression " acts of terrorism " means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.

Article 2.

Each of the High Contracting Parties shall, if this has not already been done, make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any wilful act causing death or grievous bodily harm or loss of liberty to :

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

(2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

(3) Any wilful act calculated to endanger the lives of members of the public.

(4) Any attempt to commit an offence falling within the foregoing provisions of the present article.

(5) The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

Article 3.

Chacune des Hautes Parties contractantes doit également prévoir dans sa législation pénale les faits suivants s'ils sont commis sur son territoire en vue d'actes de terrorisme visés à l'article 2, dirigés contre une autre Haute Partie contractante, en quelque pays que ces actes doivent être exécutés :

(1) L'association ou l'entente en vue de l'accomplissement de tels actes;

(2) L'instigation à de tels actes, lorsqu'elle a été suivie d'effet;

(3) L'instigation directe publique aux actes prévus par les numéros 1, 2 et 3 de l'article 2, qu'elle soit ou non suivie d'effet;

(4) La participation intentionnelle;

(5) Toute aide donnée sciemment en vue de l'accomplissement d'un tel acte.

Article 4.

Chacun des faits prévus à l'article 3 doit être considéré par la loi comme une infraction distincte dans tous les cas où il devra en être ainsi pour éviter l'impunité.

Article 5.

La répression par une Haute Partie contractante des faits prévus aux articles 2 et 3 doit être la même, que ces faits soient dirigés contre cette Haute Partie contractante ou une autre Haute Partie contractante, sous réserve des dispositions spéciales du droit national touchant la protection particulière des personnalités visées à l'article 2, N° 1, ou des biens visés à l'article 2, N° 2.

Article 6.

1. Les pays qui admettent le principe de la récidive internationale reconnaissent dans les conditions établies par leurs législations respectives, comme génératrices d'une telle récidive, les condamnations étrangères prononcées du chef de l'un des actes prévus aux articles 2 et 3.

2. Lesdites condamnations seront, en outre, reconnues de plein droit ou à la suite d'une procédure spéciale par les Hautes Parties contractantes dont la législation admet la reconnaissance des jugements étrangers en matière pénale, en vue de donner lieu, dans les conditions prévues par cette législation, à des incapacités, déchéances ou interdictions de droit public ou privé.

Article 7.

Dans la mesure où la constitution de parties civiles est admise par la législation interne, les parties civiles étrangères, y compris éventuellement une Haute Partie contractante, doivent jouir de l'exercice de tous les droits reconnus aux nationaux par les lois du pays où se juge l'affaire.

Article 8.

1. Sans préjudice des dispositions de l'alinéa 4 ci-dessous, les faits prévus aux articles 2 et 3 sont compris comme cas d'extradition dans tout traité d'extradition conclu ou à conclure entre les Hautes Parties contractantes.

2. Les Hautes Parties contractantes qui ne subordonnent pas l'extradition à l'existence d'un traité reconnaissent, dès à présent, sans préjudice des dispositions de l'alinéa 4 ci-dessous, les faits prévus aux articles 2 et 3 comme cas d'extradition entre elles, sous la condition de réciprocité.

3. Aux fins du présent article, est également considéré comme cas d'extradition, tout fait énuméré aux articles 2 et 3, qui a été commis sur le territoire de la Haute Partie contractante contre laquelle il a été dirigé.

4. L'obligation d'extrader en vertu du présent article est subordonnée à toute condition et restriction admises par le droit ou la pratique du pays auquel la demande est adressée.

Article 3.

Each of the High Contracting Parties shall make the following acts criminal offences when they are committed on his own territory with a view to an act of terrorism falling within Article 2 and directed against another High Contracting Party, whatever the country in which the act of terrorism is to be carried out :

(1) Conspiracy to commit any such act;

(2) Any incitement to any such act, if successful;

(3) Direct public incitement to any act mentioned under heads (1), (2) or (3) of Article 2, whether the incitement be successful or not;

(4) Wilful participation in any such act;

(5) Assistance, knowingly given, towards the commission of any such act.

Article 4.

Each of the offences mentioned in Article 3 shall be treated by the law as a distinct offence in all cases where this is necessary in order to prevent an offender escaping punishment.

Article 5.

Subject to any special provisions of national law for the protection of the persons mentioned under head (1) of Article 2, or of the property mentioned under head (2) of Article 2, each High Contracting Party shall provide the same punishment for the acts set out in Articles 2 and 3, whether they be directed against that or another High Contracting Party.

Article 6.

1. In countries where the principle of the international recognition of previous convictions is accepted, foreign convictions for any of the offences mentioned in Articles 2 and 3 will, within the conditions prescribed by domestic law, be taken into account for the purpose of establishing habitual criminality.

2. Such convictions will, further, in the case of High Contracting Parties whose law recognises foreign convictions, be taken into account, with or without special proceedings, for the purpose of imposing, in the manner provided by that law, incapacities, disqualifications or interdictions whether in the sphere of public or of private law.

Article 7.

In so far as *parties civiles* are admitted under the domestic law, foreign *parties civiles*, including, in proper cases, a High Contracting Party shall be entitled to all rights allowed to nationals by the law of the country in which the case is tried.

Article 8.

1. Without prejudice to the provisions of paragraph 4 below, the offences set out in Articles 2 and 3 shall be deemed to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty shall henceforward, without prejudice to the provisions of paragraph 4 below and subject to reciprocity, recognise the offences set out in Articles 2 and 3 as extradition crimes as between themselves.

3. For the purposes of the present article, any offence specified in Articles 2 and 3, if committed in the territory of the High Contracting Party against whom it is directed, shall also be deemed to be an extradition crime.

4. The obligation to grant extradition under the present article shall be subject to any conditions and limitations recognised by the law or the practice of the country to which application is made.

Article 9.

1. Lorsqu'une Haute Partie contractante n'admet pas le principe de l'extradition des nationaux, ses ressortissants qui sont rentrés sur le territoire de leur pays, après avoir commis à l'étranger l'un des faits prévus aux articles 2 et 3, doivent être poursuivis et punis de la même manière que si le fait avait été commis sur son territoire, et cela même dans le cas où le coupable aurait acquis sa nationalité postérieurement à l'accomplissement de l'infraction.

2. Les dispositions du présent article ne sont pas applicables lorsque, dans un cas semblable, l'extradition d'un étranger ne peut pas être accordée.

Article 10.

Les étrangers qui ont commis à l'étranger un des faits prévus aux articles 2 et 3 et qui se trouvent sur le territoire d'une des Hautes Parties contractantes doivent être poursuivis et punis de la même manière que si le fait avait été commis sur le territoire de celle-ci, lorsque les conditions suivantes sont réunies :

a) L'extradition ayant été demandée n'a pu être accordée pour une raison étrangère au fait même;

b) La législation du pays de refuge reconnaît la compétence de ses juridictions à l'égard d'infractions commises par des étrangers à l'étranger;

c) L'étranger est ressortissant d'un pays qui reconnaît la compétence de ses juridictions à l'égard des infractions commises par des étrangers à l'étranger.

Article 11.

1. Les dispositions des articles 9 et 10 s'appliquent également aux faits prévus aux articles 2 et 3 qui ont été commis sur le territoire de la Haute Partie contractante contre laquelle ils ont été dirigés.

2. En ce qui concerne l'application des articles 9 et 10, les Hautes Parties contractantes n'assument pas l'obligation de prononcer une peine dépassant le maximum de celle prévue par la loi du pays où l'infraction a été commise.

Article 12.

En vue de prévenir efficacement toutes les activités contraires au but visé par la présente Convention, chacune des Hautes Parties contractantes doit prendre sur son territoire et dans le cadre de sa législation et de son organisation administrative les mesures qu'elle estimera appropriées.

Article 13.

1. Indépendamment des dispositions de l'article 1, N° 5, doivent être réglementés le port, la détention et la circulation d'armes à feu (autres que les armes de chasse à canon lisse) et des munitions. Le fait de céder, de vendre ou de distribuer ces armes ou munitions à une personne ne justifiant pas de l'autorisation ou de la déclaration lorsqu'elle est requise par la législation interne pour la détention ou le port de ces objets sera réprimé; il en sera de même pour la cession, la vente ou la distribution des explosifs.

2. Les fabricants d'armes à feu, autres que les armes de chasse à canon lisse, doivent être obligés de marquer chaque arme d'un numéro d'ordre ou signe distinctif de nature à l'identifier; les fabricants et les détaillants doivent tenir un registre des noms et adresses des acheteurs.

Article 14.

1. Doivent être punis :

a) Tous les faits frauduleux de fabrication ou d'altération de passeports ou autres documents équivalents;

b) Le fait d'introduire dans le pays, de se procurer ou de détenir de tels documents qui sont faux ou falsifiés, sachant qu'ils le sont;

c) Le fait de se faire délivrer de tels documents sur déclarations ou pièces fausses;

d) L'usage fait sciemment de tels documents faux ou falsifiés ou établis à une autre identité que celle du porteur.

Article 9.

1. When the principle of the extradition of nationals is not recognised by a High Contracting Party, nationals who have returned to the territory of their own country after the commission abroad of an offence mentioned in Articles 2 or 3 shall be prosecuted and punished in the same manner as if the offence had been committed on that territory, even in a case where the offender has acquired his nationality after the commission of the offence.

2. The provisions of the present article shall not apply if, in similar circumstances, the extradition of a foreigner cannot be granted.

Article 10.

Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the offences set out in Articles 2 and 3 shall be prosecuted and punished as though the offence had been committed in the territory of that High Contracting Party, if the following conditions are fulfilled—namely, that :

(a) Extradition has been demanded and could not be granted for a reason not connected with the offence itself;

(b) The law of the country of refuge recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners;

(c) The foreigner is a national of a country which recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners.

Article 11.

1. The provisions of Articles 9 and 10 shall also apply to offences referred to in Articles 2 and 3 which have been committed in the territory of the High Contracting Party against whom they were directed.

2. As regards the application of Articles 9 and 10, the High Contracting Parties do not undertake to pass a sentence exceeding the maximum sentence provided by the law of the country where the offence was committed.

Article 12.

Each High Contracting Party shall take on his own territory and within the limits of his own law and administrative organisation the measures which he considers appropriate for the effective prevention of all activities contrary to the purpose of the present Convention.

Article 13.

1. Without prejudice to the provisions of head (5) of Article 2, the carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition shall be subjected to regulation. It shall be a punishable offence to transfer, sell or distribute such arms or munitions to any person who does not hold such licence or make such declaration as may be required by domestic legislation concerning the possession and carrying of such articles; this shall apply also to the transfer, sale or distribution of explosives.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, shall be required to mark each arm with a serial number or other distinctive mark permitting it to be identified; both manufacturers and retailers shall be obliged to keep a register of the names and addresses of purchasers.

Article 14.

1. The following acts shall be punishable :

(a) Any fraudulent manufacture or alteration of passports or other equivalent documents;

(b) Bringing into the country, obtaining or being in possession of such forged or falsified documents knowing them to be forged or falsified;

(c) Obtaining such documents by means of false declarations or documents;

(d) Wilfully using any such documents which are forged or falsified or were made out for a person other than the bearer.

2. Doit être réprimé le fait de la part des fonctionnaires compétents de délivrer sciemment des passeports, autres documents équivalents ou visas, en vue de favoriser une activité contraire au but visé par la présente Convention, à des personnes sachant qu'elles n'ont pas le droit, conformément aux lois ou règlements, d'obtenir lesdits documents ou visas.

3. Les dispositions du présent article s'appliquent sans égard au caractère national ou étranger du document.

Article 15.

1. Dans chaque pays et dans le cadre de sa législation nationale, les résultats des recherches en matière d'infractions prévues par les articles 2 et 3 et par l'article 14, dans la mesure où l'infraction à celui-ci peut être en rapport avec la préparation d'actes de terrorisme, seront centralisés dans un service.

2. Ce service doit être en contact étroit :

a) Avec les autorités de police à l'intérieur du pays;

b) Avec les services similaires des autres pays.

3. Il doit, en outre, réunir tous les renseignements pouvant faciliter la prévention et la répression des actes prévus par les articles 2 et 3 et des actes prévus par l'article 14, dans la mesure où ceux-ci pourraient être en rapport avec la préparation d'actes de terrorisme; il doit, dans la mesure du possible, se tenir en contact étroit avec les autorités judiciaires à l'intérieur du pays.

Article 16.

Chaque service, dans les limites où il le jugera désirable, devra notifier au service des autres pays, en leur donnant toutes informations nécessaires :

a) Tout acte prévu par les articles 2 et 3, même s'il est encore à l'état de projet; cette notification sera accompagnée de descriptions, de copies ou de photographies;

b) Les recherches, poursuites, arrestations, condamnations, expulsions de personnes s'étant rendues coupables d'actes visés par la présente Convention, ainsi que le déplacement de ces personnes et tous renseignements utiles, notamment leurs signalement, empreintes digitales et photographies;

c) La découverte des écrits, armes, engins ou autres objets se rapportant aux actes prévus par les articles 2, 3, 13 et 14.

Article 17.

1. Les Hautes Parties contractantes sont tenues d'exécuter les commissions rogatoires relatives aux infractions visées par la présente Convention selon leur législation nationale, leur pratique en cette matière et les conventions conclues ou à conclure.

2. La transmission des commissions rogatoires doit être opérée :

a) Soit par voie de communication directe entre les autorités judiciaires;

b) Soit par correspondance directe des ministres de la Justice des deux pays;

c) Soit par correspondance directe entre l'autorité du pays requérant et le ministre de la Justice du pays requis;

d) Soit par l'intermédiaire de l'agent diplomatique ou consulaire du pays requérant dans le pays requis; cet agent enverra directement ou par l'intermédiaire du ministre des Affaires étrangères la commission rogatoire à l'autorité judiciaire compétente ou à celle indiquée par le gouvernement du pays requis, et recevra directement de cette autorité ou par l'intermédiaire du ministre des Affaires étrangères les pièces constituant l'exécution de la commission rogatoire.

3. Dans les cas *a)* et *d)*, copie de la commission rogatoire sera toujours adressée en même temps au ministre de la Justice du pays requis.

4. A défaut d'entente contraire, la commission rogatoire doit être rédigée dans la langue de l'autorité requérante, sauf au pays requis à en demander une traduction faite dans sa langue et certifiée conforme par l'autorité requérante.

5. Chaque Haute Partie contractante fera connaître, par une communication adressée à chacune des autres Hautes Parties contractantes, celui ou ceux des modes de transmission susvisés qu'elle admet pour les commissions rogatoires de cette Haute Partie contractante.

6. Jusqu'au moment où une Haute Partie contractante fera une telle communication, sa procédure actuelle en fait de commission rogatoire sera maintenue.

7. L'exécution des commissions rogatoires ne pourra donner lieu au remboursement de taxes ou frais autres que les frais d'expertises.

8. Rien, dans le présent article, ne pourra être interprété comme constituant, de la part des Hautes Parties contractantes, un engagement d'admettre, en ce qui concerne le système des preuves en matière répressive, une dérogation à leur loi.

2. The wilful issue of passports, other equivalent documents, or visas by competent officials to persons known not to have the right thereto under the laws or regulations applicable, with the object of assisting any activity contrary to the purpose of the present Covention, shall also be punishable.

3. The provisions of the present article shall apply irrespective of the national or foreign character of the document.

Article 15.

1. Results of the investigation of offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 14 shall in each country, subject to the provisions of its law, be centralised in an appropriate service.

2. Such service shall be in close contact :

(a) With the police authorities of the country;

(b) With the corresponding services in other countries.

3. It shall furthermore bring together all information calculated to facilitate the prevention and punishment of the offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 14; it shall, as far as possible, keep in close contact with the judicial authorities of the country.

Article 16.

Each service, so far as it considers it desirable to do so, shall notify to the services of the other countries, giving all necessary particulars :

(a) Any act mentioned in Articles 2 and 3, even if it has not been carried into effect, such notification to be accompanied by descriptions, copies and photographs;

(b) Any search for, any prosecution, arrest, conviction or expulsion of persons guilty of offences dealt with in the present Convention, the movements of such persons and any pertinent information with regard to them, as well as their description, finger-prints and photographs;

(c) Discovery of documents, arms, appliances or other objects connected with offences mentioned in Articles 2, 3, 13 and 14.

Article 17.

1. The High Contracting Parties shall be bound to execute letters of request relating to offences referred to in the present Convention in accordance with their domestic law and practice and any international conventions concluded or to be concluded by them.

2. The transmission of letters of request shall be effected :

(a) By direct communication between the judicial authorities;

(b) By direct correspondence between the Ministers of Justice of the two countries;

(c) By direct correspondence between the authority of the country making the request and the Minister of Justice of the country to which the request is made;

(d) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request, either directly or through the Minister for Foreign Affairs, to the competent judicial authority or to the authority indicated by the Government of the country to which the request is made and shall receive the papers constituting the execution of the letters of request from this authority either directly or through the Minister for Foreign Affairs.

3. In cases *(a)* and *(d)*, a copy of the letters of request shall always be sent simultaneously to the Minister of Justice of the country to which application is made.

4. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method or methods of transmission mentioned above which he will recognise for the letters of request of the latter High Contracting Party.

6. Until such notification is made by a High Contracting Party, his existing procedure in regard to letters of request shall remain in force.

7. Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

8. Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws.

Article 18.

La participation d'une Haute Partie contractante à la présente Convention ne doit pas être interprétée comme portant atteinte à son attitude sur la question générale de la compétence de la juridiction pénale comme question de droit international.

Article 19.

La présente Convention laisse intact le principe en vertu duquel la qualification des faits visés par elle, les peines applicables, la poursuite, le jugement, le régime des excuses, le droit de grâce et d'amnistie relèvent dans chaque pays des règles de sa législation interne, sans que jamais l'impunité puisse résulter d'une lacune dans les textes de cette législation en matière pénale.

Article 20.

1. S'il s'élève entre les Hautes Parties contractantes un différend quelconque relatif à l'interprétation ou à l'application de la présente Convention, et si ce différend n'a pu être résolu de façon satisfaisante par voie diplomatique, il sera réglé conformément aux dispositions en vigueur entre les Parties concernant le règlement des différends internationaux.

2. Au cas où de telles dispositions n'existeraient pas entre les parties au différend, elles le soumettront à une procédure arbitrale ou judiciaire. A défaut d'un accord sur le choix d'un autre tribunal, elles soumettront le différend à la Cour permanente de Justice internationale, si elles sont toutes parties au Protocole du 16 décembre 1920 relatif au Statut de ladite Cour, et, si elles n'y sont pas toutes parties, à un Tribunal d'arbitrage constitué conformément à la Convention de La Haye du 18 octobre 1907, pour le règlement des conflits internationaux.

3. Les dispositions ci-dessus du présent article ne portent pas atteinte au droit des Hautes Parties contractantes membres de la Société des Nations de porter le différend, si le Pacte les y autorise, devant le Conseil ou l'Assemblée de la Société des Nations.

Article 21.

1. La présente Convention, dont les textes français et anglais feront également foi, portera la date de ce jour; elle pourra, jusqu'au 31 mai 1938, être signée au nom de tout Membre de la Société des Nations et de tout Etat non membre représenté à la Conférence qui a élaboré la présente Convention ou auquel le Conseil de la Société des Nations aura, à cet effet, communiqué copie de la présente Convention.

2. La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations, pour être déposés dans les archives de la Société; il notifiera les dépôts à tous les Membres de la Société ainsi qu'aux Etats non membres visés au paragraphe précédent.

Article 22.

1. A partir du 1er juin 1938, la présente Convention sera ouverte à l'adhésion de tout Membre de la Société des Nations ou de tout Etat non membre visé à l'article 21 par qui cette Convention n'aurait pas été signée.

2. Les instruments d'adhésion seront transmis au Secrétaire général de la Société des Nations, pour être déposés dans les archives de la Société; il notifiera les dépôts à tous les Membres de la Société et aux Etats non membres visés à l'article 21.

Article 23.

1. Les Membres de la Société des Nations et Etats non membres qui seraient disposés à ratifier la Convention conformément au second paragraphe de l'article 21 ou à y adhérer en vertu de l'article 22, mais qui désireraient être autorisés à apporter des réserves à l'application de la Convention, informeront de leur intention le Secrétaire général de la Société des Nations. Celui-ci communiquera immédiatement ces réserves à tous les Membres de la Société et Etats non membres au nom desquels un instrument de ratification ou d'adhésion aura été déposé, en leur demandant s'ils ont des objections à présenter. Si la réserve est formulée au cours des trois ans qui suivront l'entrée en vigueur de la Convention, la même communication sera adressée aux Membres de la Société et Etats non membres dont la signature n'a pas encore été suivie de ratification. Si dans un délai de six mois à partir de la date de la communication du Secrétaire général aucune objection n'a été soulevée contre la réserve, celle-ci sera considérée comme acceptée par les Hautes Parties contractantes.

2. Au cas où des objections seraient soulevées, le Secrétaire général de la Société des Nations en informera le gouvernement qui désire formuler une réserve et l'invitera à lui faire savoir s'il est disposé à ratifier la Convention ou à y adhérer sans la réserve ou s'il préfère s'abstenir de toute ratification ou adhésion.

Article 18.

The participation of a High Contracting Party in the present Convention shall not be intepreted as affecting that Party's attitude on the general question of the limits of criminal jurisdiction as a question of international law.

Article 19.

The present Convention does not affect the principle that, provided the offender is not allowed to escape punishment owing to an omission in the criminal law, the characterisation of the various offences dealt with in the present Convention, the imposition of sentences, the methods of prosecution and trial, and the rules as to mitigating circumstances, pardon and amnesty are determined in each country by the provisions of domestic law.

Article 20.

1. If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the parties concerning the settlement of international disputes.

2. If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice, if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

3. The above provisions of the present article shall not prevent High Contracting Parties, if they are Members of the League of Nations, from bringing the dispute before the Council or the Assembly of the League if the Covenant gives them the power to do so.

Article 21.

1. The present Convention, of which the French and English texts shall be both authentic, shall bear to-day's date. Until May 31st, 1938, it shall be open for signature on behalf of any Member of the League of Nations and on behalf of any non-member State represented at the Conference which drew up the present Convention or to which a copy thereof is communicated for this purpose by the Council of the League of Nations.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 22.

1. After June 1st, 1938, the present Convention shall be open to accession by any Member of the League of Nations, and any of the non-member States referred to in Article 21, on whose behalf the Convention has not been signed.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their receipt to all the Members of the League and to the non-member States referred to in Article 21.

Article 23.

1. Any Member of the League of Nations or non-member State which is prepared to ratify the Convention under the second paragraph of Article 21, or to accede to the Convention under Article 22, but desires to be allowed to make reservations with regard to the application of the Convention, may so inform the Secretary-General of the League of Nations, who shall forthwith communicate such reservations to all the Members of the League and non-member States on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. Should the reservation be formulated within three years from the entry into force of the Convention, the same enquiry shall be addressed to Members of the League and non-member States whose signature of the Convention has not yet been followed by ratification. If, within six months from the date of the Secretary-General's communication, no objection to the reservation has been made, it shall be treated as accepted by the High Contracting Parties.

2. In the event of any objection being received, the Secretary-General of the League of Nations shall inform the Government which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

Article 24.

La ratification par une Haute Partie contractante ou son adhésion à la présente Convention implique l'assurance de sa part que sa législation et son organisation administrative la mettent en mesure de pourvoir à l'exécution de la Convention.

Article 25.

1. Chacune des Hautes Parties contractantes peut déclarer, au moment de la signature, de la ratification ou de l'adhésion, que, par son acceptation de la présente Convention, elle n'entend assumer aucune obligation en ce qui concerne l'ensemble ou toute partie de ses colonies, protectorats, territoires d'outre-mer, territoires placés sous sa suzeraineté ou territoires pour lequels un mandat lui a été confié; dans ce cas, la présente Convention ne sera pas applicable aux territoires faisant l'objet d'une telle déclaration.

2. Chacune des Hautes Parties contractantes pourra ultérieurement notifier au Secrétaire général de la Société des Nations qu'elle entend rendre la présente Convention applicable à l'ensemble ou toute partie de ses territoires ayant fait l'objet de la déclaration prévue au paragraphe précédent. En adressant ladite notification, la Haute Partie contractante intéressée pourra spécifier que l'application de ladite Convention à l'un quelconque de ces territoires sera subordonnée à toutes réserves qu'elle aura formulées et qui auront été acceptées aux termes de l'article 23. Dans ce cas, la Convention s'appliquera, avec lesdites réserves, à tous les territoires visés dans la notification quatre-vingt-dix jours après la réception de cette notification par le Secrétaire général de la Société des Nations. Au cas où une Haute Partie contractante désirerait formuler, en ce qui concerne l'un quelconque de ces territoires, des réserves autres que celles qu'elle a déjà apportées aux termes de l'article 23, la procédure à suivre sera celle qui est fixée audit article 23.

3. Chacune des Hautes Parties contractantes peut, à tout moment, déclarer qu'elle entend voir cesser l'application de la présente Convention pour l'ensemble ou pour toute partie de ses colonies, protectorats, territoires d'outre-mer, territoires placés sous sa suzeraineté ou territoires pour lesquels un mandat lui a été confié; dans ce cas, la Convention cessera d'être applicable aux territoires faisant l'objet d'une telle déclaration un an après la réception de cette déclaration par le Secrétaire général de la Société des Nations.

4. Le Secrétaire général de la Société des Nations communiquera à tous les Membres de la Société des Nations et aux Etats non membres visés à l'article 21 les déclarations et notifications reçues en vertu du présent article.

Article 26.

1. La présente Convention sera enregistrée, conformément aux dispositions de l'article 18 du Pacte, par le Secrétaire général de la Société des Nations, le quatre-vingt-dixième jour qui suivra la réception par le Secrétaire général du troisième instrument de ratification ou d'adhésion.

2. La Convention entrera en vigueur le jour de cet enregistrement.

Article 27.

Chaque ratification ou adhésion qui interviendra après le dépôt du troisième instrument de ratification ou d'adhésion sortira ses effets dès le quatre-vingt-dixième jour qui suivra la date de la réception de l'instrument de ratification ou d'adhésion respectif par le Secrétaire général de la Société des Nations.

Article 28.

Une demande de revision de la présente Convention pourra être formulée en tout temps par toute Haute Partie contractante, par voie de notification adressée au Secrétaire général de la Société des Nations. Cette notification sera communiquée par le Secrétaire général à toutes les autres Hautes Parties contractantes, et, si elle est appuyée par un tiers au moins de celles-ci, les Hautes Parties contractantes s'engagent à se réunir en une conférence aux fins de revision de la Convention.

Article 29.

La présente Convention pourra être dénoncée au nom de toute Haute Partie contractante, par notification écrite adressée au Secrétaire général de la Société des Nations, qui en informera tous les Membres de la Société et les Etats non membres visés à l'article 21. La dénonciation sortira ses effets un an après la date à laquelle elle aura été reçue par le Secrétaire général de la Société des Nations; elle ne sera opérante qu'au regard de la Haute Partie contractante au nom de laquelle elle aura été effectuée.

Article 24.

Ratification of, or accession to, the present Convention by any High Contracting Party implies an assurance by him that his legislation and his administrative organisation enable him to give effect to the provisions of the present Convention.

Article 25.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applied to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. In making such notification, the High Contracting Party concerned may state that the application of the Convention to any of such territories shall be subject to any reservations which have been accepted in respect of that High Contracting Party under Article 23. The Convention shall then apply, with any such reservations, to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations. Should it be desired as regards any such territories to make reservations other than those already made under Article 23 by the High Contracting Party concerned, the procedure set out in that Article shall be followed.

3. Any High Contracting Party may at any time declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States referred to in Article 21 the declarations and notifications received in virtue of the present Article.

Article 26.

1. The present Convention shall, in accordance with the provisions of Article 18 of the Covenant, be registered by the Secretary-General of the League of Nations on the ninetieth day after the receipt by the Secretary-General of the third instrument of ratification or accession.

2. The Convention shall come into force on the date of such registration.

Article 27.

Each ratification or accession taking place after the deposit of the third instrument of ratification or accession shall take effect on the ninetieth day following the date on which the instrument of ratification or accession is received by the Secretary-General of the League of Nations.

Article 28.

A request for the revision of the present Convention may be made at any time by any High Contracting Party by means of a notification to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to all the other High Contracting Parties and, if it is supported by at least a third of those Parties, the High Contracting Parties undertake to hold a conference for the revision of the Convention.

Article 29.

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 21. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

EN FOI DE QUOI, les Plénipotentiaires ont signé la présente Convention.

FAIT à Genève, le seize novembre mil neuf cent trente-sept, en simple expédition, qui sera déposée dans les archives du Secrétariat de la Société des Nations; copie certifiée conforme en sera transmise à tous les Membres de la Société des Nations et à tous les Etats non membres visés à l'article 21.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Convention.

DONE at Geneva, on the sixteenth day of November one thousand nine hundred and thirty-seven, in a single copy, which will be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States referred to in Article 21.

ALBANIE — ALBANIA

Ad referendum :
Th. LUARASSI

RÉPUBLIQUE ARGENTINE — ARGENTINE REPUBLIC

Enrique RUÍZ GUIÑAZÚ

BELGIQUE — BELGIUM

Ad referendum :
S. SASSERATH

INDE — INDIA

Denys BRAY

BULGARIE — BULGARIA

N. MOMTCHILOFF

CUBA — CUBA

Dr Juan ANTIGA

RÉPUBLIQUE DOMINICAINE — DOMINICAN REPUBLIC

Ch. ACKERMANN

ÉGYPTE — EGYPT

Aly SHAMSY — Abdel Latif TALAAT

ÉQUATEUR — ECUADOR

Alejandro GASTELÚ

ESPAGNE — SPAIN

Cipriano DE RIVAS CHERIF.

ESTONIE — ESTONIA

J. KÔDAR.

FRANCE — FRANCE

Me référant à l'article 25 de la Convention, je déclare que le Gouvernement français n'entend assumer aucune obligation en ce qui concerne l'ensemble de ses colonies et protectorats, ainsi que des territoires pour lesquels un mandat lui a été confié [1].

BASDEVANT

GRÈCE — GREECE

S. POLYCHRONIADIS

HAÏTI — HAITI

Alfred ADDOR

MONACO — MONACO

Xavier RAISIN

NORVÈGE — NORWAY

Ad referendum :
H. H. BACHKE

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[1] *Translation by the Secretariat of the League of Nations :*

With reference to Article 25 of the Convention, I declare that the French Government does not assume any obligation as regards the whole of its Colonies and Protectorates, or the territories for which a mandate has been entrusted to it.

PAYS-BAS — THE NETHERLANDS

van Hamel

PÉROU — PERU

J. M. Barreto

ROUMANIE — ROUMANIA

Vespasien V. Pella.

TCHÉCOSLOVAQUIE — CZECHOSLOVAKIA

Dr Koukal

TURQUIE — TURKEY

Vasfi Menteş

UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES — UNION OF SOVIET SOCIALIST REPUBLICS

En signant la présente Convention, je déclare que le Gouvernement de l'Union des Républiques soviétiques socialistes ne sera à même de la ratifier que sous la réserve suivante :

« En matière de règlement des contestations relatives à l'interprétation et à l'application de la présente convention, le Gouvernement de l'Union des Républiques soviétiques socialistes n'assume d'autres obligations que celles qui lui incombent en tant que Membre de la Société des Nations. » [1]

M. Litvinoff.

VENEZUELA — VENEZUELA

C. Parra-Pérez

J. M. Ortega-Martinez

Alejandro E. Trujillo

YOUGOSLAVIE — YUGOSLAVIA

Thomas Givanovitch.

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[1] *Translation by the Secretariat of the League of Nations :*

In signing the present Convention, I declare that the Government of the Union of Soviet Socialist Republics will be able to ratify it only subject to the following reservation :

" With regard to the settlement of disputes relating to the interpretation or application of the present Convention, the Government of the Union of Soviet Socialist Republics assumes only such obligations as are incumbent upon it as a Member of the League of Nations."

2. CONVENTION POUR LA CRÉATION D'UNE COUR PÉNALE INTERNATIONALE

(y compris les signatures apposées jusqu'au 31 mai 1938).

. . . . . .

Désireux, à l'occasion de la conclusion de la Convention pour la prévention et la répression du terrorisme, signée à la date de ce jour, de créer une Cour pénale internationale en vue de réaliser par là un progrès dans la lutte contre les infractions présentant un caractère international,

Ont désigné pour leurs plénipotentiaires :

. . . . . .

Lesquels, après avoir produit leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :

Article premier.

Il est institué une Cour pénale internationale en vue de juger dans les conditions ci-après spécifiées les individus accusés d'une infraction prévue dans la Convention pour la prévention et la répression du terrorisme.

Article 2.

1. Dans les cas visés par les articles 2, 3, 9 et 10 de la Convention pour la prévention et la répression du terrorisme, toute Haute Partie contractante à la présente Convention a la faculté, au lieu de faire juger par ses propres juridictions, de déférer l'accusé à la Cour.

2. Elle a en outre la faculté, dans les cas où elle peut accorder l'extradition conformément à l'article 8 de ladite Convention, de déférer l'accusé à la Cour, si l'Etat qui demande l'extradition est également partie à la présente Convention.

3. Les Hautes Parties contractantes reconnaissent qu'en faisant usage de la faculté prévue par le présent article, les autres Parties contractantes se conforment à leur égard aux prescriptions de la Convention pour la prévention et la répression du terrorisme.

Article 3.

La Cour est constituée de façon permanente. Toutefois, elle ne devra se réunir que lorsqu'elle sera saisie d'une poursuite relevant de sa compétence.

Article 4.

Le siège de la Cour est fixé à La Haye. La Cour, consultée par son Président, peut, pour une affaire déterminée, décider de se réunir ailleurs.

Article 5.

La Cour se compose de magistrats choisis parmi les jurisconsultes possédant une compétence reconnue en matière de droit pénal qui sont ou qui ont été membres de tribunaux siégeant en matière pénale ou qui réunissent les conditions requises pour être nommés dans leur pays.

Article 6.

La Cour se compose de cinq juges titulaires et de cinq juges suppléants appartenant chacun à une nationalité différente, sous réserve cependant que les juges titulaires et juges suppléants doivent être des ressortissants des Hautes Parties contractantes.

2. CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT

(showing the Signatures received down to May 31st, 1938).

. . . . . .

Being desirous on the occasion of concluding the Convention for the Prevention and Punishment of Terrorism, which bears to-day's date, of creating an International Criminal Court with a view to making progress in the struggle against offences of an international character,

Have appointed as their Plenipotentiaries :

. . . . . .

Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions :

Article 1.

An International Criminal Court for the trial, as hereinafter provided, of persons accused of an offence dealt with in the Convention for the Prevention and Punishment of Terrorism is hereby established.

Article 2.

1. In the cases referred to in Articles 2, 3, 9 and 10 of the Convention for the Prevention and Punishment of Terrorism, each High Contracting Party to the present Convention shall be entitled, instead of prosecuting before his own courts, to commit the accused for trial to the Court.

2. A High Contracting Party shall further, in cases where he is able to grant extradition in accordance with Article 8 of the said Convention, be entitled to commit the accused for trial to the Court if the State demanding extradition is also a Party to the present Convention.

3. The High Contracting Parties recognise that other Parties discharge their obligations towards them under the Convention for the Prevention and Punishment of Terrorism by making use of the right given them by the present article.

Article 3.

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for an offence within its jurisdiction.

Article 4.

The seat of the Court shall be established at The Hague. For any particular case, the President may take the opinion of the Court and the Court may decide to meet elsewhere.

Article 5.

The Court shall be composed of judges chosen from among jurists who are acknowledged authorities on criminal law and who are or have been members of courts of criminal jurisdiction or possess the qualifications required for such appointments in their own countries.

Article 6.

The Court shall consist of five regular judges and five deputy judges, each belonging to a different nationality, but so that the regular judges and deputy judges shall be nationals of the High Contracting Parties.

Article 7.

1. Tout Membre de la Société des Nations et tout Etat non membre à l'égard desquels la présente Convention est en vigueur pourra présenter deux candidats au plus aux fonctions de juge à la Cour.

2. La Cour permanente de Justice internationale sera priée de choisir les juges titulaires et suppléants parmi les personnes ainsi présentées.

Article 8.

Tout membre de la Cour doit, avant d'entrer en fonction, prendre en séance publique l'engagement solennel d'exercer ses attributions en pleine impartialité et en toute conscience.

Article 9.

Les Hautes Parties contractantes reconnaissent aux membres de la Cour, dans l'exercice de leurs fonctions, les privilèges et immunités diplomatiques.

Article 10.

1. Le mandat des juges est de dix ans.

2. La Cour se renouvelle tous les deux ans à raison d'un membre titulaire et d'un membre suppléant.

3. Pour la première période de dix ans, l'ordre suivant lequel ce renouvellement aura lieu sera déterminé au moyen d'un tirage au sort au moment de la première élection.

4. Le mandat des juges peut être renouvelé.

5. Les juges restent en fonction jusqu'à leur remplacement.

6. Toutefois, après ce remplacement, ils continuent de connaître des affaires dont ils ont déjà été saisis.

Article 11.

1. En cas de vacance d'un siège par expiration du mandat du titulaire ou pour toute autre cause, il y est pourvu conformément à l'article 7.

2. En cas de démission d'un membre de la Cour, la démission prendra effet au moment où notification en sera reçue par le Greffier.

3. En cas de vacance d'un siège se produisant plus de huit mois avant la date du renouvellement normal de ce siège, les Hautes Parties contractantes doivent, dans le délai de deux mois, procéder aux présentations prévues à l'article 7, paragraphe 1, en vue de pourvoir à cette vacance.

Article 12.

Un membre de la Cour ne peut être relevé de ses fonctions que si, au jugement unanime de tous les autres membres, titulaires et suppléants, il a cessé de répondre aux conditions requises.

Article 13.

Le juge nommé en remplacement d'un juge dont le mandat n'est pas expiré achève le terme du mandat de son prédécesseur.

Article 14.

La Cour élit pour deux ans son Président et son Vice-Président; ils sont rééligibles.

Article 15.

La Cour établira elle-même un règlement pour son fonctionnement et sa procédure.

Article 16.

Le Greffe de la Cour sera assuré par le Greffe de la Cour permanente de Justice internationale, si celle-ci y consent.

Article 7.

1. Any Member of the League of Nations and any non-member State, in respect of which the present Convention is in force, may nominate not more than two candidates for appointment as judges of the Court.

2. The Permanent Court of International Justice shall be requested to choose the regular and deputy judges from the persons so nominated.

Article 8.

Every member of the Court shall, before taking up his duties, give a solemn undertaking in open Court that he will exercise his powers impartially and conscientiously.

Article 9.

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

Article 10.

1. Judges shall hold office for ten years.

2. Every two years, one regular and one deputy judge shall retire.

3. The order of retirement for the first period of ten years shall be determined by lot when the first election takes place.

4. Judges may be re-appointed.

5. Judges shall continue to discharge their duties until their places have been filled.

6. Nevertheless, judges, though replaced, shall finish any cases which they have begun.

Article 11.

1. Any vacancy, whether occurring on the expiration of a judge's term of office or for any other cause, shall be filled as provided in Article 7.

2. In the event of the resignation of a member of the Court, the resignation shall take effect on notification being received by the Registrar.

3. If a seat on the Court becomes vacant more than eight months before the date at which a new election to that seat would normally take place, the High Contracting Parties shall within two months nominate candidates for the seat in accordance with Article 7, paragraph 1.

Article 12.

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

Article 13.

A judge appointed in place of a judge whose period of appointment has not expired shall hold the appointment for the remainder of his predecessor's term.

Article 14.

The Court shall elect its President and Vice-President for two years; they may be re-elected.

Article 15.

The Court shall establish regulations to govern its practice and procedure.

Article 16.

The work of the Registry of the Court shall be performed by the Registry of the Permanent Court of International Justice, if that Court consents.

Article 17.

Les archives de la Cour sont confiées au Greffier.

Article 18.

La Cour siège au nombre de cinq membres.

Article 19.

1. Les membres de la Cour ne peuvent participer au jugement d'aucune affaire dans laquelle ils sont antérieurement intervenus à un titre quelconque. En cas de doute, la Cour décide.

2. Si, pour une raison spéciale, l'un des membres de la Cour estime ne pas devoir siéger dans une affaire déterminée, il en fait part au Président dès qu'il a été informé que la Cour est saisie de cette affaire.

Article 20.

1. Si la présence de cinq juges n'est pas assurée, ce nombre est parfait par l'appel en fonction de juges suppléants dans l'ordre du tableau.

2. Le tableau est dressé par la Cour en tenant compte d'abord de la priorité de nomination et, ensuite, de l'ancienneté d'âge.

Article 21.

1. En ce qui concerne l'application de la loi pénale de fond, la Cour appliquera la loi la moins rigoureuse. A cet effet, elle prendra en considération la loi du pays sur le territoire duquel l'infraction a été commise et la loi du pays qui a saisi la Cour.

2. Pour toutes contestations sur la question de savoir quelle est la loi pénale de fond à appliquer, la Cour statuera.

Article 22.

Si la Cour est appelée, conformément à l'article 21, à appliquer la loi d'un Etat qui ne compte pas de ressortissant parmi les juges siégeant dans l'affaire, elle pourra appeler à siéger à ses côtés, avec voix consultative et à titre de juriste assesseur, un jurisconsulte ayant une compétence reconnue en la matière.

Article 23.

La Haute Partie contractante qui use de la faculté de déférer un accusé pour jugement à la Cour en informera le Président par l'intermédiaire du Greffe.

Article 24.

Le Président de la Cour, dès qu'une Haute Partie contractante lui a communiqué sa décision de déférer un accusé à la Cour, conformément à l'article 2, en informe l'Etat contre lequel l'infraction a été dirigée, celui sur le territoire duquel elle a été commise, ainsi que celui dont l'accusé est ressortissant.

Article 25.

1. La Cour est saisie par le fait qu'une Haute Partie contractante lui défère l'accusé.

2. L'acte par lequel un Etat défère un accusé à la Cour doit contenir l'énoncé des charges principales et les éléments sur lesquels elles s'appuient, ainsi que la désignation de l'agent par lequel cet Etat sera représenté.

3. L'Etat qui a déféré l'accusé à la Cour assume la charge de soutenir l'accusation, à moins que l'Etat contre lequel l'infraction a été dirigée ou, à son défaut, l'Etat sur le territoire duquel l'infraction a été commise n'exprime le désir de se substituer à lui.

Article 26.

1. Tout Etat qualifié pour saisir la Cour pourra intervenir devant elle, prendre connaissance du dossier, présenter un mémoire à la Cour et participer aux débats.

2. Toute personne qui a été lésée directement par l'infraction pourra, si la Cour l'y autorise et dans les conditions fixées par celle-ci, se constituer partie civile; elle ne pourra prendre part au débat que lorsqu'il s'agira pour la Cour de se prononcer sur les dommages-intérêts.

Article 17.

The Court's archives shall be in the charge of the Registrar.

Article 18.

The number of members who shall sit to constitute the Court shall be five.

Article 19.

1. Members of the Court may not take part in trying any case in which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

2. If, for some special reason, a member of the Court considers that he should not sit to try a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Article 20.

1. If the presence of five regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly to age.

Article 21.

1. The substantive criminal law to be applied by the Court shall be that which is the least severe. In determining what that law is, the Court shall take into consideration the law of the territory on which the offence was committed and the law of the country which committed the accused to it for trial.

2. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

Article 22.

If the Court has to apply, in accordance with Article 21, the law of a State of which no sitting judge is a national, the Court may invite a jurist who is an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Article 23.

A High Contracting Party who avails himself of the right to commit an accused person for trial to the Court shall notify the President through the Registry.

Article 24.

The President of the Court, on being informed by a High Contracting Party of his decision to commit an accused person for trial to the Court in accordance with Article 2, shall notify the State against which the offence was directed, the State on whose territory the offence was committed and the State of which the accused is a national.

Article 25.

1. The Court is seized so soon as a High Contracting Party has committed an accused person to it for trial.

2. The document committing an accused person to the Court for trial shall contain a statement of the principal charges against him and the allegations on which they are based, and shall name the agent by whom the State will be represented.

3. The State which committed the accused person to the Court shall conduct the prosecution unless the State against which the offence was directed or, failing that State, the State on whose territory the offence was committed expresses a wish to prosecute.

Article 26.

1. Any State entitled to seize the Court may intervene, inspect the file, submit a statement of its case to the Court and take part in the oral proceedings.

2. Any person directly injured by the offence may, if authorised by the Court, and subject to any conditions which it may impose, constitute himself *partie civile* before the Court; such person shall not take part in the oral proceeding except when the Court is dealing with the damages.

Article 27.

La Cour ne peut juger d'autres accusés que ceux qui lui ont été déférés, ni juger les accusés pour d'autres faits que ceux en raison desquels ils lui ont été déférés.

Article 28.

La Cour abandonnera la poursuite et ordonnera la mise en liberté de l'accusé, si, l'accusation étant retirée, elle n'est pas immédiatement reprise par un Etat ayant qualité pour la présenter.

Article 29.

1. Les accusés pourront se faire défendre par des avocats faisant partie d'un barreau et agréés par la Cour.

2. Dans le cas où la défense ne serait pas assurée par un avocat choisi par l'accusé, la Cour désignera pour chaque accusé un défenseur d'office choisi parmi les avocats faisant partie d'un barreau.

Article 30.

L'individu déféré pour jugement à la Cour devra recevoir communication du dossier de l'affaire ainsi que du mémoire de la partie civile.

Article 31.

1. La Cour décide si l'individu qui lui est déféré doit être mis ou maintenu en état d'arrestation. Elle fixe, le cas échéant, les conditions de sa mise en liberté provisoire.

2. Pour l'exécution de la prise de corps, l'Etat sur le territoire duquel siège la Cour mettra à la disposition de celle-ci un lieu d'internement approprié ainsi que le personnel de gardiens nécessaire.

Article 32.

Les parties pourront proposer des témoins et experts à la Cour, sous réserve pour celle-ci de décider s'il y a lieu de les citer et de les entendre. La Cour pourra toujours, même d'office, procéder à l'audition d'autres témoins et experts. Il en sera de même pour tous autres éléments de preuve.

Article 33.

Les commissions rogatoires dont l'envoi serait jugé utile par la Cour seront transmises, selon la méthode fixée par son règlement, à l'Etat compétent pour leur donner suite.

Article 34.

Il ne pourra être procédé devant la Cour à aucun interrogatoire, à aucune audition de témoins ou d'experts, ni à aucune confrontation qu'en présence des conseils de l'accusé, des représentants des Etats prenant part à la procédure ou ces représentants dûment appelés.

Article 35.

1. Les audiences de la Cour sont publiques.

2. Toutefois, la Cour pourra, par un jugement motivé, décider qu'il sera procédé à huis clos. Le jugement sera toujours prononcé en audience publique.

Article 36.

Les délibérations de la Cour sont secrètes.

Article 37.

Les décisions de la Cour sont prises à la majorité des juges.

Article 38.

Tout arrêt de la Cour est motivé et lu en audience publique par le Président.

Article 27.

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Article 28.

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is abandoned and not at once recommenced by a State entitled to prosecute.

Article 29.

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused person a counsel selected from advocates belonging to a Bar.

Article 30.

The file of the case and the statement of the *partie civile* shall be communicated to the person who is before the Court for trial.

Article 31.

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Article 32.

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards any other kind of evidence.

Article 33.

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Article 34.

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and of the representatives of the States which are taking part in the proceedings or after these representatives have been duly summoned.

Article 35.

1. The hearings before the Court shall be public.

2. Nevertheless, the Court may, by a reasoned judgment, decide that the hearing shall take place *in camera*. Judgment shall always be pronounced at a public hearing.

Article 36.

The Court shall sit in private to consider its judgment.

Article 37.

The decisions of the Court shall be by majority of the judges.

Article 38.

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Article 39.

1. La Cour statuera sur les confiscations éventuelles et restitutions.

2. La Cour pourra prononcer contre les individus qui lui ont été déférés des condamnations aux dommages-intérêts.

3. Les Hautes Parties contractantes sur le territoire desquelles se trouvent les objets à restituer ou des biens appartenant aux condamnés sont tenues de prendre toutes mesures prévues par leurs propres lois afin d'assurer l'exécution de ces condamnations.

4. Les dispositions de l'alinéa précédent s'appliquent aussi lorsqu'il s'agit du recouvrement des peines pécuniaires prononcées par la Cour ou des frais de procédure.

Article 40.

1. Les peines privatives de liberté seront exécutées par la Haute Partie contractante que la Cour désignera après avoir pris son assentiment. L'Etat qui aura déféré le condamné à la Cour ne pourra refuser son assentiment. Toutefois, cette exécution sera assurée par l'Etat qui a déféré le condamné à la Cour, si cet Etat en a exprimé le désir.

2. La Cour déterminera l'affectation des amendes.

Article 41.

Si la peine de mort a été prononcée, l'Etat désigné par la Cour pour exécuter la peine aura la faculté de lui substituer la peine privative de liberté la plus grave dans sa législation nationale.

Article 42.

Le droit de grâce sera exercé par l'Etat chargé de l'exécution de la peine. Il prendra au préalable l'avis du Président de la Cour.

Article 43.

1. Contre les arrêts de condamnation rendus par la Cour, il n'y aura d'autre voie de recours que la revision.

2. La Cour déterminera par son règlement les cas dans lesquels la revision pourra lui être demandée.

3. Auront le droit de demander la revision les Etats mentionnés à l'article 25 et les personnes mentionnées à l'article 29.

Article 44.

1. Les indemnités des juges sont à la charge des Etats dont ils sont ressortissants, sur la base d'un barème établi par les Hautes Parties contractantes.

2. Il sera institué un fonds commun alimenté par les Hautes Parties contractantes et sur lequel seront prélevés les frais de procédure et autres frais imposés par le jugement de l'affaire, y compris éventuellement les honoraires et frais de l'avocat d'office, sauf recouvrement à charge du condamné. L'indemnité spéciale du Greffier et les frais du Greffe seront supportés par ledit fonds.

Article 45.

1. La Cour statue sur les questions qui pourraient surgir au sujet de sa propre compétence au cours d'une affaire dont elle est saisie; elle applique à cet effet les dispositions de la présente Convention ainsi que de la Convention pour la prévention et la répression du terrorisme et les principes généraux du droit.

2. Si une Haute Partie contractante, autre que celle qui aura saisi la Cour, conteste l'étendue de la compétence de celle-ci par rapport à ses propres juridictions nationales et si cette Haute Partie contractante ne croit pas devoir se borner à faire trancher cette question par la Cour pénale internationale en intervenant à cette fin dans la procédure, cette contestation sera considérée comme s'élevant entre cette Haute Partie contractante et la Haute Partie contractante qui aura saisi la Cour, et elle sera réglée comme il est dit à l'article 48.

Article 39.

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.

2. The Court may sentence the persons committed to it to pay damages.

3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons is situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.

4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Article 40.

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court. Such consent may not be refused by the State which committed the convicted person to the Court for trial. The sentence shall always be executed by the State which committed the convicted person to the Court if this State expresses the wish to do so.

2. The Court shall determine the way in which any fines shall be dealt with.

Article 41.

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall be entitled to substitute therefor the most severe penalty provided by its national law which involves loss of liberty.

Article 42.

The right of pardon shall be exercised by the State which has to enforce the penalty. It shall first consult the President of the Court.

Article 43.

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in Article 25, and the persons mentioned in Article 29, shall have the right to ask for a revision.

Article 44.

1. The salaries of the judges shall be payable by the States of which they are nationals on a scale fixed by the High Contracting Parties.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Article 45.

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention and of the Convention for the Prevention and Punishment of Terrorism and the general principles of law.

2. If a High Contracting Party, not being the Party who sent the case in question for trial to the Court, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts and does not see his way to appear in the proceedings in order that the question may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 48.

Article 46.

1. Les représentants des Hautes Parties contractantes se réuniront en vue de prendre toutes décisions nécessaires concernant :

a) La constitution et la gestion du fonds commun, la répartition entre les Hautes Parties contractantes des sommes jugées nécessaires pour créer et maintenir ce fonds et, d'une manière générale, toutes questions ayant trait à l'établissement et au fonctionnement de la Cour;

b) L'organisation des réunions prévues au paragraphe 3 ci-dessous.

2. Les représentants des Hautes Parties contractantes décideront également à leur première réunion les adaptations qui seraient nécessaires en vue de réaliser le but de la présente Convention.

3. Le Greffier de la Cour convoquera les réunions ultérieures conformément aux règles qui auront été établies à cet effet.

4. Toutes les questions qui pourront se poser lors des réunions visées au présent article feront l'objet de décisions prises à la majorité des deux tiers des Hautes Parties contractantes représentées à la réunion.

Article 47.

1. Tant que la présente Convention ne sera pas en vigueur entre douze Hautes Parties contractantes, il sera possible qu'un juge et un juge suppléant soient ressortissants de la même Haute Partie contractante.

2. L'application de l'article 18 et de l'article 20, paragraphe 1, ne peut avoir pour conséquence de faire siéger simultanément un juge et un juge suppléant ressortissants du même Etat.

Article 48.

1. S'il s'élève entre les Hautes Parties contractantes un différend quelconque relatif à l'interprétation ou à l'application de la présente Convention et si ce différend n'a pu être résolu de façon satisfaisante par voie diplomatique, il sera réglé conformément aux dispositions en vigueur entre les Parties concernant le règlement des différends internationaux.

2. Au cas où de telles dispositions n'existeraient pas entre les parties au différend, elles le soumettront à une procédure arbitrale ou judiciaire. A défaut d'un accord sur le choix d'un autre tribunal, elles soumettront le différend à la Cour permanente de Justice internationale, si elles sont toutes parties au Protocole du 16 décembre 1920 relatif au Statut de ladite Cour, et si elles n'y sont pas toutes parties, à un Tribunal d'arbitrage constitué conformément à la Convention de La Haye du 18 octobre 1907, pour le règlement pacifique des conflits internationaux.

Article 49.

1. La présente Convention, dont les textes français et anglais feront également foi, portera la date de ce jour; elle pourra, jusqu'au 31 mai 1938, être signée au nom de tout Membre de la Société des Nations et de tout Etat non membre au nom desquels la Convention pour la prévention et la répression du terrorisme a été signée.

2. La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations pour être déposés dans les archives de la Société; il notifiera les dépôts à tous les Membres de la Société ainsi qu'aux Etats non membres visés au paragraphe précédent. Toutefois, le dépôt d'un instrument de ratification sur la présente Convention est subordonné au dépôt, par la même Haute Partie contractante, de l'instrument de ratification ou d'adhésion à la Convention pour la prévention et la répression du terrorisme.

Article 50.

1. A partir du 1er juin 1938, la présente Convention sera ouverte à l'adhésion de tout Membre de la Société des Nations et de tout Etat non membre par qui cette Convention n'aurait pas été signée. Le dépôt d'un instrument d'adhésion est subordonné au dépôt, par la même Haute Partie contractante, de l'instrument de ratification ou d'adhésion à la Convention pour la prévention et la répression du terrorisme.

2. Les instruments d'adhésion seront transmis au Secrétaire général de la Société des Nations, pour être déposés dans les archives de la Société; il notifiera les dépôts à tous les Membres de la Société et aux Etats non membres visés à l'article 49.

Article 46.

1. The representatives of the High Contracting Parties shall meet with a view to taking all necessary decisions concerning :

(a) The constitution and administration of the common fund, the division among the High Contracting Parties of the sums considered necessary to create and maintain such fund and, in general, all questions bearing on the establishment and the working of the Court;

(b) The organisation of the meetings referred to below in paragraph 3.

2. At their first meeting, the representatives of the High Contracting Parties shall also decide what modifications are necessary in order to attain the objects of the present Convention.

3. The Registrar of the Court shall convene subsequent meetings in conformity with the rules established to that effect.

4. All questions of procedure that may arise at the meetings referred to in the present article shall be decided by a majority of two-thirds of the High Contracting Parties represented at the meeting.

Article 47.

1. Until the present Convention is in force between twelve High Contracting Parties, it shall be possible for a judge and a deputy judge to be both nationals of the same High Contracting Party.

2. Article 18 and Article 20, paragraph 1, shall not be applied in such a manner as to cause a judge and a deputy judge of the same nationality to sit simultaneously on the Court.

Article 48.

1. If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the Parties concerning the settlement of international disputes.

2. If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice, if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 49.

1. The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date. Until May 31st, 1938, it shall be open for signature on behalf of any Member of the League of Nations or any non-member State on whose behalf the Convention for the Prevention and Punishment of Terrorism has been signed.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League. The Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph. The deposit of an instrument of ratification of the present Convention shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of, or accession to, the Convention for the Prevention and Punishment of Terrorism.

Article 50.

1. After June 1st, 1938, the present Convention shall be open to accession by any Member of the League of Nations and any non-member State which has not signed this Convention. Nevertheless, the deposit of an instrument of accession shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of, or accession to, the Convention for the Prevention and Punishment of Terrorism.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States referred to in Article 49.

Article 51.

Il ne pourra être fait de réserve à la signature, à la ratification de la présente Convention ou en adhérant à elle, que sur l'article 26, paragraphe 2.

Article 52.

1. Chacune des Hautes Parties contractantes peut déclarer, au moment de la signature, de la ratification ou de l'adhésion, que, par son acceptation de la présente Convention, elle n'entend assumer aucune obligation en ce qui concerne l'ensemble ou toute partie de ses colonies, protectorats, territoires d'outre-mer, territoires placés sous sa suzeraineté ou territoires pour lesquels un mandat lui a été confié; dans ce cas, la présente Convention ne sera pas applicable aux territoires faisant l'objet d'une telle déclaration.

2. Chacune des Hautes Parties contractantes pourra ultérieurement notifier au Secrétaire général de la Société des Nations qu'elle entend rendre la présente Convention applicable à l'ensemble ou à toute partie de ses territoires ayant fait l'objet de la déclaration prévue au paragraphe précédent. Dans ce cas, la Convention s'appliquera à tous les territoires visés dans la notification quatre-vingt-dix jours après la réception de cette notification par le Secrétaire général de la Société des Nations.

3. Chacune des Hautes Parties contractantes peut, à tout moment, déclarer qu'elle entend voir cesser l'application de la présente Convention pour l'ensemble ou pour toute partie de ses colonies, protectorats, territoires d'outre-mer, territoires placés sous sa suzeraineté ou territoires pour lesquels un mandat lui a été confié; dans ce cas, la Convention cessera d'être applicable aux territoires faisant l'objet d'une telle déclaration un an après la réception de cette déclaration par le Secrétaire général de la Société des Nations.

4. Le Secrétaire général de la Société des Nations communiquera à tous les Membres de la Société des Nations et aux Etats non membres visés aux articles 49 et 50, les déclarations et notifications reçues en vertu du présent article.

Article 53.

1. Le Gouvernement des Pays-Bas est prié de convoquer une réunion des Etats ayant ratifié la présente Convention ou y ayant adhéré, réunion qui se tiendra dans le délai d'un an à compter de la réception par le Secrétaire général de la Société des Nations du septième instrument de ratification ou d'adhésion. Cette réunion aura à fixer la date de la mise en vigueur de la présente Convention. La décision sera prise à la majorité des deux tiers sans que ce chiffre puisse être inférieur à six voix. Cette réunion prendra également les décisions nécessaires pour l'application de l'article 46.

2. La mise en vigueur de la présente Convention est, toutefois, subordonnée à la mise en vigueur de la Convention pour la prévention et la répression du terrorisme.

3. La présente Convention sera enregistrée conformément à l'article 18 du Pacte par le Secrétaire général de la Société des Nations au jour qui sera fixé par la réunion ci-dessus visée.

Article 54.

Chaque ratification ou adhésion émanant d'un Etat qui n'a pas été appelé à prendre part à la réunion visée à l'article 53 produira effet quatre-vingt-dix jours après sa réception par le Secrétaire général de la Société des Nations, sans que cet effet puisse se produire moins de quatre-vingt-dix jours après l'entrée en vigueur de la Convention.

Article 55.

La présente Convention pourra être dénoncée au nom de toute Haute Partie contractante par notification écrite adressée au Secrétaire général de la Société des Nations, qui en informera tous les Membres de la Société et les Etats non membres visés aux articles 49 et 50. La dénonciation sortira ses effets un an après la date à laquelle elle aura été reçue par le Secrétaire général de la Société des Nations; elle ne sera opérante qu'au jegard de la Haute Partie contractante au nom de laquelle elle aura été effectuée.

Article 56.

1. Lorsque la Cour aura été saisie d'une affaire avant la dénonciation de la présente Convention ou l'avis prévu à l'article 52, paragraphe 3, elle en achèvera néanmoins l'examen et le jugement.

2. La Haute Partie contractante appelée à donner effet à une condamnation conformément à la présente Convention restera tenue de ses obligations à l'égard de toute condamnation intervenue antérieurement à sa dénonciation.

Article 51.

Signature, ratification or accession to the present Convention may not be accompanied by any reservations except in regard to Article 26, paragraph 2.

Article 52.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates or oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States mentioned in Articles 49 and 50 the declarations and notifications received in virtue of the present article.

Article 53.

1. The Government of the Netherlands is requested to convene a meeting of representatives of the States which ratify or accede to the present Convention. The meeting is to take place within one year after the receipt of the seventh instrument of ratification or accession by the Secretary-General of the League of Nations and has for object to fix the date at which the present Convention shall be put into force. The decision shall be taken by a majority which must be a two-thirds majority and include not less than six votes. The meeting shall also take any decisions necessary for carrying out the provisions of Article 46.

2. The entry into force of the present Convention shall, however, be subject to the entry into force of the Convention for the Prevention and Punishment of Terrorism.

3. The present Convention shall be registered by the Secretary-General of the League of Nations in accordance with Article 18 of the Covenant on the day fixed by the above-mentioned meeting.

Article 54.

A ratification or accession by a State which has not taken part in the meeting mentioned in Article 53 shall take effect ninety days after its receipt by the Secretary-General of the League of Nations, provided that the date at which it takes effect shall not be earlier than ninety days after the entry into force of the Convention.

Article 55.

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Articles 49 and 50. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

Article 56.

1. A case brought before the Court before the denunciation of the present Convention, or the making of a declaration as provided in Article 52, paragraph 3, shall nevertheless continue to be heard and judgment be given by the Court.

2. A High Contracting Party who before denouncing the present Convention has under the provisions thereof incurred the obligation of carrying out a sentence shall continue to be bound by such obligation.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention.

Fait à Genève, le seize novembre mil neuf cent trente-sept, en simple expédition, qui sera déposée dans les archives du Secrétariat de la Société des Nations; copie certifiée conforme en sera transmise à tous les Membres de la Société des Nations et à tous les Etats non membres représentés à la Conférence.

In faith whereof the Plenipotentiaries have signed the present Convention.

Done at Geneva, the sixteenth day of November, one thousand nine hundred and thirty-seven, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States represented at the Conference.

BELGIQUE

Ad referendum :
S. Sasserath

BELGIUM

BULGARIE

N. Momtchiloff

BULGARIA

CUBA

Dr Juan Antiga

CUBA

ESPAGNE

Cipriano de Rivas Cherif.

SPAIN

FRANCE

Me référant à l'article 52 de la Convention, je déclare que le Gouvernement français n'entend assumer aucune obligation en ce qui concerne l'ensemble de ses colonies et protectorats, ainsi que des territoires pour lesquels un mandat lui a été confié [1].

Basdevant

FRANCE

GRÈCE

S. Polychroniadis

GREECE

MONACO

Xavier Raisin

MONACO

PAYS-BAS

van Hamel

THE NETHERLANDS

ROUMANIE

Vespasien V. Pella.

ROUMANIA

TCHÉCOSLOVAQUIE

Dr Koukal

CZECHOSLOVAKIA

---

[1] *Translation by the Secretariat of the League of Nations :*

With reference to Article 52 of the Convention, I declare that the French Government does not assume any obligation as regards the whole of its Colonies and Protectorates, or the territories for which a mandate has been entrusted to it.

TURQUIE

Vasfi MENTEŞ

TURKEY

UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES

En signant la présente Convention, je déclare que le Gouvernement de l'Union des Républiques soviétiques socialistes ne sera à même de la ratifier que sous la réserve suivante :

« En matière de règlement des contestations relatives à l'interprétation et à l'application de la présente convention, le Gouvernement de l'Union des Républiques soviétiques socialistes n'assume d'autres obligations que celles qui lui incombent en tant que Membre de la Société des Nations. »[1]

M. LITVINOFF.

UNION OF SOVIET SOCIALIST REPUBLICS

YOUGOSLAVIE

Thomas GIVANOVITCH.

YUGOSLAVIA

---

[1] *Translation by the Secretariat of the League of Nations :*

In signing the present Convention, I declare that the Government of the Union of Soviet Socialist Republics will be able to ratify it only subject to the following reservation :

" With regard to the settlement of disputes relating to the interpretation or application of the present Convention, the Government of the Union of Soviet Socialist Republics assumes only such obligations as are incumbent upon it as a Member of the League of Nations."

N° officiel : C.548.M.385.1937.V.

3. ACTE FINAL DE LA CONFÉRENCE

Les Gouvernements de l'Afghanistan, de l'Albanie, de la République Argentine, de la Belgique, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, de la Bulgarie, du Danemark, de la République Dominicaine, de l'Egypte, de l'Equateur, de l'Espagne, de l'Estonie, de la Finlande, de la France, de la Grèce, d'Haïti, de la Hongrie, de l'Inde, de la Lettonie, de la Lithuanie, du Mexique, de Monaco, de la Norvège, des Pays-Bas, du Pérou, de la Pologne, de la Roumanie, de Saint-Marin, de la Suisse, de la Tchécoslovaquie, de la Turquie, de l'Union des Républiques soviétiques socialistes, de l'Uruguay, du Venezuela et de la Yougoslavie,

Ayant accepté l'invitation qui leur a été adressée en exécution de la résolution du Conseil de la Société des Nations en date du 27 mai 1937, en vue de la conclusion :

1° D'une Convention pour la prévention et la répression du terrorisme;

2° D'une Convention pour la création d'une cour pénale internationale;

Ont désigné les délégués ci-après :

(Pour la liste des délégués, voir pages 39 à 42.)

Qui se sont réunis à Genève du 1er au 16 novembre 1937.

Le Conseil de la Société des Nations a appelé aux fonctions de Président de la Conférence :

Son Excellence le comte Carton de Wiart, Ministre d'Etat, Délégué permanent de la Belgique près la Société des Nations.

La Conférence a désigné :

Comme Vice-Présidents :

M. Jules Basdevant, Professeur à la Faculté de droit de l'Université de Paris, et

Son Excellence le docteur Enrique Ruíz Guiñazú, Délégué permanent de la République Argentine près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse, et

Comme Rapporteur général :

Son Excellence M. Vespasien V. Pella, Envoyé extraordinaire et Ministre plénipotentiaire de Sa Majesté le Roi de Roumanie près Sa Majesté la Reine des Pays-Bas, Professeur de droit pénal à la Faculté de droit de l'Université de Bucarest.

A rempli les fonctions de Secrétaire général de la Conférence :

M. L. A. Podesta Costa, Conseiller juridique de la Société des Nations, représentant le Secrétaire général de la Société.

* * *

Au cours des réunions tenues du 1er au 16 novembre 1937, la Conférence a examiné les projets élaborés par le Comité d'experts constitué conformément à la résolution adoptée par le Conseil de la Société des Nations le 10 décembre 1934, et elle a adopté les actes ci-après énumérés :

1. Convention pour la prévention et la répression du terrorisme;

2. Convention pour la création d'une cour pénale internationale.

Official No. : C.548.M.385.1937.V.

3. FINAL ACT OF THE CONFERENCE.

THE GOVERNMENTS OF AFGHANISTAN, ALBANIA, THE ARGENTINE REPUBLIC, BELGIUM, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, BULGARIA, DENMARK, THE DOMINICAN REPUBLIC, EGYPT, ECUADOR, SPAIN, ESTONIA, FINLAND, FRANCE, GREECE, HAITI, HUNGARY, INDIA, LATVIA, LITHUANIA, MEXICO, MONACO, NORWAY, THE NETHERLANDS, PERU, POLAND, ROUMANIA, SAN MARINO, SWITZERLAND, CZECHOSLOVAKIA, TURKEY, THE UNION OF SOVIET SOCIALIST REPUBLICS, URUGUAY, VENEZUELA, AND YUGOSLAVIA,

Having accepted the invitation addressed to them in pursuance of the resolution of the Council of the League of Nations dated May 27th, 1937, with a view to the conclusion of :

1. A Convention for the Prevention and Punishment of Terrorism;
2. A Convention for the Creation of an International Criminal Court;

Appointed the following delegates :

(For the list of delegates, see pages 39 to 42.)

Who assembled at Geneva from November 1st to 16th, 1937.

The Council of the League of Nations appointed as President of the Conference :

His Excellency Count CARTON DE WIART, Minister of State, Permanent Delegate of Belgium to the League of Nations.

The Conference appointed :

As Vice-Presidents :

M. Jules BASDEVANT, Professor at the Faculty of Law of the University of Paris; and

His Excellency Dr. Enrique RUÍZ GUIÑAZÚ, Permanent Delegate of the Argentine Republic to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

As General Rapporteur :

His Excellency M. Vespasien V. PELLA, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Roumania accredited to Her Majesty the Queen of the Netherlands, Professor of Criminal Law at the Faculty of Law of the University of Bucharest.

The functions of Secretary-General of the Conference were assumed by :

M. L. A. PODESTA COSTA, Legal Adviser of the League of Nations, representing the Secretary-General of the League.

* * *

In the course of a series of meetings held between November 1st and 16th, 1937, the Conference examined the drafts drawn up by the Committee of Experts set up by the resolution adopted by the Council of the League of Nations on December 10th, 1934, and adopted the following Acts :

1. Convention for the Prevention and Punishment of Terrorism;
2. Convention for the Creation of an International Criminal Court.

En foi de quoi, les délégués ont signé le présent Acte.

Fait à Genève, le seize novembre mil neuf cent trente-sept, en simple expédition qui sera déposée dans les archives de la Société des Nations; copie certifiée conforme en sera remise à tous les États représentés à la Conférence.

In faith whereof the delegates signed the present Act.

Done at Geneva, the sixteenth day of November, one thousand nine hundred and thirty-seven, in a single copy, which shall be deposited in the archives of the League of Nations and of which authenticated copies shall be delivered to all States represented at the Conference.

Pour le Président de la Conférence :

For the President of the Conference :

Basdevant

Les Vice-Présidents :

The Vice-Presidents :

Basdevant

E. Ruíz Guiñazú

Le Rapporteur général :

The General Rapporteur :

Vespasien V. Pella

Le Secrétaire général de la Conférence :

The Secretary-General of the Conference :

L. A. Podesta Costa

AFGHANISTAN

AFGHANISTAN

M. Haïdar

ALBANIE

ALBANIA

Th. Luarassi

RÉPUBLIQUE ARGENTINE

ARGENTINE REPUBLIC

Enrique Ruíz Guiñazú

BELGIQUE

BELGIUM

S. Sasserath

GRANDE-BRETAGNE ET IRLANDE DU NORD

GREAT BRITAIN AND NORTHERN IRELAND

ainsi que toutes parties de l'Empire britannique non membres séparés de la Société des Nations :

and all parts of the British Empire which are not separate Members of the League of Nations :

John Fischer Williams

Leslie Stuart Brass

BULGARIE

BULGARIA

N. Momtchiloff

DANEMARK

DENMARK

Carl Gustav Worsaae

RÉPUBLIQUE DOMINICAINE

DOMINICAN REPUBLIC

Ch. Ackermann

ÉGYPTE

EGYPT

Aly Shamsy Abdel Latif Talaat

ÉQUATEUR

ECUADOR

Alejandro Gastelú

ESPAGNE

SPAIN

Victor Marti

ESTONIE

ESTONIA

J. Kôdar.

FINLANDE	J. Nyyssönen.	FINLAND
FRANCE	Basdevant G. Cassagnau	FRANCE
GRÈCE	S. Polychroniadis	GREECE
HONGRIE	Sebestyén	HUNGARY
INDE	Denys Bray	INDIA
LETTONIE	J. Feldmans.	LATVIA
LITHUANIE	K. Skirpa	LITHUANIA
MONACO	Xavier Raisin.	MONACO
NORVÈGE	H. H. Bachke	NORWAY
PAYS-BAS	van Hamel	THE NETHERLANDS
PÉROU	J. M. Barreto	PERU
POLOGNE	Tytus Komarnicki Lucien Bekerman	POLAND
ROUMANIE	Vespasien V. Pella.	ROUMANIA
SUISSE	Delaquis	SWITZERLAND
TCHÉCOSLOVAQUIE	Dr Koukal	CZECHOSLOVAKIA
TURQUIE	Vasfi Mentes	TURKEY
UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES	Eugène Hirschfeld	UNION OF SOVIET SOCIALIST REPUBLICS
VENEZUELA	C. Parra-Pérez J. M. Ortega-Martinez Alejandro E. Trujillo	VENEZUELA
YOUGOSLAVIE	Thomas Givanovitch	YUGOSLAVIA

Part II.

PROCEEDINGS OF THE CONFERENCE.

I. LIST OF MEMBERS OF DELEGATIONS.

AFGHANISTAN

Delegate :

His Excellency Mohammed Haïdar Khan, Permanent Delegate to the League of Nations.

Secretary :

M. Abdul Kader Khan, Secretary of the Permanent Delegation to the League of Nations.

ALBANIA

Delegate :

M. Thomas Luarassi, Chargé d'Affaires *a.i.* of the Permanent Delegation to the League of Nations.

ARGENTINE REPUBLIC

Delegate :

His Excellency Dr. Enrique Ruíz Guiñazú, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.

BELGIUM

Delegates :

His Excellency Count Carton de Wiart, Minister of State, Permanent Delegate to the League of Nations.

M. Simon Sasserath, Advocate at the Brussels Court of Appeal.

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

Delegates :

Sir John Fischer Williams, C.B.E., K.C.

Mr. L. S. Brass, Assistant Legal Adviser to the Home Office.

BULGARIA

Delegate :

His Excellency M. Nicolas Momtchiloff, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.

Substitute :

M. Evguèni Silianoff, Secretary of Legation.

CZECHOSLOVAKIA

Delegate :

M. Antonín Koukal, Counsellor in the Ministry of Justice.

Expert :

M. Vladimír Solnar, Professor Extraordinary of Criminal Law and Procedure in the Faculty of Law of the Charles IV University.

DENMARK

Delegates :

M. Carl Gustav WORSAAE, First Secretary of the Permanent Delegation to the League of Nations.

M. Carl Otto Emil SCHLEGEL, Procurator-General, Supreme Court.

DOMINICAN REPUBLIC

Delegate :

M. Charles ACKERMANN, Consul-General at Geneva.

ECUADOR

Delegate :

M. Alejandro GASTELÚ, Secretary of the Permanent Delegation to the League of Nations, Consul-General in Switzerland.

EGYPT

Delegates :

His Excellency Aly EL SHAMSY Pasha, Permanent Delegate to the League of Nations.

M. Abdel Latif TALAAT Bey, Chargé d'Affaires in Spain.

ESTONIA

Delegate :

M. Johannes KÔDAR, Counsellor of Legation, Permanent Delegate *a.i.* to the League of Nations.

FINLAND

Delegate :

M. Johannes NYYSSÖNEN, Counsellor of Legation, Permanent Delegate *a.i.* to the League of Nations.

FRANCE

Delegate :

M. Jules BASDEVANT, Professor at the Faculty of Law of the University of Paris.

Adviser :

M. Gaston CASSAGNAU, Advocate-General at the Paris Court of Appeal.

Secretary :

M. BRINCARD, Attaché at the Ministry for Foreign Affairs.

GREECE

Delegate :

His Excellency M. S. POLYCHRONIADIS, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate to the League of Nations.

HAITI

Delegate :

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

Substitute :

M. Alfred ADDOR, Consul at Geneva.

HUNGARY

Delegates :

M. Paul SEBESTYÉN, Departmental Counsellor, Head of the International Treaties Section at the Ministry for Foreign Affairs.

M. Eugène ASZTALOS, Chief of Section in the Ministry of Justice.

INDIA

Delegate :

Sir Denys BRAY, K.C.S.I., K.C.I.E., C.B.E.

LATVIA

Delegate :

His Excellency M. Jules FELDMANS, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.

LITHUANIA

Delegate :

His Excellency M. Kazys SKIRPA, Envoy Extraordinary and Minister Plenipotentiary, Permanent Delegate to the League of Nations.

UNITED STATES OF MEXICO

Delegate :

His Excellency M. Isidro FABELA, Envoy Extraordinary and Minister Plenipotentiary Permanent Delegate to the League of Nations.

Secretary and Substitute :

M. Manuel TELLO, Secretary of the Permanent Delegation to the League of Nations.

MONACO

Delegate :

M. Xavier-John RAISIN, Consul-General at Geneva.

THE NETHERLANDS

Delegate :

M. J. A. VAN HAMEL, former Professor of Criminal Law at the University of Amsterdam.

Secretary :

M. C. M. E. VAN SCHELVEN.

NORWAY

Delegate :

His Excellency M. Halvard Huitfeldt BACHKE, Envoy Extraordinary and Minister Plenipotentiary accredited to the President of the French Republic.

Adviser-Expert :

M. Finn HIORTHÖY, Director at the Royal Ministry of Justice.

PERU

Delegate :

Dr. José-Maria BARRETO, Counsellor of the Permanent Delegation to the League of Nations.

POLAND

Delegates :

His Excellency M. Tytus KOMARNICKI, Minister Plenipotentiary, Permanent Delegate to the League of Nations, President of the Delegation.

M. Władysław KULSKI, Head of the Legal Division at the Ministry for Foreign Affairs.

M. Lucien BEKERMAN, Procurator of the Republic in the Supreme Court.

ROUMANIA

Delegate :

His Excellency M. Vespasien V. PELLA, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Roumania accredited to Her Majesty the Queen of the Netherlands, Professor of Criminal Law at the Faculty of Law of the University of Bucharest.

SAN MARINO

Delegate :

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

SPAIN

Delegate :

His Excellency M. Luis JIMÉNEZ DE ASÚA, Envoy Extraordinary and Minister Plenipotentiary accredited to the President of the Czechoslovak Republic.

Substitute :

M. Victor HURTADO MARTI, Vice-consul at Geneva.

SWITZERLAND

Delegate :

Professor Ernest DELAQUIS, former Chief of the Department of Police of the Federal Department of Justice and Police and former Swiss Consul in Hamburg.

TURKEY

Delegate :

His Excellency M. Vasfi MENTEŞ, Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.

Adviser :

M Mehmet Ali ORKUS, Director of Section in the *Sûreté générale.*

UNION OF SOVIET SOCIALIST REPUBLICS

Delegate :

M. Eugène HIRSCHFELD, Counsellor of Embassy at Paris.

URUGUAY

Delegate :

His Excellency Dr. Alberto GUANI, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James.

VENEZUELA

Delegates :

His Excellency Dr. C. PARRA-PÉREZ, Envoy Extraordinary and Minister Plenipotentiary accredited to the Swiss Federal Council.

M. José-Maria ORTEGA-MARTINEZ;

Dr. Alejandro E. TRUJILLO, Consul-General.

YUGOSLAVIA

Delegates :

Dr. Thomas GIVANOVITCH, Professor of Criminal Law at the University of Belgrade.

Dr. Slavko STOYKOVITCH, Professor of Law, Legal Adviser at the Ministry for Foreign Affairs.

Legal Adviser :

Dr. Stoyan GAVRILOVITCH, Head of the League of Nations Department in the Ministry for Foreign Affairs.

Secretary :

Dr. Milenko MILITCH, Attaché of Legation.

Attended the Conference in the capacity of observer :

BRAZIL

M. J. Olinto DE OLIVEIRA, First Secretary of Legation, in charge of the Consulate in Geneva.

2. PRESIDENT AND VICE-PRESIDENTS OF THE CONFERENCE AND MEMBERS OF THE BUREAU.

President :

His Excellency Count CARTON DE WIART (Belgium).[1]

Vice-Presidents :

M. Jules BASDEVANT (France).

His Excellency Dr. Enrique RUÍZ GUIÑAZÚ (Argentine Republic).

General Rapporteur :

His Excellency M. Vespasien V. PELLA (Roumania).

Members of the Bureau :

Sir John Fischer WILLIAMS, C.B.E., K.C. (United Kingdom);

M. J. A. VAN HAMEL (Netherlands);

His Excellency M. Tytus KOMARNICKI (Poland);

M. Antonín KOUKAL (Czechoslovakia);

M. Eugène HIRSCHFELD (Union of Soviet Socialist Republics).

Secretary-General of the Conference :

M. L. A. PODESTA COSTA (Legal Adviser of the League of Nations), representing the Secretary-General of the League.

[1] Appointed by the President of the Council in accordance with a decision taken by the Council on May 27th, 1937 (See *Official Journal*, May-June 1937, page 309.)

3. TEXT OF THE DEBATES OF THE CONFERENCE.

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Page

SIXTEENTH MEETING, November 13th, 1937, at 10.30 a.m. :

SEVENTEENTH MEETING, November 13th, 1937, at 3.30 p.m. :

FIRST MEETING.

Held on Monday, November 1st, 1937, at 11 a.m.

President : Count CARTON DE WIART.

1. Opening Speech by the President.

The PRESIDENT.—I owe to the President of the Council of the League of Nations,[1] who has called upon me to preside over this Conference, the honour, in the first place, of welcoming those eminent delegates who have been appointed by the Governments of their respective countries to represent them at a solemn discussion, the importance and expediency of which will be apparent to everyone. This Conference cannot fail to bring closer together all the States which have deputed you and sent you here, reflecting as it does their common desire to elucidate and settle problems of a political, juridical and diplomatic character affecting the interests of peace and of human civilisation.

You will allow me, I trust, with the object of refreshing your memories and presenting the facts in their true perspective, to give a brief summary of the conditions under which this Conference has been convened here to-day.

The studies which led to its convocation were carried out in pursuance of a resolution adopted by the Council of the League of Nations on December 10th, 1934.[2] That resolution was itself adopted as the result of an enquiry which the Council had been called upon to institute into the circumstances in which King Alexander of Yugoslavia and M. Barthou were assassinated at Marseilles on October 9th, 1934. The Council, in its resolution, stated that, in its opinion, " the rules of international law concerning the repression of terrorist activity are not at present sufficiently precise to guarantee efficiently international co-operation in this matter ", and it decided " to set up a Committee of Experts to study this question with a view to drawing up a preliminary draft of an international convention to assure the repression of conspiracies or crimes committed with a political and terrorist purpose ".[3]

This Committee was composed of experts appointed by the following Governments : Belgium, the United Kingdom, Chile, France, Hungary, Italy, Poland, Roumania, Spain, Switzerland and the Union of Soviet Socialist Republics.

At its first meeting, held in April and May 1935, the Committee of Experts examined the proposals submitted to it by the French Government [4] with a view to the conclusion of an international agreement on the subject of terrorism and the creation of an International Criminal Court by which, under certain conditions, persons charged with terrorist acts might be tried. It also examined the observations received from thirteen other Governments on the French proposals and on the general question of international anti-terrorist action. The following is a list of those Governments : Austria, China, Cuba, Denmark, Estonia, Guatemala, Hungary, India, Latvia, Roumania, Turkey, United States of America and Yugoslavia.[5] A draft Convention and a memorandum from the Executive Bureau of the International Criminal Police Commission were also communicated to the Committee.

The Committee framed a first draft containing the essential provisions of a Convention for the repression of terrorism. This draft, accompanied by a preliminary draft of articles instituting an International Criminal Court, which certain members of the Committee had presented but which the Committee as a whole was not able to discuss, was reproduced in a report to the Council which was circulated to all the Governments.[6]

The second session of the Committee of Experts was held in January 1936. On this occasion, the Committee adopted a report presenting to the Council two draft Conventions concerning, respectively, terrorism and the creation of an International Criminal Court.[7] While preparing these drafts, the Committee had an opportunity of taking note of the observations of three other Governments : the Argentine Republic, Egypt and the Netherlands.[8] The first stage of the procedure laid down in the Council resolution was thus completed.

The preparation of the texts now laid before the Conference then underwent a second phase : the Council submitted the drafts of the Committee of Experts to Governments for an opinion, requesting them to submit their observations, and the question was placed on the agenda of the 1936 session of the Assembly. Nineteen Governments presented in writing criticisms or proposals for amendments : Australia, Austria, Belgium, Bolivia, United Kingdom of Great Britain and

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[1] See *Official Journal*, May-June 1937, page 309.
[2] See *Official Journal*, December 1934 (Part II), page 1760.
[3] For the text of the resolution, see Annex 1, page 183.
[4] Document C.184.M.102.1935.V, page 22.
[5] *Ibid.*, pages 11 to 22.
[6] *Ibid.*, pages 2 to 11.
[7] Document A.7.1936.V (Ser. L.o.N. P. 1936.V.2), pages 2 to 13.
[8] *Ibid.*, pages 13 to 16.

Northern Ireland, China, Czechoslovakia, Estonia, Finland, Hungary, India, Latvia, Netherlands, Norway, Poland, Roumania, Siam, Union of Soviet Socialist Republics and Venezuela.[1]

Such were the circumstances in which the problem as a whole was debated by the Assembly of the League of Nations in 1936. The First Committee of the Assembly devoted the greater part of four meetings to an exhaustive consideration of the proposals of the Committee of Experts and of the Governments' observations.[2] The conclusions which it reached, and which were adopted by the Assembly, are summed up in the resolution adopted by the latter on October 10th, 1936.[3]

The Assembly having recommended that the Committee of Experts should revise its conclusions in the light of the observations to be found in the Governments' replies, the Committee, in pursuance of this task, met for the third and last time in April 1937, and the results of its deliberations were communicated to all the Governments.[4]

After this lengthy preparation, the Council, at its meeting on May 27th, 1937,[5] directed the Secretary-General to invite the Members of the League and certain non-member States to be represented at a diplomatic Conference for the purpose of " considering the two draft Conventions drawn up by the Committee of Experts ".[6] The Secretary-General despatched this invitation on June 23rd, 1937,[7] and your Governments have duly replied by appointing you to represent them.

You will forgive me, I am sure, for having thus dwelt on the origins of our Conference. It is a history of patient and painstaking endeavour. And I think that we have no reason to regret it, since all the elements of a problem which is both complex and delicate have thus been the subject of exhaustive study and debate by representatives appointed by their Governments by reason of their special competence and have, moreover, been submitted to the Governments themselves for their observations. Our Conference thus has ready to hand raw material and constructional data of no uncertain value. It will be for it to employ that material as it thinks fit and as may best serve the great purpose entrusted to it.

Entitled though we are to claim that, thanks to the efforts and sacrifices of succeeding generations, our civilisation has succeeded, in many spheres, in toning down the savagery and brutality of primitive times, we cannot but realise with shame and disquiet how advancing knowledge and improved communications have served in their turn to menace the security of persons and property and helped to promote acts designated by that new term " terrorism "— acts which, by reason of their gravity and contagious nature, are prejudicial not only to the interests of individuals as such or of one or more specific States, but may affect mankind as a whole.

Against the common peril of such criminal acts, international solidarity is but a vain and hollow formula. Some means must be found whereby that solidarity may assert itself, with the object of securing the universality of measures for the repression of crimes of this nature and of ensuring that their authors shall never escape the punishment they deserve, but that the latter shall be both swift and efficacious.

It rests with you, then, to forge the legal and diplomatic instrument whereby the community of States can achieve this purpose. Such a task is worthy of your conscientious endeavours and learning. And if, responding to the confidence which the League of Nations has placed in you, your joint and co-ordinated efforts are successful in this task, you will have rendered to civilisation a service for which all honest men will be indebted to you.

These are the feelings, these are the hopes, which I lay before you as I now declare open the Conference for the International Repression of Terrorism.

2. Constitution of the Committee to Report on the Credentials of the Delegates.

The PRESIDENT proposed the constitution of a Committee to report on the credentials of the delegates consisting of the following members :

M. PARRA-PÉREZ (Venezuela);

M. DELAQUIS (Switzerland);

M. KÔDAR (Estonia).

The President's proposal was adopted.

3. Election of Vice-Presidents.

The PRESIDENT proposed the election of two Vice-Presidents : M. BASDEVANT (France) and M. RUIZ GUIÑAZÚ (Argentine Republic).

The President's proposal was adopted.

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[1] Documents A.24.1936.V. (Ser. L.o.N. P. 1936.V.6); A.24(a).1936.V (Ser. L.o.N. P. 1936.V.7); C.552.M.356. 1936.V; C.194.M.139.1937.V.

[2] See *Official Journal*, Special Supplement No. 156, pages 28 to 62.

[3] See Annex 1, page 183.

[4] Document C.222.M.162.1937.V (Ser. L.o.N. P. 1937.V.1). (See Annex 3, page 185.)

[5] See *Official Journal*, May-June 1937, page 309.

[6] For the text of the resolution, see Annex 1, page 183.

[7] Document C.L.104.1937.V.

4. Examination and Adoption of the Draft Rules of Procedure of the Conference.

The PRESIDENT opened the discussion on the draft Rules of Procedure of the Conference.

In reply to a question raised by Sir John Fischer Williams (United Kingdom) regarding the interpretation of Rule 8, the President stated that the procedure laid down in that article applied to the plenary meetings of the Conference, and that it must be left to any committees that might be appointed to decide whether they wished to adopt the same rule.

M. HIRSCHFELD (Union of Soviet Socialist Republics), referring also to Rule 8, considered that the rule requiring a unanimous vote in order to allow a draft resolution or motion proposed at a meeting to be discussed and voted upon was too rigid. He suggested that the Conference might be willing to accept a majority vote in such a case.

The PRESIDENT proposed that the words " by unanimous vote " be amended to read " by a two-thirds majority ".

The President's proposal was adopted.

The Rules of Procedure, as amended, were unanimously adopted (Annex 2, page 184).

The PRESIDENT said that, should any question of procedure arise which was not provided for by the Rules of Procedure, the Conference would apply by analogy the Rules of Procedure of the Assembly of the League of Nations.

5. Appointment of the General Rapporteur of the Conference.

M. PELLA (Roumania) *was appointed General Rapporteur of the Conference.*

6. Appointment of the Secretary-General of the Conference.

M. PODESTA COSTA, Legal Adviser of the League of Nations, *was appointed Secretary-General of the Conference.*

SECOND MEETING.

Held on Monday, November 1st, 1937, at 4 p.m.

President : Count CARTON DE WIART.

7. Report of the Committee appointed to examine the Credentials of the Delegates.

M. PARRA-PÉREZ (Venezuela), Chairman and Rapporteur of the Committee on Credentials, read the following report :

" The Committee appointed by the Conference on the International Repression of Terrorism to verify the credentials of delegates met on November 1st, 1937, at 3 p.m. in the Secretariat of the League of Nations, and appointed me Chairman and Rapporteur.

" The Committee proceeded to consider the documents submitted as credentials by the delegations taking part in the Conference, as communicated to the Committee by the Secretariat of the League.

" I.

" The Committee found that the delegates of the following States had submitted powers emanating from a Head of State, Minister for Foreign Affairs or an authority having similar or equivalent competence :

" Argentine Republic, Czechoslovakia, Dominican Republic, Estonia, Greece, India, Mexico, Netherlands, Poland, Roumania, San Marino, Spain, Venezuela.

" The powers in question in the case of these countries relate both to negotiations and to the signature of any act resulting therefrom.

" II.

" The delegates of the following States have submitted powers emanating from a Head of State, Minister for Foreign Affairs or an authority having similar or equivalent competence, entitling them to take part in the Conference :

" Belgium, United Kingdom of Great Britain and Northern Ireland, Denmark, Finland, Latvia, Lithuania, Monaco, Norway, Switzerland.

" III.

" The Turkish delegation has been accredited by telegram from the Minister for Foreign Affairs to take part in the Conference and to sign any acts resulting therefrom.

" The Committee is unable to decide whether the powers of the delegates of the States above mentioned in Sections II and III can be interpreted as authorising the delegates in question to sign acts resulting from the Conference. It accordingly requests the Conference to invite the said delegates to state in what sense their powers should be interpreted.

" IV.

" The delegations of the following States have been accredited to represent their respective countries at the Conference by telegrams from their Ministers for Foreign Affairs or by letter from their permanent delegates accredited to the League of Nations, or by letters from the delegates to the Conference themselves :

" Albania, Afghanistan, Bulgaria, Ecuador, Egypt, France, Haiti, Hungary, Peru, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

" The Committee ventures to propose that the Conference should authorise delegates of the above category of States to take part in the Conference, at the same time requesting them to submit subsequently powers in good and due form.

* * *

" The Consul of the United States of Brazil has notified the Secretary-General of the League of Nations that his Government has appointed an Observer to attend the Conference.

* * *

" The Committee draws attention to the necessity of all delegates not provided with the requisite powers for the signature of acts of the Conference forwarding the necessary documents to the Secretariat at the earliest possible date, so as to facilitate the work of the Conference."

M. HIRSCHFELD (Union of Soviet Socialist Republics) was somewhat at a loss as to the effect of the classification adopted by the Committee on Credentials. In his opinion, full powers emanating from a Head of State or from a Minister for Foreign Affairs must be valid, no matter how they were transmitted. There was, therefore, no reason for establishing a distinction between delegations whose full powers had been communicated by letter and delegations accredited by telegram.

M. PARRA-PÉREZ (Venezuela), Chairman and Rapporteur of the Committee on Credentials, referred the Conference to the practice adopted by the League in similar cases. No doubt there were strong presumptions in favour of the validity of full powers transmitted by telegram; but from a strictly legal point of view a telegram could not have the same force as a document in writing. It was customary to make that distinction at League Conferences and Assemblies; the Committee on Credentials had followed the established practice in the matter.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked M. Parra-Pérez for his explanations. Nevertheless, a distinction must be made between participation in the work of the Conference and the signing of acts. He understood that, for the signing of acts, credentials in writing were necessary; but, in his view, telegraphic credentials should be sufficient to enable delegates to take part in the work of the Conference.

The PRESIDENT did not think that the question raised was of much practical importance. It was obvious that delegations with telegraphic credentials were entitled to participate in the work of the Conference on the same footing as those who had presented credentials in writing.

The report of the Committee on Credentials was adopted.

8. Election of Members of the Bureau of the Conference.

On the proposal of the President, *the Conference appointed as members of the Bureau :* Sir John Fischer WILLIAMS (United Kingdom), M. VAN HAMEL (Netherlands), M. KOMARNICKI (Poland), M. KOUKAL (Czechoslovakia) and M. HIRSCHFELD (Union of Soviet Socialist Republics).

9. Draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court[1]: General Discussion.

The PRESIDENT opened the discussion on the principles underlying the draft Conventions before the Conference.

Sir John Fischer WILLIAMS (United Kingdom) said that His Majesty's Government, after pointing out in its observations to the League of Nations on August 13th, 1936,[2] certain difficulties

[1] For the text of the draft Conventions, see Annex 3, pages 186 and 191.
[2] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 4.

raised by the original draft of the Convention for the International Prevention and Punishment of Terrorism, had given its closest attention to the views expressed by other Governments.

In the view of His Majesty's Government, it was an existing principle of international law, recognised in Article 1 of the draft Convention, that all States should refrain from encouraging or facilitating in any way terrorist activities in another State. His Majesty's Government attached the greatest importance to a strict observance of that principle.

In the United Kingdom, the existing arrangements had been found sufficient to enable the authorities to deal with any attempt in the United Kingdom to promote terrorist activities in another country.

His Majesty's Government was willing and anxious that the question whether any Convention could usefully be drafted to secure improved co-operation between States in that matter should be explored.

His Majesty's Government had given very careful attention to the proposals of the Committee as well as to the views expressed by other Governments. Many States might find a Convention on the lines suggested by the Committee of Experts a useful step towards international co-operation in that matter. While His Majesty's Government was most anxious to abstain from any step which would hinder the achievement of that object, it had come to the conclusion that, as far as the United Kingdom was concerned, the difficulties of dealing with the matter on the lines suggested in certain articles of the draft Convention would be grave. Those difficulties were perhaps greater in the United Kingdom than in many other countries.

While the existing law of the United Kingdom was thought to be sufficient to enable effective steps to be taken for dealing with such activities, that result was attained by methods different from those proposed in the draft Convention. Before His Majesty's Government could ratify a convention on the lines suggested in the draft, changes of a very substantial character would be necessary in the form of the criminal law. Legislation for that purpose would involve departures from British traditions, which the people of the United Kingdom would be reluctant to accept. The fact that there was no practical need in the United Kingdom for such changes would make it extremely difficult to ask Parliament to approve the necessary legislation.

One difficulty in the way of such legislation would be that it would raise the question of restricting the free expression of public opinion which, especially in the political sphere, had for centuries been zealously safeguarded in Great Britain.

Moreover, English criminal jurisprudence followed the territorial principle. Exceptions to that principle were limited, and any proposal which might seem to extend their scope would not secure general approval in the absence of any circumstances clearly calling for such a change.

The export of fire-arms, etc., was regulated by an export licensing system; and, if at any time the existing law should be found insufficient, the natural course in the United Kingdom would be to take the necessary legislative measures to stop any gaps by amendments of the existing system.

His Majesty's Government had also given careful consideration to the proposal in the draft Convention relating to extradition. As already pointed out in His Majesty's Government's observations to the League on August 13th, 1936,[1] it was precluded from surrendering persons in respect of political offences; and extradition treaties with other States always contained an exception in respect of such offences. English courts placed, however, in that connection a very narrow construction upon offences of a political character. His Majesty's Government was only authorised by the legislature to grant extradition in respect of limited classes of crimes, and it felt unable to ask Parliament to extend those classes. The United Kingdom had already concluded extradition treaties with the great majority of States; and those treaties ordinarily provided for the surrender of persons accused or convicted of the crimes of murder, causing grievous bodily harm and damage to property.

His Majesty's Government therefore wished to have an opportunity, after the termination of the Conference, to study the text of any convention which might be drawn up, with a view to considering whether it could later become a party to that convention.

His Majesty's Government had sympathetically considered the proposed Convention for the Creation of an International Criminal Court, but was of opinion that the time had not yet arrived for the creation of such a Court. There would appear to His Majesty's Government to be no general analogy between the Permanent Court of International Justice and the proposed International Criminal Court. While the existing Court applied recognised rules of international law, the judgments of the proposed Court would be dependent on the national law to be applied in the particular case. The administration of criminal justice reflected the national traditions of the different peoples, and it did not appear possible to bring them into unison at the present time. It was also felt that the work which the proposed Court would perform could generally be done more efficiently by national courts. In those circumstances, His Majesty's Government did not see its way to participate in any proposal for an International Criminal Court.

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[1] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 4.

So far as His Majesty's Government could foresee, the Court, being limited to one class of crime only, would seldom be used; and it was doubtful whether the creation of such a Court would at the present time be conducive to improved international co-operation. In the opinion of His Majesty's Government, harm was done to international institutions generally by the establishment of an institution not supported by the general assent of public opinion. His Majesty's Government accordingly suggested that the proposal to link such a Court with the League of Nations should, for the time being at any rate, be abandoned. His Majesty's Government had, however, no desire to hamper the creation of such a Court by the action of those States which viewed its institution with favour, so long as the Court had no organic connection with the League.

M. Bachke (Norway) said that the Norwegian Government accepted the main principles embodied in the revised draft of the Convention on the Prevention and Punishment of Terrorism; but it felt obliged to repeat the remarks and reservations already made by the Norwegian delegation during the discussion in the First Committee of the 1936 Assembly,[1] and in the letter addressed to the Secretary-General of the League by the Norwegian Government on July 20th, 1936.[2]

The Norwegian Government noted with satisfaction that account had been taken, in the revised draft, of the observations submitted by the Norwegian delegation and by certain other countries in regard to the rules concerning extradition. As set forth in the new draft—namely, with the reservation expressed in Article 7, paragraph 4—the said rules were acceptable to the Norwegian Government. The Norwegian delegation was concerned to point out that one of the essential conditions for the accession of Norway to the Convention was that the Convention must not oblige the signatories to grant extradition where extradition was contrary to Norwegian legislation on the subject. Moreover, the Norwegian Government interpreted the Convention to mean that the rules set forth in Articles 8, 9 and 10 of the draft in regard to the obligation to punish so-called acts of terrorism were limited in their application in the same manner as the obligation to extradite criminals in connection with political offences.

In regard to the draft Convention for the Creation of an International Criminal Court, the Norwegian Government had already stated that it could not, for reasons of principle, accede to such a Convention.[3]

M. Givanovitch (Yugoslavia) said that, in current usage, the term " terrorism ", both in the Latin and other languages, had always been taken to refer to a particular group of offences, acts of violence committed, with intent to intimidate, against persons and property; but the offences in question had never been precisely defined. In the absence of any legal definition, psychological interpretations of the term had held the field, and had led (as was to be expected) to misunderstandings.

The term " terrorism " was also current in the theory of criminal law, though again no attempt had ever been made to define it. There was, in fact, no need for a definition, inasmuch as the codes contained no category of offences described as " terrorist ".

Neither did the codes, it would be remembered, specially cover political offences. As, however, such offences involved a number of legal consequences, both in municipal and in international law, attempts had been made by legal theorists to define such offences.

If only for that reason—as also in consequence of the repeated commission, during the last ten years, of acts of terrorism—criminal law theorists had turned their attention to the subject of terrorism, and had endeavoured to define it in its various forms. In particular, the International Office for the Unification of Criminal Law, at its Conferences, had encouraged research in this field. The last of these Conferences, held at Copenhagen in 1935, had evolved the draft of an enactment on terrorism. The ground had thus been cleared, though no wholly satisfactory result in the matter had been attained.

The League of Nations Committee on Terrorism had turned this work to account and, after long deliberations, had succeeded in submitting to the present Conference a text which was judiciously drafted. The search for the truth in this matter of terrorism had lasted a long time; but sufficient information was at last available to enable a definitive legal text to be drafted.

A most unhappy event in the history of Yugoslavia, the death of the heroic martyr-king Alexander I at the hand of a terrorist, was closely connected with the renewed attention paid to the theoretical and legislative aspects of the problem of terrorist offences. It was in tribute to the memory of a great king, as well as of the great French statesman, M. Barthou, who died at his side, that the League of Nations had taken steps to prepare a draft Convention for the international organisation of the campaign against terrorism. The Government of Yugoslavia had assisted in the completion of the French Government's draft;[4] and the Governments represented on the Committee had also assisted in the study of the question. The Yugoslav delegation was grateful to them for their assistance; and the Office for the Unification of Criminal Law would undoubtedly welcome the official continuance of these efforts to establish rules of law on this delicate subject.

It was not sufficient, in order to arrive at a clear and accurate picture of terrorism, to define its different forms. It was necessary, in the first place, to define terrorism in general, by establishing the elements common to every particular form of terrorism. That was such a highly delicate matter, that a definition must be given in the legislative text itself. It was not possible to leave the lawyers to evolve a definition without any legal basis.

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[1] See *Official Journal*, Special Supplement No. 156, pages 37, 50, 54 and 61.
[2] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 9.
[3] *Ibid.*, page 10.
[4] Document C.184.M.102.1935.V, page 22.

The Committee, following upon the discussion on terrorism in the Copenhagen Conference on the unification of criminal law, had done well in defining Article 1 of the draft.

It would perhaps be useful to take into account also the subjective element, and thus to define at the same time, either separately or in one and the same definition, what was meant by the term " terrorist ".

Articles 2, 3, 12 and 13 of the draft specified different forms of terrorism, direct, indirect and preparatory. The discussion on the texts would show whether that list of offences was or was not, complete.

In this matter of terrorism, the problem of extradition was a very difficult one. But it had obviously been studied with great care by the Committee; and the solution proposed had at least been formulated in precise terms.

In general, it might be said that the draft submitted afforded a solid basis for a successful issue to the Conference's work. On behalf of the Yugoslav delegation, M. Givanovitch thanked the Committee of experts for its work.

Sir Denys Bray (India) said that the Government of India, while unable to associate itself with the draft Convention for the Creation of an International Criminal Court, was in accord with the general principles of the draft Convention for the International Prevention and Punishment of Terrorism. The Government of India had felt very deeply the great tragedy in which the Convention had its origin, which had been so movingly referred to by the delegate of Yugoslavia. It also felt deeply that it was incumbent upon the nations to take up as far as possible a concerted attitude against terrorist activities.

The new draft was a great improvement on that discussed the previous year in the First Committee. Certain ambiguities and difficulties had been removed and the draft Convention appeared to offer a businesslike basis for the deliberations of the Conference. Some difficulties and inadequacies no doubt remained; in particular, the Government of India was most anxious to see the control of easily concealed fire-arms tightened up.

It was in the sincere hope that there would emerge from the deliberations of the Conference a draft Convention acceptable to the Government of India and to a large body of nations that the Indian delegation would take part in the proceedings.

M. van Hamel (Netherlands) said that the Government of the Netherlands regarded the fact of its being represented at the Conference as a proof of its desire to co-operate in a positive manner in the work of the Conference, including the drafting of a Convention.

By sending representatives to the Conference, the Netherlands had therefore given evidence of its desire to participate in the campaign against international disturbances and terrorism. The existing Netherlands institutions furnished the necessary means for action in Netherlands territory; but, if there was a need for an international agreement, the Netherlands Government was certainly ready to take its part in the discussions, subject to the right to discuss details, ask for explanations or propose amendments.

The Netherlands Government attached particular importance to the legal problem of extradition, and it wanted to be sure that any international provisions which might be adopted would not in practice give rise to difficulties for the Governments in the matter of extradition. The Netherlands Government made reservations, not only in respect of the question of law, but also in respect of its existing practice; its reservation applied, not only to questions of extradition properly so called, but also to cognate questions, such as letters of request (rogatory commissions) and police reports. The Netherlands delegation would require more definite information on those points.

In regard to the International Criminal Court, the Government of the Netherlands had already expressed the opinion in its written communications [1] that the said Court might serve a useful purpose in the international field and had stated that it was ready to examine in a constructive spirit, and to support in principle, the proposals made in that connection. It was even of the opinion that, if such a Court were instituted, it seemed essential that it should find a place within the framework of the League. Such an arrangement would be to its advantage as emphasising its international character. M. van Hamel added that the Netherlands Government attached so much importance to the creation of an International Criminal Court that it had proposed, in its written communications, the insertion in the Convention itself of a provision making the application of the first Convention conditional on reciprocity in respect of the second. He reserved the right to revert to that point in the course of the discussion.

M. Sebestyén (Hungary) said that the Royal Hungarian Government accepted as a basis for discussion the draft Convention for the Prevention and Punishment of Terrorism, in the form in which it had emerged from the latest deliberations of the Committee of Experts. The Hungarian Government was convinced that the Conference, in following the lines laid down in that draft, would not only be taking a step forward on behalf of international co-operation in the field of criminal law, but would also be performing a task of great value in view of existing conditions in Europe.

As to the second draft Convention for the Creation of an International Criminal Court, the Hungarian Government had on several occasions already stated its attitude as regards the principle. It was, for the time being, opposed to the creation of such a Court [2]: but that did not by any

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[1] Documents A.7.1936.V (Ser. L.o.N. P. 1936.V.2), page 14, and A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 10.

[2] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 5.

means imply that Hungary intended to do anything to prevent the creation of the Court. On the contrary, the Hungarian delegation would offer its technical co-operation in the drafting and preparation of the text of a Convention on the subject.

The continuation of the general discussion was adjourned to the next meeting.

THIRD MEETING.

Held on Tuesday, November 2nd, 1937, at 10.30 a.m.

President: Count CARTON DE WIART.

10. Representation of Uruguay at the Conference: Communication by the President.

The PRESIDENT said that he had received a telegram from M. Guani, delegate of Uruguay, apologising for his absence and explaining that reasons of health prevented him from being present at the first few meetings of the Conference.

11. Draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court[1]: General Discussion (continuation).

M. CHATELAIN (Haiti) said that, as he had not yet received any special instructions from his Government, his observations would be purely personal. Since, however, he was thoroughly conversant with the principles underlying the penal legislation of his country and with the main lines of Haiti's policy, it was most probable that his views would be found to coincide with those of the Government as well as of the legislative authorities and the judicature of Haiti.

He had examined with the greatest interest the two draft Conventions which the Conference was called upon to discuss. He felt most fully in sympathy with the first of those drafts. It was, in his opinion, capable of immediate realisation and its adoption would seem to be a matter of urgency, in view of the existing circumstances and of the nature of the acts which were to be prevented and punished. It was based on the idea of international co-operation in the repression of terrorism. No Government worthy of the name could remain indifferent to such a cause. The interdependence of States existed not only in economic, social and intellectual matters but also in the sphere of internal peace and security; so true was this that it was no exaggeration to say that to co-operate in the repression of acts which disturbed, or were capable of disturbing, internal peace and security was at the same time to co-operate in the maintenance of international order.

No doubt some of the clauses of the draft Convention might be at variance with the traditions of certain countries or with the principles of their public law: he alluded more particularly to the clauses concerning extradition, which was not generally admitted, and which the Republic of Haiti did not itself admit, in the case of acts of a political character. Since, however, the purpose was to protect and defend the very life and structure of the State, and since terrorist acts, as had been so truly said, constituted crimes against civilisation, they should, in virtue of the claims of international solidarity, be excluded from the category to which he had referred. Thus, delinquents would never be able to count on impunity, but would always be tried or extradited by the State on whose territory they might happen to be.

M. Chatelain was not, however, a supporter of the plan for an International Criminal Court; however legitimate the reasons adduced in favour of its creation might seem to him to be, the advantages of the scheme did not, in his view, make up for its drawbacks. The length of time required before such a Court—which would be permanent only in name—could get to work would, in the majority of cases, involve the loss or deterioration of material evidence and would not always permit of witnesses being heard. Moreover, the Court would be very expensive to maintain, and difficulties would be encountered in practice as regards, for example, the recovery of costs chargeable to the participating nations, or the choice of judges, for whom certain nations would certainly claim equality of treatment which it would be impossible to ensure.

In conclusion, M. Chatelain repeated that his remarks were in no way binding on his Government, and that the instructions which he might receive might make it necessary for him to modify his attitude.

M. KOMARNICKI (Poland) reminded the Conference of the resolution of the Council of the League of Nations, dated December 10th, 1934,[2] which had inaugurated the work of the special Committee appointed to study the question of " drawing up a preliminary draft of an international convention to assure the repression of conspiracies or crimes committed with a *political* and terrorist purpose ". The Polish Government had greeted with the deepest sympathy and the keenest interest the proposal of the French Government[3] which had formed the basis of that Council

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[1] For the text of draft Conventions, see Annex 3, pages 186 and 191.
[2] See *Official Journal*, December 1934 (Part II), page 1760. (See also Annex 1, page 183.)
[3] Document C.184.M.102.1935.V, page 22.

resolution. Poland's constructive attitude towards the problem had been reflected in her representatives' active participation in the three sessions of the Committee and in the observations which the Polish Government had forwarded to the League of Nations Secretariat.[1]

The problem was one of great practical importance, involving as it did not merely the internal repression of a certain category of illicit acts, but also the organisation of international co-operation for the prevention and punishment of terrorist conspiracies the repercussions of which were calculated to disturb good relations between the peoples. Those considerations and the general reprobation of terrorist crimes in all civilised countries constituted full justification for exceptions to the right of asylum, which for Poland as for the other States, nevertheless constituted one of the most eminent principles of public law.

The Polish Government had co-operated most sincerely in examining the various aspects—some very delicate—of that complex problem, realising that a convention had to be prepared the object of which, in accordance with the resolution adopted by the Assembly of the League of Nations of October 10th, 1936, was as follows :

" (1) To prohibit *any* form of preparation or execution of terrorist outrages upon the life or liberty of persons taking part in the work of foreign public authorities and services;

" (2) To ensure the *effective* prevention of such outrages and in particular, to establish collaboration to facilitate *early* discovery of preparations for such outrages;

" (3) To ensure *punishment* of outrages of a terrorist character in the strict sense of the word which have an international character either in virtue of the place in which preparations for them were made or the place in which they were carried out, or in virtue of the nationality of those participating in them or their victims."

Poland, it might be noted, like all the other countries, possessed adequate laws for the repression of terrorist conspiracies on her own territory. The Convention which it was now proposed to conclude under the League's auspices should, in the Polish Government's view, contribute something really new to the existing situation, and should, in particular, make it impossible for terrorist crimes to go unpunished. That purpose might be achieved by incorporating in the Convention the principle that a criminal must either be tried by the country in the territory of which he had sought refuge or must be extradited and transferred to the authorities of the country against which his crime was directed.

The Polish Government noted with regret that the draft framed at the Committee's third session now contained very little trace of the principle *aut dedere aut judicare*, which should have been the keystone of the whole Convention.

The obligation to extradite was so hemmed in by restrictions and conditions that the adoption of the draft would, in point of fact, produce no change in the existing situation; as to the obligation to try the accused in case of non-extradition, that was not even made explicitly compulsory.

The Polish delegation would do its best to have the present draft amended, in order to make it really operative; and the delegation's final attitude towards the Convention would depend upon the efficacy of the provisions of that instrument.

The Polish delegation desired also to stress the principle of the equality of the obligations stipulated in the proposed Convention. It seemed out of the question that certain signatories should be required to assume more far-reaching obligations than others simply by reason of the fact that the legislation of certain countries provided for institutions which other countries had not thought fit to adopt.

M. Komarnicki would offer no comment on the draft Convention for the Creation of an International Criminal Court, as the Polish Government did not propose to accede to any such Convention. Poland, however, did not in any way intend that her attitude should prevent other countries from organising an International Court or recognising its jurisdiction as between themselves. At the same time, the Polish Government desired to state explicitly that it could not allow the existence of the Court to affect in any way the obligations entered into in virtue of the principal Convention.

The Polish Government hoped that the observations just submitted on its behalf and any further observations that the Polish delegation might think fit to make in the course of the discussion would result in the draft Convention being amended in a way which would enable Poland to accede to it. It was the more anxious that this should be so, as it was convinced that the problem was one of the utmost gravity and that it ought to be settled on international lines.

M. Basdevant (France) referred to the position of principle adopted by the French Government towards the two draft Conventions. There was no need, he said, to emphasise the importance which France attached to the international repression of terrorism. The action taken by the French Government on December 9th, 1934,[2] in laying before the Council of the League of Nations a proposal for an international agreement for the repression of terrorism, and the circumstances in which that action had been taken, would be recalled by everyone. The French Government had followed with the keenest interest and closest attention the proceedings of the three sessions of the Preparatory Committee. Its interest in the discussions concerning the framing of a Convention for the international repression of terrorism was not purely " personal ", but had in view rather the general interests of society. The problem was one of international co-operation, and that was the aspect under which the question must be considered. That, moreover, was how it had been considered up to the present. The utility of international co-operation in the matter had repeatedly been emphasised since the opening of the Conference.

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[1] Document A.24.*(a)* 1936.V (Ser. L.o.N. P. 1936.V.7), page 1.
[2] See *Official Journal*, December 1934 (Part II), pages 1739 and 1839.

Two draft Conventions had been submitted to the Conference. The French Government was prepared to approve, in principle, both those drafts. That did not mean, however, that it might not wish to discuss particular provisions, or to examine specific proposals. The text of the proposed Conventions must be most exhaustively studied by the Conference. The French Government was prepared, however, to assent at once to the principles and general policy underlying the two drafts.

The draft Convention dealing more directly with the prevention and punishment of terrorism was held by some to be somewhat limited in scope, in that it contained an undertaking by States to do what they were doing already in virtue of their own legislation or by reason of the responsibility which they felt for repressing crime in its various forms. Some, indeed, might consider the draft inadequate. It was understood that any suggestions that might be submitted with a view to extending its scope must be very carefully examined. But limited though it was, and even though it did not go far beyond the existing national laws, the draft might serve a useful purpose, for it was only right, in a matter for which international co-operation was essential, that the form of that co-operation should be settled in advance; it was right that it should be settled by means of provisions which had already been embodied in the various legislations, by provisions which, on that account, did not appear to introduce any new and imperative idea; it was right that existing tendencies should be duly incorporated and a policy laid down. The progress of law was not achieved simply by means of imperative provisions.

All the clauses of the first draft Convention had one common aim—to establish and regulate international co-operation with a view to preventing and punishing terrorist crimes of an international character. That point had claimed the particular attention of the First Committee in 1936,[1] and that point stood out clearly now in the present text of the draft : the purpose in view was the repression of terrorist crimes of an international character. No objections had been raised to the principle of international co-operation on those lines. The only point to be decided was whether such collaboration was adequately provided for, whether everything that was desirable and possible was being done, whether some proposals might not be going too far, with the resulting danger that they might conflict with the imperative provisions of this or that national legislation.

The point just referred to touched on the substance of the problem. Agreement had been reached as to the principle. The problem was how that proposed international co-operation could be most suitably regulated; and, if successful results were to be achieved, it was essential not to conflict with anything in a given country that might appear to be of capital importance in the eyes of that country. In the realm of pure reason, disregarding contingent possibilities, it was possible to fix on this or that absolute conception, a system of universal repression, which might find supporters, perhaps many supporters, in an international congress for the study of questions of penal law. But the members of the present Conference must descend from the realm of pure reason to that of practical politics; they must take account of possibilities and establish a system of international co-operation. They must therefore call upon the goodwill that existed and take into account the possibilities open to each of those countries whose co-operation was desired. In other words, it was essential, in the proposed Convention, to avoid any conflict with what might appear to a given country to be of capital importance, even if that country's prejudices appeared to be unjustified. The main purpose of the Conference was, it would seem, to consider carefully whether or not the draft conflicted with anything of essential import in any particular country, and to adjust the draft by reference to the conclusions that the Conference might reach on that point. In that connection, two main aspects of the draft would have to be considered.

In the first place, seeing that what was contemplated was terrorist acts of an international character which the contracting States were to be under an obligation to repress, would that obligation exist irrespective of the place in which the act had been committed?

Certain countries attached particular importance, from the point of view of penal repression, to the territorial principle. With certain limited exceptions, they did not punish crimes committed abroad, but only crimes committed on the territory of the State. Articles 2 and 3 of the draft Convention now before the Conference, which specified the acts which the contracting States undertook to repress, declared specifically that it was acts committed on its own territory that the State in question undertook to punish.

The penalty laid down in Article 9 for acts committed abroad by foreigners was, moreover, attended by guarantees which appeared to leave intact the principle of territoriality for States which clung to that principle. That, no doubt, was a point in regard to which some might consider the Convention inadequate if concluded on the bases now indicated. But the draft did at least possess one merit, in that it did not conflict with certain conceptions which States considered essential in the matter of penal repression.

The second point regarding which fundamental conceptions must be taken into account was the question of extradition, which had been raised both in Governments' observations and, more particularly, during the discussion in the First Committee of the Assembly in 1936. Many countries felt that they could not grant extradition for political acts. M. Basdevant did not propose to consider at that juncture what was the precise purpose of excluding political acts; he merely noted that that was a point to which many States attached very great importance. There, again, conflicting notions were no doubt apparent. Some might think that the complete efficacy of anti-terrorist measures should imply the relinquishment of the conception of non-extradition for political crimes. But it must not be forgotten—that fact had been stated very plainly in the First Committee of the 1936 Assembly—that there were many countries which were absolutely determined to maintain the principle of non-extradition for political acts. That was one of the realities that must be taken into account.

Perhaps the text prepared by the Committee of Experts had not given sufficient consideration to those realities; it had not been sufficiently clear to prevent a divergency of views. It had been

[1] See *Official Journal*, Special Supplement No. 156.

interpreted in opposite senses, and that was the origin of the debate in the First Committee of the Assembly. But, after that discussion, the text had been revised and rectified. It now left each State free to adopt its own attitude regarding non-extradition for political crimes. The text, as newly drafted, would thus appear to satisfy the preoccupations of certain States. It was clear from the observations already sumbitted at the Conference that that conciliatory attitude had been appreciated and that, where objections had previously been encountered, objections no longer existed to-day.

Such, as regards the essential points, were the general bases of the first draft Convention. The French Government was of opinion that, without going as far as was theoretically possible, the draft did at least establish between views which were opposed on certain points—although everyone was agreed as to the object in view—a *media sententia* which, in its opinion, might constitute a formula for an agreement that would prove a useful instrument of international co-operation. The draft was admittedly limited in scope; for that very reason, it could the more readily hope to win acceptance by Governments.

The second draft certainly could not be described as modest. On the contrary—as had already been made clear at the present Conference and previously in both the First Committee of the Assembly and the Committee of Experts—the scheme for the creation of an International Criminal Court, which was the subject of that draft, represented a bold innovation. It was its very boldness, indeed, which had caused misgiving, reservations and opposition. Such opposition however, had been manifested in a way which had given M. Basdevant particular satisfaction, because it was obviously not systematic; because, although it had been made clear that certain Governments were not inclined to subscribe to a Convention of that kind, they nevertheless either recognised its importance and appreciated its purpose and the motives of its sponsors, or, at the very least, were unwilling to stand in the way of other Governments which might desire to become parties to such an agreement.

To propose the creation of an International Court with jurisdiction over terrorist offences was unquestionably a bold innovation. In certain quarters, no doubt, such boldness had been carried to still greater lengths and there had even been suggestions—although quite unconnected with the work of the present Conference—for the creation of some kind of criminal court with jurisdiction over the offences of the States themselves. That, however, was not the present purpose; nor, indeed, could the jurisdiction at present under consideration be used to lead up to that to which reference might from time to time have been made. The purpose of the present scheme was not the trial of States, which hitherto were not amenable to any criminal jurisdiction; but solely the trial of individuals already fully subject to criminal jurisdiction, of individuals proceeded against for terrorist offences, of individuals subject to the jurisdiction of national courts, for which it was now proposed to substitute an international court.

Such a proposal undoubtedly represented a radical change, a daring reform, a great innovation; but, at the same time, it was clear that the scheme was solely concerned with the trial of persons who must be tried, and that the sole question was the manner of their trial. Was it to be by a national court, as had always been the case in the past, or by a court of some other character—that was to say, a court set up under an international agreement and composed of judges of different nationalities? That this was an innovation could not be questioned, but it was much less radical than that contemplated in certain quarters.

The proposed innovation had given rise to various objections. By some it was regarded as compromising the principle that no man may be removed from the jurisdiction of the courts to which he is normally subject—a principle which M. Basdevant himself would be the last to contemn, as he knew it to be the very foundation of modern liberty. But what was the precise import of that principle? It meant the setting aside, the rejection, of what was sometimes called " trial by commission "—that was to say, trial by a body of so-called judges specially constituted to try a given offence and set up after the fact. Such, however, was not in any sense the purpose of the present proposal which, on the contrary, aimed at the constitution in advance—some might say, on paper —of a court whose composition would be such as to afford the fullest guarantees—that no one could deny—of competence and impartiality. That was far removed from the procedure to which he had just referred. Such being the case, M. Basdevant considered that the first objection was really unfounded.

A country might, indeed, object with much greater force that, having confidence in its own judges, it was unwilling to deprive them of jurisdiction over a case which should properly come before them. That was an attitude which he could well understand, and an attitude which was eminently worthy of respect, and which he himself, in fact, respected. M. Basdevant pointed out, moreover, that the draft Convention also respected that attitude, as it provided that the reference of cases to the International Court should be optional. It would be for the Governments themselves to decide whether or not they would follow such a course.

What could be their reasons for so doing? What purpose would be served by recourse to that tribunal? It must be recognised that the circumstances attaching to terrorist offences might be very different. In certain cases, their punishment could without disadvantage be left to the ordinary courts. In other cases, however, the punishment of such offences by the ordinary courts, the methods of procedure of such courts, their view of the possibly complicated circumstances of the case before them, the perhaps doubtful authenticity of the evidence and the nature of the judgment rendered, might be viewed in a different light in different countries. Indeed, the court's decision in such a case might well lead to political tension between the country affected by the terrorist offences and the country in which judgment was passed.

It was in view of cases of this kind that, for the sake of good understanding between nations, it might be desirable to send the offender for trial before judges whose impartiality and independence were beyond question, and it was for that reason that the draft Convention provided that recourse to the International Court should be optional.

Such a proposal no doubt represented an innovation and it was probably for that reason that there was some reluctance to accept it; that was probably the real objection of those who did not wish to have anything to do with the second draft. The degree of favour with which one viewed an innovation depended no doubt on one's state of mind and also on circumstances. It was true that this second proposal was an innovation, but an innovation introduced in such a way as not to interfere with anybody because of its optional character, and also because it was perfectly conceivable that the various States should choose their own time for entering the system for which the Convention provided. That was why the matter was dealt with in a separate draft. The innovation was undeniable, but M. Basdevant would ask those who were unwilling to support it and to bring the scheme into operation, those, in short, who were not prepared to send a case falling within the jurisdiction of their national courts before an international tribunal, to give this innovation a fair trial and let the future decide who was right.

M. Basdevant was, moreover, optimistic as to the possibility of giving the scheme a fair trial because, in spite of the opposition to the principle involved and in spite of the objections raised in the Committee to the creation of an International Criminal Court, those from whom such opposition and objections came had co-operated most valuably in the elaboration of the draft now before the Conference. They had warned the advocates of an International Court of the objections which might be taken to various features of the scheme; they had themselves suggested amendments. They had been of great help in working out the text as it now stood and had therefore already been to some extent instrumental in giving the scheme the fair trial for which he had appealed. It was to be hoped that their willingness to co-operate had not ended with the Committee of Experts, and that it would be possible to carry the trial of the scheme still further.

Such, in essence, were the reasons for which the French Government, in principle, supported the two drafts now before the Conference.

At the previous meeting, emphasis had been laid upon the very great political importance of international co-operation in this matter. M. Basdevant agreed absolutely with what had been said, and would add that, in addition to its unquestionable political importance, he considered the present proposal to be of genuine moral importance also.

M. Koukal (Czechoslovakia) recalled with what keen sympathy and satisfaction the Czechoslovak Government had received the French Government's proposals in 1934 for closer co-operation between civilised States in the campaign against terrorist acts. The Czechoslovak Government had at once realised that the principle underlying those proposals was the protection of the common heritage of the whole civilised world—security of life and limb, health, liberty and public property intended for the common use—against the criminal activities of certain terrorists. It had studied the possibilities of bringing all the Governments concerned into closer co-operation with a view to guarding against those dangers and also ways and means of establishing such co-operation.

As certain doubts had been cast on the international character of terrorist activities, M. Koukal would refer to some of the many precedents to be found both in the domestic legislation of the various States and in the Conventions regulating certain aspects of international relations. He recalled, in particular, that, since 1856, Belgian law had adopted a restrictive definition of political offences by which terrorist outrages were excluded; and the so-called " Belgian Clause " embodying that distinction had been subsequently included in hundreds of extradition Conventions and Treaties, so that it was now almost universally recognised. The substance of the Belgian Clause had also been embodied in Article 6 of the Model Convention drawn up by the Penitentiary Commission in 1931. The same clause was to be found in the Caracas Convention of 1911, the Bustamente Code (Article 355) and the Montevideo Convention. It might even be said that the Belgian Clause corresponded exactly to the provisions of Article 2, paragraphs 1 *(a)* and *(b)* of the draft Convention for the International Repression of Terrorism.

The Swiss Extradition Law of 1892 went even further : the Swiss Government was empowered to grant extradition for related offences when the ordinary criminal offences preponderated over the political offence.

In the Swedish Law of 1913 these two principles were combined. Attention should also be drawn to the German Extradition Law of 1929, Article 3 of which contained a provision authorising extradition for any intentional act directed against the lives of human beings, unless such act was committed in the course of an open conflict. Lastly, the French Extradition Law of 1924 authorised extradition for acts committed in the course of civil war, whenever such acts were characterised by vandalism or barbarism.

In view of these numerous precedents, the Czechoslovak Government had decided to contribute to the organisation of international action against terrorism, and on March 30th, 1937,[1] had submitted the observations which it thought appropriate.

M. Koukal expressed his appreciation of the work of the Committee of Experts which had achieved positive results, and stated that his Government accepted the draft Convention for the Repression of Terrorism as a basis for the elaboration of a final text.

Nor had the Czechoslovak Government overlooked the other aspect of the question—namely, the need for guarantees of impartial trial. Adequate guarantees must be given to those charged with, but not yet convicted of, terrorist acts, as well as to the injured States. Both must be convinced that justice would be done in an atmosphere of complete impartiality. That idea had been successfully embodied in the second draft Convention for the Creation of an International Criminal Court. M. Koukal had listened with satisfaction to M. Basdevant's remarks on the provisions of that draft, and agreed with all that he had said. The Czechoslovak Government accepted the second draft Convention as a basis for discussion.

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[1] Document C.194.M.139.1937.V.

M. Hirschfeld (Union of Soviet Socialist Republics) said that his Government had shown keen interest in the initiative taken with a view to the international repression of terrorism. It considered that the two draft Conventions submitted to the Conference represented a remarkable collective effort and constituted a solid foundation for the Conference's work. While recognising the close connection between the first and second draft Conventions, the Soviet delegate did not think it either expedient or logical to establish an unbreakable link between those two texts. Accession to the Convention for the International Prevention and Punishment of Terrorism should not be made conditional upon accession to the Convention for the Creation of an International Criminal Court.

He was glad to note the desire for international co-operation revealed by the two drafts drawn up by the Committee of Experts, in whose work a Soviet representative had participated.

He reserved the right to submit, during the examination of the texts, certain observations or draft amendments defining the rights and obligations of the parties, in order to allay certain misgivings; those observations and amendments would not, however, diminish the efficacy of the Conventions.

M. Delaquis (Switzerland) said that the competent Swiss authorities had found that the draft International Convention for the Prevention and Punishment of Terrorism now before the Conference marked an advance over the previous one, in that its scope had been restricted and account had been taken of the remarks made at the 1936 League Assembly.

Nevertheless, the fundamental concept underlying the draft Convention to be found in Article 1, paragraph 1, was still too vague and was expressed in terms (such as " to create a state of terror ") with which Swiss federal legislation—and particularly the federal law on the use of explosive substances—was familiar, but which had been eliminated for practical reasons.

Moreover, in the opinion of the Swiss authorities, the scope of the draft was still too wide. Certain provisions relating to extradition did not seem to them acceptable.

Lastly, and chiefly, the position of Switzerland in the sphere of penal law was a very special one. There was every likelihood that a referendum would be asked for on the draft Unified Penal Code, which the Federal Chambers had at present under consideration and which would probably be finally adopted by Parliament in December. It was not easy to forecast the result of that referendum. If the people rejected the Unified Penal Code, the Confederation could hardly frame a special law in accordance with the provisions of the Convention for the Prevention and Punishment of Terrorism. On the other hand, if the people accepted the Unified Penal Code, Switzerland, on the basis of that Code, could not fulfil all the obligations resulting from the Convention.

Consequently, Switzerland was not likely to be in a position to consider the possibility of signing the Convention for the Prevention and Punishment of Terrorism.

Nevertheless, while bearing in mind the situation referred to above, the Swiss authorities would still be able to afford support in the administrative sphere. Switzerland, which had always combated subversive activities, was willing to afford assistance in the future to the same extent as in the past as regarded collaboration in police matters.

As to the draft Convention for the Creation of an International Criminal Court, Switzerland, from the outset of the work of the Committee of Experts, had never been able to accept the view that the creation of such a Court was necessary; but it would, of course, do nothing to thwart the desire of other countries to accede to that Convention.

M. Sasserath (Belgium) said that the Belgian Government reserved the right to accede to the international conventions which the Conference was about to discuss after it had examined them, thus availing itself of the possibility allowed to States under Articles 20 and 46 of the drafts, which provided that the Conventions could be signed until a certain date on behalf of any Member of the League and any non-member State represented at the Conference. This reservation did not mean, however, that the Belgian Government had any prejudice against the drafts, in the framing of which, moreover, the Belgian delegates had collaborated in the Committee of Experts under the chairmanship of Count Carton de Wiart. It was based solely on the desire to ascertain, before acceding to them, whether the Conventions resulting from the Conference's deliberations conflicted with any fundamental principle of Belgian legislation in the matter of international relations.

So far from this reservation implying any unfavourable attitude towards the drafts, the Belgian Government took a keen interest in them, the object of which was to develop international co-operation against crime. It would examine the Conventions with a sincere desire to contribute as fully as possible in any efforts made effectively to guarantee friendly international relations. Moreover, the Belgian delegation had been instructed to take an active part in the efforts made to ensure the success of the Conference, and to achieve the best possible results in the interests of peace. Further, how could it fail to accede in principle to a draft, Article 1 of which proclaimed that it was the duty of States to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State, and asserted that the object of the Convention was to ensure co-operation between States for the prevention and punishment of such acts when they were of an international character?

The Belgian delegate wished to stress the words " when they are of an international character ", because the stipulation that acts of terrorism must be of an international character in order to be covered by the Convention justified the framing of an international treaty directed against such acts—that was almost a truism—and met the objection that the majority of attempts on the lives of persons and attacks on property which constituted the external and criminal manifestations of acts of terrorism, were already provided for in most domestic laws. That applied to Belgium, as it did to the majority of civilised countries. But was not that also the case with other

international Conventions already concluded with a view to the more effectual punishment of other international crimes? There was, for instance, the Convention for the Suppression of the Traffic in Women. The punishment of those crimes, and certain manifestations of those crimes, such as the corruption of minors, the abduction of minors, offences against morals, etc., was already provided for by the municipal law of the various nations. It had nevertheless been found necessary to frame an international convention for the effective punishment of that odious traffic, the effects of which were mainly felt in the international sphere. There was, further, the Convention for the Suppression of Counterfeiting Currency. There again, municipal law had for a long time past made full provision for the punishment of the crime in question within the country. It had been found, however, that the crime of counterfeiting currency was chiefly committed in the international field and that it was impossible to ensure its effective suppression unless States concluded a treaty for the purpose. Such a treaty had fortunately been signed, so that it was possible to put a stop to that traffic, which did the greatest harm to States.

The same applied to terrorist outrages which, in the form of attempts on the lives of persons or attacks on property, revealed the existence of international criminal activities, the terrorists passing from one country to another with the greatest ease. They prepared the crime in one country, executed it in a second and took refuge in a third. But why, it was said, should crimes which were already punished as such, whether they were of a terrorist nature or not, be described as terrorism? The reply—which the members of the Conference had doubtless hit upon for themselves—was as follows : while extradition treaties provided for the effective punishment of those crimes when they were not of a terrorist nature, it had been found that they often went unpunished when they assumed a terrorist character. There were many reasons for this; M. Sasserath would merely mention the two or three principal ones.

The first two applied to all crimes whatsoever of an international character. They were not confined to crimes of terrorism. In the first place, the international police organisation was inadequate, or, to put it more accurately, there was an inadequate exchange of information between the police authorities of the different countries concerning the activities of individuals who were preparing outrages and concerning suspicious persons and their movements. There was therefore every reason for Article 15 of the draft, which provided that States acceding to the Convention for the prevention and punishment of terrorist activities should organise a systematic exchange of information between their respective police authorities, and no one could deny its utility.

There was a second reason which applied to all crimes of an international character as well as to crimes of terrorism—namely, the faulty, incomplete or dilatory execution of letters of request (rogatory commissions). It was for that reason that another article of the draft rightly provided that States which signed the Convention in question should execute fully and rapidly the letters of request sent to them by the magistrates entrusted with the investigation of the crimes covered by the Convention.

The third reason related more especially, if not exclusively, to terrorist outrages; it was that those outrages often went unpunished because the countries concerned did not agree as to their real nature. That consideration met the objection referred to above. The explanation was as follows : The members of the Conference knew that many countries—and Belgium was one of the foremost—firmly refused to grant extradition for a political crime. But certain aspects of terrorism were closely related to political crime. That was the difficulty. Nevertheless, there was no question, be it noted, of inducing supporters of the Convention to agree to extradition for political crimes if that were contrary to their laws or traditions. If such were the purpose of the Convention, Belgium assuredly could not accede. Moreover, if any States still felt uneasy on that point, there was a provision in Article 7, paragraph 4, which read : " The obligation to grant extradition under the present article shall be subject to any limitations recognised by the law of the country to which application is made ". Consequently, the different States still retained their sovereign right to examine each individual case, as was quite comprehensible, seeing that the question at issue was one of individual cases rather than one of principle. Obviously, it would be necessary, in each case, for a State to which application for extradition for a terrorist crime was made to consider whether, and to what extent, that crime was political in character.

The object of the two Conventions—that point could not be sufficiently emphasised in the early stages of the debate—was not to restrict the sovereignty of the contracting States, a position which no State would agree to, but, as far as possible, to avoid the scandal of impunity for certain international crimes of particular gravity and to do so within the scope of the sovereignty of States.

From a general consideration of the structure of the two Conventions—which, in reality, though not organically connected, were complementary to one another, since the Convention concerning the International Criminal Court was simply an instrument placed at the disposal of States which might care to use it as a means of enforcing the agreement between the signatories to the first Convention to prevent impunity for terrorist crimes—it would be seen that, when a terrorist crime was committed and the country of asylum was called upon to punish the crime, that country could either grant extradition or hand over for trial to its own national courts the individual accused of having committed a terrorist act on the territory of another State. It might, of course, happen that the State of asylum wished neither to hand over the accused nor to try him itself. That was what happened nowadays, and when it did happen it meant that a criminal was allowed to go unpunished; it meant impunity in favour of one who, nevertheless, had committed a crime of an extremely serious character, not only because it constituted an attack on the life and property of another, but also because the crime was calculated to cause international difficulties which might result in the direst catastrophe.

If the two drafts were accepted, it would mean, at all events for States acceding to the second Convention together with the first—which was quite optional—that, when a State a signatory to both Conventions wished neither to hand over a foreign individual who had committed a terrorist act on foreign territory nor to judge him itself, because it had no interest in the affair, it would have the right to hand over the delinquent to the International Criminal Court. It was quite conceivable, indeed, that a foreign individual who had committed a terrorist crime on foreign territory might be a source of serious international difficulty to the country of asylum. There was the danger, for example, that the criminal might be acquitted by the courts of the country of refuge or be given so negligible a sentence that the injured State would regard the punishment as quite inadequate. Such a situation might cause serious international difficulties or, at all events, difficulties of very serious import such as to disturb the good understanding between the two States in question. In such a case, why not make it, if not incumbent upon the State acceding to the International Criminal Court, at all events optional for that State, to hand over the accused to the International Criminal Court, which would mete out judgment with strict guarantees of impartiality?

There was no need, after M. Basdevant's excellent exposé, to do more than stress the point that the possibility of having recourse to the International Court was optional for States signatories to the Convention but was not in any sense obligatory. The reservations submitted by certain States—by Belgium for one—concerning the institution of an organ of international justice, which was in the nature of a bold innovation encroaching upon the age-long and exclusive character of national criminal jurisdiction, were quite understandable. But the fact had been overlooked that accession to the Convention instituting an International Criminal Court left the signatory States perfectly free to decide whether they would have recourse to it and that they would never be obliged to have recourse to it at the expense of their own national and domestic repressive institutions, so that there could never be any question of infringing the sovereignty of the contracting States.

Speaking in the name of Belgium, M. Sasserath trusted that the deliberations of the Conference would be entirely successful and would lead to a better reciprocal understanding between States and increase their esteem for and confidence in one another. He hoped that they might be able in that way to reinforce peace in an atmosphere of concord, and that they would manage to provide greater security against crime with the help of all men of good-will.

M. Jiménez de Asúa (Spain) said that the Spanish Government welcomed both draft Conventions, and had followed with the liveliest interest the process by which they had come into being. The Spanish Government was gratified to note the considerable progress made between the first study of the problem of terrorism by the International Office for the Unification of Criminal Law and its present discussion by the League. The Convention drawn up at the Madrid Conference in 1933 was not acceptable to certain countries, including Spain, which were precluded by their Constitutions from extraditing persons committing political—and even social—offences. But Spain was prepared to accept the draft Convention now before the Conference, provided the present text was not altered to such an extent as to render such acceptance impossible.

The Spanish delegation considered that the two terms " terrorism " and " extradition " called for precise definition.

It was impossible to find a definition of terrorism which was in no way subjective; but, if the conception of the term must to some extent be subjective, it was essential at any rate to eliminate from the definition any considerations of motive. That stipulation appeared to be met in Article 1 of the present draft, though it was possible that the present text might still be improved.

The second problem, that of extradition, was closely connected with the first. It was true that paragraph 4 of Article 7 left the country applied to free to establish restrictions; but that was not the point. What was important was that the Convention should be drafted in such a way as to allow of extradition by all States.

The draft therefore could still be improved, though the Spanish delegation had no objection to raise.

The Spanish Government supported the proposal for the creation of an International Criminal Court, and was in favour of discussing it. A number of objections had been raised against the creation of such a court since the opening of the Conference, as well as in the Committee of Experts and in the First Committee of the 1936 Assembly. It had been said, in particular, that care must be taken not to call into being an institution with precarious chances of survival. But that was not the only side to the question. It was true that the law ought to be in accordance with the stage of development of a people, and, in the present case, with the stage of development of the international community. But it must not be forgotten, on the other hand, that laws and conventions were in themselves educational. This proposal for the establishment of an International Criminal Court had been under consideration for a long time past. In the years immediately following on the world war, the suggestion had not only been met with sympathy, but was regarded as capable of realisation in the near future. Since then, the idea had been forgotten, until the French proposal in 1934 had brought it once more into prominence. The present was a happy moment for giving it a trial, as the French delegate had just said. As resort to the Court was not to be compulsory, it would soon be seen whether its existence was justified. If the answer were in the affirmative, its powers could be extended, and an increasing number of cases might then come before it. If the answer were in the negative, the new organ would disappear, and no harm would have been done in any direction.

On those grounds, the Spanish Government was prepared to sign both Conventions, subject to improvement where improvement was possible. The Spanish delegation believed that the application of the two draft Conventions would contribute to the progress of peace.

M. PARRA-PÉREZ (Venezuela) said that the Venezuelan delegation's attitude during the discussions of the Conference would be in accordance with the standpoint indicated in the reply from the Minister for Foreign Affairs to the Secretary-General of the League of August 7th, 1936.[1] In that communication, the Venezuelan Government stated that it was in favour of the immediate conclusion of a Convention for the Prevention and Repression of Terrorism. Its attitude in regard to the proposal for the establishment of an International Criminal Court was somewhat more reserved. There was not, of course, the slightest objection on the part of Venezuela to other States giving the proposal what M. Basdevant had called a fair chance. The Venezuelan Government's attitude in the matter was, in short, rather expectant than definitely adverse.

The Venezuelan Government in its reply, had explained its point of view and had drawn attention to one consideration which might affect the application, under certain circumstances, of criminal law enactments in Venezuela. The Venezuelan Government had to bear in mind that, under the federal system of Venezuela, crimes and misdemeanours specified in the first draft Convention were justiciable by the separate courts of the several States belonging to the Union as courts of final instance. It was conceivable that difficulties might arise in that connection of which the Federal Government would have to take account. That consideration was one explanation of the reserved attitude of Venezuela in regard to the proposed Court.

The Venezuelan delegation was prepared to co-operate cordially in the discussion of the text. Its attitude in so doing was facilitated by the fact that the Venezuelan Criminal Code itself penalised severely the criminal acts in question.

In conclusion, the delegate of Venezuela explained that, in his country, the question of arms came under a special Law of 1928, which prohibited the import and manufacture of arms, trade in arms, and the possession or carrying of arms, whether fire-arms or side-arms.

The continuation of the general discussion was adjourned to the next meeting.

FOURTH MEETING

Held on Tuesday, November 2nd, 1937, at 4 p.m.

President : Count CARTON DE WIART.

12. Draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court:[2] General Discussion (continuation).

M. RUÍZ GUIÑAZÚ (Argentine Republic) said that his country already possessed national laws adequate to ensure the repression of the punishable acts described as acts of terrorism, and had also signed international Conventions having the same object. The experience of the problem thus acquired entitled his Government to venture the statement that the first draft Convention submitted to the Conference was a document of undoubted value. The Argentine Government would therefore support the said draft as a whole.

Under Article 212 of the Argentine Penal Code, any person was liable to punishment who, without express permission, manufactured, sold, transported or concealed explosives or appliances and materials for their manufacture liable to cause damage. By a Convention concluded in 1932 with Peru, the contracting parties undertook to expel from their territory, in accordance with the procedure laid down by their respective national laws, individuals of foreign nationality whose presence was prejudicial to public order. Accordingly, under reciprocal terms, no person so expelled by one contracting party was allowed in the territory of the other contracting party, except nationals of the latter, whose admission could not be refused.

This principle found no place in the text submitted to the Conference, and M. Ruíz Guiñazú ventured to suggest that it might usefully be considered in connection with the present draft.

He further proposed that a provision should be included to the effect that " all parties to the Convention which do not possess laws regarding the admission and expulsion of foreigners or legislation for the prevention and punishment of offences committed against public order, shall undertake to promulgate the same as soon as possible ".

Again, the provisions to prevent extremist propaganda and the perpetration of the offences described in Articles 2 and 3 as acts of terrorism should include arrangements for the exchange of *état civil* papers, finger-prints and information regarding all aspects of the subject's past history on a scale still more complete than that proposed in Articles 11 to 15 of the draft, so as to cover, not only individuals, but also associations and groups unable to prove the legality of their establishment.

The Argentine authorities had dealt with this matter with complete impartiality and with a desire to co-operate with other countries, since, in America, where the right of asylum was interpreted in a more essentially humanitarian spirit than in Europe, it was not granted to terrorists because terrorism was not a political conception, but a method of action consisting in assassination, sequestration, incendiarism, bomb-throwing and the like. Lastly, a Convention to facilitate international police action had been signed by the Argentine Republic with Uruguay.

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[1] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 12.

[2] For the text of the draft Conventions, see Annex 3, pages 186 and 191.

As to the second draft Convention for the Creation of an International Criminal Court, M. Ruíz Guiñazú recognised its importance from the scientific point of view as also the weight of the theoretical arguments in favour of the creation of such a Court, and especially the force of M. Basdevant's advocacy : but he confessed that he still had certain misgivings on the subject.

If States fulfilled their obligations under the first Convention, there would be no ground for the intervention of the Court, since it was not proposed that it should take action under Article 9, except in cases where a State retained an offender and refused to bring him to trial on its own initiative.

The second draft Convention covered only terrorism : but it would appear illogical not to extend the proposed co-operation to other offences of an international type, such as piracy, the traffic in women and counterfeiting of currency, all of which were of at least as frequent occurrence as terrorist offences.

M. Ruíz Guiñazú noticed that Article 40 made provision for the obligatory establishment of a common fund to meet the expenses of the Court. The salaries of the judges were to be paid by the States of which they were nationals. The terms of that article and of Article 44, would involve the countries signing the Convention in pecuniary obligations of a quite indefinite character.

M. Pella (Roumania), Rapporteur, speaking, in the first instance, as delegate of Roumania, stated that his Government gave its full support to the principles underlying the two draft Conventions. Provided those principles were not affected as a result of the discussion that was about to take place, he could say at once that Roumania was prepared to sign both the Convention for the Repression of Terrorism and that for the Creation of an International Criminal Court, the latter being regarded by the Roumanian Government as calculated to ensure impartial justice in cases of a particularly delicate nature.

In its first reply to the Secretary-General of the League, dated April 9th, 1935,[1] the Roumanian Government signified its full agreement with the French Government's proposals of December 1934 [2] for the creation of the Court.

M. Pella wished, moreover, to recall that, following upon the concepts he had himself propounded in 1919 regarding the creation of an international criminal jurisdiction and in accordance with the proposals he had made, since 1924, as Roumanian delegate at the various international conferences, the Roumanian Government had urged in 1928, before the ninth Assembly of the League, that jurisdiction in criminal matters should be granted to the Permanent Court of International Justice.[3]

Roumania had always looked upon an International Criminal Court as a necessary corollary to the contemporary movement in favour of inter-State criminal jurisdiction. As it had been observed, that movement " was destined to acquire increasing scope and force because it is in conformity with the evolution of law in all human communities ".[1]

As regards the first Convention, that relating to terrorism, M. Pella need only say that, long before the grave events which had obliged the League to concern itself with the problem, the Roumanian Government, in a communication addressed to the Secretary-General of the League on November 20th, 1926, had proposed that an International Convention should be drawn up to universalise the repression of terrorism.[4]

M. Pella proceeded next, in his capacity as Rapporteur, to discuss the various points of view which had been expressed during the general discussion.

On the primary issue of the legal conception of terrorism, he shared the views of M. Givanovitch, M. Sasserath and Professor Jiménez de Asúa. It was evident that, while one might have quite a clear idea as to what constituted an act of terrorism, it was not easy to find a legal definition for the term. Terrorism was not so much an offence *sui generis*—that was to say, an offence having characteristics which were invariably the same—as a manifestation *sui generis* of criminality, taking the form of a variety of crimes and offences, all of which were punishable at the present time under the criminal laws of most countries.

A study of the draft drawn up in 1935 [5] by the Committee of Jurists appointed by the League Council, of the second draft drawn up in 1936 [6] and of the third draft of 1937 [7] would reveal the difficulties the Committee had had to overcome in its attempts to define the characteristic features which differentiated any particular crime or offence as an act of terrorism. Those difficulties were enhanced by the necessity for carefully limiting the scope of the Convention to cover only acts of terrorism of an international character. This criterion of " international character " was determined either *(a)* by the nature of the injuries inflicted or *(b)* by the method of perpetration of the crime or offence, the latter criterion presupposing, in certain cases, the extension of the perpetration of the crime or offence to the territory of more than one State.

It was clear also, in that connection, that the problem must be considered also from the standpoint of the international obligations of each State. M. Sasserath had referred [8] to the duty incumbent upon every State to abstain from acts calculated to favour terrorist activities directed against public safety and order in another State, a duty, which, moreover, already existed as an unwritten rule of international law, and which it was now sought to re-affirm in precise form

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[1] Document C.184.M.102.1935.V, page 19.
[2] *Ibid.*, page 22.
[3] See *Official Journal*, Special Supplement No. 65, page 35.
[4] Document C.196.M.70.1927.V (Ser. L.o.N. P. 1927.V.1), page 221.
[5] Document C.184.M.102.1935.V, page 4.
[6] Document A.7.1936.V (Ser. L.o.N. P. 1936.V.2), page 3.
[7] Document C.222.M.162.1937.V (Ser. L.o.N. P. 1937.V.1), page 3. (See Annex 3, page 186.)
[8] See page 61.

in the Convention, as a result of the proposal made by M. Kulski in the First Committee of the 1936 Assembly [1] and in the Committee of Jurists by the Polish representative, M. Bekerman.

It was by no means an easy matter to draw a distinction between acts of terrorism and political crimes or offences. Apart from the conceptions prevailing in one or two countries which regarded political offences as more reprehensible than offences at ordinary law, and which, in principle, were in favour of extradition even for purely political offences—it was almost unanimously agreed in other countries that political offences were not of an anti-social character and did not shake the foundations of social life.

Those offences were of an anti-governmental character. Consequently, they conflicted only with the principles of a quite special morality—namely, principles which were often connected with the form of government of each State and varied from one country to another. As had been pointed out, those who to-day were regarded as political offenders might to-morrow be regarded as heroes. It was therefore advisable that other States should not intervene in questions which concerned the political life of a given State. Those States should intervene only when their own internal order or international order had been threatened by such offences. If a State helped to repress political offences which merely injured the interests of another State, that participation might be regarded as interference in the internal affairs of the latter State.

The principle of the non-collaboration of foreign States in the repression of political offences represented therefore a homage paid to the sovereignty mutually accorded by States, a recognition of the fact that every nation had full liberty to regulate its economic and social policy as it thought fit, and of its absolute right to modify the fundamental institutions of the State in whatever way it considered expedient and by its own means, all intervention by foreign Powers in such questions being excluded.

While, in principle, the value of such arguments could not be disputed, M. Pella did not think they could justify the absolute principle of the non-collaboration of other countries in repressing offences which, owing to their nature, did not merely endanger the order of a given State but social order in general. Whatever the perpetrator's motive, it was obvious, bearing in mind the odious nature of the offence and the fact that the " political will of the offender " had expressed itself in acts of barbarity and terrorism, that the principle of the non-collaboration of States in this matter would constitute the most flagrant repudiation of the duties of international solidarity.

M. Pella also stressed the existence of certain offences which, owing to their nature or their consequences, shook the very foundations of the international community—that was to say, threatened the conditions of peaceful co-existence of the nations. In the case of such offences, the application of the principle of the non-collaboration of other States in their repression was likewise inconceivable.

While as regards offences of a complex nature (anti-social offences) or heinous offences against the State (assassination, devastation, arson, etc.), the international spirit of solidarity had exerted some influence even as long ago as the second half of the nineteenth century—and while, in such cases, the theory that other nations should stand aloof was being more and more frequently rejected—it was none the less true that that same international spirit would also be called upon to exert an increasingly powerful influence on the principles of criminal law concerning the co-operation of foreign States in repressing offences against the State which likewise jeopardised the fundamental interests of the international community.

M. Pella recalled that, as long ago as 1856, the Belgian law had provided that " outrages against the head of a foreign Government or the members of his family, constituting either murder, premeditated murder or poisoning, shall not be deemed to be a political offence or offence related thereto ".

This " clause relating to outrages " had been inserted in a large number of extradition treaties.

The United States of America, which had at first been opposed to the Belgian Clause, had nevertheless concluded in 1888 an extradition treaty with Belgium in which that clause had been inserted. Since then, it had been reproduced in certain treaties concluded by the United States with other countries, as, for instance, in the treaties of 1895 with Russia, of 1898 with Brazil and of 1902 with Denmark.

The movement in favour of extending the Belgian Clause had been strengthened when the Institut de Droit international itself advocated the general adoption of that clause.

After a series of formulæ proposed in 1882 (Bluntschli's proposal made at the Oxford session), the Institut adopted, in 1892 at its Geneva session, a resolution with a view to the elimination of acts of terrorism from the category of political offences.

Article 14 of the Rules on Extradition drawn up by the Institut de Droit international at its Geneva session provided that " criminal acts directed against the bases of all social organisation, and not only against a certain State or a certain form of government are not considered political offences in the application of the preceding Rules ".

Article 13 of those Rules gave a list which, if it was not complete, was at any rate precise, of acts which should give rise to extradition. Those acts, according to the Institut de Droit international were : " crimes of great gravity from the point of view of morality and of the common law, such as murder, manslaughter, poisoning, mutilation, grave wounds inflicted wilfully with premeditation, attempts at crimes of that kind, outrages to property by arson, explosion or flooding, and serious thefts, especially when committed with weapons and violence ".

The American Institute of International Law also stipulated in draft No. 17 that " acts

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[1] See *Official Journal*, Special Supplement No. 156, page 58.

characterised as anarchy by the laws of both nations shall not be considered political crimes ".

After the world war, the movement in favour of the exclusion of acts of terrorism from the category of political offences also found expression in a series of draft penal codes and new laws, as, for instance, the Finnish Law of February 11th, 1922, which refused to regard murder or attempted murder as a political offence, unless it was committed in the course of open hostilities.

Consequently, only cases of rebellion or civil war were excluded. Those exceptions were not of great importance since, in the majority of cases, acts of terrorism could be committed even without open hostilities. Such acts, on the contrary, paved the way for revolution. M. Pella also quoted the Roumanian Penal Code, which came into force on January 1st, 1937, under which acts of terrorism " shall never be regarded as political offences, whatever the offender's motive or the circumstances in which he committed or attempted to commit the offence ".

Lastly, of all the conventions on extradition, the one which solved the problem of acts of terrorism most completely was the Convention of February 6th, 1930, between Portugal and Roumania. Article 7 of that Convention provided " that from the point of view of extradition the following acts shall never be regarded as political offences : *(a)* Murder, manslaughter, poisoning, mutilation, grave wounds inflicted wilfully with premeditation; *(b)* outrages to property by arson, explosion or flooding, and serious thefts committed with weapons and violence ".

While considerable progress could be made by municipal law or bilateral agreements relating to extradition, it was clearly much more difficult to achieve such results by means of a multilateral agreement open for the accession of a large number of States whose traditions and principles of public law in regard to the repression of political offences differed so widely.

In order to achieve such a multilateral agreement, the text of the convention should be fairly elastic and above all States should not be required to go further than was called for by the international campaign against terrorism. The Committee should encroach as little as possible upon the complex and shifting field of controversy in the matter of political offences and the right of asylum, and should avoid any kind of conflict with the almost universally admitted principle of non-intervention by another State in the punishment of purely political offences.

In consequence, the somewhat pessimistic points of view expressed by certain delegates, in particular, by those of the United Kingdom [1] and Switzerland,[2] should be examined in the light of those brief observations.

The primary necessity was that every country should be in a position, through its national laws, to carry on an effective campaign against terrorism, while at the same time co-operating in international action for the prevention and punishment of that scourge by means of the Conventions to which it was a party.

The statements made by Sir John Fischer Williams had afforded all the necessary assurances in regard to the United Kingdom, even though the methods of the latter were different from those contemplated in the draft Convention. The Conference would therefore have to consider solutions which took into account the special difficulties of certain countries in the matter of the amendment of existing laws.

M. Pella was glad to note that all the other speakers had been in favour of the principles underlying the first draft Convention.

The most important point arising out of the remarks made by the delegates of the United Kingdom, Norway[3], the Netherlands[4] and Switzerland was of course the question of extradition. In that connection, the delegate of Poland, M. Komarnicki,[5] had expressed a point of view with which, theoretically, everyone was bound to agree—namely, that there should be complete equality, in that field, between the various contracting parties as regards the obligations undertaken by them. If it were possible in all cases to make a precise distinction between a political offence and an act of terrorism, the principle of *aut dedere aut punire* should obviously be taken as the sole and unvarying basis of international co-operation in regard to extradition. M. Pella recalled that certain Governments were in favour of that principle and that he personally regarded it as the only one which could in every case ensure the effective repression of acts of terrorism. Unfortunately, its adoption would involve such considerable changes in the criminal law and practice of various countries that, while affirming the desirability and moral value of such a principle, they would have to be satisfied for the present (as M. Basdevant had remarked) [6] with more modest solutions commanding more general acceptance. M. Pella therefore fully appreciated the misgivings expressed by the delegates of the United Kingdom, Norway, the Netherlands and Switzerland.

At the time when it discussed the draft texts, the Conference would have to consider to what extent the draft Convention affected the liberty of States to decide, in each particular case, whether the terrorist aspect of the extraditable act outweighed its political aspect or *vice versa*. M. Pella himself anticipated that the discussion on that point would show clearly that the liberty of States was in no way affected.

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[1] See page 52.
[2] See page 61.
[3] See page 54.
[4] See page 55.
[5] See page 56.
[6] See page 59.

Turning to the proposal for the creation of an International Criminal Court, M. Pella noted that reservations of principle had been made in that connection by certain delegates. Others, on the contrary, had declared their readiness to support, or had at least expressed sympathy with, the principles underlying the scheme for setting up an International Criminal Court. Even those delegates who did not propose to sign the Convention for the Creation of an International Criminal Court were not opposed to the adoption of such a Convention by the present Conference.

In the first place, M. Pella recalled that the United Kingdom delegate, after stating the reasons which made it impossible for His Majesty's Government to accept the principle of the Court, had said that His Majesty's Government had no desire to hamper or impede the creation of such a Court by the action of those States which viewed its institution with favour, so long as the Court had no organic connection with the League.[1] The delegate of Hungary also had stated that, while Hungary was opposed to the creation of such a Court, it did not intend to do anything to prevent its creation.[2] On the contrary, the Hungarian delegation would continue to offer its co-operation, as it had already done in the Committee or Experts—M. Pella was glad of the opportunity to pay a sincere tribute to its work on that Committee—in the legal drafting of the text. Statements to a similar effect, of which he took grateful note, had been made by the delegates of Switzerland, Poland and Venezuela.[3]

M. Pella had no intention of repeating all the arguments which had been used for and against the creation of an International Criminal Court. His own scientific work, as also certain action taken by him in the same connection seventeen years previously, were on record to show how prominent a place the conception of the court had occupied in his life and thought; that being so, he could not refuse to abandon the cold and serene heights of objective study in order to defend with all the energy at his command ideas upon which he set so high a value and which constituted for him the faith of a lifetime.

For that reason, M. Pella accepted the arguments developed with so much perspicuity by M. Basdevant, M. van Hamel, M. Koukal [4] and M. Sasserath, and he further agreed with what had been said in favour of the Court by M. Jiménez de Asúa.[5] It only remained for him to clear up certain misunderstandings.

In the first place, the Court, as conceived in the draft Convention, conflicted with no principle whatsoever.

Countries which were not attracted by the idea—it was really a question of feeling rather than of principle—were free not to take part in it; and the judicial operation of the Court was conceived in such a manner that their legal position would not be affected thereby.

On the other hand, countries which accepted the Court, did not in any way renounce the principle of the competence of their national courts, or even that of the priority in competence enjoyed by the latter. There was no derogation of their right to have individuals guilty of terrorist acts tried by the national courts or to extradite them, as the case might be. Such countries could therefore entrust the repression of terrorism to an International Court in the exercise of their full and complete sovereignty, even interpreting the idea of sovereignty in the absolute and unrestricted sense which had obtained in former days. No one, moreover, could prevent a country from handing over for trial to such a Court offenders who had committed acts of terrorism on its territory or had taken refuge there. To dispute the right of a State to act thus would be an infringement of its sovereignty.

As to the assertion made by certain speakers that no analogy could be established between the Permanent Court of International Justice and the Criminal Court, M. Pella agreed that no such analogy was conceivable as things were at present.

The Permanent Court of International Justice applied international law, which, when no general or special international conventions existed laying down rules recognised by the contending States, was unfortunately ill-defined, being based on international custom, general legal principles, judicial decisions and the doctrine of the most competent publicists of the different nations.

On the other hand, the Criminal Court—that was its special merit—would be applying specific and clearly defined penal legislation, with which every delinquent might be presumed to be acquainted.

M. Pella agreed also that it was out of the question that the International Criminal Court should have the same organic links with the League of Nations as the Permanent Court of International Justice. The organic links between the Permanent Court and the League were determined in the first place by provisions of the Covenant, of which there was no question in the case of the International Criminal Court. There was no suggestion of amending the Covenant in order to create an organic link between the proposed new Court and the League of Nations.

Certain delegates—the representative of Haiti in particular [6]—had objected that, in many cases, the evidence would no longer be available and that the International Criminal Court could not administer justice under the same conditions as a national court. But every State was free to decide upon its own course of action : it might try the individual itself, or extradite him, or hand him over to the International Criminal Court. In the case, for example, of an individual who had sought refuge in Haiti and whose extradition was applied for by the Netherlands, the proofs of evidence would be no fresher if the individual were extradited to the Netherlands as a country, than if he were sent before the Criminal Court whose seat was in Netherlands territory. It would therefore have to be decided in each particular case whether it was desirable to refer the case to the International Criminal Court.

[1] See page 54.
[2] See page 55.
[3] See pages 61, 57 and 64.
[4] See page 60.
[5] See page 63.
[6] See page 56.

M. Pella would venture to reply to the observations of the Argentine delegate made at the present meeting, at the time when the Conference was examining the texts; but he could give some information at once concerning one objection submitted by M. Ruíz Guiñazú—namely, if the Convention for the repression of terrorism worked satisfactorily, the delinquent would either be extradited or would be tried by the national court of the State in whose territory he happened to be, and the punishment would be adequate. But M. Pella pointed out that the ideal was sometimes far removed from the reality. It must not be forgotten that no hard and fast line could in every case be drawn between terrorism and political crimes. Supposing that an individual who had committed an act of terrorism in country X, where the dominant political doctrine was different from that of country Y, took refuge in the last-named country and that country X applied for extradition. Country Y might find it difficult to grant extradition because, in the opinion of its judges, the offence had certain political aspects. The constitution of country Y might even prohibit extradition for political offences. True, if there were any doubt as to the political nature of the offence, country Y could—if its legislation allowed it to do so—bring the offenders before its own courts. In many countries, such questions were decided by the jury.

But those very motives, those very imponderabilia, which had led country Y to refuse extradition might also lead its jury or its courts to acquit the individual in question.

Moreover, it must not be forgotten that, according to universally admitted principles, in the event of acquittal even by the competent courts, a country could not disclaim responsibility. Thus, extradition was impossible, because the Constitution forbade it; and, in the event of acquittal, the country was still responsible from an international point of view. What then was the solution? Only one solution remained—namely, to refer the case to the International Criminal Court.

M. Pella mentioned certain examples and added that countless similar cases could be adduced. True, the Court would be in the nature of an innovation, but potentially its scope of action was very wide.

In conclusion, he agreed with the argument put forward by certain speakers that the Court would have very few cases to try, and he trusted that that argument would prove to be well founded, for he would prefer to see an International Criminal Court with no cases at all to try, rather than to see serious disputes arise between States either because extradition was refused or because the sentences imposed by the national courts were inadequate or because such courts acquitted the offenders. In view of these arguments, therefore, he fully agreed with the observations made by certain Governments in their replies to the League—namely, that [1] " the establishment of an International Criminal Court meets the double requirements of ensuring impartial justice in specially delicate cases and covering the responsibility of the State whose courts would have to try crimes of this kind ". The proposed Court might extend its jurisdiction at some not too distant date, by means of protocols signed by the States, to other offences of an international character forming the subject of special inter-State conventions already concluded or which might be concluded hereafter.

M. Pella ventured to hope that, with the technical assistance even of the representatives of those States which were unable for the moment to agree to the idea of the Court, it might be possible for the Conference to create an institution which would completely fulfil the moral and juridical aspirations of mankind.

The PRESIDENT pronounced the general discussion closed.

FIFTH MEETING.

Held on Wednesday, November 3rd, 1937, at 10.45 a.m.

President : Count CARTON DE WIART.

13. Question of the Participation in the Work of the Conference of the International Criminal Police Commission : Communication by the President.

The PRESIDENT informed the Conference that the Bureau had received an unofficial communication from the International Criminal Police Commission offering to participate in the work of the Conference on the technical side, which interested it more particularly. Subject to the approval of the Conference, the Bureau was of the opinion that the Commission should be informed that, if it thought fit to send a representative to participate in the work of the Conference, the latter would welcome his assistance in an advisory capacity. The President proposed that the Conference should follow the Bureau's advice.

The Bureau's proposal was adopted.

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[1] Document C.184.M.102.1935.V, page 23.

14. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937).

The PRESIDENT invited the Conference to begin its examination at a first reading, of the text of the draft Convention prepared by the Committee for the International Repression of Terrorism at its third session (1937).[1]

TITLE OF THE CONVENTION.

The PRESIDENT thought that, before examining Article 1, the Conference should discuss the title of the Convention. The present title was " Convention for the Prevention and Punishment of Terrorism ". That did not quite correspond with the title of the Committee for the International Repression of Terrorism, which had prepared the work of the Conference. The title proposed embodied the ideas of prevention and punishment. The Conference would have to consider whether that really conveyed the purport of the Convention.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thought that the idea of prevention corresponded exactly, not only to the spirit, but to the letter of the Convention. Article 1 provided for co-operation between the contracting parties for the prevention and punishment of acts of terrorism. Articles 13, 14 and 15 and the articles following referred both to the perpetration of such acts and to their preparation. The title now proposed would thus appear to be quite in keeping with the Convention and with the object of the Conference.

M. KOUKAL (Czechoslovakia) questioned whether that was the moment to discuss the title of the Convention. It would be preferable to decide first as to its contents. Certain acts mentioned in the present draft were not regarded as coming within the category of terrorist acts. The title would thus seem to be incomplete. The exact title had better be left over until a later stage in the discussion.

M. PARRA-PÉREZ (Venezuela) agreed with the Czechoslovak delegate. He suggested, however, that the title might be adopted provisionally, subject to revision, if necessary, when the examination of the text of the Convention was sufficiently advanced. He wished to say at once, however, that in his view the word " *international* " ought to appear in the title. It appeared already in the title of the Committee of Experts. The Convention might perhaps be entitled : " *Convention for the International Prevention and Repression of Terrorism* ".

M. GIVANOVITCH (Yugoslavia) thought that the title of the Convention ought to reflect both the idea of prevention and that of repression. He was not quite sure, however, about the order in which those two ideas should be mentioned. The primary and essential purpose of the Convention was the repression of terrorism, and it was only Articles 14 and 15 that dealt with prevention. Seeing, however, that prevention was more important than repression, it ought perhaps to be mentioned first. In any case, the final title should be held over until the second reading.

M. PELLA (Roumania), Rapporteur, thought that the final title could not be decided yet, since it would depend on the substance of the Convention.

As the Czechoslovak delegate had quite rightly pointed out, certain provisions of the draft did not directly refer to terrorism. But those provisions—the provisions, for instance, concerning forged passports—had been introduced with a view to the prevention of terrorism, and were thus connected—indirectly, if not directly—with it.

Replying to the suggestion put forward by the delegate of Venezuela, M. Pella observed that the formula " international prevention and repression " implied repression carried out, as it were, " internationally ". That, however, was not the position, since, under the terms of the Convention, repression would be carried out by the national authorities and, even though the International Criminal Court might be called upon to give judgment in certain cases, the execution of the sentence would always be entrusted to a national authority. There might therefore be some misunderstanding on that point.

He suggested, accordingly, that the title of the Convention should be provisionally adopted, on the understanding that it might be re-examined at the second reading of the draft.

M. HIRSCHFELD (Union of Soviet Socialist Republics) agreed to the title being regarded as provisional, but suggested that it might be amended to include the idea of " *international terrorism* ", which was very important.

The PRESIDENT said he gathered that the Conference did not wish to take a final decision at the moment; he proposed that the title of the Convention be left over till the second reading.

The President's proposal was adopted.

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[1] For the text of the draft Convention, see Annex 3, page 186.

ARTICLE 1.

1. Acts of terrorism within the meaning of the present Convention are criminal acts which are directed against a State and which are intended or calculated to create a state of terror among individuals, groups of persons or the general public.

2. The object of the present Convention is to ensure co-operation between the High Contracting Parties for the prevention and punishment of such acts when they are of an international character, it being the duty of States to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State.

The PRESIDENT pointed out the direct connection between Article 1 and the Assembly resolution of 1936,[1] whose provisions he recalled, explaining the difference between the text of Article 1 in the draft now submitted to the Conference and the text originally framed by the Committee of Experts at its first two sessions.[2]

AMENDMENTS TO ARTICLE 1.

Amendment proposed by the Belgian Delegation.[3]

To delete, in paragraph 1, the words " *among individuals, groups of persons or the general public* ", and to add, after the words " *to create* ", the words " *or have the effect of creating* ".

M. SASSERATH (Belgium) pointed out that paragraph 1 of Article 1, defining acts of terrorism within the meaning of the Convention, was a fundamental provision. All the members of the Conference would, he thought, agree that it was essential it should appear at the beginning of the Convention. It was important that Article 1 should define the idea dealt with in the succeeding provisions. The first paragraph appeared to fulfil that purpose, by specifying that acts of terrorism were " criminal acts which are directed against a State ". That important point ought to be brought out. The Belgian delegation proposed, however, that the idea reflected in the words " are intended or calculated to create " should be supplemented by the further notion embodied in the phrase " have the effect of creating ", since it might be possible to commit an act which, though not intended to create a state of terror, produced that effect.

The Belgian delegation also proposed the deletion, at the end of paragraph 1, of the words " among individuals, groups of persons or the general public ". It proposed the deletion of those words on the ground that the existence of a state of terror was a question of fact which need not be defined in the Convention. Moreover, the list given in the present draft was not a very happy way of defining the general purpose in view.

Amendment proposed by the Polish Delegation.[3]

To add, in paragraph 2, after the words " *international character* ", the following words : " *owing to the circumstances of their preparation or their accomplishment, or to the nationality of the persons involved in them or of the victims or to the place to which those persons have escaped* ".

M. BEKERMAN (Poland) said that the purpose of the amendment was to stress the international character of the acts mentioned in Article 1. The present text was vague and might lend itself to different interpretations. It might, for instance, be argued that acts of terrorism were not of an international character unless the acts themselves were international. But, in the view both of the 1936 Assembly and of the Committee of Experts, the international character of terrorist acts might be attributable to other elements; and it was those elements that the Polish amendment proposed to introduce into Article 1. If the provisions of paragraph 2 of that article were not clearly defined, as the Polish delegation proposed, disputes might arise in consequence.

Texts proposed by the Yugoslav Delegation.[3]

M. GIVANOVITCH (Yugoslavia) said, as regards the definition of terrorism in Article 1, that it should embody both the objective and subjective elements characterising terrorism. The Yugoslav delegation desired to submit the following observations on Articles 2, 3, 12 and 13, defining the

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[1] See Annex 1, page 183.

[2] *First draft* (see document C.184.M.102.1935.V, page 4) :

" *Article* 1.

" The purpose of the present Convention is to ensure international co-operation for the prevention and punishment of crimes which, by their character of violence or by creating a public danger or a state of terror, are of a nature to cause a change in or impediment to the operation of the public authorities or services of the High Contracting Parties or to disturb international relations."

Second draft (see document A.7.1936.V (L.o.N. P. 1936.V.2), page 3 :

" *Article* 1.

" The purpose of the present Convention is to ensure international co-operation for the prevention and punishment of terrorism."

[3] Document Conf. R.T.4.

various kinds of terrorism and hence the acts of terrorism which should come within the definition given in Article 1 :

In the first place, there should be some definition of the subjective element required to constitute a " terrorist crime ". The articles of the draft Convention to which he had just referred showed that the necessary subjective element was the intention though not necessarily accompanied by any particular motive. That element should accordingly be mentioned in Article 1. The word " terrorist " should also be defined, either separately or together with " terrorism ".

Secondly, with regard to the words " criminal acts which are directed against a State ", in paragraph 1 of Article 1, those acts, in the view of the Yugoslav delegation, were not specified in sufficient detail in the remainder of the paragraph, and should be made to include acts prejudicial to the honour of the State.

Thirdly, the Yugoslav delegation asked that the words " which are intended " in paragraph 1 of Article 1 should be replaced by the expression " which tend " or " which are designed ".

M. Givanovitch also objected to the use of the words " create a state of terror among " in paragraph 1 of Article 1, and proposed the substitution of the word " terrify " or " intimidate ".

Lastly—to come to the Yugoslav delegation's main criticism—the conception of terrorism conveyed by the text seemed quite inadequate.

To sum up, M. Givanovitch proposed that terrorism should be defined in one of two ways : the first, or objective definition might read as follows :

> *" Acts of terrorism, within the meaning of the present Convention, are criminal acts which are aimed, directly or indirectly, against a State, in respect of its security or of the maintenance of public order, and which, by their nature or object, have a capability of terrorising (individuals, groups of persons or the general public) which is utilised by the authors of the acts as a means of injuring the said interests of the State ".*

The subjective definition proposed was as follows :

> *" A person is guilty of terrorism within the meaning of the present Convention who intentionally commits a criminal act which is aimed, directly or indirectly, against a State, in respect of its security or the maintenance of public order, and which, by its nature or object, possesses a capability of intimidating (individuals, groups of persons or the general public) which is utilised by the author of the act as a means of injuring the said interests of the State."*

Those proposals were not formal proposals for amendment but were simply intended as suggestions for the Drafting Committee in amending the text of paragraph 1 of Article 1.

General Discussion on the Text of Article 1 and the Amendments thereto.

M. Polychroniadis (Greece) said that the terms of the second paragraph of Article 1 seemed almost contradictory. The obligation incumbent upon the contracting parties to co-operate in the prevention and punishment of acts of terrorism of an international character did not ensue from the duty of States to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State. The drafting of the paragraph was imperfect and should be amended.

The President asked whether the Greek delegation wished to translate its comments into the shape of a formal amendment.

M. Polychroniadis (Greece) said that it should be made clear that the elementary obligation entered into by States was to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State, and that the obligation imposed on the contracting parties to co-operate for the prevention and punishment of terrorist acts did not ensue from the first-named obligation.

M. Pella (Roumania), Rapporteur, agreed with the delegate of Greece that two ideas entirely independent of one another were embodied in the same text. The objection just raised was particularly apposite as regards the end of paragraph 2. The obligation to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State was a fundamental principle which ought to be embodied in a separate paragraph, to allow of the principle being postulated at the beginning of the Convention. He suggested, since the observation of the delegate of Greece referred to a question of form, that it should be held over until the Drafting Committee came to deal with the final text of Article 1.

The Rapporteur's proposal was adopted.

M. Sebestyén (Hungary) submitted a general observation with a view to elucidating the position in regard to Article 1. It appeared from the amendments and from the suggestions put forward during the discussion that Article 1 did not contain provisions embodying any obligations properly so-called for States, but was rather in the nature of a statement of principle. He suggested accordingly that the Conference should consider whether it might not be desirable to draw up a preamble stating the position in international law with regard to the obligation incumbent on States not to intervene in the affairs of other States, and declaring that it was the

duty of States to co-operate in the prevention and punishment of certain acts. The position in international law and the duty to which he had referred could be enunciated in greater detail in a preamble than in an article of the Convention.

M. VAN HAMEL (Netherlands) reminded the Conference that the Netherlands Government, in its observations on the first draft Convention,[1] had pointed out that the intention was what counted in penal law and had stressed the fact that, in defining terrorist acts, it was necessary to lay stress on the deliberate nature of such acts. Accordingly, the Netherlands Government had been in favour of substituting for the idea of being " directed to " certain objects the idea of being " intended to " produce certain effects. The expression " directed to ", appearing in the second draft prepared by the Committee of Experts (Article 2),[2] had been deleted in the third draft Convention, but had been replaced by the words " calculated to ", which did not stress the idea of deliberate intention so clearly. He suggested that it might be preferable simply to revert to the words " *intended to* ".

As the question of a preamble had been raised, M. van Hamel would suggest at once embodying in the preamble the provisions of Article 11 dealing with the duties incumbent on the contracting parties. Those provisions were too elastic, and they might appear less inacceptable if they were put in the preamble.

M. PELLA (Roumania), Rapporteur, referring to M. Sebestyén's proposal, said that, even before discussing Article 1, he wished to urge the necessity for a preamble. Nevertheless, a preamble was not on the same footing as the text of a Convention; it had not the same legal force. M. Sebestyén had proposed that certain points in connection with the definition of terrorism should be relegated to the preamble. Article 1, however, served as a basis for the whole Convention. Articles 2 and 3 and subsequent articles became applicable only if the acts specified—for example, in Article 2— were also subject to the conditions mentioned in Article 1. For example, in the case of a wilful act directed against the life of a person exercising the prerogatives of head of the State, the Convention would be applicable only if the act in question were covered by Article 1, in other words, if the object of the act were to create a state of terror, or its character were such as to create that state, and if it were directed in the last analysis against the State itself. Such stipulations as these, therefore, could not possibly be transferred from Article 1 to the preamble.

M. Sebestyén had also suggested that the general obligation incumbent on all States to abstain from any act designed to encourage terrorist activities might be included in the preamble. M. Pella could not support that suggestion either. The Polish delegation's proposal was designed to transform an obligation already operative under the unwritten rules of international law into a positive prescription of that law. If that were really its intention, the obligation should be made binding by inclusion in the text of the Convention. To leave it as a more or less platonic declaration in a preamble, was not enough. For that reason, while M. Pella agreed with M. Sebestyén that a preamble was necessary, he thought that the provisions of Article 1 should not be included in it. In his view, they should figure, subject to such modifications of form as might be thought desirable, in the text of the Convention.

Turning to M. van Hamel's remark, the Rapporteur fully appreciated that the absence of any reference in Article 1 to the wilful nature of the act might suggest that the authors of the Convention had wished also to penalise—in certain cases—unintentional acts. In order to fall within the meaning of the present Convention, a terrorist act would require to be covered by Article 2 as well; that article specified in very precise language that such acts must be wilfully performed. In other words, only wilful acts were covered, and Article 2 contained an express statement to that effect. Such acts must also come within the meaning of Article 1, by being intended, or calculated, to create a state of terror among individuals, groups of persons or the general public, and by being directed against a State. No discussion therefore was possible in regard to Article 1. An act of terrorism, by its very nature, was a wilful act.

Since the Conference was now approaching the substance of the problem, M. van Hamel had laid stress on the question of the purpose of such acts. But, when they spoke of " purpose ", it was no longer a question of " wilful intent " but of what criminal law called " motive ". According to the Convention, terrorist acts must be wilful acts and at the same time must be committed with the intention of creating a state of terror among individuals, groups of persons or the general public. The draft also allowed for a further hypothesis : it might happen that an act was not committed with the intention of creating a state of terror, yet that it was of such a nature to arouse terror. Clearly, even in that case, the act would have to be wilful and to be directed against a State. M. van Hamel wished that second possibility to disappear.

To adopt M. van Hamel's view would be, M. Pella believed, to narrow the scope of the Convention. He agreed with M. van Hamel that in no case could a terrorist act be treated as criminal, when wilful intention was lacking. He hoped that his explanations would give full satisfaction to the delegate of the Netherlands. But if some doubt were still felt as to the need for an element of wilful intent in any terrorist act falling within the scope of the Convention, he would suggest that any additional clarification required should be introduced when Article 2 of the draft Convention was under discussion.

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[1] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 10.
[2] Document A.7.1936.V (Ser. L.o.N. P. 1936.V.2), page 3.

M. SEBESTYÉN (Hungary) explained that he had never proposed to transfer paragraph 1 of Article 1 to the preamble, since it obviously constituted an essential provision of the Convention and should figure at the head of the latter. He was fully in agreement with the Rapporteur on that point. His suggestion referred only to that part of the Convention which did not contain legal provisions in the strict sense of the term.

M. GARDA (San Marino), referring to the end of paragraph 2, thought it should be specified whether the words " of another State " referred to a contracting party or to any other State. Since the Convention would not be signed by all Governments, a clear indication should be given as to whether the obligations assumed by the contracting parties were to be applied *vis-à-vis* all Governments or only the other contracting parties.

M. STOYKOVITCH (Yugoslavia), referring to M. Polychroniadis' argument that paragraph 2 of Article 1 contained a contradiction, said that the existing rules of common international law obliged States to prevent and punish international terrorism, and that paragraph 2 of Article 1 imposed no new obligation : it merely stated the existing obligation in more precise terms, the purpose of the Convention being to lay down the technical rules for such collaboration and to codify the rules of common international law.

As to the point raised by M. Garda, which was closely related to the previous question, in M. Stoykovitch's opinion, the words " another State " included all States whether contracting parties or not, since the end of paragraph 2 of Article 1 referred to an existing rule of international law which was binding upon all countries.

M. PELLA (Roumania), Rapporteur, said that M. Garda had raised a very important point. Although it was clear that the provisions of the Convention were only binding upon the contracting parties, it could not be gainsaid that the last part of paragraph 2 of Article 1 had a much wider application.

In declaring the duty of States to be " to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State ", this passage merely reaffirmed an obligation which was universally recognised in unwritten international law, and which therefore possessed universal application. This obligation, indeed, went even further, and M. Pella would, in due course, suggest an addition to the text.

A State was not only bound itself to refrain from any act designed to encourage terrorist activities; it was also bound to prevent the committing of such acts on its own territory. That obligation rested upon all States, whether parties to the Convention or not.

M. Pella thanked M. Garda for having given him an opportunity of explaining the matter, and expressed his entire agreement with the view just advanced by M. Stoykovitch.

As regards means for the prevention or punishment of terrorist acts, States might be divided into two categories.

States not parties to the Convention had, in accordance with the general obligation imposed upon them by unwritten international law, to take all measures deemed by them to be appropriate for preventing or punishing acts of terrorism directed against another State. Where proof was forthcoming that they had encouraged such acts, or even refrained from preventing them, the responsibility would rest with those States, according to the general principles of international law.

The obligations of States parties to the Convention were more explicit, since the Convention obliged them, on the one hand, to take appropriate steps for the prevention or punishment of terrorism and, on the other, to collaborate with the other contracting parties—following the rules laid down in the Convention—to ensure such prevention and punishment.

It followed, therefore, that the steps to be taken under the Convention were compulsory for a contracting party only when the terrorist acts were directed against another contracting party.

In conclusion, the Rapporteur expressed the view that, in any event, M. Polychroniadis' observation would have to be borne in mind; for, as M. Pella had already pointed out, that observation called for the preparation of a general clause to be inserted at the outset of Article 1 of the Convention. The clause would reaffirm the general principle of international law, binding upon all countries, that States must refrain from encouraging terrorist acts directed against another State, and must also prevent such acts. The later articles of the Convention, which were only binding upon the contracting parties, would then appear as the logical consequence of the general principle of international law reaffirmed in Article 1.

The PRESIDENT, summing up the discussion, proposed to refer the Greek delegate's remarks to the Drafting Committee, the latter to redraft Article 1 in such a form as to make it the duty of States not only to abstain from all action calculated to favour terrorist activities against another State, but also, as the 1936 Assembly had proposed, to prevent the preparation and execution on their territory of terrorist crimes directed against the life and liberty of persons charged with public functions or holding public positions abroad.

The President's proposal was adopted.

DETAILED EXAMINATION OF ARTICLE 1, PARAGRAPH 1, AND THE AMENDMENTS THERETO.

Amendment proposed by the Belgian Delegation[1] (continuation).

The PRESIDENT asked the Conference to take a decision on the amendment proposed by the Belgian delegation.

In reply to a question by the Rapporteur, M. SASSERATH (Belgium) said that the phrase " among individuals, groups of persons or the general public " which he proposed to omit from paragraph 1 did not make the idea any clearer, and might lead in practice to regrettable controversies. He recalled that, in criminal law, the more detailed the rule, the greater the risk that it would give rise to controversies the object of which was to evade its application. It would be much better to use a concise expression, such as " a state of terror ", which was at once sufficiently precise and at the same time indicative of what the Conference had in mind. Any amplification of the term was bound to provoke endless discussion when the Convention came to be applied.

M. CHATELAIN (Haiti), while fully in agreement with the Belgian proposal, to add after the words " to create " the words " or have the effect of creating ", wished to propose a formal modification thereof—namely, that the text should read : " *the intention, nature or result of which is to create a state of terror* ".

M. SASSERATH (Belgium) agreed to the proposed modification.

The PRESIDENT invited the Conference to take a decision as to the omission of the words " among individuals, groups of persons or the general public ".

M. HIRSCHFELD (Union of Soviet Socialist Republics) preferred to retain the words in question. He recalled that the text of paragraph 1 had been discussed at length in the Committee of Experts and that the majority had been in favour of retaining the phrase under discussion.

M. SEBESTYÉN (Hungary) said that a definition of terrorism was a delicate matter, and the Conference was bound to lay itself open to criticism in the matter. The definition adopted by the Committee of Experts was not very scientific in character, and might even be said to beg the question. The more it was simplified, the more illogical it appeared. While he admitted that the words " among individuals, etc. " added little to the substance of the article, he though that, if they were omitted, something would have to be put in their place which did not show up too conspicuously the illogical nature of the definition. The point might be referred to the Drafting Committee.

M. PELLA (Roumania), Rapporteur, said that there was a shade of difference in the meaning. An earlier text considered by the Committee had referred to acts designed to create terror among duly specified persons—namely, persons who, by reason of their position, exercised an influence over the affairs of the State. Later, the Committee had substituted for those specified persons the word " individuals ". Logically, M. Sebestyén was right in saying that the text ought to be more explicit, since otherwise the definition of the idea would simply depend on the term employed. It would be preferable, therefore, to revert to the idea of " *duly specified persons* ", which would justify the scope of the text.

M. BEKERMAN (Poland) was not satisfied with the definition in Article 1. It defined acts of terrorism as acts intended or calculated to create a state of terror, and made no mention of violence, which was the essential feature of terror. There was another characteristic feature of terror—namely, the power to spread panic among the general public. M. Bekerman thought, therefore, that as no better definition of terrorist acts had been found than that appearing in the third draft of the Convention now under discussion, the definition should be kept as it stood, since the reference to individuals, groups of persons and the general public was characteristic of a state of terror.

Sir John Fischer WILLIAMS (United Kindom) supported the Polish delegate's remarks.

He pointed out that the English text spoke of " a state of terror ", whereas the French text merely referred to " la terreur ". A state of terror generally implied something rather widespread among the public; it was certainly an advantage, in the English version, to insist on the fact that it might be confined to certain individuals, such as the Head of the Government or Cabinet. It was important, at any rate in the English text, to retain the mention of individuals, in order to emphasise the fact that a state of terror might be created, not necessarily in the public at large or in a considerable mass of people, but in definite individuals whose policy it was intended to affect.

The PRESIDENT enquired whether the delegate of Belgium would agree to substitute the expression " *certain persons* " for the word " *individuals* ", in view of the observations which had been submitted and the necessity of bringing the English and French texts into harmony.

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[1] For the text of the Belgian amendment, see page 71.

M. SASSERATH (Belgium) did not think that the formula proposed would meet the objection he had raised when he had proposed the deletion of the words immediately following the word " terror ". He pointed out, in the first place, to the Hungarian delegate that Article 1 was not intended simply to give a definition—which would indeed be begging the question and might be ironically interpreted. The purport of Article 1 was quite different : it was to the effect that acts of terrorism, within the meaning of the Convention, were in the first place criminal acts directed against a State. That was one point. Secondly, the terror or state of terror must have been deliberately aimed at by the person guilty of the act in question. Accordingly, first the purpose of the act and then its nature were indicated. M. Sasserath proposed the addition of a third feature—namely, that the act should have the effect of creating terror. The expression " criminal acts which are directed against a State and which are intended or calculated to create or have the effect of creating a state of terror " appeared to be the most satisfactory way of expressing what was wanted—for no one had yet found an ideal formula. If anything else were added after the word " terror ", the result would be that some loophole would be sought, in each particular case, whenever such an act had been committed. A reference in the Convention to a state of terror being created among certain persons, would give rise to discussions as to who those persons were. A reference in the Convention to the general public would give rise to the question where a state of terror among the general public began or ended. A reference to groups of persons would give rise to the same questions. The discussions on all those various points might prove interminable. Whereas, if the text simply said that, for an act to come within the scope of the Convention, it must be a terrorist act—that was to say, an act the purpose, nature and effect of which created a state of terror—it would be possible, in each individual case, to see whether the act in question did come within the scope of the Convention, and the latter would thus achieve its maximum effect.

The continuation of the examination of Article 1, *paragraph* 1, *and of the amendments thereto was adjourned to the following meeting.*

SIXTH MEETING.

Held on Wednesday, November 3rd, 1937, *at* 3.30 *p.m.*

President : Count CARTON DE WIART.

15. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937) [1] (continuation).

ARTICLE 1 (continuation).

DETAILED EXAMINATION OF ARTICLE 1, PARAGRAPH 1, AND THE AMENDMENTS THERETO *(continuation).*

Amendment proposed by the Belgian Delegation [2] (continuation).

The PRESIDENT reminded the Conference that it had before it a Belgian proposal to suppress the words " among individuals, groups of persons or the general public "; that amendment had been discussed and had encountered certain objections, on the part of the United Kingdom delegation in particular.[3] He enquired whether the delegate of Belgium wished to maintain his amendment.

M. SASSERATH (Belgium) explained that the proposals which he had submitted reflected his personal views. In his opinion, those various additions and deletions were of value. Since, however, they were not likely to improve the draft Convention very appreciably, and since, moreover, his proposal had met with objections from such an important delegation as that of the United Kingdom, M. Sasserath was quite prepared to withdraw the amendment.

The PRESIDENT reminded the Conference that it had to consider a proposal made by the Rapporteur to substitute for the word " individuals " the words " duly specified persons ".[3]

M. JIMÉNEZ DE ASÚA (Spain) said that he personally was in favour of the proposal of the Belgian delegate, but that, as the latter had just withdrawn it, he would not pursue the matter. Seeing that that amendment had not been accepted, it was preferable to leave the text as it stood.

M. MENTES (Turkey) thought that the expression " duly specified persons " was better; it would improve and complete the text.

M. PELLA (Roumania), Rapporteur, recalled that the expression " duly specified persons " had been used in an earlier text considered by the experts. It was to be preferred from the point

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[1] For the text of the draft Convention, see Annex 3, page 186.
[2] For the text of the Belgian amendment, see page 71.
[3] See page 75.

of view of form. In order to appreciate the reasons for inserting the list in the draft, it would be necessary to be familiar with the point of view expressed by the United Kingdom delegate; but the reader of the convention who was not familiar with the work of the Committee of Jurists would find the expression " duly specified persons " easier to understand.

Sir Denys BRAY (India) said that the English text " to create a state of terror among individuals " necessarily implied that the state of terror must extend beyond one individual to two or three. He suggested that the meaning the Conference really wished to convey was that of a state of terror in a person or group of persons.

The PRESIDENT said that the Indian delegate's remark applied also to the French text. It must be made quite clear whether it was intended to cover acts calculated to create a state of terror in a given person.

M. VAN HAMEL (Netherlands) thought that the very idea of terrorism implied indefinite plurality. Over-individualisation would lead away from the idea of terrorism. He added, however, that that was merely a suggestion, to which he did not attach very great importance.

M. van Hamel thanked the Rapporteur for his explanations given at the last meeting[1] concerning the phrase : " acts . . . which are calculated . . . ". He understood that the emphasis was on the manifest nature of the act—that was to say, the intention; that point was brought out if the French text were compared with the English text, which read " intended or calculated ". M. van Hamel was quite satisfied on that point. He observed that the use of the expression " have the effect of " proposed by the Belgian delegate would create difficulties for the criminologists. The effect might be accidental, which was precisely what the criminologists wished to avoid. For that reason, M. van Hamel asked the Belgian delegate not to insist on that point in his proposal.

M. SASSERATH (Belgium) said that he agreed with the Netherlands delegate.

The PRESIDENT understood that the Conference was in favour of the expression " duly specified persons ", a formula which would cover even the hypothesis mentioned by the delegate of India.

The Conference accepted provisionally the formula " duly specified persons ".

Texts proposed by the Yugoslav Delegation[2] (continuation).

M. PELLA (Roumania), Rapporteur, noted that the Yugoslav delegation had proposed two formulæ : the first objective and the second subjective. He would refer for the moment to the second. If asked for his opinion as a professor of criminal law, he would be prepared to accept that formula enthusiastically; it was very scientific. He pointed out, however, that the Convention would be read, not only by professors of law, but also by the general public. Only a learned brain would understand the full scope and subtlety of the formula suggested by the Yugoslav delegate.

That formula did, however, offer very interesting indications as to how the text could be made more precise and complete.

In the first place, the Yugoslav delegate had pointed out the desirability of defining what was meant by " criminal acts which are directed against a State ". His intention was to amend the somewhat general character of that formula by specifying that what was meant was criminal acts directed against the safety and public order of the State.

Again, the Yugoslav delegate had suggested defining the notion of terrorism by using the expression " which, by its nature or object, possesses a capability of intimidating ". There was obviously a shade of difference between the meaning of that phrase and the meaning of the phrase " calculated to create a state of terror " used in the text of the draft. While the expression proposed by the Yugoslav delegate might not be considered quite adequate by certain delegations, it did contain a suggestion which might offer a means of solving the difficulties in regard to the definition of terrorism.

M. GIVANOVITCH (Yugoslavia) said that the Rapporteur had interpreted his views quite correctly. With the idea of completing the text, the Yugoslav delegation had simply wished to make a suggestion first with regard to the object of criminal acts directed against a State and, secondly, with regard to the necessity of defining the mode of terrorism, in order, if possible, to avoid begging the question in the definition.

The PRESIDENT thought that it might be possible to adopt the interesting idea embodied in the Yugoslav proposal. The formula " criminal acts which are directed against a State " had been criticised. It would make the text clearer and improve it, if the phrase " criminal acts directed against a Sate in respect of its safety or the maintenance of public order " were adopted, as the Yugoslav delegate had suggested.

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[1] See page 73.

[2] For the texts proposed by the Yugoslav delegation, see page 72.

M. PELLA (Roumania), Rapporteur, saw no objection to adopting the formula proposed by the Yugoslav delegate. That addition, which would impart a more directly legal character to the text, would simply bring Article 1 and Article 2 more closely into harmony. He would, however, be glad to know the views of other delegations on that point.

M. KOUKAL (Czechoslovakia) pointed out a shade of difference in the meaning of the text proposed by the Yugoslav delegate and the experts' draft. The latter was based upon reciprocity between the contracting parties. The Yugoslav formula was wider and extended the scope of action of the Convention.

The PRESIDENT said that the question of reciprocity was brought up in Articles 2 and 3. Article 1 was confined to a declaration of principle. It did not seem necessary to mention the idea of reciprocity in Article 1.

M. KOUKAL (Czechoslovakia) said that the idea of reciprocity would be found in the amendment just submitted by the Czechoslovak delegation[1] in the reference to Articles 2 and 3.

M. BASDEVANT (France) questioned whether the addition proposed by the Yugoslav delegation would clarify the text very appreciably. In order to determine that point, it was necessary to consider the general structure of the texts and the relationship between Article 1 and Article 2. Under Article 2, the contracting parties undertook to make a whole series of acts criminal offences under their domestic legislation if such acts constituted acts of terrorism within the meaning of Article 1. Apart from that, those same acts were covered by the penal legislation of the country; the Convention did not deal with them. Accordingly, Article 1 would not be improved by the insertion of a complete and adequate definition of terrorist crimes. Article 1 might, moreover, conceivably be treated as part of Article 2. The object of Article 1 was to exclude from the scope of the Convention acts enumerated in Article 2 and not included within the scope of Article 1. The difficulty lay in the fact that the word " terrorism " had to be explained by the use of the word " terror ". An attempt had been made to find some other solution, but a different expression, such as " épouvante " or " intimidation ", conveyed the idea that was wanted no better than the word " terror ".

There was the further point that the acts covered by the Convention must be international in character.

Such was the structure of the draft : Article 1 did not claim to give a complete definition of acts of terrorism.

That being so, was it advisable to add the phrase mentioning " safety and public order "? If the terrorist act were committed within the territory of the State against which it was perpetrated, it was clear that it was directed against public order in that country. But the only terrorist acts with which the Convention was concerned were those committed in one State and directed against another State; that was the essential idea of the Convention. Since that was so, it would have to be considered whether an act committed in France, for example, and directed against Portugal, necessarily affected safety and public order in Portugal. M. Basdevant was not quite sure about that : it would depend upon the particular case. Supposing, for instance, that Portuguese nationals resident in France were in the habit of meeting on a sports ground, and that certain individuals, in order to act against Portugal, disturbed such meetings systematically by attacks directed, for example, against human life; could it be said that such acts were connected in any way with safety or public order in Portugal? Public order in France would be affected, but that was quite a different matter.

For these reasons, M. Basdevant was reluctant to accept the proposed addition. The Conference should not be too ambitious. It should be satisfied with the simpler formula in the experts' text. That formula might perhaps be open to criticism : there was something of naïveté in the attempt to define terrorism by terror : but, if it were desired to make a change, the Conference should not adopt a formula which, while satisfactory in theory, would be ill-adapted to the real object of the Convention.

M. PELLA (Roumania), Rapporteur, had no wish to enter into a legal controversy on the point with M. Basdevant; but he wished nevertheless to draw attention to what was meant by " public order " : any criminal offence was an offence against public order. In that connection, there was a difference between international law and municipal law. Under municipal law, even when private interests had to be protected by the imposition of a penalty, the purpose of the penalty was always the defence of public order in the general sense of the term.

The example given by M. Basdevant did not seem to M. Pella to be relevant. If an act committed in France did not in any way affect public order in Portugal, it would not come under the Convention. It was not necessary to provide in an international Convention for acts which were only directed against the public order of the country in which they were committed. Moreover, the term " criminal act " necessarily implied an act calculated to disturb public order. If M. Basdevant could give him a single example of a criminal act directed against a State which would not be directed either against public order or against the safety of that State, M. Pella would say no more.

M. BASDEVANT (France) recalled that he had just said that a crime always affected the public order of the country in which it was committed. It was therefore impossible for him to give an example. If it were admitted that a criminal act directed against a country always affected the public order of that country, he failed to see what would be added by the proposed text.

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[1] For the text of the Czechoslovak amendment, see page 80.

The PRESIDENT was of opinion that the addition suggested by M. Givanovitch would not change the meaning, and that M. Basdevant was right in thinking it superfluous.

The question remained whether it was not necessary to expand somewhat the first paragraph of Article 1 and, if so, whether the new wording would not be open to the objection already raised by certain delegates that the formula employed in the text might be understood to refer solely to acts directed against the State itself. As had been pointed out, if someone threw a grenade against a sentry-box or a police station, that could not be described as an act directed against the State.

The Conference had before it two suggestions : that of M. Basdevant, who proposed a more concise wording, and that of M. Givanovitch, whose wording was rather longer but had the merit of making the paragraph clearer. There was no divergence of principle : it was simply a matter of drafting.

M. VAN HAMEL (Netherlands) thought it would be difficult for the Conference, at that stage, to vote for radical changes in a draft drawn up, after three readings, by the Committee of Experts. On the other hand, he had great admiration for the ideas underlying the Yugoslav proposal. Perhaps the more explicit text proposed by M. Givanovitch could be inserted in the report, to serve as an explanation and a basis of interpretation of the Convention.

The PRESIDENT said that everyone had the greatest respect for the text drawn up by the Committee of Experts; but there was no reason to consider it sacrosanct. If the Conference had been sufficiently enlightened by the discussion, it might now vote on the proposed amendment, and take up the point again, if necessary, at the second reading.

M. DELAQUIS (Switzerland) pointed out that the term " public order " was not very clear, and that its meaning was not the same in international and in criminal law. In France, the terminology was the same in both cases; but in German, while the French expression " ordre public " was used in international law, in criminal law the expression used was " öffentliche Ordnung ". It was not correct to say that all offences were necessarily directed against what the Germans called " öffentliche Ordnung ", since the codes provided for a special category of offences, described as " Verbrechen gegen die öffentliche Ordnung ".

So far as criminal law was concerned, M. Givanovitch was right : but the introduction of the words " public order " would make the text ambiguous, which in its present form it was not.

M. KOUKAL (Czechoslovakia) observed that the definition of terrorism in the first paragraph of Article 1 was a general definition which had no connection with the later provisions of the Convention. Would it not meet the difficulty to insert a reference to the concrete provisions in the following articles? The Czechoslovak delegation had based its proposed amendment on M. Sasserath's amendment, not thinking that the latter would subsequently be withdrawn. But, given a reference to the concrete provisions of the following articles, the wording " criminal acts directed against a State " would be sufficient.

M. JIMÉNEZ DE ASÚA (Spain) fully agreed with M. Delaquis. The Spanish Penal Code contained a chapter dealing with offences against public order in the strict sense of the term— that was to say, offences of an essentially political nature. For that reason, he would vote against any reference to public order. If the Czechoslovak proposal to insert in Article 1 a reference to Articles 2 and 3 were accepted, he was prepared to accept the wording : " criminal acts directed against a State ".

M. PELLA (Roumania), Rapporteur, thought it was very difficult for the Conference to take a decision there and then. On the one hand, it had before it a Czechoslovak amendment which had the advantage of getting round the difficulty by a reference to Articles 2 and 3, and on the other, M. Givanovitch's suggestion with the explanatory comments of M. Delaquis. He might point out that even the penalisation of offences against private interests was determined by the requirements of the public interest, which indeed constituted the justification of the penalty.

In view of the difficulty with which the Conference was faced, he proposed to refer the Yugoslav and Czechoslovak amendments to the Drafting Committee.

M. HIRSCHFELD (Union of Soviet Socialist Republics) could not accept the Yugoslav amendment, which enlarged the scope of the Convention and introduced conceptions foreign to its object. He was in favour of leaving the text as it stood or of inserting the text proposed by the Czechoslovak delegation. He could also agree to M. van Hamel's suggestion to embody in the report the ideas expressed in the Yugoslav proposal.

M. GIVANOVITCH (Yugoslavia) observed that the terms " safety " and " public order " were also to be found in the second paragraph of the text proposed by the experts. The French Penal Code used the expression " sûreté extérieure et intérieure de l'Etat ". If that was what was meant, it would have been better to use the same expression.

M. SASSERATH (Belgium) thought it was simpler to refer the amendments to the Rapporteur rather than to the Drafting Committee. The Rapporteur was in a better position to find the most satisfactory formula.

M. BEKERMAN (Poland) thought it would serve no useful purpose to refer the matter to the Rapporteur or the Drafting Committee. It was preferable to take a decision at once . All the Rapporteur could do was to submit two texts, between which the Conference would have to choose, and it would then be confronted with the same difficulty.

M. Bekerman did not think it possible to introduce the expression " public order ", which, as had already been seen, had three or four different meanings in different connections. M. Delaquis had just given one example. The Spanish delegate had quoted the case of the Spanish Code. The Polish Code, for its part, distinguished between criminal acts directed against the State on the one hand and criminal acts directed against public order on the other. But the expression " criminal acts directed against the State " was not used in the text of the draft Convention in the sense it had in national penal codes. The reference was rather to the relation between acts of terrorism and the vital interests of the State, to the exclusion of acts aimed directly against private interests.

M. HIRSCHFELD (Union of Soviet Socialist Republics) agreed with M. Bekerman that there was no point in referring the text to the Drafting Committee or to the Rapporteur. The Conference must decide for one or other of the two solutions, leaving it to the Drafting Committee to find a wording embodying the Conference's decision. It was not for the Drafting Committee to decide between the two texts.

M. PELLA (Roumania), Rapporteur, was grateful to M. Bekerman and M. Hirschfeld for relieving him of a very delicate duty. Since it was not possible to come to an agreement on the basis of the formula proposed by M. Givanovitch, the Rapporteur proposed to retain the text of the first paragraph as it appeared in the experts' draft. On the other hand, if M. Givanovitch had no objection, M. Pella would like to adopt M. van Hamel's suggestion and embody in the report the ideas contained in the Yugoslav proposal. Should there be no final report, the mere reading of the Minutes would suffice to show the scope of the text of paragraph 1, taking into account the very interesting observations made by the Yugoslav delegate.

M. GIVANOVITCH (Yugoslavia) accepted M. Pella's proposal. As he had already stated when submitting his text, his only aim was to make suggestions. He was in the hands of the Drafting Committee.

The Rapporteur's proposal was adopted.

AMENDED TEXT OF ARTICLE 1 PROPOSED BY THE CZECHOSLOVAK DELEGATION.[1]

To replace Article 1 by the following text :

1. *Acts of terrorism within the meaning of the present Convention are criminal acts which are dealt with below in Articles 2 and 3 of the Convention and which are directed against a State and are intended or are calculated to create or have the effect of creating a state of terror.*

2. *The High Contracting Parties in their relations with one another recognise that they have under the general rules of international law the duty to refrain from any act designed to encourage terrorist activities against the safety and public order of another State. They accordingly assume towards one another the obligation to prevent and punish all the terrorist activities dealt with in the present Convention.*

M. KOUKAL (Czechoslovakia) explained that the Czechoslovak delegation had embodied in its text all the amendments submitted by the other delegations. As the Belgian delegation had withdrawn its amendment, however, the words " or have the effect of creating " could be omitted in the text of the Czechoslovak amendment.

M. JIMÉNEZ DE ASÚA (Spain) thought that it would be well to give, if not a definition, at all events an objective description, of terrorism. He did not think that a definition should appear in the preamble, as that would raise the question of the value of the preamble in the interpretation of the Convention. No definition could ever hope to be perfect. Nor indeed was a definition absolutely necessary, seeing that the purpose of the Convention was to confer an international character on acts which were known to all criminologists. Again, it would be difficult to avoid tautology in any definition of terrorism.

He welcomed the Czechoslovak amendment proposing the insertion in Article 1 of a reference to Articles 2 and 3. If, however, it were decided to leave the text of Article 1 as it stood, it would be preferable to invert the order of the two paragraphs.

M. PELLA (Roumania), Rapporteur, said the Czechoslovak amendment had many merits. One difficulty, nevertheless, arose from the fact that the international character of the acts covered by the Convention was indicated in other articles besides Articles 2 and 3—in particular, in connection with extradition.

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[1] Document Conf. R.T.4*(a)*.

The PRESIDENT reminded the Conference that it had been decided to substitute the words " duly specified persons " for the word " individuals " in the experts' text.[1] The Czechoslovak amendment would conflict with that decision.

M. STOYKOVITCH (Yugoslavia) observed that the Czechoslovak amendment raised a technical difficulty, inasmuch as Article 2 itself contained a reference to Article 1. There was therefore a vicious circle, since Article 1 referred to Article 2 for the definition of the aims of the Convention, and Article 2 contained a similar reference to the previous article.

The PRESIDENT recognised that this was a serious objection. He proposed to consider the present text of paragraph 1 as adopted at a first reading. It would always be possible for the Conference to revert to it later, after considering Article 2.

The President's proposal was adopted.

SEVENTH MEETING.

Held on Thursday, November 4th, 1937, at 10.30 a.m.

President : Count CARTON DE WIART.

16. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937)[2] (continuation).

ARTICLE 1 (continuation).

DETAILED EXAMINATION OF ARTICLE 1, PARAGRAPH 2, AND THE AMENDMENTS THERETO.

The PRESIDENT recalled that the Polish delegation had proposed an amendment to Article 1, paragraph 2,[3] with the object of emphasising the international character of the acts of terrorism which the Convention was designed to prevent and punish by its provisions for co-operation between States. The Czechoslovak delegation had also submitted an amendment to the same paragraph [4] which reproduced to some extent the Greek delegate's suggestion [5] that a clear statement should be included, in accordance with the Assembly resolution of 1936,[6] as to the obligation of States to refrain from interference in the political life of other States and to prevent the preparation and execution of terrorist crimes directed against other States. Since it had been decided, at the fifth meeting, to refer the Greek delegation's suggestion to the Drafting Committee, the President proposed to do the same with the Czechoslovak amendment, and to begin with the discussion of the Polish amendment.

The President's proposal was adopted.

Amendment proposed by the Polish Delegation[3] (continuation).

M. BEKERMAN (Poland) recalled the arguments he had advanced, in submitting his amendment at the fifth meeting,[7] in order to show that, since the international character of the acts of terrorism to which the Convention was intended to apply was postulated in Article 1, paragraph 2, it was necessary to define what was meant by that international character.

The PRESIDENT recalled that the Committee of Experts had taken the view that Article 1 ought to be couched in general terms, to serve as an introduction to the Convention. The Polish amendment was of great interest, as it indicated the qualifications which gave an international character to acts of terrorism : but the Conference would have to consider, first, whether the Polish list of qualifications was a comprehensive one and, secondly, whether it was not calculated to overload paragraph 2, to which there were already amendments submitted by the Greek and Czechoslovak delegations. The President pointed out that paragraph 2 could not be expected to say everything that was to be said.

M. SEBESTYÉN (Hungary) accepted the idea on which the Polish amendment was based—namely, that the international character of the acts to be punished should be clearly defined—

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[1] See page 77.
[2] For the text of the draft Convention, see Annex 3, page 186.
[3] For the text of the Polish amendment, see page 71.
[4] For the text of the Czechoslovak amendment, see page 80.
[5] See page 72.
[6] See page 183.
[7] See page 71.

but he doubted whether the amendment as it stood was as clear as its authors would like. Taken in conjunction with the articles of the Convention relating to the international character of specific acts of terrorism, it tended to confuse the issue. For example, under the Polish amendment, the nationality of the authors of acts of terrorism was a factor in determining the international character of the act. Article 2, on the other hand, did not take the factor of the offender's nationality into account. What gave an act of terrorism an international character under Article 2 was the fact of its being directed against another State. Further inconsistencies could be pointed out. The Polish amendment would therefore have to be more precisely worded. It might possibly meet the Polish delegation's objection to say in paragraph 2 of Article 1, that such acts must be prevented and punished " when they are of an international character *within the meaning of Articles, etc.*".

With reference to the Czechoslovak amendment, M. Sebestyén recalled that, at the fifth meeting,[1] he had pointed out that the passage in Article 1 relating to the duty of States to refrain from interference in the political life of another State was not drafted in the form of a provision of the Convention. Hence his suggestion that the obligation in question should be included in a preamble. M. Sebestyén noted that the Czechoslovak amendment, which was drafted in a legally binding form, could quite well be included in the text of the Convention itself; it imposed on States the obligation not to interfere in the affairs of other States. That provision was logical; and he was ready to support it, subject to the requisite revision of the text by the Drafting Committee.

The Spanish delegate's suggestion that the order of the two paragraphs of Article 1 should be reversed[2] deserved attention. It might well be referred to the Drafting Committee.

M. Givanovitch (Yugoslavia) thought it was very difficult to define the international character of a criminal act; for that reason he could not support the Polish amendment. Any list of qualifying clauses was bound to be incomplete; it was better to leave it to the legal practice of each country to establish the international character of the criminal acts to be punished. M. Givanovitch pointed out that the international character of a criminal act was determined by two factors : the international status of the person or property attacked, and the means by which the attack was effected. On the other hand, the terrorist's place of refuge could not, in his opinion, have any bearing on the international character of his crime, since his extradition could be demanded. In a word, M. Givanovitch did not think it advisable to attempt to specify in the text of the Convention the criteria by which to determine the international character of the acts concerned.

M. Bekerman (Poland) insisted that, as the international character of acts of terrorism was postulated in the Convention, it was essential to define what was meant by that international character. If the list of qualifications given in the Polish amendment was incomplete, it could be supplemented in accordance with such suggestions as the Conference might put forward. On the other hand, if paragraph 2 were amended in the sense proposed by the Czechoslovak delegation, the definition of the international character of the acts concerned might be given in paragraph 1. M. Bekerman wished to insist on the necessity of clearly indicating in the Convention itself whether the international character was inherent in the act itself or dependent upon circumstances to be determined.

The President proposed, in the light of M. Bekerman's intimation that his list of qualifications was open to completion, to refer the Polish amendment to the Drafting Committee, as had already been done with the Greek and Czechoslovak amendments.

M. van Hamel (Netherlands) said that, while he appreciated the idea behind the Polish amendment, he would prefer to see it put in more general language. The Conference was drawing up an international Convention, not a penal code or a contract. Governments should therefore be left free to decide for themselves as to the international character of the acts covered by the Convention. Subject to that reservation, M. van Hamel would not oppose the reference of the Polish amendment to the Drafting Committee.

M. Bekerman (Poland) was willing for his amendment to be referred to the Drafting Committee.

Replying to the Netherlands delegate, he observed that the Convention which the Conference was called upon to draw up constituted a contract, and as such it should say clearly what was meant by the international character of the acts which the contracting parties were to undertake to prevent and punish.

The President proposed to refer paragraph 2 to the Drafting Committee, together with the Polish, Czechoslovak and Greek amendments and the suggestion made by the Netherlands delegate.

The President's proposal was adopted.

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[1] See page 72.
[2] See page 80.

For the information of the Drafting Committee, the PRESIDENT remarked that the discussion had shown the Conference to be in favour of Article 1 being left in general terms. It was intended as an introduction to the Convention, and ought not to go into details. Its provisions should not be too meticulous, since no list could include all the acts of terrorism which it was intended to cover.

ARTICLE 2.

Each of the High Contracting Parties should make the following acts committed on its own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any act intended to cause death or grievous bodily harm or loss of liberty to ;

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

(2) Wilful destruction of or damage to public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

(3) Any wilful act calculated to endanger the lives of members of the public.

(4) The manufacture, obtaining, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

(5) Any attempt to commit any of the acts falling within the present article.

AMENDMENTS TO ARTICLE 2.

Amendment proposed by the Belgian Delegation.[1]

In the introductory paragraph :

Add, after the words " *the High Contracting Parties should* ", the words " *if this is not already the case* ".

Suppress the words " *and if they constitute acts of terrorism within the meaning of Article* 1 ".

Amendment proposed by the Czechoslovak Delegation.[2]

Replace the introductory paragraph by the following text :

Each High Contracting Party should make the following acts committed on his territory criminal offences if they are directed against another High Contracting Party and satisfy the conditions laid down in paragraph 1 *of the preceding article.*

M. PELLA (Roumania), Rapporteur, said that the Czechoslovak amendment was a logical consequence of the same delegation's amendment [3] to Article 1. Discussion of the amendment to Article 2 might therefore be posponed until the Drafting Committee had taken a decision in regard to Article 1.

M. Pella accepted the Belgian amendment. He pointed out that Roumanian criminal law already covered all the acts referred to in Article 2. The Belgian proposal to add " if this is not already the case " after the word " should " did not affect the scope of Article 2. The proposal was perfectly sound, and he felt sure the Conference would see its way to accepting it.

M. SASSERATH (Belgium) said there was no need to dwell further on the first Belgian amendment, which the Rapporteur had so fully justified. Moreover, M. Sasserath believed that all the delegations were willing to accept it.

Turning to the second Belgian amendment, he pointed out that the various acts covered by Article 2 constituted ordinary criminal offences, so that to say, as the present text did, " if they constitute acts of terrorism within the meaning of Article 1 ", was to narrow the conception of an ordinary criminal offence. It was for that reason that the Belgian delegation proposed to omit the phrase. However, certain delegates had since pointed out to him that the Conference was not concerned with ordinary criminal offences except in so far as they were of a terrorist character, and had expressed a desire to retain the phrase used in Article 2. That being so, M. Sasserath would withdraw his amendment.

M. BEKERMAN (Poland) had no objection to the first Belgian amendment, which was quite a reasonable one, although, in his view, the statement it contained was self-evident, and therefore served no purpose.

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[1] Document Conf. R.T.5.
[2] Document Conf. R.T.5*(a)*.
[3] See page 80.

Passing next to point (4) of Article 2, M. Bekerman laid stress upon the importance of that provision. He observed, however, that the question of arms and ammunition was also partially covered by Article 12. Admittedly, some of the problems to which Articles 2 and 12 referred were treated from a different standpoint in the two articles; but in any case Article 12 was incomplete and required redrafting. It did not mention, for example, the manufacture of arms. The penalties which it prescribed related only to acts regarded as offences in themselves. If Article 12 were completed, point (4) of Article 2 might be unnecessary. Point (4) of Article 2 was purely subjective. It penalised only such acts as came within the category of offences the purpose of which brought them within the scope of the Convention. But experience showed how difficult it was to establish " purpose ". It might be preferable to treat the acts in question as offences in themselves. The acts specified in point (4) of Article 2 were preparatory acts and, as such, did not come under the criminal codes of most countries unless they were associated with major crimes. Moreover, the obligations incurred by the contracting parties under point (4) would necessitate the revision of their penal codes—a considerable undertaking for States which had only recently achieved such a revision. Such States might find it difficult on that account to adopt the Convention.

If the subjective character of the acts specified in point (4) were maintained, the contracting parties would be assuming an obligation which might well prove too onerous. Since the Convention already covered preparatory offences in connection with false passports and the purchase and carrying of arms, M. Bekerman proposed to treat the acts specified in point (4) as purely objective offences, and to incorporate them in Article 12.

In reply to the President, M. Koukal (Czechoslovakia) said his delegation was willing for its amendment to be referred to the Drafting Committee.

The Czechoslovak amendment was referred to the Drafting Committee.

The President asked if the Conference was prepared to adopt the first part of the Belgian amendment.

Sir John Fischer Williams (United Kingdom) was in favour of referring the amendment to the Drafting Committee for further consideration in the light of Article 23 and others.

The first part of the Belgian amendment was referred to the Drafting Committee.

The President, in answer to M. Bekerman's argument that point (4) was superfluous, pointed out that Article 12 covered neither the manufacture of arms nor the manufacture, purchase, etc., of harmful substances.

M. Bekerman (Poland) explained that he had not said that point (4) was superfluous. He had expressed the opinion that it overlapped to some extent with Article 12, and had suggested that the latter article needed to be completed.

He added that it would be very difficult to punish the acts specified in point (4) as at present stated. The acts in question belonged to a category of offences which it was most difficult to prove, because their motive had to be clearly established. The Conference should take that consideration into account, since it made prosecution difficult. To take an example, a man might obtain a permit from the competent authorities to buy a revolver with which to commit an act of terrorism. In that case, the purchase of the revolver was a punishable offence in virtue of point (4); but how was it possible to prosecute, if the criminal obtained the necessary authorisation to make the purchase in question?

M. Pella (Roumania), Rapporteur, thought the Polish proposal perfectly logical; but he doubted, in view of the difficulties encountered in connection with Article 12 by the Committee of Experts, whether the scope of that article could be widened. Grave objections had been raised in the Committee to much less far-reaching proposals for supplementing Article 12, owing to the difficulty which some countries would have in modifying their administrative regulations as to the carrying and possession of arms. However, if M. Bekerman felt that the obstacles encountered in the Committee of Experts could be surmounted at the Conference, M. Pella would suggest the adoption, at the first reading, of point (4) as it stood. Should the scope of Article 12 be subsequently expanded, the Conference could then reconsider point (4) in the light of the new text of Article 12.

M. Jiménez de Asúa (Spain) agreed with M. Bekerman. Article 12 was concerned with administrative regulations respecting arms, whereas point (4) of Article 2 related to acts committed in preparation of the offences covered by that article. Article 2 therefore covered the crime itself, preparatory acts and attempted crimes. That was too much for a single article. Why not put attempted crimes and preparatory acts in a special article? Article 2 would then stop at point (3); points (4) and (5) would form a separate article—Article 3. That regrouping was æsthetically preferable, since Article 2 would then relate only to actual offences, and the new Article 3 to attemped crimes and preparatory acts. The Convention stood to gain by the change.

M. Sasserath (Belgium) was against any change in points (4) and (5) of Article 2, or in Articles 12 and 13.

In connection with points (4) and (5), he pointed out that " the manufacture, obtaining or supplying of arms, ammunition, explosives or harmful substances, with a view to the commission

in any country whatsoever of an offence falling within the present article " was not necessarily or exclusively a preparatory act. It was part and parcel of the act of terrorism itself. An act of terrorism did not consist solely in the final act of violence; it comprised all the preliminaries and all the means used for the perpetration of the act as well.

In Article 12, on the contrary, the idea of terrorism as such did not appear. Article 12 sought to prevent preparatory acts by stipulating that " The carrying, possession and distribution of fire-arms . . . should be subjected to regulation, and it should be a punishable offence to transfer . . . them . . .", but it did not take into account whether or not an act of terrorism was involved.

Similarly, Article 13 laid down that " The following acts should be punishable : *(a)* Any fraudulent manufacture or alteration of passports or equivalent documents ", but did not apparently deal further with the conception of terrorism. The Committee of Experts had been perfectly logical in the matter. In Article 2, it specified the different crimes and offences for which legal provision was to be made, if not already made, by the different countries in connection with terrorism within the meaning of Article 1. The Committee went on, in Articles 12 and 13, to specify preventive measures to be taken in order, as far as possible, to remove the customary instruments of crime from the reach of criminals. It was obvious that the general regulation of the carrying, possession and distribution of fire-arms, and the introduction of severe legal penalties against the manufacture or alteration and circulation of passports, must go a long way to restrict the facilities of terrorists for the accomplishment of their crimes.

Under those circumstances, any change either in Article 2, or in Articles 12 and 13, would seriously upset the scheme of the Convention as a whole. M. Sasserath hoped therefore that the Conference would keep the articles as they stood.

M. Pella (Roumania), Rapporteur, thought that some explanations were necessary with regard to the questions raised by the delegate of Poland and the delegate of Spain.

As regards the first, he repeated what he had already said—namely, that, if substantial changes were made in Article 12, it would be necessary to see whether such amendments affected point (4) of Article 2. Clearly, if the scope of Article 12 were extended so as to go beyond the enunciation of a general rule, it might be maintained that, in certain cases, Article 12 would overlap with point (4) of Article 2. At present there was no overlapping, because the draft made certain preparatory acts punishable in the form of special offences. That recommendation was necessary, because many legislations did not make such preparatory acts punishable. Speaking generally, preparatory acts were punishable only in particularly serious instances, in the case of crimes directed against the safety of the State and other very serious crimes in which the prevention of preparation meant the prevention of the offence itself.

The Rapporteur felt accordingly that point (4) of Article 2 should be kept as it stood and that the question of amending it should only be discussed, if, as a result of the amendment of Article 12, there was found to be overlapping. M. Pella therefore asked the Polish delegate to accept point (4) as it stood for the moment, on the understanding that he would be free to revert to his proposal at the second reading if, as the result of extending the scope of Article 12, point (4) of Article 2 was found to overlap with the former article.

As regards the Spanish proposal, the force of the Spanish delegate's arguments would depend on the view taken by the Conference. Clearly, since in point (4) of Article 2, the manufacture, obtaining and supplying of arms, etc., with a view to acts of terrorism, were made special criminal offences, it was for the Conference to decide whether or not attempts to commit those special offences should also be made punishable. From the strictly legal standpoint, they were not really attempts to commit preparatory acts, but rather, seeing that the preparatory acts were punishable as special offences, the acts in question were really themselves in the nature of attempted offences. It was for the Conference then to decide whether it wished an attempt to commit such an offence to be punishable or not. In the latter case, the position was quite clear; it was simply a matter of inverting points (4) and (5) of Article 2 : the new point (4) would read " *Any attempt to commit any of the acts mentioned above* " and the present point (4) would become point (5). Every country would of course have the right under its national legislation to declare attempts to commit those special acts punishable or not as it thought fit.

Consequently, as regards the question raised by the Spanish delegate, the point to be decided was whether the Conference wished the contracting parties to enter into an obligation to punish attempts to commit the offences named in point (4) of Article 2, or whether it wished to leave the matter to be decided by the contracting parties themselves. A decision was required on that point. If the Conference accepted the Spanish delegation's view, all that was necessary was to invert the order of points (4) and (5).

M. Bekerman (Poland) accepted the Rapporteur's proposal concerning point (4). He pointed out, at the same time, that he had not intended to submit a formal amendment, but had simply wished to direct the Conference's attention to the connection between point (4) of Article 2 and Article 12.

The Spanish delegate's observation appeared to him quite justified. He noted, however, that if, as the Rapporteur suggested, acts preparatory to the perpetration of terrorist acts were regarded as special offences, difficulties would arise in the matter of the national legislation. It must not be forgotten that point (1) of Article 2 concerned intentional acts directed against the liberty of certain persons. If, therefore, point (4) of Article 2 were allowed to stand, it would be necessary, in anticipation of the act of obtaining a revolver with a view to an attack on the liberty of certain persons, to provide in the national legislation for a special offence relating either to the loss of liberty in general or to the loss of liberty of the persons mentioned in the Convention. Provisions would thus have to be introduced into the national legislations covering all the different aspects of the acts covered by the Convention. That obviously would lead to difficulties.

The PRESIDENT noted that the delegate of Spain had not submitted a formal amendment. Nevertheless, his observations could be met by inverting points (4) and (5) of Article 2. In that way, attempts would only be punishable if they referred to the acts previously enumerated.

The President therefore proposed *the inversion of points* (4) *and* (5) *of Article 2.*

M. JIMÉNEZ DE ASÚA (Spain) said that the inversion of points (4) and (5) was, in his view, a fundamental matter. It could not be said that the mere fact of making a preparatory act punishable meant that an attempt to commit that act could also be made punishable. But attempts could in fact be made punishable simply by inverting points (4) and (5).

M. SASSERATH (Belgium) suggested, in the interests of symmetry, that it would be better not to invert points (4) and (5) of Article 2, and proposed that point (5) should read : " *Any attempt to commit any of the acts falling within points* (1) *to* (3) *above* ". The various acts would thus follow in succession, and attempts to commit those acts would be mentioned later.

M. PELLA (Roumania), Rapporteur, thought that if the idea of the preparatory act in itself were considered of importance, it would be better to redraft the article accordingly, and to mention first the act of execution, then the attempt to commit that act, and then the preparatory act. It would thus be more logical to put point (5) before point (4).

He wished to refer more particularly to one aspect of the matter which did not call for any decision by the Conference but was of importance from the point of view of the modifications which the adoption of the present Convention would necessitate in the national legislations. If the Conference adopted point (4) concerning preparatory acts, the national legislator would have a choice between several methods of giving effect to that text. He might first adopt the following method : make punishable certain acts, mentioned in points (1), (2) and (3) of Article 2, and then provide in general terms that preparatory acts with a view to their execution should be punishable. In that case, it would not even be necessary to repeat the list in point (4). That was a question of method to be left to the sole judgment of the national legislator. Another legislator, on the other hand, might adopt a different system. He might declare that each preparatory act was a special offence, indicating the specific features of that offence.

The Rapporteur thought therefore that it should be made clear that the national legislator remained perfectly free to follow whatever method he thought fit to make the preparation of acts covered by the Convention a criminal offence—whether all preparatory acts as such were made punishable under the terms of a general formula or whether they were made punishable as special offences.

In any case, the Spanish delegate's proposal was not affected by the particular aspect to which the Rapporteur had just referred, and it would be for the Conference to say whether it was in favour of the contracting parties entering into a formal obligation to make attempted preparatory acts punishable offences or whether it preferred to leave that punishment to their discretion.

M. JIMÉNEZ DE ASÚA (Spain) said that the formula proposed by the Belgian delegate met with his entire approval.

The Conference decided to examine the Polish delegate's proposal concerning point (4) *after the adoption of Article* 12 *at a first reading.*

It further adopted the drafting of point (5) *suggested by the Belgian delegate.*

M. GIVANOVITCH (Yugoslavia), referring to point (4), asked why the word " possession " which had appeared in earlier texts of the draft Convention had been deleted in the present draft and replaced by the word " obtaining ", which was not the same thing.

M. PELLA (Roumania), Rapporteur, thought that it was necessary to make the possession of arms with a view to the perpetration of an act of terrorism a punishable offence.

The Conference decided to insert the word " possession " after the word " obtaining " in point (4).

Article 2 was referred to the Drafting Committee together with the proposals made during the discussion.

EIGHTH MEETING.

Held on Thursday, November 4th, 1937, at 3 p.m.

President : Count CARTON DE WIART.

17. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937) [1] (continuation).

ARTICLE 3.

1. Each of the High Contracting Parties should also make the following actions criminal offences when they are committed on his own territory with a view to acts of terrorism directed against another High Contracting Party, whatever the country in which the acts of terrorism are to be carried into execution :

(a) Any agreement to commit any of the acts mentioned in Article 2 (Nos. (1) to (4));
(b) Any direct public incitement, whether successful or not;
(c) Any successful private incitement;
(d) Any wilful complicity;
(e) Any help given towards the commission of such an act.

2. Acts of participation in the offences falling within the present Convention shall be treated as separate offences when the persons committing them can only be brought to trial in different countries.

AMENDMENT TO ARTICLE 3.

Amendment proposed by the Polish Delegation.[2]

In paragraph 1 *(a)* replace the word "*agreement*" by the word "*combination*".

PARAGRAPH 1.

M. PELLA (Roumania), Rapporteur, gave the Conference the following explanations with reference to the Polish amendment.

The Committee had often discussed the question dealt with in the amendment. The Polish delegation had submitted the same proposal in the Committee, which had not, however, accepted it. The Polish delegation had now submitted it again at the Conference.

He pointed out that if certain serious acts of a terrorist character were to be effectively prevented, it would be necessary not only to punish the preparatory act, but also the "agreement" to commit that act. To begin with, adopting the terminology employed in the French law against anarchist conspiracies, the Committee of Jurists had used the expression "conspiracy to commit an act of terrorism". That expression had not been approved by the Polish expert, and, after lengthy discussion, it had been decided to use the word "agreement". A conspiracy was of course something quite different from a "combination". The latter presupposed a concrete organisation and concrete forms of execution, whereas a conspiracy simply implied a decision arrived at by several persons to commit a given act.

Consequently, for the reasons which had led the French legislator to add the term "entente" ("conspiracy") to that of "association" ("combination"), and for the reasons for which the British legislator had adopted the word "conspiracy", which was wider in meaning than "combination", ("association"), the Rapporteur asked the Conference not to adopt the amendment.

M. SASSERATH (Belgium) thought it necessary, in any case, to retain the word "accord", or some synonym, such as "entente", which had the advantage of already appearing in several codes, and more particularly in certain French laws. The Conference might decide to add the word "association", which was different in meaning from "entente", and use the expression "association ou entente", which was also found in several recent French laws.

M. KOUKAL (Czechoslovakia) supported the proposal of the Belgian delegate, and quoted the precedent of the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, which contained a similar clause in paragraph *(c)* of Article 2.

M. PELLA (Roumania), Rapporteur, explained that, in the preliminary draft which he had submitted to the Committee, he had used the expression "asssociation ou entente". The Committee had deleted the word "association" on the ground that there could be no "association" without "entente". Personally, he could see no objection to reverting to the expression "association ou entente".

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[1] For the text of the draft Convention, see Annex 3, page 186.
[2] Document Conf. R.T.6.

M. CASSAGNAU (France) explained why the French legislator had thought it necessary to add the word " entente ". " Association " implied an organisation and leaders. When measures had had to be taken to repress anarchist conspiracies, difficulties had arisen from the fact that the anarchists claimed that they could not have either organisation or leaders. To cope with that objection, the idea of an " entente " had been introduced.

M. GIVANOVITCH (Yugoslavia) said that if the word " association " were to be inserted, it should be mentioned first, and then " entente ", since " association " was a more limited term and every " association " implied an " entente ".

M. BEKERMAN (Poland) explained that he had proposed the expression " association " because, in his view, it was more precise in meaning than the word " accord ". He had followed the French Penal Code, which referred in Article 265 to " associations de malfaiteurs ". As regards the English translation of the Polish proposal, he was not sufficiently conversant with English juridical terms to express an opinion as to the suitability of the term which had been used.

M. HIORTHÖY (Norway) said that the Norwegian delegation, while in agreement with the main principles of the draft Convention, considered that, as the Conference was covering new ground, it ought to proceed very cautiously. The Norwegian delegation was of opinion that the draft Convention was too far-reaching, in that it covered acts which, being of a less serious nature, ought not to come within the scope of the Convention. The Norwegian delegation, without wishing to submit any definite proposal, considered it preferable that the provisions of Article 3, concerning the different forms of participation, should refer only to sub-paragraphs (1), (2) and (3) of Article 2, and not to sub-paragraph (4), which related to preparatory acts.

At the same time, the Norwegian delegation desired to inform the Conference that it was of the opinion that the question how far preparatory acts should be punishable ought to be decided by the internal laws of the various countries.

M. PELLA (Roumania), Rapporteur, said that, as the Conference had decided, in connection with Article 2, not to regard attempts to commit preparatory acts as offences, it would hardly be possible, from a purely logical point of view, to treat as an offence the fact of " association ou entente " with the object of committing preparatory acts.

It might obviously be asserted that, as " association ou entente " was an act presupposing the joint action of several individuals, it was thus more dangerous than an individual act. The Conference must therefore decide whether, in view of the collective nature of the act, it should or should not punish " agreement " (" entente ") to commit preparatory acts.

M. GIVANOVITCH (Yugoslavia) thought that the phrase " Nos. (1) to (4) " in paragraph 1 *(a)* of Article 3 should be retained.

The PRESIDENT pointed out that the decision taken at the morning meeting concerning the last paragraph of Article 2 [1] was an argument in favour of the Norwegian proposal.

M. GIVANOVITCH (Yugoslavia) regretted that he had not been present at the discussion.

M. PELLA (Roumania), Rapporteur, understood the Yugoslav delegate's idea to be that, in the case of an " entente " or " association " the act was more serious in character because it was collective. It would be going too far to suggest the punishment of attempted acts in the case of individual preparatory acts, whereas collective acts for the purpose of preparing a terrorist crime ought to be punished. If the Conference accepted the Yugoslav delegate's views, it would be necessary to scrutinise the various points in Article 3, and to retain or exclude, in the case of each of them, the reference to sub-paragraph (4) of Article 2, according to whether the acts in question were individual or collective. If that method were followed, Article 3 would be brought into harmony both with the decision taken regarding Article 2 and with the Norwegian proposal.

M. HIRSCHFELD (Union of Soviet Socialist Republics), supported the Yugoslav delegate's suggestion on that point. Reverting to the question of the use of the term " association " or " entente ", he expressed the opinion that the Conference should decide in favour either of a more general term or of a more precise term such as the Polish delegate had suggested. It was not logical to combine in a single expression the general idea of an " entente " and the narrower idea of an " association ", the latter being simply a particular kind of " entente ". The Conference must decide on one or other of those terms. Personally, M. Hirschfeld preferred the word " entente ".

Sir John Fischer WILLIAMS (United Kingdom) said that so far as the English text was concerned the United Kingdom delegation thought that it would be best to use the word " conspiracy ", which was stronger than " entente ".

M. PELLA (Roumania), Rapporteur, quoted the precedent of the 1936 Convention for the suppression of the Illicit Traffic in Dangerous Drugs: Article 2 of that Convention used the expression

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[1] See page 86.

" l'association ou l'entente " in the French text and the word " conspiracy " as its equivalent in the English text. The conclusion was that the authors of the 1936 Convention had been of opinion that the word " conspiracy " alone was sufficient to convey the idea embodied in the expression " association ou entente ".

The PRESIDENT said that the Conference had to come to a decision on two questions. The first was whether it should employ the expression " association ou entente " or the word " entente " alone. The second was whether, on the basis of the Yugoslav delegate's suggestion in conjunction with the Norwegian proposal, a distinction should be made, in sub-paragraphs *(a)* to *(e)* of Article 3 of the draft Convention, between individual acts and collective acts.

M. PELLA (Roumania), Rapporteur, thought, as regards the second point, that the Conference should simply take a decision of principle, leaving the Drafting Committee to frame the text if the Conference decided to accept the Norwegian proposal in conjunction with the Yugoslav delegate's suggestion. The Drafting Committee would also frame a special text concerning preparatory acts, to meet the views of the delegate of Spain.

M. DELAQUIS (Switzerland) said that he had not quite grasped the scope of the Rapporteur's proposal. He supported the Norwegian proposal to delete in paragraph 1 *(a)* of Article 3 the reference to sub-paragraph (4) of Article 2, but he did not see why a collective act should be treated differently from an individual act. If the Convention was not to cover attempts representing the first stages of execution, it was illogical that it should be made to cover " ententes " which were not followed by the first stages of execution.

M. PELLA (Roumania), Rapporteur, said that, if the delegate of Switzerland would descend from the realms of pure logic and draw on his long experience in the matter of administrative and police researches, he would agree that it was frequently necessary to punish " entente " or " association " to commit preparatory acts. It should not be forgotten that the preparation and execution of acts of terrorism might extend over the territory of several States and that it might, in many cases, be impossible effectively to prevent acts of terrorism without punishing the agreement (entente) to commit such preparatory acts. There was no doubt, moreover, that a collective act presupposing agreement between several individuals was far more serious than an individual act. No penal law existed which punished a simple individual decision to commit a crime, but collective decisions in the form of " ententes " or " associations " to commit a crime were often punishable. It would be a mistake if, as a result of an apparent lack of logic, the provisions adopted left many terrorist activities untouched by the Convention.

The Rapporteur ventured accordingly to insist again on his proposal that the matter should be referred to the Drafting Committee, together with the Spanish delegate's proposal concerning preparatory acts. He warned the Conference against taking hasty decisions which might tend to weaken the Convention. He was afraid, indeed, that that had already been done.

In conclusion, M. Pella said he was unable to accept the Polish proposal that the word " accord " should be replaced by " association ", without the addition of the word " entente ". He proposed that the Conference should accept the text he had submitted to the Committee of Jurists at the outset, which made " association " or " entente " a punishable offence.

The Conference decided to substitute provisionally the expression "association ou entente " *for* " l'accord " *in the French text of paragraph* 1 (a) *of Article* 3 *and to refer the Norwegian proposal and the Yugoslav delegate's suggestion to the Drafting Committee, in accordance with the Rapporteur's proposal.*

M. BASDEVANT (France) wished to lay before the Conference certain points which had occurred to him since the last meeting of the Committee of Experts, concerning paragraph 1 *(c)* of Article 3. He felt that it might be going rather too far to make provision in an international convention for successful private incitement. He was aware that the law in several countries made that act a punishable offence. He did not wish to criticise those laws, but was afraid that certain legislators might hesitate to adopt the same procedure. It might perhaps be preferable to leave the question to the national legislation of each State.

M. PELLA (Roumania), Rapporteur, said that every legislation in the world made private incitement a punishable offence if it was successful; it was simply the expression " instigation " (incitement) which was new. Most systems of law used the term " provocation " instead of " instigation " and made " provocation " of a non-public nature by means of gifts, threats, abuse of authority and so forth a punishable offence if successful. That was the idea conveyed by the expression "private incitement " as opposed to public incitement, which latter was punishable whether successful or not. In M. Pella's opinion, failure to make provision for successful private incitement would constitute a serious omission, particularly in view of the fact that the law of certain countries went even farther and punished such private incitement even when it was unsuccessful.

M. GIVANOVITCH (Yugoslavia) agreed with the Rapporteur. All legislations, he said, made the acts which it was intended to cover in paragraph 1 *(c)* punishable offences. As regards terminology, it would be preferable to substitute for the term " private incitement " the term " incitement ", in contrast to public incitement. If that terminology were adopted, it would be necessary to invert the order of sub-paragraphs *(b)* and *(c)* of paragraph 1 and to mention, first, incitement pure and simple, and then direct public incitement.

M. PELLA (Roumania), Rapporteur, reminded the Conference that the original French proposals [1] had also referred to public incitement to commit acts of terrorism and to the defence of such acts. He pointed out also that, if public incitement, even though unsuccessful, were made a punishable offence, then there was even more reason to punish successful private incitement, which was a far more serious act.

M. BASDEVANT (France) did not think that it was right to refer now to the French suggestions which had been submitted three years before and had simply been in the nature of a programme. The Rapporteur's instructive explanations had, nevertheless, left some doubt in his mind. The Rapporteur had said that all the legislations made private incitement a punishable offence and had given examples which corresponded to the idea of " qualified provocation ", since reference was made to the means employed. Those examples did not, however, cover every case. If someone, for instance, in the course of a private conversation, simply by means of his eloquence, persuaded another person to commit a crime, that was a case of private incitement but not of qualified provocation. If M. Basdevant could have some additional information on that point, he would feel reassured as to the usefulness of the provision now under discussion.

M. JIMÉNEZ DE ASÚA (Spain) said that he was in agreement with the Rapporteur, but wondered whether the word " private " might not create difficulties for those who were not jurists. *He proposed to keep the word " incitement, " to delete the word " private " and to invert the order of sub-paragraphs* (b) *and* (c) *in paragraph* 1. There would thus be no possibility of doubt, as everyone knew what was meant by " incitement ".

M. SASSERATH (Belgium) agreed with the Rapporteur. As regards terminology, he suggested using the word " *provocation* ", which was found in several codes. It was advisable, in his opinion, to avoid departing from the general terminology, at all events as far as possible.

Sir John Fischer WILLIAMS (United Kingdom) supported M. Basdevant's suggestion, largely on practical grounds. He thought that the mention of private incitement would make the Convention more difficult to accept, because it had an air of prying into private life and confidential communications. Moreover, private incitement was extremely difficult to prove, and any attempt to prove it probably meant using tainted evidence. In the general interest of the Convention, and with a view to its ultimate ratification, it would be advisable, for practical reasons, to omit that particular paragraph.

M. PELLA (Roumania), Rapporteur, did not think that the United Kingdom delegate's proposal met the French delegate's point. The Conference had to consider three questions.

There was first the Spanish delegate's proposal to omit the word " private ". In its first draft,[2] the Committee of Experts had followed M. Pella's advice in this matter, but it had subsequently added the word " private ", so that a clear distinction could be drawn between private and public incitement. Personally, he would find it difficult to oppose the deletion of that word, since he had not used it in his own preliminary draft. He would therefore certainly support the proposal made by M. Jiménez de Asúa.

There was also the Belgian delegate's proposal to substitute the word " provocation " for " incitement ". The Rapporteur saw no objection to that proposal, but thought that the term " incitement " was more in keeping with modern conceptions of penal law and would prevent confusion with the other meaning of the word " provocation ". That was simply a scientific consideration.

There was lastly the proposal of the French delegate. The latter had mentioned the only case which would not constitute qualified incitement. As regards that point, the Rapporteur thought that the Conference ought to face its responsibilities and decide whether it could admit that a person who made another commit an act of terrorism should not be punished.

The PRESIDENT asked whether the formula " *incitement by means of gifts, threats, abuse of authority, etc.* " was not more in keeping with the views of the delegate of France.

M. PELLA (Roumania), Rapporteur, asked, on the other hand, whether the formula " *qualified incitement* " would not satisfy the French delegate. He did not personally approve of that expression, but he had suggested it in a spirit of compromise and to avoid prolonging the present discussion. He proposed in any case to refer to the matter at the next meeting or when the draft was adopted at a second reading, as he considered that the simple and unqualified expression " *successful incitement* " should be used.

M. BASDEVANT (France) replied that the expression " qualified incitement " was not adequate. The formula suggested by the President seemed to him preferable.

The PRESIDENT thought that the Conference should adopt provisionally " incitement by means of gifts, threats, abuse of authority, etc.", leaving the Drafting Committee to frame a text.

The President's proposal was adopted.

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[1] Document C.184.M.102.1935.V, page 22.
[2] Document C.184.M.102.1935.V.

NINTH MEETING.

Held on Friday, November 5th, 1937, at 10.30 a.m.

President : Count CARTON DE WIART.

18. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937) [1] (continuation).

ARTICLE 3 (continuation).

PARAGRAPH 1 *(continuation).*

M. SCHLEGEL (Denmark) had no serious objection to sub-paragraphs *(a)* to *(c)* ; but he wished to draw attention to sub-paragraph *(e)*. As he understood it, the latter covered any help given, whether intentional or not, towards the commission of any one of the acts specified in sub-paragraphs (1) to (4) of Article 2. If that were so, sub-paragraph *(e)* of Article 3 went too far. The idea of motive having already been introduced in connection with acts of terrorism, it should be introduced also in connection with the help given towards the commission of the act. He therefore suggested adding the word " *intentional* " before " *help* " in sub-paragraph *(e)*.

M. PELLA (Roumania), Rapporteur, said that the Committee of Experts had never intended to regard unintentional help as an offence. To make that point clear, he suggested the wording " *any help knowingly given* ", which was quite in accordance with the intentions of the Committee.

The Conference decided to word sub-paragraph (e) *as follows :*

" (e) *Any help knowingly given towards the commission of such an act.*"

M. SEBESTYÉN (Hungary), referring to the more explicit wording proposed at the previous meeting for sub-paragraph *(c)* thought it might be advisable to use the general term " incitement ", proposed by the Spanish delegate, and to leave the legislatures of the different countries free to decide what constituted incitement.

He further supported the Spanish delegate's proposal to invert the order of sub-paragraphs *(b)* and *(c)*.[2]

The PRESIDENT recalled that the word " private " had given rise to considerable discussion, and that it did not figure in the first draft Convention drawn up by the Committee of Experts.

M. DELAQUIS (Switzerland) reviewed the tendencies of modern penal legislation on the subject of incitement. The more recent penal codes did not in the majority of cases define incitement; as far back as 1870, some codes which enumerated the different means of incitement had been at pains to add " and other means ", to indicate that their enumeration was not exhaustive. If the Convention referred to incitement, it should do so without attempting to define the term. It must not be forgotten that the Conference was drawing up an international convention; it could not introduce therein particular provisions which ran counter to the general tendencies and lines of development of criminal law. To define the means of incitement would be to challenge the very marked progress achieved in nearly all modern penal codes.

Sir John Fischer WILLIAMS (United Kingdom) explained that it was not incitement in general, but private incitement, which he had had in mind when he proposed at the previous meeting to eliminate all references to " incitement ".[2]

He added that the English wording of sub-paragraph *(a)* of paragraph 1 was very happy, and he hoped it would be kept.

M. GIVANOVITCH (Yugoslavia) preferred to say merely " incitement ", and leave the legislature of each country free to interpret the term in the light of its own law.

M. PELLA (Roumania), Rapporteur, referring to the explanations given at the last meeting, thought that the question could best be solved by reverting to the wording adopted at the outset by the Committee of Experts—namely, "successful incitement "—the word " private " being dropped.

The Conference decided to word sub-paragraph (c) *as follows :*

" *Any successful incitement.*"

It was further decided to invert the order of sub-paragraphs (b) *and* (c).

Paragraph (1) *as amended was adopted at a first reading.*

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[1] For the text of the draft Convention, see Annex 3, page 186.

[2] See page 90.

PARAGRAPH 2.[1]

M. KOUKAL (Czechoslovakia) pointed out that the criterion adopted in certain earlier Conventions—namely, the Conventions for the international repression of counterfeiting currency and the suppression of the illicit drug traffic—for deciding whether offences should be considered as " separate offences " was not the same as in the present draft. The determining factor in the two Conventions in question was the place in which the crime was committed. The different criterion in the text under discussion did not appeal to him.

Again, paragraph 2 might be taken to refer only to intentional complicity. To make it perfectly plain that the paragraph covered all the acts to which paragraph 1 related, it should read " *the activities to which the preceding paragraph relates* ".

M. Koukal noted, as regards the criterion of " separate offences ", that, in paragraph 2, the consequences resulting from the acts committed constituted the factor determining the nature of those acts. He did not like that criterion. He preferred the criterion of the place of perpetration as in the previous Conventions he had cited. He had no formal amendment to propose, but would like it to be considered whether the wording of paragraph 2 could not be brought into accordance with that of the corresponding provisions of previous conventions.

M. PELLA (Roumania), Rapporteur, said that the provision in the first draft prepared by the Committee [2] was practically identical with that of the Convention for the Suppression of Counterfeiting Currency. He explained why the Committee had been led to abandon that wording in favour of that which was now before the Conference.

In Article 4 of the Convention for the Suppression of Counterfeiting Currency, it was provided that the acts mentioned in Article 3 of the Convention should be considered as separate offences if they were committed in different countries.

The authors of the draft Convention for the Prevention and Punishment of Terrorism had, in paragraph 2 of Article 3 of the draft now under discussion, suggested the wording " when the persons committing them can only be brought to trial in different countries " for " if they are committed in different countries ". The purpose of this amendment was to avoid controversy where all those participating in any special act were tried in the same country.

Certain authorities considered that the system of the Convention for the Suppression of Counterfeiting Currency made it necessary to prosecute separately those guilty of different acts of participation, if such acts had been committed in different countries, even when the parties were tried in a single country.

M. Pella did not share that view, as the proceedings of the Conference for the Suppression of Counterfeiting Currency made it clear that the object was to prevent offenders going unpunished when a State was unable to try all the guilty parties owing to the fact that they were abroad and had committed their acts of participation abroad.

The report by the Committee which had prepared the Convention for the Suppression of Counterfeiting Currency, the first draft of which had been drawn up by M. Pella in 1927, stated that " that rule did not compel States that might be competent to try acts considered as distinct offences to deal with them separately, but, on the contrary, left each State free to try them under one heading only ".

To avoid such discussion in the future and to dispel all uncertainty as to the exact scope of the text, M. Pella had, however, himself asked that the draft Convention for the Prevention and Punishment of Terrorism should specify that acts of participation must be considered as separate offences only when they could not be tried in the same country. Consequently, a State was not obliged to prosecute such acts separately.

As regards the substance of the problem, M. Pella felt that numerous opportunities of evading punishment would be afforded if the contracting parties were not bound to consider—in the circumstances specified in paragraph 2 of Article 3—acts of participation as separate offences.

He would not dwell on all the cases which might occur, but would only point out that, in many States, it was possible to evade punishment for accessory participation. That applied to all States whose laws treated complicity as an offence subsidiary to the principal offence, while at the same time recognising the principle of the non-punishment of offences committed abroad by foreigners and the principle of non-extradition of nationals.

The difficulty could only be eliminated by adopting " the theory of complicity as a distinct offence ", which had already been sanctioned by the Institut de Droit international at its session in Munich in 1883. This consisted in adopting as a basis of competence for the purpose of securing punishment, not the place where successful participation occurred, but the place where the individual happened to be at the moment when he committed the act of participation.

The Rapporteur likewise recalled that the French group of the International Union of Criminal Law had voiced the same opinion and had, in 1905, adopted the following formula : " Any act of co-operation or complicity constitutes a separate offence which may give rise to prosecution in the country where it has been committed and to trial according to the laws in force in that country ".

The Rapporteur concluded by drawing attention to the fact that nearly all international conventions for the prevention and punishment of certain offences had approved the ideas he

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[1] For the text of paragraph 2 of Article 3, see page 87.

[2] Document C.184.M.102.1935.V, page 4 (last paragraph of Article 2).

supported and that these conceptions had been embodied in many modern legislations. He thought that these means were the only ones capable of suppressing terrorist organisations whose ramifications often extended over the territory of several States.

M. GIVANOVITCH (Yugoslavia) was in favour of keeping paragraph 2 as it stood, for the reasons stated by the Rapporteur. He appreciated M. Koukal's point as to the adoption of the place of perpetration as a determinant factor; but he thought there were other factors to be taken into account. The effect of paragraph 2 might be made more definite, if the last part of the text were to read " *when the agents* . . . " instead of " *when the persons* . . . ".

M. KOUKAL (Czechoslovakia) was grateful for the Rapporteur's clear and detailed statement of the position, which entirely met his argument. He had no further objection to the text of paragraph 2 as it stood.

M. PELLA (Roumania), Rapporteur, was not opposed to the proposal of M. Givanovitch to make the effect of paragraph 2 clearer by substituting the words " agents " for the word " persons ".

Sir John Fischer WILLIAMS (United Kingdom) said that, personally, he thought the Convention would be the better for the omission of paragraph 2 of Article 3, which was of a rather delicate character, embodying as it did a somewhat subtle conception of criminal law. It could certainly be left to the different countries to decide, in accordance with their own law, their attitude in regard to the acts of the different parties to an offence : such acts, in his view, must include all acts constituting offences within the meaning of the Convention.

He said that when the competent authorities of the contracting States applied to their Parliaments to legislate on a text such as paragraph 2 of Article 3, that paragraph would be extremely difficult to explain; it was at once too precise and too vague. A national administration would have great difficulty in ascertaining whether the persons committing " acts of participation " could " only be brought to trial in different countries ", and the courts—at all events in the United Kingdom—could hardly settle what was to be done in other countries.

He did not wish to move an amendment, but suggested seriously that, at the second reading at any rate, the Conference should consider whether the omission of the passage in question would not simplify the Convention and render it more acceptable to the various Parliaments called upon to pass the legislation necessary for its adoption. That omission, he suggested, would render the whole Convention more acceptable, by avoiding a refinement which appeared to be unnecessary.

M. PELLA (Roumania), Rapporteur, said, with reference to the United Kingdom delegate's objection and in order to avoid any misunderstanding, that he would endeavour to submit to the Drafting Committee an even more adaptable wording which would merely indicate that the contracting parties would have to consider the various acts mentioned in the Convention as separate offences in their legislation where this was necessary in order to prevent an offender escaping punishment.

The Conference adopted paragraph 2 of Article 3, subject to the reservation submitted by the United Kingdom delegate and with the substitution of the word " agents " for the word " persons ".

Article 3 was referred to the Drafting Committee.

ARTICLES 4, 5 AND 6.

Article 4.

Without prejudice to the characterisation of offences and to other special provisions of national law relating to the persons and property mentioned in Article 2, no High Contracting Party shall make any distinction as regards the protection afforded by criminal law between acts, falling under Articles 2 and 3, directed against the Party itself and similar acts directed against another High Contracting Party.

Article 5.

1. In countries where the principle of the international recognition of previous convictions is accepted, foreign convictions for any of the acts mentioned in Articles 2 and 3 will, within the conditions prescribed by the domestic law, be taken into account for the purpose of establishing habitual criminality.

2. Such convictions will, further, in the case of High Contracting Parties whose law recognises foreign convictions, be taken into account, with or without special proceedings, for the purpose of imposing, in the manner provided by that legislation, incapacities, disqualifications or interdictions whether in the sphere of public or of private law.

Article 6.

In so far as " parties civiles " are admitted under the domestic law, foreign " parties civiles ", including, in proper cases, a High Contracting Party, should be entitled to all rights allowed to nationals by the law of the country in which the case is tried.

Amendments to Articles 4, 5 and 6.

Amendments proposed by the Polish Delegation.[1]

To suppress Articles 4, 5 and 6.

M. Bekerman (Poland) said that Article 4 provided that the contracting parties should make no distinction as regards the protection afforded by criminal law between national persons and property and foreign persons and property, and that, consequently, it overlapped with Article 18. Moreover, there was a contradiction in Article 4, in that it contained a reservation concerning the characterisation of offences and other special provisions of national law relating to persons and property, and stipulated, on the other hand, that no contracting party should make any distinction, as regards the protection afforded by criminal law, between national and foreign persons and property. If a reservation were made concerning the characterisation of offences and other special provisions of national law, the Convention must not stipulate that the contracting parties should make no distinction between national and foreign property. It would, of course, be difficult to prevent a national legislation from making a distinction, as regards the protection afforded by criminal law, between national and foreign property, particularly in the case of public national property. Moreover, all the national legislations with which M. Bekerman was acquainted invariably referred, when speaking of an official or public property, to national officials or public property. The method of procedure laid down for the repression of acts directed against nationals or national property was not therefore the same as when the acts were directed against foreign property.

Article 4 would consequently prove inoperative and, if maintained, would be incompatible with Article 18. Furthermore, it would be a difficult matter to oblige the national legislatures to make no distinction as regards the protection afforded by criminal law between national and foreign property, as that would necessitate a radical amendment of the national laws. Moreover, Article 18 offered a perfectly satisfactory solution of the point covered by Article 4. In conclusion, M. Bekerman recalled that, in any international convention, the States parties to the instrument must be trusted to apply the provisions of the text in a proper manner.

Turning to Articles 5 and 6, which concerned respectively the principle of the international recognition of previous convictions and the question of *parties civiles* in criminal procedure, the Polish delegate said that there was a deep divergence on those matters between the different national laws, certain countries admitting the principle of the international recognition of previous convictions and others refusing to accept it. Seeing then that differences existed, he wondered how a country possessing a certain institution could undertake, under an international convention, to put its machinery into operation when another country, which did not possess that institution, was not bound by any such obligation. In his view, only reciprocal undertakings were conceivable in an international convention. Consequently, he could not accept, on Poland's behalf, any undertaking to enforce the principle of the international recognition of previous convictions, unless the other contracting parties were prepared to assume the same obligation. Obligations, he insisted, must be equal, and that was why he had asked for the deletion of Articles 5 and 6.

M. Bachke (Norway) supported the proposal to delete Article 5 and endorsed the Polish delegate's arguments. The provisions of Article 5 were hardly compatible with the Norwegian Code as regards the infliction of heavier penalties in the case of habitual criminality. The adoption of Article 5 would necessitate far-reaching amendments in Norwegian law. The Norwegian delegation would not oppose the deletion of Articles 4 and 6.

M. Hirschfeld (Union of Soviet Socialist Republics) agreed with the Polish delegate concerning Article 4, the provisions of which were contradictory and were not in harmony with those of Article 18. He did not, however, approve of deleting Article 4. The text would have to be amended, but the principle of non-discrimination must be maintained, though it would, of course, have to make allowance for exceptions obtaining under the national laws.

In connection with Articles 5 and 6, the Polish delegation had raised the important question of material reciprocity. That could hardly be mentioned in the Convention, which left the national legislature free to decide how its provisions should be applied. All question of material reciprocity was thus excluded, and reciprocal goodwill must be relied on to enforce, with the necessary elasticity, the provisions of the Convention. The Soviet delegation was therefore in favour of retaining Articles 5 and 6.

The question of inequality between the different countries, mentioned by the Polish delegate in connection with the principle of the international recognition of previous convictions, did not worry M. Hirschfeld, since it was a matter for the national laws of each State. The Polish objection appeared to be based on a question of form; it might perhaps be met by amending the text so as to make it less imperative—for example, by the use of a phrase such as " *When the domestic law* ", etc., at the beginning of Article 5.

M. Pella (Roumania), Rapporteur, reminded the Conference that the Polish delegate had used the same arguments in the Committee of Experts and that the latter had decided in favour of retaining the provisions now under discussion. Article 4 embodied a principle which was an

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[1] Documents Conf. R.T.7, 8 and 9.

elementary consquence of inter-State solidarity in the campaign against terrorism. That solidarity should be reflected in the acceptance of the principle of equality, as regards the protection afforded by criminal law, between the legal property of the State itself and the property of other States parties to the Convention. Accordingly, in order to demonstrate the principle of solidarity which the Conference wished to embody in the Convention, Article 4 should be retained. A similar article existed in the Convention for the Suppression of Counterfeiting Currency. If the inequality which was the outcome of national egoism was to be maintained, it was useless for the Conference to meet for the purpose of framing a Convention.

M. Pella admitted that difficulties had arisen in the matter of Article 4. It was impossible to seek equality as regards the protection afforded by criminal law—either for the characterisation of offences or for penalties—in the case of all the legal property mentioned in Article 2.

Many bodies of law, for example, regarded an attempt on a head of State as an attempt directed against the existence of the State itself, as an offence of the gravest nature against the entity of the State.

Nearly all exceptional regulations for the prevention and punishment of offences against the entity of the State also applied to offences against the life, security and personal liberty of a head of State. Other legislations went even farther and regarded such an act as a violation of the duty of allegiance which every citizen owed to a head of State. Other countries again, such as France, did not grant special protection under the criminal law to the head of the State. The President of the French Republic was, in this respect, only afforded the protection of the ordinary law.

The Committee of Experts had obviously had no intention of interfering with the characterisation of offences as determined by the strong traditions and constitutional organisation peculiar to each country. It had simply sought to affirm the principle of equality, in the matter of the protection afforded by criminal law, as a direct consequence of international solidarity in the campaign against terrorism.

Turning to the question of the international recognition of previous convictions, M. Pella reminded the Conference that a provision similar to that of Article 5 already existed in the International Convention for the Suppression of Counterfeiting Currency. Under its terms, a State was under no international obligation in the matter unless its code provided for the international recognition of previous convictions. That principle was optional also in States such as Poland and Norway, whose legislation left it to the discretion of the judge whether he should or should not take foreign convictions into account for the purpose of establishing habitual criminality. Thus, countries which did not accept the principle of the international recognition of previous convictions, or which did so only in an optional form, had no reason to object to Article 5 of the present draft. That being so, he did not quite see the point of the Norwegian delegate's observations, since the international recognition of previous convictions was not, he understood, compulsory under the Norwegian Code. For France, Belgium, the United Kingdom and other countries, then, which did not accept the principle, Article 5 might be regarded as *res inter alios acta*. From a legal point of view, neither Poland nor Norway was affected by Article 5.

Stressing the moral value of Article 5, the Rapporteur pointed out that the Conventions signed at Geneva were much more general in scope; they exercised an influence in scientific and legal circles in the different countries. The provisions relating to the international recognition of previous convictions, which appeared in the Convention for the Suppression of Counterfeiting Currency, had produced a movement of opinion in many countries which had led to the adoption of that principle in the new codes. Thus, apart from their specific object, international conventions helped to determine public opinion; in the field of criminal law, while international conventions might be rather difficult to draw up, they were indicative, when it was possible to adopt them, not only of an inter-State solidarity in the campaign against certain crimes, but also of the general tendencies of criminal legislation. That aspect of the question should be borne in mind.

Lastly, with regard to Article 6, concerning the constitution of the *parties civiles*, the Rapporteur recalled that the obligation to provide security for costs *(cautio judicatum solvi)* also existed in penal matters. In spite of the exemption from such security provided for in various agreements and in spite of the International Conventions of The Hague of 1896 and 1905, such exemption was only granted by a limited number of States and did not apply to some of the new States created after the war. It was therefore essential for the States which admitted the constitution of *parties civiles* that the Convention should lay down the principle that foreign plaintiffs could exercise the same right as those granted to nationals of the country by the laws of the State in which the case was tried.

It should be recognised, moreover, that the participation of a foreign *partie civile*, having the same rights as nationals of the country, might play an important part in the discovery of the offence and of the guilty persons. M. Pella also thought it essential, in view of certain cases which had recently occurred, that a foreign State which was the victim of an offence should be granted the right to constitute itself a *partie civile*. This was an elementary conception which arose out of the solidarity of all nations in the struggle against the scourge of terrorism.

In conclusion, M. Pella proposed that the principles embodied in Articles 4, 5 and 6 should be accepted, on the understanding that the texts might, if necessary, be amended in the interests of greater precision.

M. Givanovitch (Yugoslavia) was in favour of maintaining the principles embodied in Articles 4, 5 and 6. He regarded Article 4 as a substantial strengthening of the means of action against terrorism. Referring to Article 5, he pointed out that the principle of the international recognition of previous convictions was to be found in all the new codes and suggested that the older codes should be amended on those lines. Article 6 relating to *parties civiles* should prove

very useful. He agreed, however, with the Polish delegate on the subject of equality of obligations and reciprocity. He suggested that the Drafting Committee should try to find a formula to meet the Polish delegate's views.

M. DELAQUIS (Switzerland) did not see that there was any contradiction in Article 4, though it might be open to criticism on the grounds that it was not sufficiently clear. This could be remedied by indicating that the persons and property to whom the characterisation of offences and other special provisions of the national law applied were those mentioned in sub-paragraphs (1) and (2) of Article 2, whereas, in the case of the acts mentioned in the following sub-paragraphs of the article, no distinction need be drawn according to whether they were directed against the injured State or against another contracting party.

M. Delaquis recalled the opinion which he had expressed in the Committee of Experts concerning Article 5. As regards the Polish delegate's objections, he wondered how any country which admitted under its laws the principle of the international recognition of previous convictions, could refuse to admit it in the case of a previously-convicted terrorist whom it regarded as a dangerous offender, on the grounds that another country did not accept the principle of the international recognition of previous convictions.

M. HIORTHÖY (Norway) said that the principle of the international recognition of previous convictions was admitted under the Norwegian Code.

M. BEKERMAN (Poland), replying to the Swiss delegate, pointed out that he had never said that his country would not apply the principle of the international recognition of previous convictions unless there was reciprocity in the matter. He had said that Poland would not enter into an international undertaking in the matter unless all the other contracting parties gave a similar undertaking.

M. PELLA (Roumania), Rapporteur, replying to M. Hiorthöy's remarks, said that national legislations might be divided into two categories, as regards their attitude towards the question of the international recognition of previous convictions. Certain countries, in given circumstances, automatically recognised foreign convictions for the purpose of establishing habitual criminality. Other legislations, such as the Polish and Norwegian, made the recognition of foreign convictions optional from that point of view. Since Article 5 stipulated that the admission of the principle of international recognition of previous convictions should be contingent on the conditions prescribed by the domestic law, it followed that, in the case of Norway, whose legislation made the acceptance of that principle optional, the obligation laid down in Article 5 would in its turn be purely optional. That was why M. Pella had said that Norway was not affected by Article 5.

The continuation of the discussion on Articles 4, 5 and 6 was adjourned to the next meeting.

TENTH MEETING.

Held on Friday, November 5th, 1937, at 3.30 p.m.

President : Count CARTON DE WIART.

19. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937)[1] (continuation).

ARTICLES 4, 5 AND 6 (continuation).

M. BASDEVANT (France) desired to submit various further observations concerning Articles 4, 5 and 6.

Article 4 was based on the following notion : It seemed logical, if co-operation could be established for the repression of terrorism, that acts of terrorism directed against one of the signatory States should be repressed in the same way, to the same extent and by the application of the same penalties as if they had been directed against the State in which they were committed. There could be no objection of principle to that very simple idea, which the Committee of Experts had unhesitatingly accepted. At the same time, extremely serious objections occurred when the question of applying that idea was considered. The simplest example was that of crimes directed against the person of the sovereign; in such cases, special penalties were provided which the State concerned would not be willing to enforce if the crime were directed against the head of a foreign State. Without relinquishing the principle, therefore, certain restrictions must be stipulated. Similarly, in certain countries, special provisions might exist for the protection of public buildings which were not necessarily the same as those applicable to foreign public buildings. There again, some slight departure from the principle was necessary.

That was why Article 4 included a reservation relating to the characterisation of offences and the other special provisions of national law. Subject to that reservation, it was only right and proper, when an undertaking was being entered into for the severe repression of terrorist

[1] For the text of the draft Convention, see Annex 3, page 186.

acts, that such repression should follow the rules laid down for similar attempts against internal order. There was no objection to some more appropriate formula, if that could be found, but the idea should be left intact. It was a perfectly sound idea, which ought to be embodied in the Convention.

M. Basdevant thought it wise to discuss Articles 5 and 6 together, seeing that they both dealt with the same question. They referred (1) to countries in which the international recognition of previous convictions was accepted; (2) to countries which recognised foreign convictions; (3) to countries which admitted *parties civiles*.

Articles 5 and 6 did not affect the question of national law, which was left intact on all the three above-mentioned points and which States had the right to amend as they thought fit. The text simply said that if a State accepted the principle of the international recognition of previous convictions, if it recognised foreign convictions, or if it admitted *parties civiles*, it should do so also in the case of terrorist acts directed against a foreign State. States were not asked to accept anything new, but simply to apply, in the matter of terrorism, what was admitted in other matters. As the delegate of Switzerland had said, they were being asked not to make an unfavourable exception for acts of terrorism.

M. Basdevant did not think that that was asking too much. States were not even being asked to enter into a new undertaking, since the provisions in question already existed. France, for example, could give no undertaking in regard to the first two points, but was quite prepared to enter into an undertaking not to depart from the rule in connection with *parties civiles*, of which the principle was admitted under French law.

Formal modifications could of course be introduced. A State might conceivably object that there was no reason for it to do what the other signatory States were not prepared to do. A less rigid text might meet that objection. He suggested, for example, a formula such as the following : "*The High Contracting Parties declare that it is their intention :* (1) *in so far as their law admits the international recognition of previous convictions, etc.;* (2) *in so far as their law admits the recognition of foreign criminal convictions; etc.;* (3) *in so far as their law admits* parties civiles, *etc.* He was not suggesting a formal text, but simply indicating the possibility of a more elastic formula. The Drafting Committee could go into the question of amendments conceived on those lines.

The Drafting Committee might also consider the question of amending paragraph 1 of Article 5. M. Basdevant had been struck by the doubts of the Norwegian delegation, although, as he interpreted that text, they seemed to him to be unfounded. Article 5 involved no obligation for the signatory States to modify their domestic law. As he understood the position, the Norwegian law admitted the principle of the international recognition of previous convictions as an optional measure, the Norwegian judge being free to decide whether he should or should not apply the principle. That optional right was in no way affected by Article 5, which contained the clause : " within the conditions prescribed by the domestic law ". The optional character of the acceptance of the principle was one of those conditions. It could perhaps be made clearer by amending the text to read " *to the extent and under the conditions prescribed in the national law* ". The Drafting Committee might consider that suggestion.

For the various reasons which he had laid before the Conference, M. Basdevant thought that the texts now under discussion should remain in the Convention.

M. Sasserath (Belgium) agreed with the Rapporteur and the delegate of France that Articles 4, 5 and 6 should be retained. At the same time, he thought that modifications could, if necessary, be introduced to meet the view of the Polish delegation.

Article 4 simply said that no contracting party should make any distinction between acts directed against the party itself and similar acts directed against another contracting party. That was a self-evident principle, and a necessary condition for the framing of an international convention. It was, however, wise on occasion to affirm the most obvious principle.

Taking into account the Polish delegation's reference to Article 18, it might perhaps be well to insert in Article 4 a reference to Article 18, adding, for example, after the reservation concerning the characterisation of offences and other special provisions of national law, the words : " *in conformity likewise with the provisions of Article* 18 ".

M. Sasserath agreed with the delegate of France that the wording of Article 5 left no doubt as to its scope. To take the Polish law, for example : Paragraph 1 of Article 60 of the Polish Penal Code made acceptance of the principle of the international recognition of previous convictions optional but not compulsory. If an individual committed a theft in Poland, and if it were proved that he had committed similar acts within the last five years in Roumania, the Polish judge was not forced to apply, but could at his discretion apply, the rules applicable to habitual criminality. Seeing, however, that Article 5 contained the clause : " within the conditions prescribed by the domestic law ", the exercise of the right laid down in the Polish Penal Code was still a matter for the judge's discretion and was not in the nature of an obligation. As to the question of reciprocity, M. Sasserath fully appreciated the doubts of the Polish delegation, which did not see why the rule concerning the international recognition of previous convictions should be enforced in regard to States which did not themselves accept it. But, seeing that, in Poland's case, the principle was optional, it need not be applied to such States. Article 5 could, indeed, be amended by the addition of the words : " *when the injured State itself accepts the principle of the international recognition of previous convictions* ".

M. Sasserath submitted, lastly, that Article 6 merely enunciated a rule which was already applied in every country. There seemed to be no reason why the recognition of the right of injured foreign parties to come forward as *parties civiles* should encounter any objection. There again the text might be amended to read " *without prejudice to the principle of reciprocity* ". That would not

affect the scope of the text, since all the States which admitted *parties civiles* extended that provision to foreigners. There was no objection, however, to mentioning the reservation.

M. POLYCHRONIADIS (Greece) agreed with the previous speakers as to the importance of maintaining Articles 4, 5 and 6. At the same time, he thought that it would be a mistake to insist on the over-strict application of the principle of reciprocity. The Convention, it must be remembered, was intended to ensure international co-operation. There was the danger that the efficacy of the instrument might be weakened by the very laudable desire to insist on reciprocity. The wider application of certain principles—even though not admitted by other States—would open up fresh possibilities of future co-operation on international lines. The over-strict application of the principle of reciprocity would, however, tend to arrest co-operation, and might even mean a set-back. It was important to bear in mind the idea at the back of international co-operation—namely, that each State should co-operate so far as it was able, taking duly into account the peculiarities of its national law. If a State were prepared to make its contribution in the interests of progress, there was no reason why it should be prevented from doing so by a too rigid application of the principle of reciprocity.

M. BACHKE (Norway) thanked the French and the Belgian delegates for their explanations. Their interpretation of Article 5 had done much to allay the doubts of the Norwegian delegation. The latter would be quite satisfied if Article 5 were interpreted on the lines suggested by the delegate of France, and would be interested to see what formal amendments the Drafting Committee might decide to introduce.

The PRESIDENT said that although no concrete amendment had been submitted, several suggestions had been put forward which might well be considered by the Drafting Committee. It had been suggested, for instance, that Articles 4, 5 and 6 should be combined, and that the text should be slightly amended by the introduction of a clause such as " to the extent and under the conditions prescribed in the national law ". The suggestion had also been made that, to meet the views of the Polish delegation, it should be stipulated that the reservation concerning the characterisation of offences and other special provisions of national law should not apply to points (3), (4) and (5) of Article 2. The Belgian delegate had also proposed inserting a reference to Article 18, and had suggested the possibility of introducing the idea of reciprocity. That last suggestion had, however, met with objections from the Greek delegation. Did the delegate of Belgium wish his proposal to stand?

M. SASSERATH (Belgium) said that he had simply put forward a number of suggestions.

M. PELLA (Roumania), Rapporteur, thought that it would be well to make certain points quite clear. The Polish delegation would say if he were misinterpreting its views. In proposing the deletion of Articles 5 and 6, it had wished to arrive at a definition of the issue of reciprocity. If M. Pella understood the position, Poland was prepared to enforce certain domestic provisions, but only under her national law and not in virtue of an international undertaking. She refused to admit that a contracting party, the national law of which did not include the provisions mentioned in Articles 5 and 6, should be able to object that Poland had violated the Convention in that she had failed to apply the provisions of her national law. In a word, Poland could not agree that purely national legislative provisions should be transformed into international obligations.

M. BEKERMAN (Poland) endorsed that interpretation.

M. PELLA (Roumania), Rapporteur, went on to discuss the Swiss delegate's proposal that the reservation in Article 4 with regard to the characterisation of offences and other special provisions of national law should apply only to points (1) and (2) of Article 2. The adoption of that proposal would, M. Pella thought, prevent misunderstanding. On the other hand, he was not in favour of the Belgian delegate's suggestion to insert in Article 4 a reference to Article 18, which would, in his view, simply complicate matters. If the Swiss delegate's proposal were accepted, M. Pella considered that the Belgian suggestion would be of no further use.

The French delegate's suggestion concerning the more careful wording of Articles 4, 5 and 6 might be referred to the Drafting Committee for consideration, although M. Pella would have preferred that Articles 5 and 6 be kept in their present form.

He trusted that the Polish delegation, which had already given proofs of its readiness to co-operate, would be prepared to withdraw its amendment in the light of the explanations he had just given, seeing that the issue which chiefly concerned it was the question of reciprocity.

M. BEKERMAN (Poland) thanked the Rapporteur for his explanations. He understood that the question was to be referred to the Drafting Committee, and said that the Polish delegation would wish to see whether it could accept the new formula.

The PRESIDENT proposed that Articles 4, 5 and 6 should be referred to the Drafting Committee, and that the latter should be asked to consider their amendment on the lines suggested by various delegates. He did not think there would be any misunderstanding on the subject, as due note had been taken of the observations submitted in the course of the discussion.

The President's proposal was adopted.

ARTICLES 7, 8 AND 9.

Article 7.

1. Without prejudice to the provisions of paragraph 4 below, the acts set out in Articles 2 and 3 shall be deemed to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty shall henceforward, without prejudice to the provisions of paragraph 4 below and subject to reciprocity, recognise the acts set out in Articles 2 and 3 as extradition crimes as between themselves.

3. For the purposes of the present Article, any act specified in Articles 2 and 3, if committed in the territory of the High Contracting Party against whom it is directed, shall also be deemed to be an extradition crime.

4. The obligation to grant extradition under the present Article shall be subject to any limitations recognised by the law of the country to which application is made.

Article 8.

1. When the principle of the extradition of nationals is not recognised by a High Contracting Party, nationals who have returned to the territory of their own country after the commission abroad of an offence mentioned in Articles 2 or 3 should be prosecuted and punished in the same manner as if the offence had been committed in their own country, even in a case where the offender has acquired his nationality after the commission of the offence.

2. The provisions of the present Article shall not apply if, in similar circumstances, the extradition of a foreigner cannot be granted.

Article 9.

Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the acts set out in Articles 2 and 3 should be prosecuted and punished as though the act had been committed in the territory of that High Contracting Party, if the following conditions are fulfilled—namely, that :

(a) Extradition has been demanded and could not be granted for a reason not connected with the act itself;

(b) The law of the country of refuge recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners;

(c) The foreigner is a national of a country which recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners.

Amendments to Article 7.

Amendment proposed by the Polish Delegation.[1]

In paragraphs 1 and 2, strike out the words : "*without prejudice to the provisions of paragraph 4 below* ".

Strike out the whole of paragraph 4.

Amendment proposed by the Netherlands Delegation.[2]

In paragraph 4, insert after the words : "*recognised by the law* " the words "*or by the practice* ".

Amendment to Article 8.

Amendment proposed by the Polish Delegation.[3]

Strike out paragraph 2.

Amendments to Article 9.

Amendment proposed by the Polish Delegation.[4]

Omit the words "*if the following conditions are fulfilled . . .*" down to the end of the article and replace by the following words : "*if extradition has been demanded and has not been granted* ".

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[5]

Strike out sub-paragraph *(c)*.

M. Pella (Roumania), Rapporteur, pointed out that the Polish amendment was the more radical of the two amendments relating to Article 7. If it were rejected—but not otherwise—the Conference would have to discuss the Netherlands amendment.

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[1] Document Conf. R.T.10 *(a)*.
[2] Document Conf. R.T.10.
[3] Document Conf. R.T.11.
[4] Document Conf. R.T.12.
[5] Document Conf. R.T.12 *(a)*.

M. Bekerman (Poland) explained that the Polish proposals relating to Articles 7, 8 and 9 constituted a whole. They were an affirmation of the principle *aut dedere aut judicare*. To realise the scope of those amendments, it was necessary to remember the aims and origin of the Convention. He reminded the Conference, as M. Komarnicki had done,[1] that the original French proposals[2] had referred to " political terrorism ". That expression had now been abandoned in favour of " terrorism " alone. But, none the less, there was no doubt that political terrorism was what had been meant all along. The odious and tragic act which had been the origin of the draft Convention was in itself an act of political terrorism. The purpose of the Conference was not so much to wipe out political terrorism as to establish a line of demarcation between political terrorism and non-political terrorism. The Conference was not concerned with non-political terrorism. Acts which created a state of terror, though not political in character, were reprehensible in themselves and were extraditable, even without the conclusion of a new Convention. The provisions of the extradition treaties were sufficient for the purpose. It had been pointed out that, in the matter of extradition law, much had already been done to distinguish political offences properly so-called from offences which, by reason of the means and methods employed, must be excluded from the category of political offences. There was, for instance, the Belgian clause and the English judicial practice, with its special conception of political offences; there were other instances. In the present case, the Belgian clause, providing that acts directed against Heads of States should not be deemed to be political offences, might be adopted.

It was logical that terrorist offences should not be regarded as political offences. The odious character of those crimes of violence, which made them a scourge and a danger to peace and international relations, must not be forgotten. If Article 7 were left as it stood and if, for terrorist acts, the obligation to grant extradition were made " subject to any limitations recognised by the law of the country to which application is made ", the existing practice in the matter of extradition for terrorist crimes would still remain unchanged—that was to say, as defined in the existing extradition treaties. In the Polish delegation's view, the purpose of Article 7 should be to ensure that the contracting States would conclude new extradition treaties containing the necessary additions to cover terrorist crimes, for instance, in the form of a clause on the lines of the Belgian provision.

M. Bekerman could understand the inclusion of paragraph 4 of Article 7, if it were meant to refer simply to procedure, to extradition formalities; but as regards the substantive law, if the Convention were intended to introduce anything new in the matter of extradition, some clause must be inserted defining its object and making terrorist crimes extraditable under the Convention itself, and not under existing extradition treaties or laws.

M. Pella (Roumania), Rapporteur, speaking as delegate of Roumania, reminded the Conference that, in reply to the first consultation carried out under the League's auspices on the subject of the repression of terrorism, the Roumanian Government had said that the Convention should lay down, for all offences of a terrorist character, the principle *aut dedere aut punire*.[3] States should be asked to enter into an undertaking either to punish acts of terrorism, or to surrender the offenders, or to refer the case to the International Criminal Court. The Roumanian Government's attitude was therefore quite clear.

If other delegates accepted the Polish proposal, M. Pella, as Roumanian delegate, would be prepared to do the same. Even supposing that the Conference did not adopt that proposal, a text already existed in the new Roumanian Code, providing that terrorist acts should never be deemed to be political offences. Roumania would propose that a clause should be inserted in the bilateral Conventions already existing between her and Portugal and Spain, and in all future conventions to be concluded by her, stipulating that terrorist acts should never be regarded as political offences. The Roumanian attitude on the subject was thus perfectly clear. It had already been clearly stated in the Committee of Experts, and the only reason that had led M. Pella to accept a different text had been in order that the Convention might be signed by the largest possible number of States.

On behalf of the Roumanian delegation, M. Pella desired to associate himself entirely with the Polish delegation's proposals.

M. Koukal (Czechoslovakia) said that he had been very much interested in the Polish delegate's explanations and agreed with his views. He endorsed the Polish suggestions, for the reasons just explained by M. Pella.

M. Hirschfeld (Union of Soviet Socialist Republics) said that the Polish proposal was extremely logical, almost too logical, indeed. The object of the Convention was to define as far as possible cases which it was generally agreed should not be dealt with under the system adopted for political offences. The Conference must come to some agreement as to which offences, irrespective of motive, were to be regarded as terrorist acts, so that the author should not enjoy the benefit of the system prescribed for political offences. The Polish proposal was perfectly logical, and if it were adopted, the principle in question would be formally accepted.

The Polish proposal, he repeated, was, however, too logical. Paragraph 4 of Article 7 was a compromise text which was bound to exhibit the defects inherent in any compromise. Two tendencies were apparent : one was reflected in the proposal of the Polish delegation, the other in that of the Netherlands delegation. If the majority of the Conference were in favour of the

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[1] See page 56.
[2] Document C.184.M.102.1935.V, page 22.
[3] *Ibid.*, page 15.

Polish view, M. Hirschfeld would not hesitate to accept it. He could not, however, support the Netherlands proposal, which would not only weaken the compromise text but would even practically destroy it. M. Hirschfeld regretted therefore that he could not accept the Netherlands delegation's proposal. In his view, the text of the compromise in the draft was the minimum that was acceptable.

M. Givanovitch (Yugoslavia) supported the Polish proposal, in the name of the Yugoslav delegation. He pointed out that paragraph 4 of Article 7 might, in practice, produce effects contrary to the purpose of the Convention, by restricting its scope of application.

Sir John Fischer Williams (United Kingdom) said that the insertion in an international convention of an obligation compelling extradition whether or not the crime had a political character—that was to say, a political character in the sense in which British jurisprudence would interpret those words—was directly contrary to the principles of English law. If importance was attached to the favourable examination of the Convention by the United Kingdom Government it was necessary that paragraph 4 of Article 7 should stand. He was inclined to be an uncompromising advocate of compromise. He knew of no other way in which human affairs could be managed.

There was in the United Kingdom a long tradition of jurisprudence by which protection was given to political refugees. In determining whether a man was a political refugee or not, it must be considered, not whether the isolated act which he had committed was or was not of a certain quality, but rather what were the surrounding circumstances in which the act had been committed. If it had been committed in the general course of a political movement approaching though not necessarily rising to the horror of civil war, then the British tendency was to say that the act was political and that it was not an individual crime. On the other hand, if a crime or act which fell within the scope of English criminal law, whether terrorist or not, was not committed under those conditions of general agitation, the United Kingdom was prepared to surrender the criminal. But it was not prepared to make a general concession of a political tradition to which it attached very great value.

M. Delaquis (Switzerland) said that the Swiss delegation took the same view on this point as the United Kingdom delegation. The conception in Switzerland of a political offence—it was based on the decisions of the Federal Court—was in the main the same as that held in the United Kingdom. Consequently, the Swiss delegation was unable to accept the Polish proposal. M. Delaquis recalled how a similar position had arisen in the Conference on Counterfeiting Currency. That Conference had even set up a Sub-Committee, of which he had been a member, to deal with the question; and the Sub-Committee had proposed the same solution, in the case of the Convention on Counterfeiting Currency, as that which appeared in paragraphs 1 to 4 of Article 7 of the Convention now before the Conference.

M. Delaquis recalled also the debate in the First Committee of the Assembly in 1936.[1] The cardinal point of the discussion was this same question of extradition; various delegations had then stated that they were unable to accept the point of view now upheld by the Polish delegation. In M. Delaquis' view, the question was of first-rate importance.

M. Basdevant (France) also regarded the question as extremely important. The Committee of Experts had not felt able to introduce in the Convention a provision binding the signatories to grant extradition for what they regarded as political offences, if they took the view that political offences were not extraditable. However keen might be the desire to put down terrorism, the Committee of Experts had not thought it possible to make an exception in the Convention to the recognised liberty of States to refuse extradition for political offences, if they saw fit. That point of view was already embodied in the draft of the Committee of Experts[2] which had been examined by the Assembly of the League :[1] but the texts were perhaps not sufficiently clear, and certain misunderstandings had crept in.

Attention had been devoted to the point in the First Committee of the Assembly;[1] and the clearest impression that emerged from the discussions was that a good many countries were not prepared to agree to the insertion in the Convention of a clause which did not leave them free, should such a decision be in accordance with their law, to refuse extradition for political offences. That attitude had been adopted by many delegations in the Assembly, including delegations of countries which were undoubtedly anxious to see a Convention for the repression of terrorism successfully concluded. That being so, the necessary conclusions must be drawn.

The Polish proposal envisaged a stricter undertaking, in virtue of which the acts of terrorism referred to in the Convention would create of themselves, and without further question, an obligation to grant extradition. M. Basdevant understood that conception, and paid a tribute to those who held it. He could imagine even the conclusion of agreements between particular States to give effect to that conception. But, in the present state of affairs, he did not think it possible to contemplate an international convention containing such a clause. He was therefore of opinion that the Conference should maintain paragraph 4 of Article 7 as it stood.

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[1] See *Official Journal*, Special Supplement No. 156, pages 28 *et seq.*
[2] Document A.7.1936.V (Ser. L.o.N. P. 1936.V.2), page 4.

M. Sasserath (Belgium) associated himself fully with the observations of Sir John Fischer Williams and M. Basdevant. The Belgian delegation would be unable to accede to a Convention which did not contain the provision embodied in Article 7, paragraph 4. Furthermore, he had made a very categorical statement in that respect during the general discussion.[1] He had in fact stated that " the members of the Conference knew that many countries—and Belgium was one of the foremost—firmly refused to grant extradition for a political crime." Certain aspects of terrorism were, however, closely related to political crime. That was the difficulty. But there was no question, be it noted, of inducing supporters of the Convention to agree to extradition for political crimes if that were contrary to their laws or traditions. If such were the purpose of the Convention, Belgium assuredly could not accede to it. Moreover, if any States still felt uneasy on that point, there was a provision in Article 7, paragraph 4, which read : " The obligation to grant extradition under the present Article shall be subject to any limitations recognised by the law of the country to which application is made ".

M. Sasserath reminded the Conference that Article 7, paragraph 4, did not appear in the first draft. It had been introduced as a result of the very plain observations of certain Governments, particularly the Belgian Government. It was therefore out of the question for the Belgian delegation to agree to strike out the paragraph; and, if it were maintained, it was obvious that the first Polish amendment to strike out the words " without prejudice to paragraph 4 below " in the first paragraph must also be dropped.

M. Schlegel (Denmark) said that the views of the Danish delegation were in general agreement with those just expressed by the United Kingdom delegate. The Danish delegation was therefore in favour of retaining paragraph 4 of Article 7, amended in accordance with the Netherlands proposal.

M. van Hamel (Netherlands) thanked the Committee of Experts for having taken account, in its second draft, of the observations made by several Governments, including the Government of the Netherlands.[2] The latter Government was anxious that the texts should make it quite clear that each Government remained free to decide, in accordance with its tradition and practice, whether an offence should be regarded as of a political nature, and, in consequence, whether extradition should or should not be granted. Governments would certainly not take decisions in such cases without due consideration, or without regard to the claims of international solidarity and good neighbourly relations. There was no reason, therefore, to fear that they would make an arbitrary use of their sovereignty. But it was the bounden duty of the Government of the Netherlands to maintain, in the name of human civilisation, the principle that Governments must be free, in case of necessity, to protect political refugees and not lightly to hand over, in definitely political cases, individuals who had sought refuge in their territory. M. van Hamel believed that the right of asylum was of great benefit to mankind; and he thought all Governments might one day or another have cause to congratulate themselves that that principle was affirmed in a Convention.

He desired to allay the anxiety of the delegation of the Soviet Union on the subject of the Netherlands amendment. The Netherlands proposal was not of great international importance. Its aim was to meet certain difficulties arising out of Netherlands law. In the Netherlands, questions relating to the right of extradition were not regulated solely by the written law. They were governed also by case law and political practice. Consequently, if the Convention referred to law alone, misunderstandings might subsequently arise and references be made to certain gaps in Netherlands law. But the practice of the Government of the Netherlands had long since done much to fill those gaps. For that reason, the Netherlands delegation asked for the insertion, in paragraph 4, after the words " by the law ", of the words " or by the practice ".

To sum up, the Netherlands Government would be unable to accept the Convention if paragraph 4 of Article 7 were omitted; and it would have great difficulty in accepting it, if the Netherlands amendment were rejected.

It was perhaps some offset to the restriction involved in Article 7, paragraph 4, to know that, in availing themselves of the power conferred under paragraph 4, Governments would undoubtedly bear in mind the principles upon which the Convention was based. They would undoubtedly consider all the circumstances of each case before deciding, in the exercise of their sovereignty, whether any given act constituted a political offence. Governments would further regard it as a duty to do all in their power to see that proper police and administrative measures were taken to prevent terrorist manœuvres on their territory, and to remove any danger in that respect. The Government of the Netherlands was already doing so, and would continue with greater reason under the regime of the Convention, to make its contribution to the international campaign against terrorism.

In conclusion, M. van Hamel quoted from the Netherlands Government's observations in regard to the Conventions drawn up by the Committee of Experts, as follows : [3] " The Netherlands is not prepared to consider all the offences referred to in the present Articles 2 and 3 as being deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between the Netherlands and all the other contracting States. Moreover, the extradition treaties hitherto concluded by the Netherlands Government are based, in general, on the principle that extradition cannot be granted for political offences. In view of the wide

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[1] See page 62.

[2] Documents A.7.1936.V (Ser. L.o.N. P. 1936.V.2), page 15, and A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 11.

[3] Document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 11.

differences of political opinion which at present exist in different countries on fundamental questions, the time does not seem favourable for completely abrogating this rule. The present circumstances as regards the national policies of different States are not such as to induce the Netherlands to depart from their historic tradition as regards the hospitality offered to political refugees."

M. BACHKE (Norway) referred to the statement of principle he had made during the general discussion,[1] as to the inability of the Norwegian Government to accept any Convention involving an obligation to grant extradition where such was contrary to Norwegian law. Norway was not prepared to abandon its traditions in regard to the extradition of persons guilty of political offences. Norway was concerned to maintain the right of asylum. He therefore associated himself with the statements of those who were in favour of maintaining Article 7, paragraph 4, as it stood. On the other hand, the Norwegian delegation was in favour of the Netherlands amendment.

Aly SHAMSY Pasha (Egypt) said that the acceptance of the Polish proposal would no doubt mean a great step forward in the repression of terrorism. But it could not be contested that, if the aim in view were to be achieved, it was essential that the Convention should be signed by as many States as possible. But a great many countries were definitely opposed to the Polish proposal and anxious for the maintenance of Article 7 in the form given to it by the Committee of Experts. Egypt associated herself with those countries, for the reasons set forth by the previous speakers.

The Netherlands amendment did not, in the opinion of the Egyptian delegation, raise any question of principle.

M. NYYSSÖNEN (Finland) said that the Finnish Government could not abandon its traditions on the subject of the right of asylum. It must be remembered that there were several kinds of terrorism; one form of terrorism even was Governmental terrorism, directed, for example, against national minorities or political opponents. The point of view of the Finnish Government was similar to that of the United Kingdom and Danish Governments. The Finnish Government would find it very difficult to extradite a person who had met terrorism in his country by an act of desperation. For those reasons the Finnish delegation hoped the Convention would restrict the right of asylum as little as possible.

M. SEBESTYÉN (Hungary) was unable to accept the Polish amendment. He felt, moreover, that, even if paragraph 4 were retained, Article 7 would not be entirely without practical value. The other paragraphs of the article were indicative of a certain tendency, as the Rapporteur had pointed out; and M. Sebestyén was convinced that the contracting States would not refuse, without due consideration, to extradite persons guilty of the offences covered by the Convention.

As for the Netherlands amendment, the Hungarian delegation thought the word " droit " in Article 7, which was a translation of the word " law " in the United Kingdom proposal, covered written law, customary law and even case law. The point had been cleared up by the Committee of Experts; and the Hungarian Government's acceptance of the text in question had always been subject to the statements made at the time in the Committee. M. Sebestyén did not think, therefore, that the Netherlands proposal was very important. If, however, the Netherlands delegation insisted on it, the Hungarian delegation would raise no objection to its adoption.

The PRESIDENT said that the Conference had now reached the crucial point of its discussions. Governments in favour of the radical solution envisaged by the Polish amendment could always conclude bilateral agreement or even an optional protocol, as in the case of the Convention for the Suppression of Counterfeiting Currency; but he thought the great majority of the Conference was in favour of maintaining the general tenor of Article 7.

As for the question raised by the Netherlands amendment, it would seem, after the explanations of the Hungarian delegate, that that amendment was no longer of great importance. Nevertheless, he asked the Conference to take a decision with regard to it.

M. PELLA (Roumania), Rapporteur, thought the explanations given by M. van Hamel himself showed that his amendment was unnecessary. M. van Hamel's reservation applied, not merely to the law, but also to the case law, of his country. But, as M. Sebestyén had pointed out, the Committee of Experts had taken the expression " law " to mean both law and customary law, as well as case law. Had it been concerned only with legal enactments, it would have used a less general term than " law ".

M. Pella pointed out, further, that the Netherlands had signed the Convention for the Suppression of Counterfeiting Currency, the text of which—as far as the question to which the Netherlands amendment referred was concerned—was identical with that of the present draft. Article 10 of the Convention for the Suppression of Counterfeiting Currency stipulated that " Extradition shall be granted in conformity with the law of the country to which application is made ". He thought that, with that interpretation, confirmed by several members of the Committee of Experts, M. van Hamel need have no further anxiety.

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[1] See page 54.

M. VAN HAMEL (Netherlands) was obliged to the Hungarian delegate and the Rapporteur for their explanations; but he preferred to maintain his amendment. There was no question of an academic discussion as to what was meant by " law ". The text proposed by the Committee of Experts might in the future involve the Government of the Netherlands in misunderstandings, for, in its opinion, it was not a question merely of statute law, customary law, or even case law, but also of the practice of the Department of Justice, which was responsible for extradition questions. Some doubt had been expressed in the Netherlands as to whether the practice of the Ministry of Justice in the solution of extradition questions came under the heading of law.

If M. van Hamel were speaking on his own behalf, the explanations he had just heard would perhaps satisfy him; but in view of the importance attaching to this question in his country and the opinion prevailing in Government circles, he must press his amendment. In reply to M. Pella's point that the Government of the Netherlands had signed the Convention for the Suppression of Counterfeiting Currency, M. van Hamel observed that, while from the technical standpoint there might be some analogy between the two Conventions, the Convention for the repression of terrorism involved a far more delicate issue. He noted in any case that there had been no formal objection to the Netherlands amendment.

M. STOYKOVITCH (Yugoslavia) was unable to support the Netherlands proposal. The reasons advanced by previous speakers might be summarised in the statement that modern jurisprudence covered statute law, case law and everything connected with the enforcement of the law. Law, as defined in text-books, consisted of all the rules enforced by courts of law. Misunderstandings might arise, if anything whatever were added to the words " by the law ".

Article 7 was the result of a compromise; and for the Yugoslav delegation, which had accepted that compromise, it was mainly of psychological, of moral, value because it indicated a tendency to restrict the conception of political offences. The expression " by the practice " covered something which was not fixed; and, if it were inserted in the Convention, it might give ground for supposing that the Conference had intended to stabilise the present practice with regard to extradition for political offences. Yugoslavia hoped the Convention would mark a step forward; and it could not agree to the introduction of words that might have the effect of crystallising the present practice.

The PRESIDENT proposed to refer the question to the Drafting Committee. He gathered that it was agreed to maintain Article 7 at a first reading.

The President's proposal was adopted.

M. BEKERMAN (Poland) pointed out that the Polish amendments to Articles 7, 8 and 9 formed a whole, and that the considerations he had advanced in support of the amendment to Article 7 applied to the suppression of the second paragraph of Article 8. The Polish amendment to Article 9 was in the same position. Both amendments exemplified the principle *aut dedere, aut judicare :* the first related to *dedere* and the second to *judicare.*

M. PELLA (Roumania), Rapporteur, hoped the Polish delegation would recognise that, just as the Conference had been unable to reach a decision in the sense of the Polish amendment to Article 7, paragraph 4, neither could it agree to the suppression of Article 8, paragraph 2. He illustrated his meaning by an example. Suppose that a Roumanian and a Pole committed, in France, a crime against France, and both sought refuge in Roumania. France might then apply for the extradition of the Pole from Roumania. Roumania might reply : " I cannot extradite this person because, in application of Article 7, paragraph 4, I consider that the crime committed was of a political character ". But, if Article 8, paragraph 2, were omitted, Roumania would be compelled to take proceedings against her own national in the same matter. Consequently, if the Conference retained Article 7, paragraph 4, and omitted Article 8, paragraph 2, it would be establishing a discrimination against nationals in any given country.

M. BEKERMAN (Poland) recognised the strength of M. Pella's point; it was for just that reason that, in referring to the Polish amendments to Articles 7, 8 and 9, he had said that they formed a whole. He regretted that the Conference had not accepted the Polish amendment to Article 7, and he thought that the Convention would lose much of its efficacy as a result.

M. VAN HAMEL (Netherlands) enquired whether paragraphs *(b)* and *(c)* of Article 9 really related to jurisdiction *in concreto.* The Netherlands courts had jurisdiction in respect of certain offences committed by foreigners abroad—for example, on board a Netherlands vessel. At the same time, the Government of the Netherlands would not be prepared to admit that, because of these exceptional cases, it could be claimed that sub-paragraphs *(b)* and *(c)* of Article 9 were generally applicable in cases other than the concrete acts to which Netherlands law referred.

M. PELLA (Roumania), Rapporteur, said that some modern legislation covered acts committed outside national territory (1) when the principle of active personality was admitted (offences committed by nationals abroad, for which case provision was made in Article 8); (2) in the case of the extension of the principle of territoriality; (3) when the offences were committed abroad and

the victims thereof were nationals. Legislation which admitted the principle of passive personality or of the protection of nationals was, moreover, very rare; (4) in the case of the application of the principle of real protection. Many States punished offences committed abroad when they directly affected certain interests of the State concerned (crimes against the safety of the State, counterfeiting of national currency, etc.); (5) when the principle of universality was admitted. Article 9 related to legal enactments which admitted the principle of universality, formulated in the Latin maxim *ubi te invenero, ibi te judicabo*. Consequently, M. Pella thought M. van Hamel need have no anxiety in the matter.

M. Basdevant (France) said the Rapporteur's explanations in reply to M. van Hamel's question were perfectly explicit; he asked that they should be put on record in one form or another. The Drafting Committee might revise Article 9 in the sense indicated, or the Rapporteur's explanations might be recorded in the proceedings of the Conference.

The President opened the discussion on the Soviet amendment to omit Article 9, sub-paragraph *(c)*.

M. Hirschfeld (Union of Soviet Socialist Republics) explained that the Soviet delegation was of opinion that the first two conditions were sufficient, and that the third condition, formulated in sub-paragraph *(c)*, to some extent restricted the application of the guiding principle of the Convention.

Sir John Fischer Williams (United Kingdom) said that this was a question which closely touched the British conception of territorial law. The paragraph in question was inserted with a view to meeting the difficulties of the United Kingdom; the United Kingdom delegate therefore hoped it would be maintained. It would be very difficult for his Government to accede to a Convention which recognised a principle it had always declined to accept—namely, the competence of a State to punish a foreigner for acts committed outside its jurisdiction.

M. Pella (Roumania), Rapporteur, was afraid that the United Kingdom delegate's remarks might give rise to misunderstanding. Naturally, when a British national committed an offence abroad, the Government of the United Kingdom could not object if the State the public order of which had been disturbed took the elementary measures which the United Kingdom would take itself, should a foreigner commit an offence on its own territory. The point was that, as the United Kingdom accepted, generally speaking, the principle of territoriality as such—which was a logical principle from the English point of view, since it involved the principle of the extradition of nationals—it clearly could not admit the other view—namely, the punishment of offences committed abroad. It was therefore rather a question of legal attitude. The United Kingdom was anxious, in all cases, to retain the power to intervene whenever a British subject was prosecuted in another country for an offence committed outside that country and when it was of opinion that there might be some abuse. In other words, the United Kingdom did not desire to abandon its virtual right of intervention as a result of the insertion of a clause in the Convention. That was why the Committee of Experts had inserted the text in question in the draft.

Sir John Fischer Williams (United Kingdom) said he must make it clear that the United Kingdom was not attempting to intervene in respect of British subjects who committed acts of terrorism or any other offences abroad, assuming that they were punished by the country in which the offences were committed. That was a perfectly logical attitude; and there was no difficulty in that respect.

The principle the United Kingdom delegation wanted to keep alive was that, if a British subject were sought to be prosecuted in one country for something he had done in another (both countries being foreign to Great Britain), the Government claimed the right to insist that the principles of international law did not permit a State to punish a foreigner for acts committed outside the jurisdiction of the country which was seeking to punish him.

The President asked whether M. Hirschfeld pressed his amendment.

M. Hirschfeld (Union of Soviet Socialist Republics) asked what would happen if extradition were not granted by a country which recognised the competence of its courts to deal with offences committed by foreigners abroad. The offender would then be neither tried nor extradited.

On the other hand, if sub-paragraph *(c)* were maintained and the case contemplated by Sir John Fischer Williams arose, the offender might be tried in a country other than that in which the crime had been committed, provided that the conditions laid down in sub-paragraph *(c)* were fulfilled—that was to say, if the foreigner were a national of a country which recognised the jurisdiction of its own courts in respect of offences committed abroad by foreigners. There was obviously a difference between Sir John Fischer Williams' thesis and the conception embodied in the present text of the draft Convention.

Sir John Fischer Williams (United Kingdom) replied that he had not intended to support any thesis. He had merely wished to point out that there were two conceptions of criminal jurisdiction. One was the territorial conception, according to which a crime disturbed the peace of the country where it was committed, and that country had full rights over the criminal. The other was the conception that a country was entitled to enact legislation even with regard to acts

committed outside its own jurisdiction by people who were not its subjects. That was a conception which was believed in England—and there was a long tradition behind the belief—to be inconsistent with international law. It was because the United Kingdom could not accept the insertion of such a conception in a convention which it was asked to sign that that paragraph had been introduced, and that the United Kingdom delegation was obliged to maintain its attitude in the matter.

Articles 7, 8 and 9 were referred to the Drafting Committee.

ARTICLE 10.

The provisions of Articles 8 and 9 shall also apply to acts referred to in Articles 2 and 3 which have been committed in the territory of the High Contracting Party against which they were directed.

As regards the application of Articles 8 and 9, the High Contracting Parties do not undertake to pass a sentence exceeding the maximum sentence prescribed by the law of the country where the offence was committed.

Amendment to Article 10.

Amendment proposed by the Hungarian Delegation.[1]

Add, at the end of paragraph 2, the following text :

They shall further not be obliged to prosecute or punish the accused if he has already been prosecuted in another country and, in case he was convicted, has undergone his sentence or been reprieved or the sentence has ceased to be enforceable in virtue of some provision of the foreign law.

M. Sebestyén (Hungary) explained that the Hungarian courts took into account to a large extent the legislation of the country in which the offence had been committed, whenever they were called upon to deal with acts committed abroad. That was why, in the Committee of Experts, the Hungarian representative had suggested the insertion of the second paragraph, which took account of Hungarian legislation and made it possible for Hungarian judges to apply the law of the country in which the offence had been committed, if the penalty prescribed by the latter were lighter. The Committee of Experts had drawn up that second paragraph in such a way as not to impose an obligation but simply to give States discretionary powers.

The amendment now proposed by the Hungarian delegation had the same object in view. It proposed to take account of sentences passed in another country, mitigating circumstances from a legal standpoint, quashing of sentences, etc., provided for under the foreign law. In application of the principle *ne bis in idem*, if an offence had been tried in a country or had ceased to be indictable, it should be possible to waive further proceedings. The Hungarian delegation had already suggested to the Committee of Experts that this provision should be added to Article 10 but it had been told that the principle was understood and that, moreover, Article 18 allowed the contracting States full freedom to apply their own rules. M. Sebestyén believed, however, that the Conference would facilitate the acceptance of the Convention if it adopted the amendment. If, for any reason, it were not prepared to do so, he would be satisfied with an authentic and formal statement by the Rapporteur, duly recorded, to the effect that the principle laid down in the amendment proposed by the Hungarian delegation was understood, and that Article 18 gave all contracting States the right to apply foreign law in regard to mitigating circumstances, right of pardon and right of amnesty.

M. Pella (Roumania), Rapporteur, recalled that the point raised by the Hungarian delegation had already been discussed in the Committee of Experts. In the amendment submitted by the Hungarian delegation, the term " in another country " was very vague. Supposing that an individual who had committed in Yugoslav territory a crime directed against the safety of the French State, took refuge in Roumania, and the latter wished to punish him, Yugoslavia might conceivably pardon the offender, but France, against whom the crime had been directed, might not consider it expedient to do so. Referring also to other hypotheses, M. Pella said that crimes directed against the safety of the State were of a very delicate nature; in such cases, an exception might well be made even to the principle *ne bis in idem*, however general the application of the principle to all other offences. Many legal systems did not apply the principle *ne bis in idem*, nor even the principle of the deduction of the penalty in the case of crimes directed against the safety of the State.

M. Pella asked the Hungarian delegation to agree to the reference of its amendment to the Drafting Committee, to enable provision to be made to cover these important contingencies.

M. Sebestyén (Hungary) would have preferred the Conference to take a decision on the question. If, however, the Rapporteur thought that the Drafting Committee would be able to find a formula which would allay both the technical apprehensions of the Hungarian delegation and his own political apprehensions, the Hungarian delegation would have no objection to the reference of the matter to the Drafting Committee.

Article 10 and the Hungarian amendment were referred to the Drafting Committee.

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[1] Document Conf. R.T.13.

ARTICLE 11.

Each High Contracting Party should take on his own territory appropriate measures to prevent any activity contrary to the purpose of the present Convention.

AMENDMENTS TO ARTICLE 11.

Amendment proposed by the Czechoslovak Delegation.[1]

Suppress Article 11.

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[2]

Redraft Articles 11, 12 and 13 as one article.

M. KOUKAL (Czechoslovakia) recalled that the Czechoslovak delegation had submitted a text for Article 1.[3] It was in the hope that that text would be accepted that it had proposed the omission of Article 11, as a logical consequence of the acceptance of the text proposed for Article 1.

M. NYYSSÖNEN (Finland) said that the Convention should cover political terrorism of all kinds. The amendment to Article 1 proposed by the Czechoslovak delegation covered only the cases of terrorism specified in Articles 2 and 3. If Article 11 were omitted, the scope of the Convention would be considerably restricted. There were other kinds of terrorism besides those mentioned in Article 2—for example, the activities of organisations whose object it was to upset the Government of another country and the distribution of publications with the same object. If Article 2 were amended and Article 11 omitted, the Convention would no longer be a Convention for the suppression of terrorism, but merely a Convention for the suppression of certain kinds of terrorism.

M. PELLA (Roumania), Rapporteur, said he felt sure his Finnish colleague was mistaken in thinking that the intention of the Czechoslovak delegation was to limit the scope of the Convention in any way. He was not a Czechoslovak; but he protested, on behalf of his Czechoslovak colleague, against such a supposition! M. Koukal had asked for the omission of the article solely for legal and conventional reasons of a technical character, his idea being that, if Article 1 were worded as he proposed, Article 11 would become superfluous.

M. Pella proposed that Article 11 should be retained for the reason that, in his opinion, its scope was not the same as that of Article 1. Article 11 dealt rather with administrative measures. For example, in its observations on the right of asylum, the Roumanian Government had expressed the following views :[4] " Account should also be taken of the situation of States bordering on the refugees's country of origin. It might be desirable to suggest that such States should refuse entry to certain refugees (at frontiers of countries other than their country of origin, of course) if they are not in a position to exercise surveillance over the activities of these refugees. In any case, steps should be taken to prohibit refugees from sojourning in districts near the frontiers of their country of origin. This would be one of the most effective means of preventing certain terrorist activities."

M. Pella then turned to the proposal of the Soviet delegation to redraft Articles 11, 12 and 13 as one article. It was true that Article 11 laid down a general principle, the practical application of which might be similar to that of Articles 12 and 13. But, again because of legal and conventional considerations of a technical character, he was reluctant to combine in a single article such intricate questions as the carrying and holding of arms and the forgery of passports, each of which alone might form the subject of a special Convention. For those reasons, he would urge the Soviet delegate not to press his amendment.

M. HIRSCHFELD (Union of Soviet Socialist Republics) said he would defer to M. Pella's point of view.

M. VAN HAMEL (Netherlands) wished to inform the Conference of certain apprehensions to which the text of Article 11 had given rise in his country. The Netherlands Government was reluctant to bind itself by obligations formulated so broadly as those contained in Article 11. The observations made by the Finnish delegate showed that this formula might cover a very large number of contingencies, unless Article 11, as suggested by the Soviet delegate, were made, so to speak, a generic expression of the specific obligations embodied in Articles 12 and 13. M. van Hamel regarded Article 11 as a possible source of disputes and difficulties between Governments. Signatory States might, for example, receive requests from the other contracting States requiring action which the signatory State itself could not contemplate taking. It was true that, under Article 19, it was always possible in such a case to have recourse to arbitration. Nevertheless, Article 11 might give rise to contention and to arbitral disputes.

M. van Hamel would prefer the solution proposed by the Soviet delegate, unless the Conference agreed to replace in the text of Article 11 the words " *appropriate measures* " by " *such measures as they may deem appropriate* ".

He urged the Rapporteur to think over the observations he had put forward.

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[1] Document Conf. R.T.14.
[2] Document Conf. R.T.14*(a)*.
[3] See page 80.
[4] Document C.184.M.102.1935.V, page 20.

M. PELLA (Roumania), Rapporteur, proposed that M. van Hamel's suggestion should be referred to the Drafting Committee; but he hoped the text which would be prepared to meet the difficulties raised would not be altogether illusory. It was essential that it should retain the character of an international obligation.

Article 11, *together with M. van Hamel's suggestion, was referred to the Drafting Committee.*

The Conference postponed its decision on the amendment proposed by the Soviet delegation until the next meeting.

ELEVENTH MEETING.

Held on Saturday, November 6th, 1937, *at* 10.30 *a.m.*

President : Count CARTON DE WIART.

The PRESIDENT welcomed M. Guani (Uruguay).

20. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937)[1] (continuation).

ARTICLE 1 [2] (continuation).

ARTICLE 11 [3] (continuation).

Amended Text of Article 1 *proposed by the Delegations of Czechoslovakia, Greece, Poland, Roumania, Turkey and Yugoslavia.*

M. PELLA (Roumania), Rapporteur, recalled that, in addition to the Soviet amendment, there was another one proposed by M. van Hamel with a view to a closer definition of the scope of Article 11. A third suggestion, not embodied in a formal amendment, had been made during the discussion at the previous meeting. Article 11, by its very nature, did not overlap with Article 1. Its object was to oblige the contracting parties to take the administrative measures necessary for a more efficient campaign against terrorism. The Drafting Committee should therefore take care to distinguish clearly between Article 11 and Article 1.

The Conference would remember that, during the discussion on Article 1, the Greek delegate [4] had submitted an amendment suggesting that the underlying principle of the whole Convention —namely, the obligation assumed by all States to refrain from, and prevent, terrorist activities— should be more clearly stated. The Czechoslovak delegate had made a similar proposal.[5] In the hope of lightening the task of the Drafting Committee by reconciling the different views expressed, the delegations of Czechoslovakia, Greece, Poland, Roumania, Turkey and Yugoslavia had proposed a new text for Article 1. While the sense remained unaltered, the new text laid greater stress on the fundamental principle of which he had spoken. That text read as follows : [6]

"Article 1.

" 1. The High Contracting Parties, reaffirming the principle of international law in virtue of which it is the duty of every State itself to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State and to prevent such acts, undertake to prevent and punish activities of this nature and to collaborate with one another for this purpose.

" 2. Acts of terrorism within the meaning of the present Convention are criminal acts having an international character which are directed against the safety or public order of a State and which are intended or calculated to create a state of terror in particular persons, among groups of persons or among the general public."

M. Pella proposed that this amended text, in the preparation of which he himself had taken part as Roumanian delegate, should be referred to the Drafting Committee.

The Rapporteurs's proposal was adopted.

ARTICLE 12.

1. The carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition and explosives should be subjected to regulation, and it should be a punishable offence to transfer, sell or distribute them to any person who does not hold such licence or make such declaration as may be required by the domestic legislation concerning the possession and carrying of such articles.

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[1] For the text of the draft Convention, see Annex 3, page 186.
[2] For the text of Article 1, see page 71.
[3] For the text of Article 11, see page 107.
[4] See page 72.
[5] See page 80.
[6] Document Conf. R.T.4*(b)*.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, should be required to mark each arm with a serial number and factory mark permitting it to be identified, and to keep a register of the names and addresses of purchasers.

AMENDMENT TO ARTICLE 12.

Amendment proposed by the Indian Delegation.[1]

Replace the final phrase of paragraph 2 after the word " *identified* " by the following text : " *and both manufacturers and retailers should be required to keep a register of the names and addresses of purchasers* ".

Sir John Fischer WILLIAMS (United Kingdom) apologised on behalf of the delegate for India who was prevented by an indisposition from attending the meeting. Sir Denys Bray suggested that the amendment proposed by the Indian delegation should be referred to the Drafting Committee, subject to the approval of the Conference.

The PRESIDENT recalled that the Conference had before it an amendment proposed by the Soviet delegation for redrafting Articles 11, 12 and 13, the purport of which was the same, as one article.[2]

Sir John Fischer WILLIAMS (United Kingdom) was reluctant to intervene in the discussion, as his Government's attitude in regard to these articles was one of considerable caution; but he wished to suggest that the Drafting Committee might consider whether Article 12 was the appropriate place for the mention of explosives. The term " explosives " was very wide, and had already been dealt with in sub-paragraph (4) of Article 2. Explosives were used in a large number of industries, in particular, in the mining industry; and the observance of a general obligation such as that contained in the first paragraph of Article 12 would entail numerous difficulties for many countries in view of their national legislation. The whole question of explosives called for very careful consideration.

M. BEKERMAN (Poland) recalled that he had already drawn attention to the relation existing between sub-paragraph (4) of Article 2 and Article 12.[3] He would like the Drafting Committee to take his observations into account when examining Article 12.

Sir John Fischer WILLIAMS (United Kingdom) supported the Polish delegate's request.

M. PELLA (Roumania), Rapporteur, asked Sir John Fischer Williams if his remarks referred solely to the arrangement of the Convention, in which case, the Drafting Committee need only consider the order of the articles concerned, or if he objected to the question of explosives being treated in the Convention at all. The question of explosives was obviously important, and was so closely bound up with the problem of terrorism that it could not be passed over in silence in the Convention. It was essential that the preventive provisions of the Convention should include a reference to the question of explosives.

M. KOUKAL (Czechoslovakia) assumed that the provisions of paragraph 2 of Article 12 did not apply to fire-arms for the use of national armies.

M. PELLA (Roumania), Rapporteur, replied that it was Sir John Fischer Williams who had requested that a clause should be introduced providing that " manufacturers of fire-arms, other than smooth-bore sporting-guns, should be required to mark each arm with a serial number and factory mark permitting it to be identified, and to keep a register of the names and addresses of purchasers ".[4]

He added, in reply to a further question by M. Koukal, that this obligation could clearly not be enforced in the case of weapons supplied to armies, public authorities (such as police, Customs officers, frontier guards) and even public utility institutions. If Sir John Fischer Williams agreed with the interpretation just given by the Rapporteur, it might be included in the Minutes in order to satisfy M. Koukal.

The PRESIDENT observed that Article 12 required States to subject to regulation the carrying, possession and distribution of fire-arms, etc. He pointed out, however, that that provision assumed the existence of legislative or administrative regulations in regard to such arms in the States in question. Obviously, the provisions of Article 12 did not apply to arms, etc., for the use of public authorities.

Article 12 was referred to the Drafting Committee, together with the amendment proposed by the Indian delegation and the observations of Sir John Fischer Williams.

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[1] Document Conf. R.T.14 *(b)*.
[2] See page 107.
[3] See pages 84 and 85.
[4] See Document C.184.M.102.1935.V, page 5.

ARTICLE 13.[1]

1. The following acts should be punishable :

(a) Any fraudulent manufacture or alteration of passports or other equivalent documents;

(b) Bringing into the country, obtaining or being in possession of such forged or falsified documents knowing them to be forged or falsified;

(c) Obtaining such documents by means of false declarations or documents;

(d) Using any such documents which are forged or falsified or were made out for a person other than the bearer.

2. The wilful issue of passports, other equivalent documents, or visas by competent officials to persons known not to have the right thereto under the laws or regulations applicable, with the object of assisting any activity contrary to the purpose of the present Convention, should also be punishable.

3. The provisions of the present Article shall apply irrespective of the national or foreign character of the document.

Amendment to Article 13.

Amendment proposed by the Yugoslav Delegation.[2]

Substitute for sub-paragraphs *(a)*, *(b)* and *(d)* of paragraph 1, the following text :

(a) *Any fraudulent manufacture of passports or other equivalent documents or alteration of such documents;*

(b) *Bringing of such documents into the country or obtaining or being in possession thereof knowing the documents to be forged or falsified;*

(c) . . .

(d) *Using any such documents or documents made out for a person other than the bearer.*

Aly Shamsy Pasha (Egypt) reminded the Conference that at the 1936 session the Chilian representative on the Committee of Experts had pointed out that Article 13 was of general scope, but had recommended, in view of the admitted connection between the repression of terrorism and the falsification of passports, that the falsification of identity papers should be dealt with in a separate optional Protocol. As the International Conference for the Unification of Penal Law, which was to meet at Cairo in January 1938, was to deal with the falsification of identity papers, passports and other documents enabling their holders to travel from one country to another, the Egyptian delegate suggested that the question of the repression of the falsification of passports should be left to that Conference. He had no objection to an international undertaking for the repression of the falsification of passports; his suggestion was simply aimed at preventing the present Conference's work from overlapping that of the Cairo Conference on the point.

M. Pella (Roumania), Rapporteur, said he would answer the Egyptian delegate in the dual capacity of Rapporteur to the present Conference and Secretary-General of the Office and of the Conferences for the Unification of Penal Law. In this matter of passports, the ideal was obviously a Convention for the repression of all falsifications of identity papers, passports and other documents enabling their holders to travel from one country to another. But a general solution on those lines was not, in present circumstances, within the reach of the Conference. In the meantime, the fact remained that the falsification of passports was very closely connected with the problem of terrorism. It was only on very rare occasions that a terrorist travelled from one country to another without a falsified passport. The falsification of passports was therefore one of the characteristic forms of the preparation of terrorist outrages, or at any rate of the circulation of agents preparing such outrages. M. Pella therefore asked the Egyptian delegate to make allowance for all the difficulties which the Committee had encountered in that connection, and to agree to deal with the question of the falsification of passports in connection with the prevention of terrorism.

The function of the seventh Conference for the Unification of Penal Law to be held in Cairo in January 1938, in so far as the falsification of passports was concerned, would be to study the legislative forms to be introduced into the codes to give effect to the obligations entered into by States in the Convention now under discussion : in other words, it would be called upon to prepare the way for giving effect to the obligations of the Convention.

M. Delaquis (Switzerland) observed that the limitation appearing in the second paragraph of Article 13 was not to be found in the first, so that the scope of the first paragraph was too wide. He proposed to introduce in the first paragraph the same limitation as in paragraph 2 by the addition of the words " *with the object of assisting any activity contrary to the purpose of the present Convention* ". He showed by an example that, without that limitation, a person unjustly detained—for instance, in a concentration camp—who procured a forged passport in order to escape, would be punishable for so doing, although the use of a forged passport in such a case would be a legitimate means of escape. M. Delaquis did not propose any formal amendment; he merely put forward the suggestion for the consideration of the Drafting Committee.

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[1] See also the amendment to Articles 11, 12 and 13, proposed by the Soviet delegation, page 107.
[2] Document Conf. R.T.14*(c)*.

M. Bekerman (Poland) admitted the force of the arguments in favour of sub-paragraph *(b)*; but he felt obliged to point out that it would constitute an innovation in the law of certain countries. The form in which the sub-paragraph was drafted was also very subtle. He wondered if it would not be wiser to omit the words " *knowing them to be forged or falsified* ", and to refer only to the possession of the documents.

With reference to sub-paragraph *(c)*, M. Bekerman described the complications which would arise when a person obtained a false passport in country A from a consul of country B, and pointed out that the consul might be the genuine victim of the applicant's false statements.

The objection put forward by M. Delaquis did not seem to him well-founded. He thought it would be better to treat the offences referred to in Article 13 as offences in themselves. If the limitation " with the object of assisting any activity contrary to the purpose of the present Convention " were introduced in paragraph 1, it would be very difficult to prove the existence of the motive in question. Referring to the example quoted by M. Delaquis, M. Bekerman pointed out that the use of forged passports could only be justified as long as the person unjustly detained was in the territory of the country which had arbitrarily deprived him of his freedom. As soon as he reached another country, the authorities could properly require him to reveal his true identity, and the use of a forged passport would be no longer justified. Every country possessed legislative or administrative provisions concerning passports and other identity papers; and the Convention for the Prevention and Punishment of Terrorism should only deal with passports in connection with acts of terrorism.

M. Pella (Roumania), Rapporteur, recalled that this point had been discussed in the Committee of Experts. M. Delaquis had then made the same proposal, and the Committee had agreed, in a spirit of conciliation, to insert the limitative provision in question in paragraph 2, but had considered it impossible to introduce it in the first paragraph. M. Pella thought M. Delaquis would appreciate the argument that the absence of any specification of the purpose of the falsification made for more effective prevention of terrorism. He gave an example to show that it was very difficult, in certain circumstances, to prove the purpose aimed at by passport forgers, and that it was important to make it a punishable offence to introduce into a country, to procure or to carry forged passports, whatever the agent's object. Further, if M. Delaquis' view were accepted, establishment of the fact that the passport had been falsified to facilitate a terrorist act would make the falsification of the passport an act connected with a terrorist outrage, and Articles 2 and 3 of the Convention would thereupon come into play. The text proposed by M. Delaquis would then have no purpose.

The point made by M. Bekerman in regard to escaped prisoners was very sound. That an escaped prisoner should regularise his position as soon as he left the territory of the country which had arbitrarily deprived him of his freedom was essential, since it was necessary to prevent suspicious movements in the country of refuge.

In reply to M. Bekerman's suggestion to replace the acts enumerated in sub-paragraph *(b)* by the sole act of possession of such documents, M. Pella gave an example to show that possession was not the same as the introduction or obtaining of a passport. A person might be guilty of the introduction of a forged passport into a country without being in possession of the same.

As regards the second case—that was to say, the obtaining of false passports without utilising them—he considered that the acts should be penalised independently of the act of using false passports; for it was often very difficult to prove that use had been made of a passport anywhere else than at a frontier post. The omission of sub-paragraph *(c)* would make terrorist activities easier. On the other hand, the fact that a passport had been obtained by a false statement or by producing a false document was easy to establish. Reserving for the moment the contingency of consuls issuing passports abroad, M. Pella asked the Polish delegate not to oppose the maintenance of sub-paragraph *(c)*.

M. Bekerman (Poland) said that it had not been his intention to propose the omission of sub-paragraph *(c)*. He believed that any false declaration of identity should be punishable. His only object had been to show the difficulties which might arise in connection with passports issued by consuls abroad.

Sir John Fischer Williams (United Kingdom) wished to ask a question in regard to the following passage in Article 13, paragraph 2 : " The wilful issue of passports, other equivalent documents, or visas by competent officials . . . should also be punishable ". Did the Rapporteur intend that to mean that penal legislation should be introduced to make the offence punishable, or would it be sufficient to deal with acts of that kind by administrative regulations?

M. Pella (Roumania), Rapporteur, replied that he assumed every country had a law under which an official issuing passports to persons who were not entitled to them was punishable by disciplinary or criminal proceedings, particularly when the official in question acted with the intention of encouraging activities contrary to the objects of the present Convention—namely, the prevention and repression of terrorism. He believed that the laws of all countries were in agreement in that respect.

M. Hirschfeld (Union of Soviet Socialist Republics) asked whether it was agreed that his proposal for the amalgamation of Articles 11, 12 and 13 [1] should be referred to the Drafting Committee.

Article 13 was referred to the Drafting Committee together with the amendments proposed thereto.

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[1] See page 107.

ARTICLE 14.

1. The results of the investigation of offences provided for in Articles 2, 3 and 13 should in each country and within the framework of the law of that country be centralised in an appropriate service.

2. Such service should be in close contact :

(a) With the police authorities of the country;

(b) With the corresponding services in other countries.

3. It should furthermore bring together all information calculated to facilitate the prevention and punishment of the acts mentioned in Articles 2, 3 and 13 and should, as far as possible, keep in close contact with the judicial authorities of the country.

AMENDMENT TO ARTICLE 14.

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[1]

Strike out paragraph 2.

M. HIRSCHFELD (Union of Soviet Socialist Republics) maintained that paragraph 2 overlapped with Article 15 and especially with sub-paragraph *(b)* of that article, in which the obligations concerned were specified.

The PRESIDENT asked whether the Soviet delegation wished to omit sub-paragraph *(a)* of paragraph 2 of Article 14 which, in his view, was essential.

M. HIRSCHFELD (Union of Soviet Socialist Republics) was in favour of omitting paragraph 2 and adding the words " *and police* " after " *judicial authorities* " in paragraph 3.

M. PELLA (Roumania), Rapporteur, understood that the Soviet amendment referred merely to the wording of the text, and that it was not M. Hirschfeld's intention to prevent the police authorities of different countries from remaining in contact. Articles 14 and 15 had been taken from other international agreements, and had merely been adapted to the requirements of the present Convention. Article 14 stipulated that the police authorities of the different countries should remain in contact, and Article 15 said how that contact was to be established. While he had no objection to Article 14 being reconsidered by the Drafting Committee, he thought it preferable to retain its present wording so as to keep it in harmony with similar articles in previous Conventions.

Article 14 was referred to the Drafting Committee.

ARTICLE 15.

Each service, so far as it considers it desirable to do so, should notify to the services of the other countries, giving all necessary particulars :

(a) Any act mentioned in Articles 2 and 3, even if it has not been carried into effect, such notification to be accompanied by descriptions, copies and photographs;

(b) Any search for, any prosecution, arrest, conviction or expulsion of persons guilty of acts dealt with in the present Convention, the movements of such persons and any pertinent information with regard to them, as well as their description, finger-prints and photographs;

(c) Discovery of documents, arms, appliances or other objects connected with acts mentioned in Articles 2, 3, 12 and 13.

AMENDMENT TO ARTICLE 15.

Amendment proposed by the Netherlands Delegation.[2]

In the French text of the article replace the words " *où il le jugera utile* " by the words " *où il le jugera désirable* ".[3]

The Netherlands amendment was adopted.

Article 15 was referred to the Drafting Committee.

ARTICLE 16.

1. The High Contracting Parties shall be bound to execute letters of request in accordance with their domestic law and practice.

2. The transmission of letters of request relating to offences referred to in the present Convention should be effected :

(a) By direct communication between the judicial authorities; or

(b) By direct correspondence between the Ministers of Justice of the two countries, or by direct communication from the authority of the country making the request to the Minister of Justice of the country to which the request is made; or

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request direct to the competent judicial authority, or to the authority indicated by the Government of the country to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

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[1] Document Conf. R.T.15.
[2] Document Conf. R.T.16.
[3] The proposed amendment is intended to make the French and English texts correspond more exactly.

3. In cases (a) **and** (c), **a copy of the letters of request shall always be sent simultaneously to the superior authority of the country to which application is made.**

4. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method or methods of transmission mentioned above which he will recognise for the letters of request of the latter High Contracting Party.

6. Until such notification is made by a High Contracting Party, his existing procedure in regard to letters of request shall remain in force.

7. Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

8. Nothing in the present Article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws.

AMENDMENTS TO ARTICLE 16.

Amendment proposed by the Netherlands Delegation.[1]

In paragraph 1, substitute for the words " *in accordance with their domestic law and practice* " the words " *to the extent provided for by their domestic law and practice* ".

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[2]

In sub-paragraph *(c)* of paragraph 2, add, after the words " *direct from such authority* " the words " *or by the diplomatic channel through the Ministry for Foreign Affairs* ".

M. VAN HAMEL (Netherlands) proposed to refer the Netherlands amendment to the Drafting Committee.

M. BEKERMAN (Poland) said that the expression in the Netherlands amendment " dans les limites de " (" to the extent provided for by ") seemed to him objective, while the original wording " conformément à " (" in accordance with ") was subjective.

After some discussion, in which a number of delegates took part, M. VAN HAMEL (Netherlands) agreed to replace the words " conformément à " [3] by " *selon* " [3], on the understanding that it was specified by the Rapporteur that the expression " selon " was to be understood as taking into account both subjective and objective considerations.

M. PELLA (Roumania), Rapporteur, thought that all the delegates were in favour of interpreting the expression " selon " in the sense indicated by M. van Hamel.

The Conference decided to replace the words " conformément à " *in paragraph 1 of Article 16 by* " selon ", *on the understanding that the expression was to be interpreted in the sense indicated by M. van Hamel.*

M. BEKERMAN (Poland) thought it better not to combine in a single item the two methods of transmission of letters of request, for which sub-paragraph *(b)* of paragraph 2 provided. He also maintained that sub-paragraph *(a)* was not sufficiently clear, on the ground that it did not indicate to whom the judicial authorities applied to should send the papers constituting the execution of the letter of request. While he had no objection to the transmission of letters of request through the diplomatic channel, as proposed by the Soviet delegation, he considered it unnecessary to specify that such transmission must take place through the Ministry for Foreign Affairs.

M. PELLA (Roumania), Rapporteur, thought M. Bekerman's remark well-founded. He suggested accordingly that sub-paragraph *(a)* should be retained, and sub-paragraph *(b)* divided into two parts, of which the second would become sub-paragraph *(c)*. The present sub-paragraph *(c)* would then become sub-paragraph *(d)*. There would therefore be the following four sub-paragraphs :

" *(a)* (As in the present text);

" *(b) By direct correspondence between the Ministers of Justice of the two countries;*

" *(c) By direct correspondence between the authority of the country making the request and the Minister of Justice of the country to which the request is made;*

" *(d)* (As sub-paragraph *(c)* in the present text)."

The question was merely one of form, and he felt sure delegates would easily be able to agree.

M. Pella added that he failed to see the practical utility of the Soviet proposal, since it was the usual practice for communications addressed through the diplomatic channel to be handled by the Ministry for Foreign Affairs.

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[1] Document Conf. R.T.17.
[2] Document Conf. R.T.17*(a)*.
[3] The English translation " in accordance with " remains unchanged.

M. HIRSCHFELD (Union of Soviet Socialist Republics) explained that the Soviet amendment was merely intended to make it clear that letters of request should be sent either *(a)* directly to the competent judicial authority or *(b)* through the diplomatic channel—that was to say, through the Ministry for Foreign Affairs.

M. PELLA (Roumania), Rapporteur, said that the same point should be made in connection with the sending of the papers constituting the execution of the letters of request.

M. HIRSCHFELD (Union of Soviet Socialist Republics) agreed.

M. PELLA (Roumania), Rapporteur, remarked that the Soviet amendment merely confirmed current practice. There was therefore no reason why it should not be adopted, and he proposed to leave it to the Drafting Committee to find a suitable formula in which to embody that idea.

The Rapporteur's proposal was adopted.

Article 16 *was referred to the Drafting Committee.*

ARTICLE 17.

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the question of the limits of criminal jurisdiction as a question of international law.

Article 17 *was referred to the Drafting Committee without observations.*

ARTICLE 18.

The present Convention does not affect the principle that, subject to the acts in question not being allowed to escape punishment, the characterisation of the various acts dealt with in the present Convention and the determination of the applicable penalties and of the methods of prosecution and trial depend in each country upon the general rules of the domestic law. It, further, does not impair the right of the High Contracting Parties to make such rules as they consider proper regarding the effect of mitigating circumstances, the right of pardon and the right of amnesty.

AMENDMENT TO ARTICLE 18.

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[1]

Strike out the second sentence reading : " *It, further, does not impair the right of the High Contracting Parties to make such rules as they consider proper regarding the effect of mitigating circumstances, the right of pardon and the right of amnesty* ".

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that Article 18 provided, in the first sentence, that the contracting parties should be free to follow the general rules of their domestic law for the purpose of enforcing the Convention, subject to the proviso that the acts covered by the Convention should not be allowed to escape punishment. The second sentence, however, greatly weakened the scope of the article and of the Convention as a whole. The stipulation that the Convention did not impair the right of the contracting parties to make such rules as they considered proper regarding the effect of mitigating circumstances, the right of pardon and the right of amnesty might mean that the acts in question would escape punishment, contrary to the spirit of the Convention. The Soviet delegation, therefore, asked for the deletion of the second sentence of Article 18.

M. KOUKAL (Czechoslovakia) said that the first sentence of Article 18 restricted the scope of application of the Convention; it seemed to imply that the contracting States were obliged to enforce the general rules of their domestic law, a situation which would appear to preclude the application of special rules. He proposed the deletion of the words, " *the general rules of* ".

M. PELLA (Roumania), Rapporteur, replying to the Czechoslovak delegate, explained that by the words " general rules " was meant the general legislative system of the country, and that the use of those words was no impediment to the operation of the special systems in force in some countries in which certain categories of offences were tried by special courts.

Referring to the Soviet proposal, he said that the Convention for the Suppression of Counterfeiting Currency was the first Convention in which a text similar to the one now under consideration had been adopted. Article 18 of that instrument read : " The present Convention does not affect the principle that the offences referred to in Article 3 should in each country, without ever being allowed impunity, be defined, prosecuted and punished in conformity with the general rules of its domestic law." In the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, the same formula had again been employed, with one slight difference, Article 15 containing the words " législation nationale " (" domestic law ") instead of " législation interne " (" domestic law "). Those two Conventions did not include the second sentence now appearing in Article 18 of the draft Convention for the Prevention and Punishment of Terrorism, as it had been felt that it might have led the contracting parties to make too frequent a use of their right of pardon and right of amnesty. The Rapporteur saw no objection to the deletion of the second sentence of Article 18; the meaning of the article could be made the subject of an interpretation, as had been done in the case of the 1936 Opium Convention.

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[1] Document Conf. R.T.18.

The PRESIDENT said that the intention underlying Article 18 was to leave the contracting parties free to punish the acts dealt with by the Convention in conformity with their domestic law. The only question was whether the expression " general rules " was adequate.

M. GIVANOVITCH (Yugoslavia) supported the Czechoslovak delegate's proposal to omit the reference to " general rules ".

Sir John Fischer WILLIAMS (United Kingdom) suggested that that was simply a question of drafting. He believed that he had been responsible for the use of the expression " general rules ". He thought that the Drafting Committee might be left to settle the question.

M. SEBESTYÉN (Hungary) was in favour of deleting the word " *general* ". He could not, however, support the Soviet amendment. The right of pardon and the right of amnesty were constitutional prerogatives of the Head of the State, and the adoption of the Soviet amendment would make it necessary for the contracting parties to amend their Constitutions. Moreover, pardon and amnesty would certainly not be lightly granted to terrorists. He did not think, therefore, that the last sentence of Article 18 would in any way weaken the efficacy of the Convention.

M. PELLA (Roumania), Rapporteur, replying to the Hungarian delegate's observation, said that the text framed by the Committee of Experts did not affect the right of amnesty and the right of pardon in the different countries. At the same time, the question whether a country possessed unlimited rights when it had entered into an undertaking to ensure the effective repression of certain acts, was a very delicate problem. In certain cases, the contracting parties would be justified in considering the unlimited exercise by another party of its right of amnesty and pardon as a refusal of justice. Although such cases might hitherto have been rare, it was impossible to deny the principle that States were entitled to criticise the abuse by another State of the right of amnesty and pardon, when such abuse directly affected their interests or those of their nationals. That principle was recognised by international law.

M. BASDEVANT (France) thought that one point was quite clear and definite. No one dreamed of interfering with the statutory provisions of any country determining what authority possessed the right of pardon or the right of amnesty, and specifying the circumstances in which either right might be exercised. That point was governed by the Constitution in some countries, and by the laws in others. It was a purely domestic matter, and there was no need for the Conference to discuss it. The text of Article 18 was all that was required from the point of view of the right of pardon and amnesty and the authority possessing competence in those matters. The Conference was not concerned with that purely domestic issue.

There was, however, another aspect of the matter. Supposing that the right of pardon and the right of amnesty had been exercised by the competent authority, it was quite immaterial, from an international point of view, who that competent authority was. The point to be decided, from an international point of view, was whether the right of pardon and the right of amnesty could be exercised freely and arbitrarily, without the possibility of appeal by the foreign State concerned, whatever the provisions of the domestic law might happen to be.

That question, considered simply as a matter of ordinary international law and setting aside all conventional obligations for the moment, could not be settled by a mere statement that the exercise of the right of pardon and amnesty could in no circumstances be criticised by a foreign Government. A foreign Government would be justified in saying : " You have made an abusive use of the right of pardon and the right of amnesty; you have gone too far. In what sense? In the sense that, by granting a pardon or amnesty, you have gone so far as to refuse justice to those who were entitled to it. You have been guilty of a denial of justice."

That idea had been embodied in several international arbitral awards in recent years. It was, of course, extremely difficult to prove that there had been an abuse, a denial of justice. Such cases were extremely rare, but the principle might be regarded as having been recognised by international law.

That was a point that the Conference should bear in mind and should not lose sight of by adopting a formula in the matter of the repression of terrorism which would appear to recognise a purely arbitrary right of pardon or right of amnesty. The Conference must weigh the terms it used in this respect most scrupulously; it must scrutinise the formula in the text now under discussion with due reference to the various observations which had been submitted. The purpose of the Soviet proposal appeared to be to avoid the use of too radical, too absolute a formula, to avoid conflicting with ordinary international law, which would be both improper and out of place in a Convention such as that which the Conference was discussing.

If those various considerations were taken into account, it should be possible to find some common ground.

Sir John Fischer WILLIAMS (United Kingdom) pointed out that Article 18 as it stood—that was to say, as framed by the Committee of Experts—satisfied the United Kingdom delegation and that any changes that might be suggested would have to be very carefully examined.

The PRESIDENT suggested that the Drafting Committee should endeavour to find a more precise formula, on the lines of the Soviet amendment.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked the various speakers—the Rapporteur and the delegate of France in particular—for the light which they had thrown on the Soviet amendment. It was quite clear, he thought, that the Soviet delegation had had no intention of abolishing the exercise of the right of pardon and the right of amnesty, for which provision was made in the Constitution of the different countries. The point at issue, however, was not merely the existence of that right, which was incontestable, but the degree of elasticity with which it might be exercised. The future Convention would possess, in addition to its legal value, political, moral and psychological value. Article 18 contained one clause which was a fundamental feature of the Convention : " subject to the acts in question not being allowed to escape punishment ". But the sentence which followed, in that same article, laid far too much stress on the power of the contracting parties to exercise their right of pardon and right of amnesty. That was not merely a matter of form, but affected the general tendency of the Convention. M. Hirschfeld asked the Conference to give most careful consideration to the Soviet proposal, which aimed at reinforcing international action in the prevention and punishment of terrorism.

M. GIVANOVITCH (Yugoslavia) suggested deleting the phrase " *the effect of mitigating circumstances* " and keeping only " *the right of pardon and the right of amnesty* ".

M. SASSERATH (Belgium) thought that, as no one had objected to the first sentence of Article 18, there was no need to refer in the second to the effect of mitigating circumstances in the application of penalties. No one wished to restrict the exercise of the right of pardon or the right of amnesty. The French delegate had pointed out, however, that the injured party was allowed, in international law, to protest against any abusive use of the right of pardon and the right of amnesty in connection with international crimes. It would accordingly be better to delete the second sentence of Article 18. The article would then stipulate only what was universally admitted—namely, that States were free to apply the general rules of their domestic law as regards the characterisation of the various acts, the penalties applicable and the methods of prosecution and trial, on the understanding that the injured party was entitled by international usage to criticise any abusive use of such powers. If the second sentence of Article 18 were allowed to stand, M. Sasserath did not see how it could avoid conflicting with the principles which the Convention was intended to lay down.

The PRESIDENT agreed that it would be difficult to find a satisfactory formula. The Conference might perhaps have to rely on the report and the Minutes to make its intentions clear.

M. STOYKOVITCH (Yugoslavia) proposed that Article 18 should be referred to the Drafting Committee so that the latter might find a more satisfactory formula. The weakness of Article 18 was due, in his opinion, to the fact that the first part, which concerned the characterisation of the various acts, the penalties applicable, the methods of prosecution and so forth, contained the phrase " subject to the acts in question not being allowed to escape punishment ", whereas the second part, which dealt chiefly with the exercise of the right of pardon and the right of amnesty, left the contracting parties free to make such rules as they considered proper regarding that right and the effect of mitigating circumstances. The clause " *subject to the acts in question not being allowed to escape punishment* " might perhaps come at the very end of the article.

M. VAN HAMEL (Netherlands) said that the question of the responsibility of Governments towards one another was now in process of evolution, but that the lines on which it was shaping were not yet very clearly defined. The wisest course would be to avoid any categorical statement and not to lay down a definite rule in one sense or the other. The Conference would be exceeding its powers if it tried to settle a question in process of evolution. The arbitral awards which had been given in the matter referred to particular cases. He agreed with what had been said by the Yugoslav delegate and thought that it would be best to delete all mention of the right of pardon and the right of amnesty.

Article 18 was referred to the Drafting Committee together with the proposals made during the discussion.

The continuation of the discussion was adjourned to a later meeting.

21. Appointment of the Drafting Committee.

The Conference decided to set up a Drafting Committee consisting of the representatives of the following countries : United Kingdom, France, Poland, Czechoslovakia, Yugoslavia, Belgium, Netherlands and Spain, together with the Rapporteur.

Sir John Fischer WILLIAMS (United Kingdom), while expressing his appreciation of the honour shown him, said that the fact of serving on the Drafting Committee must not be understood as prejudicing in any way the reserved attitude which the United Kingdom had adopted towards the Convention.

TWELFTH MEETING.

Held on Monday, November 8th, 1937, at 3.30 p.m.

President : Count CARTON DE WIART.

22. Question of the Participation in the Work of the Conference of the International Criminal Police Commission (continuation).

The PRESIDENT read a letter from the Secretary of the International Criminal Police Commission in reply to the telegram sent to the Commission by the Conference.[1] The Secretary of the Commission expressed regret that the Commission was unable to accept the invitation of the Conference owing to the fact that, on the one hand, the Conference had already been in session for some days past at Geneva and, on the other hand, there had been no time to consult the members of the Commission as to the desirability of sending a representative to attend the Conference.

23. Draft Convention for the Creation of an International Criminal Court :[2] General Discussion (continuation).

The PRESIDENT proposed to begin the examination, at a first reading, of the draft Convention for the Creation of an International Criminal Court.[2] As the underlying principles of the Convention had already been debated in the general discussion of the draft Convention for the Prevention and Punishment of Terrorism,[3] he presumed that the Conference would be able to dispense with a general discussion on the draft Convention concerning the Criminal Court, unless any delegate desired to speak on the Convention as a whole.

M. POLYCHRONIADIS (Greece) had the impression that there was a lack of precision about the provisions of the Convention in regard to the sending of guilty parties by the signatory States for trial before the proposed International Criminal Court. Article 3 contained a provision to say that they could be so sent; but there was no single article dealing with the acceptance of such sending by the other injured States—that was to say, the State on the territory of which the act of terrorism was prepared, the State against which the act was directed and the State entitled to demand the extradition of the guilty party.

The first paragraph of Article 3 did not, in fact, do more than record the existence of powers conferred on every State in virtue of its domestic law. The Convention ought to make it clear that the intention of the article was very different. The idea to be expressed was, first, that the exercise by States of those powers arising out of their domestic law did not conflict with the obligations assumed under the Convention for the Prevention and Punishment of Terrorism and, secondly, that the exercise of those powers did not involve any injury to the States on the territory of which the act of terrorism was prepared or against which it was directed, or again to the States demanding the extradition of the guilty party, or anything conflicting with the obligations undertaken for the purpose of international collaboration. That was the idea he wanted to see expressed, whether in Article 3 or in a separate article.

M. PELLA (Roumania), Rapporteur, admitted the force of M. Polychroniadis' general remark as to there being a certain lack of assurance about the wording of the Convention as a whole. That lack of assurance was inevitable in presence of the necessity for dispelling the apprehensions of States which did not propose to accede to the Convention.

As to the particular case mentioned by M. Polychroniadis, the Rapporteur recognised that the idea which he wished to have expressed was not quite clear from the text of the Convention as a whole; but he hoped to be able to explain the position to M. Polychroniadis' satisfaction.

The Greek delegate had pointed out that the powers of a State to send a guilty party for trial before the International Criminal Court instead of itself bringing him to trial or extraditing him were powers inherent in the State's own sovereignty and not a product of the Convention. That was of course quite correct.

A distinction must be made from the outset between the States signatories of the Convention and the non-signatory States, no matter whether the latter were States against which the act was directed or States of which the offending party was a national. Relations with the second category of States would not be affected by the Convention. The Convention was applicable only to those who were parties to it. Nevertheless, that, of course, was not an absolute principle. M. Pella thought there might well be cases where a State not a signatory of the Convention might have an interest in sending a guilty party for trial before the International Criminal Court rather than that he should remain unpunished.

A second case that might arise was where the States concerned were all parties to the Convention, the offence being directed against one of them or the offender being a national of one of them. Suppose, for instance, that a crime directed against France had been committed

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[1] See page 69.
[2] For the text of the draft Convention, see Annex 3, page 191.
[3] See pages 52 to 69. See also page 146.

on Yugoslav territory, the offender taking refuge in Roumania. Roumania would then be able either to bring the offender to trial or extradite him : but she could also exercise the powers referred to in Article 3 and send the offender for trial before the International Criminal Court. Neither Yugoslavia nor France would be entitled to object to such a decision. The position would be more complicated if, on Roumania deciding to send the offender for trial before the Court, France were to claim that the offence did not come within the category of the acts covered by the Convention for the Prevention and Punishment of Terrorism. There would then be a difference of opinion between France and Roumania in regard to the applicability of the Convention on Terrorism. Clearly, if the offence did not come under that Convention, Roumania could not exercise her powers under Article 3 of the Convention for the Creation of an International Criminal Court. But, in such a case, the difficulty would be dealt with under Article 45 of the latter Convention.

M. Polychroniadis (Greece) thanked the Rapporteur for his explanations, but pointed out that the text of the Convention was not sufficiently clear. States were asked to divest themselves of important contractual rights : the right to leave certain crimes unpunished and the right, which was far more important, to demand the offender's extradition. Such important points as those should be explicitly stated. There must be a definite text stipulating that such rights were to be renounced. He repeated that the right laid down in Article 3 came within the scope of the domestic law and could not form the subject of an international convention. What the Convention should make clear was that injured States—the State on the territory of which the act had been committed, or the State against which the act had been committed, or the State entitled to demand extradition—would not raise any objection to the exercise of that right, but would regard it as coming within the scope of the Convention for the Prevention and Punishment of Terrorism.

M. Pella (Roumania), Rapporteur, understood the Greek delegation's point that the Convention should state explicitly that once a contracting party to the Convention for the Creation of an International Criminal Court had availed itself of the right to bring the accused person before that Court, instead of extraditing or trying him, the contracting party in question had fulfilled its obligations towards the other contracting parties, in conformity with the Convention for the Prevention and Punishment of Terrorism. M. Pella agreed that that idea was not very clearly expressed in the text of the Convention for the Creation of a Criminal Court. It ought perhaps to be stated at the very beginning; if that were done, the provisions of paragraph 3 of Article 3, which were too restrictive, could be deleted. M. Pella was not prepared to submit a text immediately, but was quite willing to give effect to the Greek delegate's proposal.

M. Koukal (Czechoslovakia) said that a State could hand over the author of a crime to the International Criminal Court by a unilateral act, without any need for agreement between the parties concerned.

M. Polychroniadis (Greece) said that what he wanted was not that States should be given the right to send anyone for trial before the International Criminal Court, but that it should be stipulated that the other States would not raise any objection to the exercise of that right, that they would not say, for example : " By what right have you sent the accused to The Hague, instead of trying him yourself or extraditing him? "

M. Pella (Roumania), Rapporteur, said that there must surely be some misunderstanding. He thought that what the Czechoslovak delegate meant was that there was no need for agreement between the States concerned in each individual case, but that such agreement would ensue from the mere fact that the States in question were parties to the Convention.

The President thought that the matter was sufficiently clear, and suggested that it could be settled when the Conference came to examine Article 3. Some formula could be found then which would admit of no doubt whatsoever.

24. Examination, at a First Reading, of the Draft Convention for the Creation of an International Criminal Court : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937).[1]

ARTICLE 1.

An International Criminal Court for the trial, as hereinafter provided, of persons accused of an offence dealt with in the Convention for the Prevention and Punishment of Terrorism is hereby established.

Article 1 was referred to the Drafting Committee without observations.

ARTICLE 2.

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for an offence within its jurisdiction.

The President noted that the text had taken duly into account certain general objections which had been raised to international courts of the type proposed. Article 2, in its present

[1] For the text of the draft Convention, see Annex 3, page 191.

form, made it clear that the Court would not be a permanent body, that it would sit only intermittently and perhaps indeed only on rare occasions.

Article 2 was referred to the Drafting Committee.

ARTICLE 3.

1. In the cases referred to in Articles 2, 3, 8 and 9 of the Convention for the Prevention and Punishment of Terrorism, each High Contracting Party to the present Convention shall be entitled, instead of prosecuting before his own tribunal, to send the accused for trial before the Court.

2. A High Contracting Party shall further be entitled in the cases mentioned in Article 7 of the said Convention, instead of extraditing, to send the accused for trial before the Court if the State demanding extradition is also a Party to the present Convention.

3. The provisions of the present Article shall be applicable only if the accused is a national of a State which is a Party to the present Convention and if the offence is directed against the interests of a High Contracting Party to the present Convention.

Amendment to Article 3.

Amendment proposed by the Czechoslovak Delegation.[1]

Paragraph 3 :

(a) Strike out the words : " *if the accused is a national of a State which is a Party to the present Convention and* " ;

(b) Replace the words : " *against the interests of a High Contracting Party* " by the words " *against one of the High Contracting Parties* ".

M. Basdevant (France) said that the expression " au lieu de juger elle-même " in paragraph 1 was not quite correct. It would be more accurate to say " au lieu de faire juger par ses propres tribunaux ". That would correspond more closely to the English text, which read : " instead of prosecuting before his own tribunal ".

Again, the drafting of paragraph 3 was not, in M. Basdevant's view, satisfactory. The present text might perhaps be redrafted so as to take into account the idea expressed by the Greek delegate in his observations.[2]

The President suggested the following formula : " *The use that may be made by one of the High Contracting Parties of the right laid down in paragraphs 1 and 2 above shall be recognised by the other High Contracting Parties as being in conformity with the obligations ensuing from the Convention for the Prevention and Punishment of Terrorism.*"

M. Sebestyén (Hungary) understood that the result of the Czechoslovak amendment was to suppress one of the conditions determining the exercise of the right of sending the accused for trial before the International Criminal Court. If the amendment were adopted, it would be possible to send for trial before the Court nationals of States which were not parties to the Convention for the creation of that Court. It seemed to him that the omission of that condition would mean interfering with the first Convention and might lead to difficulties and disputes. The parties to the first Convention would have the right to insist that their own nationals should not be sent for trial before the International Criminal Court.

M. Sebestyén submitted those observations simply from the point of view of ensuring harmony between the two Conventions. He did not propose to go into the question whether, or to what extent, States which had not recognised the International Criminal Court could recognise the right to have one of their nationals tried by that Court.

M. Momtchiloff (Bulgaria) said that, without wishing to prejudice his Government's attitude towards the Convention for the Creation of an International Criminal Court, he fully endorsed the objections and observations submitted by the Hungarian delegate. He thought that the acceptance of the Greek amendment would probably facilitate the Bulgarian Government's accession to the Convention.

M. Koukal (Czechoslovakia) said that one of the amendments which he had submitted was purely formal in character. The substitution of the words " against one of the High Contracting Parties " for the words " against the interests of a High Contracting Party " would bring the text of Article 3 into line with the text of the Convention for the Prevention and Punishment of Terrorism.

Reverting to the suggestion he had made on a question of substance, M. Koukal directed attention to the question of plurality of prosecutions, a matter which had not been settled in either of the draft Conventions. As a jurist, he saw in the provisions of Article 3 a special form of the competence of the courts of each State party to the Convention for the creation of an International Criminal Court. Instead of itself prosecuting or extraditing, a State could avail itself of the right laid down in Article 3. In the exercise of its full and sovereign rights, it was entitled itself to try the accused, or to extradite him or send him for trial before the Court, irrespective of his nationality. The only possible restriction of that right of jurisdiction arose out of the consideration due to another State whose interests had suffered injury. If the injured State were not a party

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[1] Document Conf. R.T.22.

[2] See pages 117 and 118.

to the Convention for the Creation of an International Criminal Court, it might insist that the accused should not be sent for trial before the Court, but the nationality of the accused could not be deemed to be a factor in the case.

Sir John Fischer WILLIAMS (United Kingdom) said that he had not expected to take part in the debate, as his Government had already declared its intention of not signing the Convention under discussion. In view, however, of the suggestion made by the Czechoslovak delegation to extend the jurisdiction of the Court to persons other than the nationals of the contracting parties, he desired to mention one objection which was, perhaps, an objection of principle, but which was strongly felt. He thought that a State was entitled to take the view that, when any new international organ was created, its nationals should—on a matter of international comity—only be subjected to the jurisdiction of that organ if the State itself were prepared to acquiesce in the new institution.

After that explanation, he trusted that the Czechoslovak delegate would not press an amendment against which the United Kingdom delegation was not in a position to vote, as the United Kingdom did not intend to accede to the Convention, but to which—on grounds of international comity, at any rate—it was entitled to take objection.

M. GIVANOVITCH (Yugoslavia) thought that Article 3 should be left as it stood. The words " juger elle-même " seemed to him very expressive, as they brought out the exceptional character of the procedure of sending the accused for trial before the International Criminal Court.

The Czechoslovak proposal was, he thought, open to objections, the most important of which had already been mentioned by the United Kingdom delegate. He asked the Czechoslovak delegation not to insist on its proposal.

M. PELLA (Roumania), Rapporteur, said that he realised the scope of the Czechoslovak amendment, just as he appreciated the United Kingdom delegate's objections. But if he rightly understood the purport of the French delegate's proposal for giving effect to the suggestion put forward by the Greek delegation, paragraph 3 of Article 3 should be deleted. Did M. Basdevant agree?

M. BASDEVANT (France) thought that, if the Greek delegation's suggestion were taken up on the lines he had suggested, paragraph 3 would be superfluous. The question as a whole presented itself, in his view, as follows :

Was it or was it not necessary to include in the Convention a clause precluding the jurisdiction of the International Criminal Court, if the accused were a national of a State which was not a party to the second Convention, and again if the act in question were directed against such a State?

To appreciate the full scope of that issue, he would ask the Conference to ignore for the moment the Convention for the Creation of an International Criminal Court and to suppose that there was only the Convention for the Prevention and Punishment of Terrorism. Under the terms of the last-named Convention, if a terrorist act were committed in France against a foreign State, France was obliged to punish that act irrespective of the nationality of the author. She must take the necessary measures, in conformity with the principles laid down in her own legislation : she organised her criminal courts in the way she considered appropriate, the only condition being that the organisation and functioning of every court should be satisfactory. Hence, whatever the nationality of the accused, France was entitled to commit him for trial by jury or to send him for trial before a court composed of five judges of foreign nationality. France was fully entitled to choose that second solution and, in doing so, could not be deemed guilty of failure to fulfil the obligations ensuing from the Convention for the Prevention and Punishment of Terrorism.

That was the situation from the point of view of international law. Such being the case, it was difficult to see what objection there could be to certain States signatories to the Convention for the Prevention and Punishment of Terrorism agreeing between themselves to constitute an International Criminal Court before which they would have the right to send accused persons for trial. Precedents already existed. About a century ago certain German duchies had constituted a common Court of Appeal, without any objection on the part of foreign States. M. Basdevant did not see, then, what objection there could be to a State which was a signatory to the second Convention sending for trial before the International Criminal Court any individual, of no matter what nationality, whom it had the right to prosecute before its own tribunals.

There remained the question of expediency. It was quite conceivable of course that States which were not signatories to the second Convention might not be inclined to accept any extension of the competence of the International Criminal Court which would include their nationals. In law it was self-evident that a State which could prosecute an individual before its own tribunals could also send the accused for trial before any international court that it might select. The question was whether it was expedient to go so far. The Greek delegation's suggestion was extremely interesting from that point of view. If the text simply declared that States signatories to the Convention for the Creation of an International Criminal Court recognised, in so far as it concerned them, that every signatory State which sent an accused person for trial before the Court was fulfilling its obligations towards them under the Convention for the Prevention and Punishment of Terrorism, there would be no reference to the situation of third-party States under the Convention for the Creation of a Criminal Court. That would allay any doubts that might be felt by States which did not intend to sign the Convention, and the situation so far as they were concerned would still be governed exclusively by international law.

M. KOUKAL (Czechoslovakia) said that, in deference to the doubts expressed by the United Kingdom delegate, he was prepared to withdraw his amendment.

Sir John Fischer WILLIAMS (United Kingdom) thanked the Czechoslovak delegate for the concession he had made on that point. It was understood, he took it, that, although the new text of the Convention did not in so many words contain an actual undertaking that subjects of States not parties to it should not be brought before the International Criminal Court, that would in practice be the effect. He had understood what the delegate of France had said as implying that, in practice, although there was no legal obligation, no attempt would be made to bring nationals of States not parties to the second Convention before the tribunal, and that there was what was sometimes called a " gentlemen's agreement " on the subject.

M. VAN HAMEL (Netherlands) asked whether the United Kingdom delegate did not think that a State might be acting as much in accordance with the principles of international law if it sent a foreigner for trial before a recognised and well-established International Criminal Court as if it prosecuted him before the national courts.

Sir John Fischer WILLIAMS (United Kingdom) hoped that the Netherlands delegate was not going to call upon him to answer points of international law of a rather problematical character. He had not wished to lay down any proposition of international law. He had simply suggested that it was a matter of international comity that the jurisdiction of the Court under discussion should not be extended beyond the nationals of consenting States.

M. VAN HAMEL (Netherlands) said that he had not received any instructions from his Government on the subject, but that he was personally of opinion that a Government was free to send any foreigner guilty of having committed an act of terrorism on its territory before any court which it considered to be just and properly organised. He did not see why it should be contrary to international law or courtesy to send a foreigner for trial before such an international court, if the latter appeared to be equitable.

M. SEBESTYÉN (Hungary) said that the French delegate's suggestion had the merit of eliminating any possibility of dispute as to the connection between the two Conventions. The solution proposed was not, however, capable of settling all the difficulties that might arise. In matters of international penal law, the recognition of the right of States to try foreign nationals was based on a knowledge of the judicial institutions of those States. The situation was different in the case of a new judicial institution. There was no need to recall the cases in which refusal to grant extradition had been determined by the fact that special tribunals were functioning in the applicant countries. Again, it was not at all certain that the verdicts of the new Court would have the same value as those of the ordinary State tribunals. M. Sebestyén did not claim to be able to settle that problem. He simply wished to reserve his Government's right to decide whether it should consider the new Court equivalent to the ordinary courts, or whether it should regard the point as doubtful.

M. PELLA (Roumania), Rapporteur, said that when he had put his question to the delegate of France his own impression had been that, if Article 3 were amended in accordance with the Greek delegation's proposal, paragraph 3 would be found to be unnecessary. The French delegate's statements had confirmed that view.

After hearing the various observations which had been submitted, M. Pella had come to the conclusion that the adoption of the new formula now proposed would settle the question as regards States parties to the Convention for the Creation of an International Criminal Court. There remained the problem of the attitude of the States which were not parties to that instrument. In their case, the problem was simplified, since relations with them were governed by the rules of international law concerning the right of a State to send a foreign national for trial before whatever court it thought fit. That was the advantage of the French delegate's proposal.

Supposing a Hungarian national—assuming that Hungary was not a party to the Convention—committed a terrorist crime in Roumania, Roumania might propose to send the accused for trial before the International Criminal Court. Obviously, from the point of view of the rights arising directly from Roumanian sovereignty, Roumania could cause to be tried, in any way that she thought fit, persons who had committed crimes within her territory.

Even though Hungary had not acceded to the Convention for the Creation of an International Court, the question of the extent of the right of other States to submit its nationals to international jurisdiction depended exclusively on international law. The question would be decided, if a difference of opinion arose, through diplomatic channels or by arbitration or judicial proceedings.

Moreover, the Roumanian Code contained provisions embodying the principle of the universality of repression. If an individual guilty of an offence abroad connected, for instance, with traffic in women or traffic in dangerous drugs, were arrested on Roumanian territory, he could be tried by the Roumanian courts, whatever his nationality. It might be objected, by reference to certain doctrines based on the principle of territoriality, that Roumania was not entitled to try that individual unless the offence had been committed on her territory or unless the individual was a Roumanian national. Roumania might thus be exposed at any moment to a protest on the part of a State which did not admit the doctrine of universality. In practice, however, that contingency would not occur, since it was to the interest of all States that repression should be effective in the case of crimes which threatened the interests of the whole of mankind.

If no objection had hitherto been made to the principle of universality, which applied also to terrorist crimes, M. Pella thought that States which were not parties to the Convention for the Creation of an International Criminal Court would have no cause to object to their nationals being tried, not by the national court of another State, but by an international tribunal.

All States had an interest in ensuring that terrorism was effectively and impartially repressed. If States realised that in certain particularly delicate cases such repression could only be ensured by bringing the accused before the International Criminal Court, it was inadmissible that such States should raise difficulties which would be likely to hinder such repression and enable the guilty person to go unpunished. In any case, the matter at issue could always be settled by means of diplomatic negotiations.

The system proposed by the delegate of France simply made the text of the Convention more elastic, without, however, extending its scope. Under the old text it would not have been possible in any circumstances to send for trial before the International Criminal Court an individual who had committed an act of terrorism against a State which had not recognised that Court or who was a national of a State which had not acceded to the Convention for its creation, whereas, according to the new text, there was the possibility, in complicated cases—for instance, when there were several delinquents or accomplices of different nationalities or when a State met with difficulties regarding trial or extradition—to institute direct negotiations, with a view to obtaining the express or tacit consent of all the States concerned to the handing over of those individuals for trial to the International Criminal Court.

M. VAN HAMEL (Netherlands) said that, as between the contracting parties, the competence of the International Criminal Court mentioned in paragraphs 1 and 2 of Article 3 extended only to acts committed on the territory of the contracting party in question and to extraditable offences. If a Government had not the right to grant extradition owing to the political character of the offence, it would not be entitled either to send the accused for trial before the International Criminal Court.

Again, a State might introduce the principle of the universality of repression into its legislation, in order to make acts of terrorism punishable, not only if they were committed on its territory or by its own nationals, but even if they were committed abroad by foreigners. M. van Hamel wondered whether the State in question would have the right, in such a case, to send the accused for trial before the International Criminal Court. Would it perhaps be necessary to make provision for that contingency in a special article?

M. PELLA (Roumania), Rapporteur, referring to the first hypothesis put forward by the Netherlands delegate, explained that, if a Government were bound by the national laws to regard a given act as a non-extraditable political offence, the author of the offence could clearly not be sent for trial before the International Criminal Court if the offence were purely political in character. Some countries, however, now adopted quite a different attitude in regard to the nature of political offences : they no longer distinguished between political offences and offences against the ordinary law, from the point of view of extradition. Some countries went even further and took the view that, considering the gravity of offences directed against a State, the duty of international co-operation was more imperative in that sphere than in the case of offences against the ordinary law. It was therefore difficult to arrive at a decision which would be universally accepted. The only point definitely established was that, under Article 7 of the Convention for the Prevention and Punishment of Terrorism, States had the right to refuse extradition, but it was not specified that they were obliged to refuse extradition in the case of political offences. States could, moreover, conclude bilateral Conventions and interpret Article 7 in the widest possible manner. At the time when the Convention for the Suppression of Counterfeiting Currency was concluded, certain States had also concluded a Protocol undertaking that they would in no case regard offences in the matter of counterfeiting currency as political offences. Every country was thus free to decide whether, in the case of a given offence, the political or terrorist character predominated, and it could on its own responsibility send the delinquent for trial before the International Criminal Court.

As regards the second hypothesis, it was clear that if a State had the right under its national laws to judge a terrorist offence committed by a foreigner on foreign territory, it also had the right to send the accused for trial before the International Criminal Court. That last-named right followed simply from the fact that it had power itself to try the case. The Rapporteur took the view that the text as it stood conferred on States which recognised the principle of *judex deprehensionis* the right to send for trial before the International Criminal Court the author of an act committed abroad.

M. VAN HAMEL (Netherlands) thanked the Rapporteur for his explanations, which satisfied him as regards the second part of his question. The Rapporteur had clearly shown, by his reference to Article 7 of the Convention for the Prevention and Punishment of Terrorism, to which paragraph 1 of Article 3 of the Convention for the Creation of an International Criminal Court referred, that it was not necessary to introduce a further special article, in order that Governments should have the right mentioned by M. Van Hamel in his second hypothesis. That right was already implied, according to the very lucid explanation given by the Rapporteur, in the present text.

Concerning the first part, however, the Rapporteur had been somewhat categorical. The Netherlands Government was obliged by treaty to regard certain offences as political offences for which it could not grant extradition. If extradition were refused by reason of the political character of the offence, there must be no question of the State being required to send the delinquent for trial before the International Criminal Court.

M. PELLA (Roumania), Rapporteur, repeated that the question whether the Netherlands Government would send the offender before the Court instead of granting extradition would arise only if that Government were in a position to grant the extradition for which application was made. There might indeed be cases where a Government, whilst well aware of the terrorist character of the offence, and realising that extradition was justifiable, nevertheless found it difficult to hand the accused person over to the State demanding extradition, because of certain currents of opinion which would be hostile to such an act. It would be an easier solution in such cases to bring the individual concerned before the International Criminal Court.

M. VAN HAMEL (Netherlands) thanked the Rapporteur for his explanation, with which he was entirely satisfied. If, then, a Government were not in a position in certain cases to grant extradition, the question of sending the criminal before the International Criminal Court would not arise as far as it was concerned.

Article 3 was referred to the Drafting Committee for amendment in the sense of the suggestions made by M. Polychroniadis and M. Basdevant.

ARTICLE 4.

The Court shall be composed of judges chosen from among jurists who are acknowledged authorities on criminal law and who are or have been members of courts of criminal jurisdiction or possess the qualifications required for such appointments in their own countries.

Article 4 was referred to the Drafting Committee without observations.

ARTICLE 5.

The Court shall consist of five regular judges and five deputy judges, each belonging to a different nationality, but so that the regular judges and deputy judges shall be nationals of the High Contracting Parties.

M. PELLA (Roumania), Rapporteur, proposed to refer Article 5 to the Drafting Committee for such modifications as might seem desirable in view of the number of States ratifying or acceding to the Convention. As it stood, the text could not be applied until ten States had ratified or acceded to it. A transitional text should be drawn up stipulating that, pending the ratification of or accession to the Convention by ten States, deputy judges of the same nationality as the regular judges could be appointed, subject to the understanding that, in the absence of a regular judge, he would be replaced by a deputy judge whose nationality was different from that of any of the other judges sitting.

The Rapporteur's proposal was adopted.

ARTICLE 6.

1. Any Member of the League of Nations and any non-member State in respect of which the present Convention is in force may nominate not more than two candidates for appointment as judges of the Court.

2. The Council of the League of Nations shall be requested to choose the regular and deputy judges from the persons so nominated.

AMENDMENT TO ARTICLE 6.

Amendment proposed by the Czechoslovak Delegation.[1]

To substitute in the French text of paragraph 1 the words " *à l'égard desquels* " for the words " *à l'égard duquel* ".

M. SEBESTYÉN (Hungary) pointed out that no indication was given as to how the Council was to be approached. Was it to be through the diplomatic channel?

M. PELLA (Roumania), Rapporteur, explained that paragraph 2 followed the more or less traditional form in matters of procedure. The Hungarian delegate would note that Article 44 laid down that the contracting parties should meet with a view to taking all necessary decisions concerning the election of judges, etc.

M. VAN HAMEL (Netherlands) thought it might be useful to include a provision similar to that contained in Article 9 of the Statute of the Permanent Court of International Justice, by which a majority in the Council and the Assembly was required for the election of judges.

Sir John Fischer WILLIAMS (United Kingdom) said that Article 6 placed the Conference in the presence of one of the major issues arising in connection with the Convention for the Creation of an International Criminal Court. His Majesty's Government in the United Kingdom had already indicated that it did not wish to oppose the formation of an International Criminal Court by such States as were prepared to support it. It wished the Court every success. But His Majesty's Government was opposed to the Court's fortunes being linked up with those of the League.

In the opinion of His Majesty's Government, the League should only take action when at least a great majority, if not the whole, of its Members intended to participate. Speaking from

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[1] Document Conf. R.T.23.

the point of view of a Government whose ardent belief in the League had never been challenged, he urged that it would be in the nature of a gamble if the League's fortunes were attached to an institution which had not yet been proved.

Sir John Fischer Williams had been struck by the remark of the Rapporteur that he contemplated that, at the outset, only ten States or less would be parties to the Convention. How could it be proposed to put under the auspices of the League an institution which had the support of less than one-fifth of its Members?

Again, to take the proposal exclusively from the point of view of the functioning of the Court, the question arose whether the Council of the League was the best body to choose the members of a criminal court. Had the Council the necessary knowledge for that purpose? It would not be dealing with anything like the Permanent Court of International Justice, the candidates for which were persons of universal reputation. In the present case, it would have to choose specialists in criminal law, whose reputations must necessarily be confined to their own States. The proposal that the members of the Assembly should also be called in to take part in the election of members of the Criminal Court was, in his view, calculated to confuse the matter even more. There would be some fifty delegations voting who could not possibly be acquainted with the merits of the particular candidates.

Sir John Fischer Williams noticed that the League had not yet been approached. He took it that unanimity would be required for the League's assent to a proposal of that kind.

He observed that Article 44 as drafted contained indications as to the method of election of judges. Only a very small change would be required in the text of the Convention to confer the right of electing judges upon the States which were parties to the creation of the Court.

The only other reference to the Council of the League was in Article 7, where it said : " For the first period of ten years, the order of retirement shall be determined under the authority of the Council of the League of Nations by drawing lots ". He could not help thinking that the Council of the League had more important matters to attend to than the drawing of lots.

M. Pella (Roumania), Rapporteur, wished to avoid any misunderstanding. He did not think it was accurate to say that it was proposed to link the fortunes of the League with those of the International Criminal Court. The reports adopted by the Council of the League at its private meetings showed that it was not exclusively concerned with questions of first rate importance : indeed, it dealt with matters some of which were of far less moment than the election of judges of the International Criminal Court. A glance through the Convention as a whole would, moreover, show that the sole association of the Council with the Court was in this matter of the election of judges.

Obviously, there was no analogy between the International Criminal Court and the Permanent Court of International Justice. There was an organic connection between the latter and the League of Nations in the provisions of the Covenant itself. Even in that case, however, the Council intervened only from time to time to appoint judges; and it could not be said to assume any specific responsibility by so doing. Moreover, numerous agreements provided for the appointment by the Council of arbitrators and judges. Must it be assumed that the responsibility of the Council was thereby engaged?

In any case, M. Pella was willing to discuss any proposal for entrusting the appointment of judges of the International Criminal Court to an institution other than the Council of the League of Nations. He thought that the task might, if necessary, be entrusted to the Permanent Court of International Justice.

M. Basdevant (France) said that he approached the question in no doctrinaire spirit, but solely from the practical point of view. What was the most convenient method of electing judges of the International Criminal Court? In principle, his Government had no objection to the Netherlands delegate's proposal for election by the Council and the Assembly : but would it meet the requirements of the case? A Court set up under a Convention signed in the beginning by a small number of States could hardly be appointed by an Assembly in which more than fifty States were represented. That was a very important objection against participation by the Assembly. It was doubtful, moreover, if the Assembly would be prepared to act in the matter. M. Basdevant, for his part, would prefer not to run the risk of a rebuff by asking it to do so.

On the other hand, resort to the Council was open to the objection that the majority of the signatory States might not be represented on it. M. Basdevant wondered whether the Council might, in that case, invite the States concerned to sit *ad hoc* for the purpose of the election.

The Council had not infrequently been called upon to take action similar to that contemplated in the draft Convention. It had appointed M. Eugène Borel, under a provision of the Treaty of Lausanne, to arbitrate on the allocation of the Ottoman Debt. It had appointed M. Undén to settle a dispute between Greece and Bulgaria under Article 180 of the Treaty of Neuilly. Again, it had been asked to appoint an arbitrator in a railways dispute under a clause in the Treaty of Saint Germain. The Secretariat might perhaps study the precedents for an invitation by the Council to the States concerned to sit *ad hoc* when members of the Court were being elected.

In any case, the election of members of the Court by the Council would not be a proceeding without precedent. M. Basdevant did not say it was the only possible solution. The French Government would be quite willing for the choice of judges to be entrusted to the Permanent Court of International Justice. That arrangement would, in its opinion, offer many advantages. The point was a difficult one, involving delicate issues and calling for reflection. It could not be settled hurriedly at the close of a meeting.

M. VAN HAMEL (Netherlands) was ready to withdraw his suggestion concerning the participation of the Assembly, if that would help toward a rapid solution whereby the choice of judges would be entrusted to the Permanent Court of International Justice.

Sir John Fischer WILLIAMS (United Kingdom) preferred to postpone the decision until the next meeting.

Sir John Fischer Williams' proposal was adopted.

ARTICLE 7.

1. Judges shall hold office for ten years.

2. Every two years, one regular and one deputy judge shall retire.

3. For the first period of ten years, the order of retirement shall be determined under the authority of the Council of the League of Nations by drawing lots.

4. Judges may be re-appointed.

5. Judges shall continue to discharge their duties until their places have been filled.

6. Nevertheless, judges, though replaced, shall finish any cases which they have begun.

Sir John Fischer WILLIAMS (United Kingdom) observed that paragraph 3 of Article 7 provided for action by the Council of the League and the proposed drawing of lots. As such, it must be postponed for the same reasons as Article 6.

M. PELLA (Roumania), Rapporteur, proposed the provisional adoption of Article 7, reserving paragraph 3.

Article 7 was referred to the Drafting Committee, paragraph 3 being reserved.

ARTICLE 8.

A judge appointed in place of a judge whose period of appointment has not expired shall hold the appointment for the remainder of his predecessor's term.

Article 8 was referred to the Drafting Committee without observations.

ARTICLE 9.

1. Deputy judges shall be called upon to sit in the order laid down in a list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

Article 9 was referred to the Drafting Committee without observations.

ARTICLE 10.

1. Members of the Court may not participate in the settlement of any case on which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

2. Every member of the Court shall, before taking up his duties, give a solemn undertaking in open Court that he will exercise his powers impartially and conscientiously.

AMENDMENT TO ARTICLE 10.

Amendment proposed by the Czechoslovak Delegation.[1]

Make a *special article* of *paragraph 2.*

M. PELLA (Roumania), Rapporteur, supported the proposal of the Czechoslovak delegation to make a special article of paragraph 2 of Article 10.

Article 10 was referred to the Drafting Committee together with the proposal of the Czechoslovak delegation.

ARTICLE 11.

1. Any vacancy, whether occurring through the expiration of a judge's term of office or for any other cause, shall be filled as provided in Article 6.

2. In the event of the resignation of a member of the Court, the resignation shall take effect on notification being received by the Registrar.

ARTICLE 12.

A member of the Court cannot be dismissed unless in the unanimous opinion of the other members he has ceased to fulfil the required conditions.

ARTICLE 13.

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

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[1] Document Conf. R.T.24.

ARTICLE 14.

1. The Court shall elect its President and Vice-President for two years; they may be re-elected.

2. The work of the Registry of the Court shall be performed by the Registry of the Permanent Court of International Justice, if that Court consents.

ARTICLE 15.

The seat of the Court shall be established at The Hague. For any particular case, the President may take the opinion of the Court and the Court may decide to meet elsewhere.

ARTICLE 16.

A High Contracting Party who avails himself of the right to send a person for trial before the Court shall notify the President through the Registry.

Articles 11 *to* 16 *were referred to the Drafting Committee without observations.*

ARTICLE 17.

The Court shall apply the substantive criminal law of the State on the territory of which the offence was committed. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

M. GIVANOVITCH (Yugoslavia) observed that Article 17 raised the much debated question of the place where the offence was committed. Did the territory on which the offence was committed mean the place where the act was committed, or the place where the results of the act occurred, or both?

M. PELLA (Roumania), Rapporteur, agreed that the point was a controversial one. The difficulty was met, however, by the second part of Article 17, which provided that if there were any dispute as to what substantive law was applicable, the Court would decide. Even if there were not a difference of opinion, but the Court was uncertain about the question, it must state its opinion. It was necessary to have confidence in the Court. It would certainly be capable of solving difficulties of that sort.

M. GIVANOVITCH (Yugoslavia) recalled that several national codes, such as the Yugoslav Code and the Italian Code, had already decided the matter. The Court might be given an indication in that sense.

M. PELLA (Roumania), Rapporteur, observed that the Drafting Committee would, in any case, have to revise the text. Perhaps M. Givanovitch would draw up a proposal in writing to assist the Drafting Committee in deciding whether to amend the text itself or to leave it to the Court to settle the matter in particular cases.

M. GIVANOVITCH (Yugoslavia) said he would be satisfied by a reference in the records of the Conference to the fact that the point had been raised.

Article 17 *was referred to the Drafting Committee.*

ARTICLE 18.

If, for some special reason, a member of the Court considers that he should not sit to hear a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

ARTICLE 19.

1. The presence of five members shall be necessary to enable the Court to sit.

2. If the presence of five regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

ARTICLE 20.

If the Court has to apply, in accordance with Article 17, the law of a State of which no sitting judge is a national, the Court may invite a jurist who is an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Articles 18 *to* 20 *were referred to the Drafting Committee without observations.*

ARTICLES 21 AND 22.

Article 21.

As soon as the Court is seized of a case, the President of the Court shall notify the State against which the offence was directed, and the State on the territory of which the offence was committed. These States, and any other States, may put before the Court the results of their investigations and any evidence and objects connected with the crime which they have in their possession; these shall be included in the file of the case.

Article 22.

1. The Court shall be seized of a case by an indictment issuing from a High Contracting Party.

2. The right to conduct the prosecution shall rest with the State against which the offence was committed. Failing that State, it shall belong to the State on the territory of which the offence was committed, and failing also that latter State, then to the State by which the Court was seized.

3. The State which seizes the Court shall at the same time name the agent by whom it will be represented.

4. The Court must not proceed further with the case if the charge is withdrawn.

M. PELLA (Roumania), Rapporteur, said that Articles 21 and 22 must be referred to the Drafting Committee for redrafting in more precise form. It was not clear whether the Court was seized merely by the reference of a case to it, or whether it could only be seized by an indictment. It was true that Article 22 stated that the Court was seized of a case by an indictment issuing from a contracting party : but the two articles were contradictory, as the indictment could issue either from the State which decided to send the accused for trial before the Court or from the State against which the offence was committed. The contradiction could be eliminated by amending Articles 21 and 22 as follows :

Article 21 to read :

> *" The President of the Court, on being informed by a High Contracting Party of its decision to commit an accused person for trial before the Court, shall notify the State against which the offence was directed and the State on the territory of which the offence was committed."*

Paragraph 2 of Article 22 would be amended by the substitution at the end of the paragraph of the words *" which committed the accused person to the Court "* for the words *" by which the Court was seized "*.

A new paragraph, numbered 4, to be inserted, reading as follows :

> *" The States mentioned in the aforesaid paragraph 2 may inform the Court of the results of their investigations and of any evidence or objects connected with the crime which they have in their possession. These shall be included in the file of the case."*

The present *paragraph* 4 to become *paragraph* 5.

M. Pella added that the proposed amendments were of a purely technical nature, and he proposed to refer them to the Drafting Committee.

M. SEBESTYÉN (Hungary) suggested that the Drafting Committee should also take into account the possibility of informing the State of which the accused person was a national.

Articles 21 and 22 were referred to the Drafting Committee, it being understood that the proposals of the Rapporteur and of the delegate for Hungary would be taken into consideration.

ARTICLE 23.

Any State or person injured by an offence may constitute itself or himself " partie civile " before the Court, inspect the file, submit a statement of its or his case to the Court, and take part in the debates.

ARTICLE 24.

The file of the case and the statement of the " partie civile " shall be communicated to the person who is before the Court for trial.

ARTICLE 25.

The parties may propose the hearing of witnesses and experts by the Court, which shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts.

Articles 23 to 25 were referred to the Drafting Committee without observations.

THIRTEENTH MEETING.

Held on Tuesday, November 9th, 1937, at 11.30 a.m.

President : Count CARTON DE WIART.

25. Examination, at a First Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937) [1] (continuation).

ARTICLE 19.

If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the parties concerning the settlement of international disputes.

[1] For the text of the draft Convention, see Annex 3, page 186.

If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice, if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

AMENDMENT TO ARTICLE 19.

Amendment proposed by the Polish Delegation.[1]

Add at the end of the article a new paragraph reading as follows :

The above provisions of the present Article shall not prevent High Contracting Parties, if they are Members of the League of Nations, from bringing the dispute before the Council or the Assembly of the League in virtue of the Covenant.

M. KULSKI (Poland) said that Article 19 reproduced a formal clause which appeared in all the multilateral conventions concluded under the auspices of the League of Nations. The Polish delegation was doubtful, however, whether the insertion of that clause, as it stood, was sufficient. The Convention for the Prevention and Punishment of Terrorism was of a particular character and presented certain political features. Article 19, as framed by the Committee of Experts, might give rise to delicate questions in the future, owing to the fact that only one authority was made competent to settle disputes—namely, the Permanent Court of International Justice. For example, if a dispute arose concerning the Convention which one party wished to submit to the Council, how would the question of the interpretation of Article 19 be decided? Legal practice and doctrine offered no categorical reply. There was therefore a danger that the second party might be unwilling to lay the matter before the Council and might insist on the dispute being referred to the Court. The latter would find itself in an embarrassing situation if it had to deal with a dispute which was political rather than legal in character. Provision must therefore be made to allow of the dispute being submitted to the Council. To that end, the Polish delegation proposed that a new paragraph should be added at the end of Article 19 providing that the contracting parties should not be prevented " from bringing the dispute before the Council or the Assembly of the League in virtue of the Covenant ".

The PRESIDENT asked whether the Conference thought that the first paragraph of Article 19 precluded the possibility of recourse to the Council.

M. KULSKI (Poland) reminded the Conference that the provisions of earlier conventions, reproduced in the first paragraph of Article 19, had in the past been the subject of divergent interpretations. It was to avoid all possibility of misunderstanding that the Polish delegation now asked that Article 19 should provide explicitly for recourse to the Council.

The PRESIDENT observed that the Polish amendment appeared to be in the nature of an interpretation.

M. SEBESTYÉN (Hungary) said that the impression he had received from the Polish delegate's remarks was that the Polish amendment would mean establishing two jurisdictions : that of the Permanent Court of International Justice for disputes relating to the interpretation of the Convention and that of the Council or the Assembly for disputes of any kind relating to the interpretation or application of the Convention. The amendment appeared to confer on the Council and the Assembly powers which they did not possess under the Covenant.

The competence of the Council and Assembly was very clearly defined in the Covenant. Article 11, paragraph 1, for instance, provided for recourse to the Council in case of " war " or " threat of war " and paragraph 2 of that same article provided for recourse to the Assembly or the Council in the case of " any circumstance whatever . . . which threatens to disturb international peace ". Articles 15 and 16 defined with no less precision the cases in which the Assembly or the Council was competent. The fact of a dispute having arisen regarding the interpretation or application of a treaty was not in itself sufficient to justify laying the matter before the Council or the Assembly. The Polish amendment would tend to create a situation that was not quite in keeping with the provisions of the Covenant.

The Hungarian delegate therefore urged the Conference to examine the question very carefully and said that he would be interested to hear his colleagues' views thereon.

Sir John Fischer WILLIAMS (United Kingdom) thought that the Polish amendment should be very carefully examined. Its relation to the Covenant of the League needed closer scrutiny than appeared to have been given to it. As the Hungarian delegate had pointed out, there were several articles of the Covenant which dealt with questions of the same kind, particularly questions relating to the solution of difficulties.

Article 13 provided that if what might be described generally as a legal dispute arose, particularly a dispute as to the interpretation of a treaty, the dispute was to be solved by reference to an arbitral or judicial tribunal.

Article 15 on the other hand—the Polish delegate appeared to think that the clause concerning disputes was related to that article—provided for reference to the Council and possibly to the Assembly in the case of any dispute which was described as " likely to lead to a rupture ".

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[1] Document Conf. R.T.19.

The only right which the Polish amendment was meant to reserve was the right to proceed under Article 15, and it was thus important to observe that Article 15 provided only for a particular class of disputes, whereas the Polish amendment provided for reference to the Council or the Assembly in all cases—that was to say, whether the dispute was likely to lead to a rupture or simply concerned the interpretation of the Convention.

He did not see any objection to reserving the over-ruling provisions of the Covenant, but thought that the text needed more careful consideration and suggested that the Drafting Committee might be asked to decide exactly how the reference to the Covenant should be formulated. He did not think that it was a very good precedent to reserve special rights which were already safeguarded in the Covenant. The Covenant was the over-ruling law and, if expressions such as "this is not to prejudice the Covenant" were introduced into conventions, people would begin to point out that no such provision occurred in other cases and to suggest that, unless a special reservation existed, the rules of the Covenant might be over-ruled. That was a danger. The whole question was one of considerable delicacy, and he thought that the Conference ought to consider it a little further before accepting the amendment, at any rate in its present form.

M. van Hamel (Netherlands) thought perhaps the difficulty which the Polish amendment was intended to meet was covered already by the provisions of paragraph 1 of Article 19, which stipulated that, if a dispute relating to the interpretation or application of the Convention had not been satisfactorily solved by diplomatic means, it should be settled in conformity with the provisions in force between the parties concerning the settlement of international disputes. Did not that clause enable Members of the League to submit their disputes, if they happened to be of a political character, to the Council for settlement? If so, the Polish amendment was unnecessary, as the substance of the proposal existed already in the first paragraph of Article 19. That should avoid the danger—a by no means negligible danger—mentioned by the United Kingdom delegate.

The adoption of the Polish amendment might lead to difficulties. For example, those parties which had accepted the Optional Clause relating to the compulsory jurisdiction of the Permanent Court of International Justice had thereby agreed to submit to the Court's jurisdiction all legal questions concerning the application of treaties. Members of the Conference would surely not be prepared to admit an exception to the obligation which had been assumed by acceding to the Optional Clause. The Polish amendment might indeed be interpreted to mean that, even in the case of a legal dispute, seeing that Article 19 spoke of disputes relating to the interpretation of the Convention, any such dispute might be brought before the Council, whereas by acceding to the Optional Clause States had recognised the exclusive jurisdiction of the Permanent Court in such matters. M. van Hamel suggested that the first paragraph of Article 19 already met the Polish delegation's requirements, since it provided implicitly that the parties could refer to the Council.

M. Pella (Roumania), Rapporteur, supported the proposal that the matter dealt with in the amendment submitted by the Polish delegation should be referred to the Drafting Committee so that the possibility should be examined of making Article 19 clearer. In any case, he agreed, in principle, with the Polish amendment.

As to the problem of unilateral applications to the Court, the second paragraph of Article 19 contained the words : " If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice ". He would not have raised the question had it not been for the fact that the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs stipulated that the contracting parties should submit the dispute to the Permanent Court of International Justice " at the request of any one of the Parties ". The text of the 1936 Convention thus provided explicitly for the hypothesis of a unilateral request. Article 19 of the present draft could, of course, be interpreted as not precluding unilateral requests. But the text of that article read : " If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice ". Must there be agreement on the choice of the Permanent Court? M. Pella did not think so. He thought that the idea of a unilateral request was already embodied in the text of Article 19 of the draft. Since, however, a recent Convention—the 1936 Opium Convention—made explicit provision for unilateral requests, the Conference should make known its views on the subject.

M. Kulski (Poland) agreed to the suggestion that the Polish amendment should be referred to the Drafting Committee. He wished, however, to dispel a misunderstanding. The Polish delegation had had no intention of extending the competence of the Council; its purpose had been to safeguard it. The Polish amendment, moreover, was not an innovation in international practice. Political agreements, such as the Locarno Treaty, contained an article safeguarding the rights and duties of the parties under the Covenant. The wording of the Polish amendment perhaps needed to be improved, but the Polish delegation urged that the Conference should agree to adopt a text which was designed to safeguard the competence of the Council.

M. Givanovitch (Yugoslavia) considered that the various aspects of the interpretation of the Convention should be dealt with in a uniform manner and that that could only be done by the Council. He therefore supported the Polish amendment.

M. Hirschfeld (Union of Soviet Socialist Republics) made a general reservation on behalf of his Government concerning the application of Article 19.

His personal opinion regarding the Polish amendment was that it was very desirable that it should be adopted in some form which the Drafting Committee might decide. It seemed expedient to stress the connection between the Convention and the Covenant—that was to say, between international co-operation for the repression of terrorism and international co-operation in general. He thought that the explanations which the Polish delegate had given should allay the fears of certain delegations.

The PRESIDENT proposed that the Polish amendment should be referred to the Drafting Committee and that the latter should be asked to consider it with due reference to what had been said in the course of the discussion.

The President's proposal was adopted.

The PRESIDENT invited the Conference to discuss the Rapporteur's proposal to introduce, in the second paragraph of Article 19, a clause providing for unilateral requests.

M. BASDEVANT (France) thought that it was unnecessary to introduce in paragraph 2 of Article 19 a clause providing explicitly for unilateral requests. Paragraph 2 embodied a rule of compulsory jurisdiction. It instituted the compulsory jurisdiction of the Permanent Court of International Justice for disputes that might arise in any of the various hypotheses contemplated. Once the compulsory jurisdiction of the Court was established, the way in which it functioned and, in the first instance, the methods by which disputes should be referred to the Court, would be fixed not by the Treaties containing the Clause relating to compulsory jurisdiction, but by the Statute, Rules and practice of the Court itself.

According to the Statute of the Court and its Rules and practice, there were two ways of seizing the Court—namely, by means of a special agreement, a way which was always open, whether a clause relating to compulsory jurisdiction existed or not, and by means of a written application, a course which was possible only when there was a clause relating to compulsory jurisdiction : either the clause laid down in Article 36 of the Statute of the Permanent Court or a clause in some particular treaty. Therefore, in the absence of any specific provision, it would mean that, according to the Statute, Rules and practice of the Court, the latter could be seized either by means of a special agreement between the parties to the dispute—and that method might have much to recommend it, as it would give the parties to the dispute an opportunity, before referring to the Court, of defining the subject and terms of the dispute, and circumscribing the issue, which might be extremely useful—or, in the absence of a special agreement, by means of a written application.

The legal position was thus quite clear. That being so, it seemed preferable not to add the parenthetical clause appearing in the 1936 Opium Convention.

M. PELLA (Roumania), Rapporteur, said that he was already in agreement—by anticipation—with the delegate of France as to the inadvisability of inserting the clause which appeared in the 1936 Opium Convention. He had raised the point simply in order that the Minutes might show why the Conference had adopted Article 19 as it stood, and how it had interpreted the provisions of that article.

Article 19 was referred to the Drafting Committee.

ARTICLE 20.

1. The present Convention, of which the French and English texts shall be both authentic, shall bear to-day's date. Until . . . it shall be open for signature on behalf of any Member of the League of Nations and on behalf of any non-member State represented at the Conference which drew up the present Convention or to which a copy thereof is communicated for this purpose by the Council of the League of Nations.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 20 was referred to the Drafting Committee without observations.

ARTICLE 21.

1. After the . . . , the present Convention shall be open to accession by any Member of the League of Nations and any of the non-member States referred to in Article 20 on whose behalf the Convention has not been signed.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their receipt to all the Members of the League and to the non-member States referred to in Article 20.

Article 21 was referred to the Drafting Committee without observations.

ARTICLE 22.

Any Member of the League of Nations or non-member State which is prepared to ratify the Convention under the second paragraph of Article 20, or to accede to the Convention under Article 21, but desires to be allowed to make reservations with regard to the application of the Convention, may so inform the Secretary-General of the League of Nations, who shall forthwith communicate such reservations to all the Members of the League and non-member States on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto.

Should the reservation be formulated within two years from the entry into force of the Convention, the same enquiry shall be addressed to Members of the League and non-member States whose signature of the Convention has not yet been followed by ratification. If, within six months from the date of the Secretary-General's communication, no objection to the reservation has been made, it shall be treated as accepted by the High Contracting Parties.

Amendment to Article 22.

Amendment proposed by the United Kingdom Delegation.[1]

At the end of the article, insert the words :

In the event of any objection being received, the Secretary-General of the League of Nations shall inform the Government of the Member or non-member State which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

Sir John Fischer Williams (United Kingdom) said that the United Kingdom amendment was designed to remedy, both in the present Convention and probably in other conventions, an omission which was apparent in Article 22 as it stood. As drafted, the text did not state what was to happen if an objection to a reservation was received. The United Kingdom amendment made it clear that, in that event, the State which had submitted the reservation had to choose between dropping the reservation or not ratifying the particular convention. The United Kingdom amendment was merely a useful piece of legislation relating to the general clauses of conventions concluded under the auspices of the League.

M. Sebestyén (Hungary) said that Article 22, as it stood, differed slightly from the corresponding provisions in conventions previously concluded under the auspices of the League. Experience of reservations made by Governments to conventions signed by them had led to the insertion of the stipulation in Article 22 to the effect that the absence of objection to a reservation was tantamount to acceptance of the same. The innovation was welcome as making it easier to ascertain, in the case of any particular convention, in what countries it was in force, and subject to what conditions. M. Sebestyén congratulated the Secretariat on the form given to Article 22, which would facilitate the application of the Convention. He also supported the United Kingdom amendment as a useful addition to the effectiveness of Article 22.

M. Podesta Costa, Secretary-General of the Conference, explained the origins of the provision in Article 22. Before 1927, no international conventions or treaties contained any provision in regard to reservations; and the position in the matter had been chaotic. But certain reservations made in the case of the Convention of February 19th, 1925, for the control of the international traffic in narcotic drugs had led the Council to adopt a resolution, on June 17th, 1927,[2] to the effect that reservations were not binding unless accepted by the other contracting parties.

In the light of that resolution, a clause was inserted in the Convention of November 8th, 1927, for the Abolition of Import and Export Prohibitions and Restrictions, providing for the collective consultation of all signatories on all reservations—a somewhat cumbrous proceeding. The 1928 Convention on Economic Statistics, the 1929 International Convention for the Suppression of Counterfeiting Currency, and the 1930 Convention on Stamp Duties on Bills of Exchange and Promissory Notes, provided that all States ratifying those Conventions, or definitively acceding thereto, were to be consulted by the communication in writing of all reservations made. In the absence of any objection to a reservation within six months of the date of its communication, the reservation was to be regarded as adopted.

In the present Convention, while the six months time-limit had been maintained, the experts had introduced a slight modification by extending the list of States consulted to include those which had only signed the Convention, provided that the delay in ratification did not exceed a relatively considerable period of time. It was felt that the action of States in allowing a number of years to pass without ratifying was proof of absence of interest, and that such absence of interest disqualified the States in question from debarring third States which desired to accede with reservations. The effect of the United Kingdom amendment was to strengthen the operation of the article should objections to a reservation be raised.

M. Pella (Roumania), Rapporteur, had no observations to offer on the United Kingdom amendment. It was a logical deduction from the text proposed by the experts.

In connection with the statement just made by the Secretary-General of the Conference, M. Pella pointed out that the ratification of conventions dealing with matters of criminal law frequently involved fundamental changes in national legislation. For example, Roumania had been obliged to await the promulgation of its new Criminal Code before it could take the necessary steps to ratify the Convention for the Suppression of Counterfeiting Currency. On the other hand, Roumania had ratified the Optional Protocol, which went further, but which did not involve any change in the existing Roumanian law.

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[1] Document Conf. R.T.20.

[2] See *Official Journal*, July 1927, page 800.

The Secretariat's proposal to limit the communication of reservations to States which had signed, but had not ratified, the Convention within two years from its entry into force, excluded, because they had not ratified within that period, countries which obviously intended to do so and which might have everything to gain from an international solution of the problem. Those countries, however, might have observations to make on certain reservations.

While he accepted both Article 22 and the United Kingdom amendment, M. Pella thought both texts should be referred to the Drafting Committee for reconsideration in the light of the Convention as a whole, as well as for the solution of the specific case to which he had drawn attention.

M. BASDEVANT (France) thanked M. Podesta Costa for the information he had supplied in regard to the development of existing practice in the matter of reservations. The whole Conference would be grateful to the Secretariat for the valuable assistance it had given in this matter, a contribution to the work of the Conference which only the Secretariat could have made. The text of Article 22, as prepared by the Secretariat, should facilitate the conclusion of international conventions of a collective character.

M. Basdevant was happy to be able to accept the United Kingdom amendment, which completed Article 22; he would like, however, to propose a formal amendment—namely, to omit the words "*of the Member or non-member State*" so that the text would read "*the Government which desired . . .*"

Sir John Fischer WILLIAMS (United Kingdom) had no objection to M. Basdevant's proposed amendment.

The PRESIDENT noted that the Conference was prepared to accept the amendment proposed by the United Kingdom delegation, as amended by M. Basdevant. Article 22 would accordingly be referred to the Drafting Committee for reconsideration in the light of the Rapporteur's observations on the two-year time-limit.

M. PODESTA COSTA, Secretary-General of the Conference, pointed out that the two-year time-limit began not from the date of signature of the Convention, but from the date of its coming into force. The period might therefore be in practice four of five years from the date of signature. In order to meet the Rapporteur's objection, however, he proposed to extend the period to three years.

M. PELLA (Roumania), Rapporteur, agreed that the period in question should be three years.

M. HIRSCHFELD (Union of Soviet Socialist Republics) asked what was to be done if objections were raised that did not take account of the reasons for which reservations had been made. The United Kingdom amendment provided for objections to be communicated by the Secretary-General of the League to the Governments concerned, but gave no indication of their being considered by the League or any other organisation.

Sir John Fischer WILLIAMS (United Kingdom) thought there was a misunderstanding. He would describe the situation as follows. An agreement had been signed in a settled form. If a State wished to accede to it with a certain difference, the assent of the other signatory States was necessary. If any one of the other States did not accept the reservation, they obviously could not change the whole Convention. States which wanted to make reservations on an accepted text were, to put it plainly, at the mercy of any one State which had signed the Convention and did not accept the reservation. The question of the reasonableness of the exception to the reservation did not arise for decision. That question would have to be negotiated between the two States concerned, and the State which objected to the reservation might press the other State to withdraw it. That was a matter for negotiation between them, and not for discussion by the Conference or by a superior body.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked the United Kingdom delegate for his explanations.

The PRESIDENT proposed to refer Article 22 and the United Kingdom amendment to the Drafting Committee, subject to the conditions already agreed.

The President's proposal was adopted.

ARTICLE 23.

Ratification of or accession to the present Convention by any High Contracting Party implies an assurance by him that his legislation and his administrative organisation are in conformity with the rules contained in the Convention.

Article 23 was referred to the Drafting Committee without observations.

ARTICLE 24.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories

in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may at any time declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States referred to in Article 20 the declarations and notifications received in virtue of the present Article.

AMENDMENT TO ARTICLE 24.

Amendment proposed by the United Kingdom Delegation.[1]

Replace the last sentence of paragraph 2 by the following text :

In making such notification, the High Contracting Party concerned may state that the application of the Convention to any of such territories shall be subject to any reservations which have been accepted in respect of that High Contracting Party under Article 22. The Convention shall then apply, with any such reservations, to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations. Should it be desired as regards any such territories to make reservations other than those already made under Article 22 by the High Contracting Party concerned, the procedure set out in that Article shall be followed.

Sir John Fischer WILLIAMS (United Kingdom) said that the United Kingdom amendment was really one of style and form, intended to make clear the effect of the introduction of reservations when a colony was introduced as a territory to which the Convention was to apply.

Article 24 was referred to the Drafting Committee, together with the amendment proposed by the United Kingdom delegation.

ARTICLE 25.

The present Convention shall, in accordance with the provisions of Article 18 of the Covenant, be registered by the Secretary-General of the League of Nations on the ninetieth day after the receipt by the Secretary-General of the . . . ratification or accession.
The Convention shall come into force on the date of such registration.

ARTICLE 26.

Each ratification or accession taking place after the deposit of the . . . instrument of ratification or accession shall take effect on the ninetieth day following the date on which the instrument of ratification or accession is received by the Secretary-General of the League of Nations.

ARTICLE 27.

A request for the revision of the present Convention may be made at any time by any High Contracting Party by means of a notification to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to all the other High Contracting Parties and, if it is supported by at least a third of those Parties, the High Contracting Parties undertake to hold a conference for the revision of the Convention.

ARTICLE 28.

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 20. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Convention.

DONE at Geneva, ... in a single copy, which will be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States referred to in Article 20.

The PRESIDENT noted that the articles which remained to be considered were similar to those in other conventions concluded under the auspices of the League.

In regard to Articles 25 and 26, the only question which remained open was that of the number of instruments of ratification or accession required for the Convention to take effect.

[1] Document Conf. R.T.21.

M. PELLA (Roumania), Rapporteur, said that the number was really dependent on the possibilities which might exist of speedy ratification by the States. The problem must also be examined from the standpoint of the difficulties which certain States might experience in undertaking the immediate modification of their criminal legislation. M. Pella therefore suggested that the Bureau or the Drafting Committee might be asked to make proposals as to the number.

Articles 25 to 28 were referred to the Drafting Committee.

The PRESIDENT declared closed the examination, at a first reading, of the draft Convention for the Prevention and Punishment of Terrorism.

FOURTEENTH MEETING.

Held on Tuesday, November 9th, 1937, at 3.30 p.m.

President : Count CARTON DE WIART.

26. Examination, at a First Reading, of the Draft Convention for the Creation of an International Criminal Court : Text prepared by the Committee for the International Repression of Terrorism at its Third Session (1937)[1] (continuation).

ARTICLE 22[2] (continuation).

M. PELLA (Roumania), Rapporteur, reverting to Article 22 (already referred to the Drafting Committee) drew attention to the fact that the State against which an offence was directed might also be the author of the indictment. Many countries, however, allowed private criminal proceedings, in which the party against whom the offence was directed was the party bringing the charge. Although it might appear somewhat strange that form of proceedings was sanctioned by a number of criminal procedure codes.

ARTICLE 26.

1. The Court shall decide whether a person who has been sent before it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Article 26 was referred to the Drafting Committee without observations.

ARTICLE 27.

Any letters of request which the Court considers it necessary to have despatched shall at its demand be addressed by the High Contracting Party on the territory of which the Court is sitting to the State competent to give effect to such letters of request.

Article 27 was referred to the Drafting Committee without observations.

ARTICLE 28.

No examination of the person sent to the Court for trial, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for that person, the representatives of the State against which the offence was directed or on the territory of which the offence was committed or which laid the case before the Court and the representatives of the " parties civiles ", or after due summons to such persons to be present.

M. GIVANOVITCH (Yugoslavia) thought that a reference to paragraph 2 of Article 22 should be inserted in Article 28.

M. PELLA (Roumania), Rapporteur, supported the suggestion as making the text of Article 28 clearer and linking it up with Article 22. He proposed that Article 28 should be referred to the Drafting Committee.

The Rapporteur's proposal was adopted.

ARTICLE 29.

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused person a counsel selected from advocates belonging to a Bar.

Article 29 was referred to the Drafting Committee without observations.

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[1] For the text of the draft Convention, see Annex 3, page 191.
[2] See page 127.

ARTICLE 30.

1. The hearings before the Court shall be public.

2. Nevertheless, the Court may, by a reasoned and unanimous judgment, decide that the hearing shall take place " in camera ". Judgment shall always be pronounced at a public hearing.

M. POLYCHRONIADIS (Greece) pointed out that decisions to hear cases *in camera* were usually taken by a majority vote. For what special reasons was unanimity required in the case of the International Criminal Court? He proposed that the question should be referred to the Drafting Committee.

The PRESIDENT asked whether M. Polychroniadis thought a simple majority sufficient in the case of decisions to hear cases *in camera*, or whether he thought some specific majority was necessary in such cases.

M. POLYCHRONIADIS (Greece) replied that, in his opinion, a simple majority was sufficient.

M. PELLA (Roumania), Rapporteur, agreed that a simple majority was sufficient. He pointed out that the question would usually arise in connection with serious cases involving important interests of States. The International Criminal Court should not be transformed into a tribune for purposes other than those mentioned in the Convention.

Article 30 was referred to the Drafting Committee.

ARTICLE 31.

The Court shall sit in private to consider its judgment.

ARTICLE 32.

The decisions of the Court shall be by majority of the judges.

ARTICLE 33.

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Articles 31 to 33 were referred to the Drafting Committee without observations.

ARTICLE 34.

The Court may not entertain charges against any person except the person sent before it for trial, or try any accused person for any offences other than those for which he has been sent for trial.

M. PELLA (Roumania), Rapporteur, observed that no objection had been raised to Article 34; but the problem with which Article 34 dealt raised another question. It was obvious that the Court could only try persons sent before it : but what persons could be sent before it? Suppose a State arrested some, but not all, of those known to be guilty of an act of terrorism : could it, in sending before the Court the persons whom it had arrested, at the same time indict the perpetrators of the crime it had not been able to arrest? That problem was connected with the question of judgment by default. Would it not create a deplorable impression for the Court to sentence some of the authors of an act of terrorism to ten or fifteen years of penal servitude, while others whose guilt was also established were not sentenced even by default, for the sole reason that the State bringing the matter before the Court had not been in a position to arrest them? The case would be even worse, if the State which decided to bring a matter before the Court was only able to arrest an accomplice, the chief author of the crime having taken refuge in the territory of a third State.

A search for solutions to cover such cases might lead to the inclusion of some provision for sentences *in contumaciam*. M. Pella was also aware of the arguments that could be adduced in favour of the theory that sentences *in contumaciam* should be excluded, especially when such sentences were to be rendered by an International Court. He therefore made no specific proposals in that connection; he merely drew attention to the point, which might be studied by the Drafting Committee.

M. POLYCHRONIADIS (Greece) said that the problem raised by the Rapporteur was simply that of the jurisdiction of States. Since States were only entitled to indict before the International Court persons over whom they had themselves jurisdiction, the point to be settled was how far their jurisdiction extended.

M. SASSERATH (Belgium) observed that the Rapporteur had not proposed any amendment to Article 34. He had merely raised the question whether the International Criminal Court should have powers to pass judgments *in contumaciam*. It was obvious that the Court had the power to try any parties indicted before it, whether present or absent. That was clear from Article 34, though the point might perhaps be made more explicit by a specific reference to the possibility of judgment by default.

There was, however, another question of a more delicate nature; and that was whether countries which decided to indict an accused person before the Court could at the same time indict a joint author or accomplice whom they had been unable to arrest and must therefore indict by default. In municipal law, the problem would of course give rise to no difficulty; but in

international jurisdiction delicate situations might arise. It would be much more difficult for the Court to try an individual by default than it would be for a national court of the country instituting proceedings.

But these difficulties were difficulties of practice only. Legally, M. Sasserath could not see that there was anything to prevent a country which had fully investigated a crime from indicting all parties to the crime. After the Marseilles outrage, a number of the accused were tried by default. Was it arguable that, if the International Criminal Court had been in existence at that time, it would have been unable to try the parties concerned by default, merely because it had not been possible to arrest them, or because the countries in which they had taken refuge were unwilling to extradite them?

M. Sasserath proposed that it should be explicitly stated in Article 34 that the Court had power to try accused persons even by default; and it might perhaps be added—if that point was not thought obvious of itself—that the State which seized the Court of a case could also indict before it any parties to the crime whom it had not been able to arrest.

M. Givanovitch (Yugoslavia) wondered whether the point could not be settled by giving the Court power to apply for the extradition of any parties to a crime, when it had been duly seized of the case by the indictment of one of the parties.

M. Koukal (Czechoslovakia) pointed out that the right to send accused parties before the Court was covered by Articles 2, 3, 8 and 9, as well as by Article 7, of the Convention for the Prevention and Punishment of Terrorism. All the cases covered by those articles assumed the presence of the author of the crime in the territory of the State concerned, or the jurisdiction of the State concerned derived from the fact that the offence had been committed within its territory. In the latter case, the State could indict the guilty parties before the Court, even though they were absent.

M. Basdevant (France) observed that the discussion had gone a long way beyond the scope of Article 34. Article 34 laid down a simple rule to which no one could object. But in connection with that article a very important issue had just arisen, for which it would seem that no adequate solution was provided in the texts before the Conference.

What parties could a signatory State indict before the International Criminal Court? That was the question; and the answer was relatively simple. It could indict before the Court any parties coming within its own jurisdiction in respect of any of the acts enumerated in the Convention for the Prevention and Punishment of Terrorism; and the scope of the State's own jurisdiction was determined by its national law.

But, in practice, delicate situations might arise. Take the case of a crime directed against France, which was committed in France by three individuals, two of whom took refuge in Roumania. Roumania might considered herself competent to prosecute the two individuals in question and she might also consider herself competent to include the third in the proceedings. But if Roumania decided to send the three before the International Criminal Court, the third of the three being in France, what would be the position if France decided to bring the last-named before the French courts? In the absence of an International Criminal Court, the Roumanian courts might try the three perpetrators of the crime; but their decisions regarding the third, who was in France, would be of no effect, so far as the French courts were concerned. The position would be different if there were an International Criminal Court, to which both Roumania and France had acceded. The decisions of that Court would not of course be on the same footing as those of the Roumanian courts. M. Basdevant regretted that he did not, for the moment, see a solution of the difficulty. The problem might be one for which there was no judicial solution, and which must be solved by the most appropriate methods.

M. Pella (Roumania), Rapporteur, said that M. Basdevant had just raised a new problem. It was clear that, under paragraph 1 of Article 3 of the Convention for the Creation of a Criminal Court, a State could send before the Court any persons arrested on its territory who had been guilty of acts of terrorism covered by the Convention for the Prevention and Punishment of Terrorism, provided that under its own law that State possessed the right to have those persons tried by its own courts.

There was, however a second possibility provided for under paragraph 2 of Article 3—namely, the case of persons who had taken refuge within the territory of a State who were not judiciable by that State under its own national law. If Belgium, for example, were a party to the Convention for the Creation of an International Criminal Court, she would be competent, under her own law, to try both an individual who had committed a crime in Belgium, a Belgian national who had committed an offence abroad, or, lastly, a person who had committed abroad any of the crimes punished by Belgium under the system of real protection. In all three cases, she could, instead of exercising that right through her own courts, send the individual before the International Criminal Court. But there was yet another case where she would be able to send the individual before the Court, even though not herself competent to try him; that was the case of a foreigner committing an offence abroad, who had entered Belgian territory, and for whose extradition application had been made. Belgium could then send him before the Court instead of extraditing him. It was clear therefore, that the Greek delegate's conception of the problem as a problem of the jurisdiction of States applied to a large number of cases, though not to all.

M. Pella would give a few examples. If three Roumanians committed an offence in France against France, and two of them entered Roumanian territory, while the third remained in Yugoslavia, Roumania would not only be entitled to send before the Court the two individuals

who had taken refuge in Roumanian territory : she would also be entitled to indict the third individual in virtue of her individual competence, because he was a Roumanian national (principle of active personality).

Suppose, again, that three individuals committed in French territory an offence directed against Yugoslavia, and France considered that they should be sent before the Criminal Court. Suppose also that two only of them were in France, while the third was not. In that case, since the offence had been committed in French territory, France would be entitled to indict before the Criminal Court the third, and absent, party as well, because the French courts were competent to try all three parties seeing that they had committed an offence in French territory (principle of territoriality).

In the case of the examples he had just given, there was, M. Pella thought, no objection to trying by default parties whom the State had been unable to arrest. The Conference must, however, take a decision on the actual principle of judgment by default.

The problem became more complicated where a State, having arrested in its territory a foreigner who had committed an act of terrorism in a foreign country against a foreign State, decided to send him before the Court. Could it in such case also indict before the Court the other parties whom it had been unable to arrest? Except for the few countries whose legislation admitted the principle of universal jurisdiction, most countries held that the foreigner was sent before the Criminal Court, not in virtue of the State's competence to try him, but solely in virtue of the fact that he had taken refuge in its territory and that it had the right to extradite him.

Then there was the hypothetical case put forward by M. Basdevant, which was altogether different, though interesting because of its bearing on the attitude of the different States parties to the Convention. M. Basdevant asked what would happen where one of the authors or accomplices in an offence was in the territory of one State, and the rest were arrested by another State and sent before the Court. The issues involved in that event were so intricate and varied so greatly in each particular case that, in the Rapporteur's opinion, there was only one possible solution; and that was to ascertain whether or not it was possible to extend the provisions of paragraph 2 of Article 43 on the subject of possible disputes as to the extent of the Court's jurisdiction in relation to the jurisdiction of the national courts.

M. Sebestyén (Hungary) had the impression, from the discussion, that it would greatly complicate the work of the Court to introduce the conception of jurisdiction *in contumaciam*. The prestige even of old and well-established international organisations had been known to suffer from attempts to solve problems beyond their powers. The functions of the Court should be specified in language as simple and clear as possible. Complication of those functions by the introduction of judgments *in contumaciam* would necessitate recourse by the Court to platonic judgments, which would not tend to enhance its prestige. Later, perhaps, it might be possible to extend the proposed system in order to provide for more complicated jurisdiction; but, for the present, the Court's task should be confined to the normal functions of a criminal court.

M. Sasserath (Belgium) did not share the Hungarian delegate's misgivings as regards the possibility of allowing the Court to try cases by default. He failed to see why it should be better not to try an accused person at all than to do so in his absence. The highest judicial institutions were frequently called upon to try cases by default, and judgments thus delivered by the International Criminal Court, in exceptional cases only, would not diminish its prestige.

M. Sasserath agreed with the Rapporteur that, in 80 % or 90 % of cases, no difficulty could arise. Where all the countries concerned were parties to the Convention, the possibility of dispute could be almost ruled out. It was otherwise, where one of the States concerned was a non-signatory State : but there was nothing to prevent the latter from exercising its own sovereign jurisdiction in the case without reference to the indictment of particular authors of the crime before the International Court.

As regards the case put by M. Basdevant, M. Sasserath recognised that the problem that arose was difficult to solve. In any event, no solution in general terms was possible. As, however, the text would be referred in any event to the Drafting Committee, delegates would have time for reflection on what was undoubtedly a difficult and delicate problem.

M. Polychroniadis (Greece), in reply to the Hungarian delegate's observations, drew attention to the fact that Article 3 automatically transferred to the International Criminal Court the competence of the State in the matter of sentences *in contumaciam*.

M. Sebestyén (Hungary) could not refrain, in view of the Belgian and Greek delegates' observations, from once more drawing attention to the dangers which might result, if the International Criminal Court were allowed to try cases by default. Suppose that a State which was a party to both Conventions indicted before the Court a person who was not distrainable, and that the Court acquitted him. Suppose that, after his acquittal, the person in question was arrested in a country which was not a party to either Convention. Or again, take the case of a person convicted by the Court *in contumaciam* who was arrested in a State which was not a party to the Convention. The latter, not feeling bound by the judgment of the Court, might acquit the individual in question. The exercise by the International Criminal Court of jurisdiction *in contumaciam* would inevitably result in situations which were better avoided.

M. Basdevant (France) agreed with M. Sasserath that the problem was not one to be disposed of in a hurry. M. Sasserath's own proposal to introduce the idea of jurisdiction by default into Article 34 should itself, in M. Basdevant's opinion, be carefully weighed before it was adopted.

It was quite normal for criminal courts to try cases by default. Where the convicted party was arrested later, the judgment lapsed, and a fresh trial took place. The position as regards national courts was perfectly simple : but it would be otherwise with the International Criminal Court. A party tried in his absence and convicted *in contumaciam* might afterwards be arrested in the territory of a signatory State having jurisdiction over him. Was that State obliged to bring him before the International Criminal Court in order for the judgment by default to lapse? What would be the position if the State refused to bring the case before the International Court, preferring to retain the accused in its possession? A State arresting such a person in its own territory, a person, it might be, who was its own national, could not be obliged to bring him before the International Criminal Court; and, should it refuse to do so, the finding of its courts might differ from that pronounced by the International Court. The position would be even more deplorable than if the State were not a signatory of the Convention.

In view of the above difficulties, M. Basdevant wondered if it would not be wiser to ignore certain traditional practices of national courts, and to make it a rule that the International Criminal Court should not try cases by default. Only such accused parties as were actually brought before the Court would then be tried by it. No proceedings would be taken against the others, the national courts retaining their jurisdiction over such persons. He agreed that the solution was not ideal; but it would, he felt, serve to avert some of the difficulties that might otherwise arise. M. Basdevant added that he had only made a suggestion : he was not prepared to define his attitude in the matter.

M. Hirschfeld (Union of Soviet Socialist Republics) said that no one could fail, especially after hearing M. Basdevant's remarks, to realise the difficult and delicate nature of the problem. But would not the disagreement which might arise between a judgment *in contumaciam* of the International Criminal Court and the decisions of a national court of a signatory State, occur also in connection with the judgment of the International Criminal Court in an ordinary trial and the decisions of a national court of a non-signatory State?

So far as the signatory States were concerned, M. Hirschfeld could not see how a State which recognised the competence of the International Criminal Court could, in spite of a judgment *in contumaciam* by that Court, try the accused on the same charge in its own courts.

M. Hirschfeld did not claim to throw any light on the point : he would himself be grateful for enlightenment.

M. Sasserath (Belgium) said that he had not proposed any formal amendment. He had merely suggested a solution which might be considered by the Drafting Committee. He did not claim that his solution was the best.

In reply to M. Basdevant, who had referred to the difficulties which would arise should a State which was a party to the Convention reject a judgment given by default in the International Criminal Court, M. Sasserath pointed out that the same difficulty might arise in an ordinary trial by the Court. Take the case of a Frenchman who committed an act of terrorism in Belgium, and afterwards fled to Roumania for refuge, the latter country and France having signed the Convention and Belgium not having done so. Suppose that Belgium asked Roumania to extradite or punish the offender, and that Roumania, not wishing to extradite him, and preferring for practical reasons not to try him in the Roumanian courts, handed him over to the International Criminal Court. Belgium, being a country which did not admit the latter's jurisdiction, might not be satisfied with such a solution. That was a difficulty which could not be removed by the Convention. On the other hand, if it were necessary to provide against every potential difficulty, it would he better not to draw up a Convention at all.

M. Pella (Roumania), Rapporteur, said that he was glad to have started the discussion, if only for the assistance which the record of it in the Minutes would afford in the solution of the problem. In his view, provision should in any event be made for some form of judgment by default, however limited. If three persons accused before the Court escaped to Netherlands territory, ought not the possibility of trying those persons by default be admitted? Judgment by default must be retained at any rate in specified cases, even if it could not be more generally applied. M. Pella proposed to refer the suggestion to the Drafting Committee.

M. Bekerman (Poland) said that M. Sasserath's point that difficulties might arise even in ordinary cases before the Court seemed to him an additional reason for not complicating the problem still further by introducing the notion of default. He did not regard judgment by default as an essential element in criminal proceedings. There were several legislations in which provision was not made for it, and it was not in any way missed.

In the particular case before the Conference, if a signatory State brought an offender before the Court while a non-signatory State refused to hand over other offenders in its custody, a judgment by default would offer no solution.

Article 34 *was referred to the Drafting Committee.*

ARTICLE 35.

1. The Court may sentence the persons sent before it to restore property or to pay damages.

2. The Court shall decide whether any restitution or confiscation of any object is to be made.

3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons is situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences.

4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

M. GIVANOVITCH (Yugoslavia) noted that both paragraph 1 and paragraph 2 of Article 35 referred to restitution. He asked whether it was a case of overlapping or whether the two paragraphs dealt with different matters.

M. PELLA (Roumania), Rapporteur, proposed that the article should be referred to the Drafting Committee, which, in the light of the Minutes of the Committee of Jurists, would be able to see whether there was any special reason for drafting the text in that way.

The Rapporteur's proposal was adopted.

ARTICLE 36.

1. Sentences involving loss of liberty shall be executed by the High Contracting Party which shall be designated by the Court.

2. The Court shall determine the way in which any fines shall be dealt with.

M. VAN HAMEL (Netherlands) wondered whether the Government which had sent the accused for trial before the Court should not have the right to ask that the execution of the sentence should be entrusted to it. The following clause might be added at the end of paragraph 1 of Article 36 : " *If the State which has sent the accused for trial before the Court so requests, the Court shall entrust the execution of the sentence to it* ".

M. KOUKAL (Czechoslovakia) said that Article 17 laid down what substantive criminal law was applicable in fixing the penalty. The law of the State entrusted with the execution of the sentence might conceivably not make provision for the penalty inflicted. To supply that deficiency, it might be stipulated in Article 36 that penalties would be executed in conformity with the law of the country entrusted with the execution of the penalty. The same formula would have to be adopted for fines, in paragraph 2.

M. PELLA (Roumania), Rapporteur, saw no objection to adopting the Netherlands delegate's suggestion, if that was the Conference's wish. He would, however, have preferred to allow the Court the right to select the State which was to carry out a penalty involving loss of liberty. In any case, if the State which had indicted the accused before the Court were chosen by the latter to carry out the penalty, that State should be obliged to undertake that duty.

As to M. Koukal's proposal, the Rapporteur did not think it was possible to do more than specify that the State entrusted with the execution of the sentence should, in cases where its own national law had not been applied, enforce the penalty which under its own law approximated most closely, from the point of view of gravity and conditions, to the penalty inflicted by the Court.

Under certain codes, that same solution was provided for in a few cases in respect of persons who had committed offences abroad and in regard to whom a penalty laid down by foreign criminal law had to be applied.

Turning to the question of the execution of pecuniary sentences, M. Pella thought that it was quite clear from Article 35, paragraph 4, that those sentences would be carried out in accordance with the national law of the country responsible for collecting the fines.

M. SEBESTYÉN (Hungary) recalled that the present text had been established with due reference to the observations submitted by the Hungarian Government on the first draft framed by the experts in 1936.[1] The Hungarian Government had said on that occasion that it was desirable to leave it to the Court itself to decide in what State sentences involving loss of liberty should be carried out, in order to avoid the execution of the sentence being entrusted to a State which was prejudiced against the accused and against which the presumption existed that it would not accord to the latter impartial and humane treatment. Those same doubts might arise if the Netherlands delegate's proposal were adopted. M. Sebestyén would prefer to keep to the text as it stood; he thought that the Court would possess all the information necessary to enable it to designate a State offering the requisite guarantees in that respect.

M. PELLA (Roumania), Rapporteur, thought that there was some misunderstanding. He too had considered the hypothesis mentioned by the Hungarian delegate. It was obviously desirable that the execution of the penalty should not be entrusted to the State against which the crime was directed, since, in such a case, the penalty might be carried out under conditions tantamount to an aggravation of the penalty. If, on the other hand, the State against which the act was directed was also the State which, instead of trying the accused, had sent him for trial before the Court, that was in itself a guarantee as to the proper execution of the penalty, seeing that the State in question had the right to prosecute the accused before its own courts and to execute the sentence.

The Rapporteur proposed that Article 36 should be referred to the Drafting Committee and that the latter should be requested to consider the different opinions which had been expressed.

The Rapporteur's proposal was adopted.

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[1] See document A.24.1936.V (Ser. L.o.N. P. 1936.V.6), page 6.

ARTICLE 37.

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall be entitled to substitute therefor the most severe penalty in its national legislation involving loss of liberty.

M. GIVANOVITCH (Yugoslavia) interpreted Article 37 as referring to States in which the death penalty existed.

M. PELLA (Roumania), Rapporteur, said that in the first place there were two possibilities to be considered : (1) cases in which the death penalty was provided for in the law of a certain State but was not enforced, as was the case in Belgium in peace-time, and (2) cases in which the death penalty did not exist in the legislation of a State. In either case, the State entrusted with the execution of the sentence would, in the absence of the death penalty, enforce the most serious sentence involving loss of liberty for which provision was made in its national law.

There was, however, a third case : that of States in which the death penalty existed in law and in fact. For instance, if France were asked to carry out the death penalty, she would have the right to substitute for the death penalty the most serious penalty involving loss of liberty, just as she could substitute for the death penalty imposed by a French court, imprisonment for life.

Article 37 was referred to the Drafting Committee.

ARTICLE 38.

The right of pardon shall be exercised by the State which has to enforce the penalty. It shall first consult the President of the Court.

AMENDMENT TO ARTICLE 38.

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[1]

Replace the text of Article 38 by the following :

The State which has to execute the sentence shall have the right to ask the Court to grant a pardon.

M. KOUKAL (Czechoslovakia) proposed *the deletion of Article 38*. It concerned what he regarded as a fundamental aspect of the Convention—namely, the effects which would ensue from the fact of seizing the Court and from the latter's verdict. If the Court were seized, the right of prosecution would be suspended in all other countries parties to the Convention, and the effects of the conviction would be recognised also in those countries.

M. HIRSCHFELD (Union of Soviet Socialist Republics) pointed out, in support of the Soviet proposal, that it would be illogical for the right of pardon to be exercised by the State which had to execute the sentence. It seemed to him far more logical that it should be exercised by the Court itself. On the other hand, it must be stated who was entitled to ask that free pardon should be granted. That was why the Soviet delegation had proposed its amendment, but it did not intend to insist on that second point. The essential point so far as it was concerned, was that the right of pardon should be exercised by the Court.

The PRESIDENT observed that the Soviet proposal would have the effect of conferring on the judiciary a prerogative which was normally exercised by the executive.

M. HIRSCHFELD (Union of Soviet Socialist Republics) agreed that his suggestion might appear revolutionary from the point of view of domestic legislation, but pointed out that the Conference was setting up a new international institution on which somewhat special powers were to be conferred.

M. JIMÉNEZ DE ASÚA (Spain) supported the Soviet proposal, observing that, under Spanish law, the right of pardon was vested in the Court of Cassation, whereas the right of amnesty was vested in Parliament. Legislations did exist, therefore, in which the right of pardon was not vested in the executive.

M. BEKERMAN (Poland) recognised that the problem which had just been raised was a difficult one. There was, in the first place, the factor of tradition, according to which the right of pardon was a prerogative of the executive. It was true that, in Spain, as the Spanish delegate had just stated, the right of pardon was vested in the Court of Cassation, but there could be no analogy between that situation and the situation which would arise if the right of pardon were conferred on the International Criminal Court. In the first case, the right of pardon was exercised by a Court other than the Court which had pronounced the sentence. The Court of Cassation was never called upon to give judgment on the substance of a question; its functions were confined to scrutinising the juridical aspect of the affair. In the second case, on the other hand, one and the same Court would give sentence and exercise the right of pardon. It would be in the better interests of justice, in his view, to confer the right of pardon on the State which had sent the accused for trial before the International Criminal Court.

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[1] Document Conf. R.T.25.

As regards the second point of the Soviet amendment, M. Bekerman said there was a misunderstanding, and observed that the right to ask for pardon lay normally with the prisoner and his family.

M. VAN HAMEL (Netherlands) thought it preferable not to vest the right of pardon in the State which had to execute the sentence. He agreed with the Soviet delegate on that point. Such a procedure would impose too great a responsibility on the head of the State which had execut the sentence. The mere fact of being entrusted with the execution of the sentence could not to justify such a responsibility, which might have serious political consequences.

On the other hand, M. van Hamel did not think it would be expedient to vest the right of pardon in the Court. It seemed to him more logical to confer it on the State which had set the judicial machinery in motion and which should still have the chief say in the matter.

M. GIVANOVITCH (Yugoslavia) thought that the Soviet amendment might be accepted in the form of an additional provision, to be embodied in a separate article. The obligation to consult the Court would then have to be stipulated in both cases.

M. PELLA (Roumania), Rapporteur, said that there were four proposals before the Conference : (1) a Czechoslovak proposal to delete Article 38; (2) a Soviet proposal that the right of pardon should be vested in the Court; (3) a Polish proposal, supported by the Netherlands delegation, that that right should be conferred on the State which had brought the case before the International Criminal Court; and, lastly, (4) a Yugoslav proposal to confer the right of pardon both on the State which had executed the sentence and on the State which had indicted the accused before the Court. In both cases, the President of the Court should be consulted.

He did not propose to discuss the first proposal. It involved a question of principle on which it was not desirable to open a long discussion.

With regard to the Soviet proposal, the Rapporteur would not repeat the arguments advanced by the Polish delegate when referring to the Spanish delegate's support of the Soviet proposal. Clearly, the adoption of the proposal would mean a confusion of powers. It would be quite irregular, according to the principles now recognised by the large majority of countries, to confer the right of pardon on the Court which had pronounced sentence. The Conference could not accept such an idea.

The Polish delegation maintained that it was more logical that the State which had sent the accused before the Court should exercise the right of pardon. If logic were pushed a little farther, that right should rather be vested in the State against which the crime had been directed, seeing that the fundamental interests of that State were affected. The injured State might come to the conclusion, in the light of certain circumstances, and after the lapse of a certain interval, that it was expedient, for internal reasons, to exercise the right of pardon in favour of the individual concerned. The Conference might ponder that question.

Two different conceptions could be admitted concerning the legal situation of the State responsible for executing the sentence, namely : *(a)* the conception of the sovereign rights of the State which executed a sentence in its territory; *(b)* the conception that the State which executed the sentence was merely an agent.

As regarded the first conception, the point should be emphasised that the right of pardon ensued from the principle of the sovereignty of the State. It seemed hardly conceivable, therefore, that a State—the State which had sent the accused for trial before the Court—should have power to intervene with a view to preventing the execution of a sentence under the responsibility of another State.

The Rapporteur thought, therefore, that only one point should be considered—namely, whether the right of pardon should be conferred also on the State against which the crime had been directed, in view of the fact that that State might wish for certain special reasons—in the interests, for example, of social calm—that the right of pardon should be exercised. It was clear that, if the conception of the sovereign rights of the State were admitted, the same objections of principle might be raised in that case also.

It was therefore only possible to allow the State against which the offence had been directed the right to ask for pardon, it being clearly understood that the State entrusted with the execution of the sentence would have the exclusive right of granting pardon. The Rapporteur realised that such a stipulation would have a purely moral value, as every State had the right to ask for pardon. The convicted person and his family also possessed that right.

Lastly, there was the second conception—namely, that the State which carried out the penalty imposed by the International Criminal Court was merely an agent. There could thus be no question of the execution of a sentence in virtue of the sovereign rights of the State, a right which would exclude the interference of another State in the execution of that penalty. If that second conception were admitted, the right of pardon could of course also be conferred on the State against which the offence had been directed.

The PRESIDENT said that five different proposals had now been laid before the Conference. The work of the Drafting Committee would be greatly facilitated if the authors of those various proposals would send them in in writing.

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that he was not entirely convinced by the arguments advanced against the exercise of the right of pardon by the Court, but that he would not insist on that part of his proposal, as he felt that the majority of the Conference was not in favour of such a solution. On the other hand, he could not agree to the right of pardon

being exercised by the State which would have to execute the sentence. That State, he pointed out, would be acting not in the exercise of its own sovereign powers but simply as the mandatory of the Court. If the State in question were executing a sentence pronounced in the exercise of its sovereign rights, it would be at liberty to decide what penalty should be inflicted.

M. Hirschfeld added that no analogy was possible between the case which the Conference was discussing and the usual standards determining the division of powers between the legislature and the executive. In the case now under consideration, there were internal and external political arguments in favour of the abolition of the right of pardon. The Soviet delegation's chief anxiety was that the right of pardon should not be accorded to the State which would have to execute the sentence. It considered, on the contrary, that it would be far more logical, as the Rapporteur had suggested, to vest that right in the injured State. The Soviet delegation would be prepared to accept that solution.

The PRESIDENT noted that the different points of view were beginning to approximate more closely to one another. He added that it seemed only logical that the right of mercy should bear some relation to the injury suffered and that it should not be exercised by any non-interested third party. He emphasised the argument concerning political expediency mentioned by the Rapporteur, who had pointed out that it might be to the interest of the injured State, in certain circumstances, to grant a pardon as a measure of appeasement.

M. GIVANOVITCH (Yugoslavia) suggested that the injured State might even be given the right to object to the granting of a pardon.

Article 38 was referred to the Drafting Committee, which should take into account, as far as possible, the suggestion that the right of pardon should be vested in the injured State, on the understanding that provision should be made for the consultation of the President of the Court in every case.

ARTICLE 39.

1. Against convictions pronounced by the Court, no proceedings other than an application or revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in Article 22, and the persons mentioned in Article 29, shall have the right to ask for a revision.

AMENDMENT TO ARTICLE 39.

Amendment proposed by the Delegation of the Union of Soviet Socialist Republics.[1]

Provide in the text that an application for revision may only be made if new circumstances have arisen.

M. PELLA (Roumania), Rapporteur, observed that the Soviet proposal was framed in rather vague terms. He understood, however, that the proposal covered only new circumstances which might have affected the verdict had they been known when the judgment was given. If that were the Soviet delegate's intention, such a case would, the Rapporteur thought, necessarily be provided for in the rules to be drawn up in accordance with paragraph 2 of Article 39 of the draft.

M. HIRSCHFELD (Union of Soviet Socialist Republics) agreed that he had had in mind new circumstances such as to affect the verdict.

The PRESIDENT quoted Article 61 of the Statute of the Permanent Court of International Justice concerning the cases in which an application for revision of a judgment could be made. He proposed that Article 39 should be referred to the Drafting Committee, and that the latter should be asked to consider the suggestions which had just been put forward.

M. SEBESTYÉN (Hungary) noted the reference in paragraph 3 to Article 29; he interpreted that as applying also to the accused. If that were so, it might perhaps be necessary to mention it specifically, since Article 29 appeared from the drafting to concern only the counsel.

The PRESIDENT said that it was understood that the accused also had the right to apply for the revision of a judgment.

Article 39 was referred to the Drafting Committee.

ARTICLE 40.

1. The salaries of the judges shall be payable by the States of which they are nationals on a scale fixed by the High Contracting Parties.

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[1] Document Conf. R.T.26.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

M. GIVANOVITCH (Yugoslavia) proposed that Article 40 should be inserted after Article 43.

M. PELLA (Roumania), Rapporteur, accepted the proposal. He also mentioned that provision would have to be made in Article 40 for expenditure in connection with officially selected counsel.

Article 40 was referred to the Drafting Committee.

ARTICLE 41.

The Court's archives shall be in the charge of the Registrar.

Article 41 was referred to the Drafting Committee without observations.

ARTICLE 42.

The Court shall establish regulations to govern its practice and procedure.

Article 42 was referred to the Drafting Committee without observations.

ARTICLE 43.

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention and of the Convention for the Prevention and Punishment of Terrorism and the general principles of law.

2. Should a High Contracting Party, not being the Party who sent the case in question for trial to the Court, dispute the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts, this issue shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 45.

M. PELLA (Roumania), Rapporteur, pointed out that the Drafting Committee would have to consider the possibility of extending the scope of paragraph 2 of Article 43 so as to take into account the point mentioned by the delegate of France during the discussion on Article 34.[1] The question was whether the decision rested with the Permanent Court of International Justice or with the International Criminal Court itself.

The Rapporteur also thought it desirable that the disputes referred to in paragraph 2 of Article 43 should be settled by the International Criminal Court, but, in order that the Court might be competent to do so, the States parties to the dispute would of course have to give their consent, failing which, the dispute would be settled in accordance with Article 45.

Article 43 was referred to the Drafting Committee.

ARTICLE 44.

1. The representatives of the High Contracting Parties shall meet with a view to taking all necessary decisions concerning :

(a) The election of judges;
(b) The organisation of the Registry;
(c) The constitution and administration of the common fund, the division among the High Contracting Parties of the sums considered necessary to create and maintain such fund and, in general, all financial and administrative questions bearing on the establishment and the working of the Court;
(d) The organisation of the meetings referred to below in paragraph 3.

2. The Government of the Netherlands shall be requested to convene this meeting as soon as possible after the present Convention enters into force.

3. The Registrar of the Court shall convene subsequent meetings in conformity with the rules established to that effect.

4. On all questions of procedure that may arise at the meetings referred to in paragraphs 2 and 3, decisions shall be taken by a majority of the High Contracting Parties represented at the meeting.

M. PELLA (Roumania), Rapporteur, pointed out that it would be necessary to extend the scope of paragraph 1, sub-paragraph *(c)*, of Article 44. As now drafted, that clause provided only for the discussion of financial and administrative questions by the representatives of the contracting parties. It should also be possible for the meetings referred to in Article 44 to discuss the adaptations necessary to ensure the operation of the Court and to take decisions on the matter. A more comprehensive formula would cover any unforeseen difficulties that might arise.

Article 44 was referred to the Drafting Committee.

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[1] See page 136.

ARTICLE 45.

If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the Parties concerning the settlement of international disputes.

If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice, if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

ARTICLE 46.

1. The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date. Until . . . it shall be open for signature on behalf of any Member of the League of Nations or any non-member State on whose behalf the Convention for the Prevention and Punishment of Terrorism has been signed.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League. The Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph. The deposit of an instrument of ratification of the present Convention shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of or accession to the Convention for the Prevention and Punishment of Terrorism.

ARTICLE 47.

1. After . . . , the present Convention shall be open to accession by any Member of the League of Nations and any non-member State which has not signed this Convention. Nevertheless, the deposit of an instrument of accession shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of or accession to the Convention for the Prevention and Punishment of Terrorism.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States referred to in Article 46 and the first paragraph of the present article.

ARTICLE 48.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates or oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States mentioned in Articles 46 and 47 the declarations and notifications received in virtue of the present article.

ARTICLE 49.

The present Convention shall, in accordance with the provisions of Article 18 of the Covenant, be registered by the Secretary-General of the League of Nations on the ninetieth day following the receipt by the Secretary-General of the . . . instrument of ratification or accession.

The Convention shall come into force on the date of such registration. Nevertheless, its entry into force shall be subject to the entry into force of the Convention for the Prevention and Punishment of Terrorism.

ARTICLE 50.

Each ratification or accession taking place after the deposit of the . . . instrument of ratification or accession shall take effect on the ninetieth day following the date on which the instrument of ratification or accession is received by the Secretary-General of the League of Nations.

ARTICLE 51.

A request for the revision of the present Convention may be made at any time by any High Contracting Party by a notification to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to all the other High Contracting Parties and, if it is supported by at least a third of those Parties, the High Contracting Parties undertake to hold a conference for the revision of the Convention.

ARTICLE 52.

1. The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Articles 46 and 47. Such

denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

2. Denunciation of the Convention for the Prevention and Punishment of Terrorism shall " ipso facto " involve denunciation of the present Convention.

ARTICLE 53.

A case brought before the Court before the denunciation of the present Convention, or the making of a declaration as provided in Article 48, paragraph 3, shall nevertheless continue to be heard and judgment be given by the Court.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Convention.

DONE at Geneva, ... in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States represented at the Conference.

The PRESIDENT said that the remaining articles contained formal clauses which had already been discussed at the first reading of the Draft Convention for the Prevention and Repression of Terrorism.[1]

M. PELLA (Roumania), Rapporteur, wished to state his views on the question of reservations. While reservations were conceivable in the case of an international convention of a more general character, that did not apply to the Convention for the Creation of an International Criminal Court. In the present case, reservations might have the effect of hampering or even preventing the functioning of the Court.

He begged the delegates to give very careful consideration to the question of reservations; the circumstances of the present draft were quite different from those applying to other international conventions.

M. BASDEVANT (France) did not think that the arrangements contemplated in Article 49 for the entry into force of the Convention were appropriate to the kind of convention that was now contemplated. A more practical solution of the problem must be envisaged. It should be laid down in the second paragraph of Article 49 that, when the requisite number of ratifications had been obtained, the signatory States would meet, at the suggestion of the most active of their number, in order to decide by agreement the date for the entry into force of the Convention.

M. PELLA (Roumania), Rapporteur, agreed with the delegate of France. He thought that his suggestion might be linked up with Article 44, which provided for meetings of representatives of the contracting parties. The Government of the Netherlands might convene a meeting of the Powers that had ratified or acceded to the Convention, when the necessary number of ratifications or accessions had been obtained.

Articles 45 to 53 were referred to the Drafting Committee together with the French delegate's proposal.

The PRESIDENT declared closed the examination, at a first reading, of the draft Convention for the Creation of an International Criminal Court.

FIFTEENTH MEETING.

Held on Friday, November 12th, 1937, at 10.30 a.m.

President : M. BASDEVANT (France), *Vice-President.*

27. Absence of Count Carton de Wiart, President of the Conference : Communication by M. Basdevant, Vice-President.

M. BASDEVANT (France), Vice-President, read the following letter, dated November 10th, 1937, from Count Carton de Wiart to the Secretary-General of the Conference :

> " As I have been recalled to Brussels on urgent business, I shall, to my great regret, be unable to discharge my duties as President of the Conference. Will you please accept my apologies and convey them to my colleagues? I shall retain a happy memory of the few days of our collaboration in a legal undertaking of great international importance.

[1] See pages 127 to 134.

" I hope that the Vice-Presidents will agree to replace me and I sincerely thank them for doing so.

" I feel convinced that our work will lead to new achievements in the fields of law and good international relations.

(Signed) CARTON DE WIART.

" *P. S.*—I should be grateful if you would convey my thanks to all those working with you in the Secretariat for their invaluable help, which I have much appreciated."

M. Basdevant added that Count Carton de Wiart was still President of the Conference and would, he hoped, be able to resume his duties; in his absence, the Vice-Presidents would preside over the discussions.

28. Draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court : General Discussion (continuation) : Declaration by the Delegate of Uruguay.

The PRESIDENT said that M. Guani, delegate of Uruguay, who had been absent during the general discussion and had not had an opportunity of expressing his Government's views, desired to make a declaration.

M. GUANI (Uruguay) said that the Uruguayan Government was not able to give its entire approval to the draft Convention for the Creation of an International Criminal Court, but that it accepted the general lines of the draft Convention for the Prevention and Punishment of Terrorism. It was in full agreement with the spirit of that draft Convention. As he had so often had occasion to say at League meetings, his Government and his country were keenly desirous that a system of international relations should be established and extended which would ensure internal and external peace for all the peoples. The draft on terrorism now submitted to the Conference represented a valuable contribution towards the realisation of those aspirations. Consequently, although the Uruguayan legislation already contained certain penal provisions for the repression of similar offences, the Uruguayan Government was quite prepared to accede to an international instrument for the prevention and punishment of acts of terrorism as defined in the present Convention.

As regards the draft Convention for the Creation of an International Criminal Court, it had seemed to the Uruguayan Government necessary that the provisions of that instrument, which were of interest from several points of view, should first be studied by its experts. There was one point to which the Uruguayan Government attached the greatest importance—namely, that agreement should first be reached, in regard to that delicate matter, between the Governments of the American continent. That would take a certain time. In any case, the Government of Uruguay had no objection in principle to the procedure contemplated by the creation of the Court being adopted by a larger or smaller group of States—that was to say, by those States which had declared their willingness to have recourse to the institution in question for affairs of mutual concern to them.

29. Examination, at a Second Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Drafting Committee.[1]

M. KOMARNICKI (Poland) said that the Polish delegation's attitude during the second reading of the draft Convention would depend on the nature of that examination. The Polish delegation considered that during the second reading only the general structure of the draft Convention should be examined. It would not therefore again submit those of its amendments which had not been accepted by the Drafting Committee. The Polish representatives had taken an active part in the work of the Drafting Committee, whose task was clearly defined by the decisions taken during the first reading. Nevertheless, the Polish delegation could not regard as satisfactory the text prepared by the Drafting Committee. It would confine itself, therefore, during the second reading, to submitting its observations on the general structure of the draft Convention.

TITLE OF THE CONVENTION.

Convention for the Prevention and Punishment of Terrorism.

M. HIRSCHFELD (Union of Soviet Socialist Republics) proposed the wording " *international terrorism* ".

M. PELLA (Roumania), Rapporteur, suggested that the expression proposed was inadequate and heavy. Again, the expression "*terrorism having an international character*" was too long. He pointed out that the international character of the terrorism envisaged was indicated in the preamble.

M. GIVANOVITCH (Yugoslavia) suggested that "*international repression of terrorism*" might meet the Soviet delegate's views.

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[1] Document Conf. R.T.27. (See Annex 4, page 196). For the final text of the Convention, see page 5.

M. PELLA (Roumania), Rapporteur, said that that formula was not suitable, as repression was to be exercised by national bodies. True, the title of the Conference was " Conference on the International Repression of Terrorism ", but that title had simply been chosen for the benefit of the public and could not be used in legal texts.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked the Rapporteur for his explanations and said that he would not press his suggestion.

M. PARRA-PÉREZ (Venezuela) pointed out that the title of the Conference ought to be changed to " International Conference for the Prevention and Punishment of Terrorism ".

The PRESIDENT said that the Venezuelan delegate's observation would be duly taken into account when drafting the records of the Conference.

The title of the Convention was adopted without modification.

PREAMBLE.

. . . . . .

Being desirous of making more effective the prevention and punishment of terrorism of an nt ernational character,

Have appointed as their plenipotentiaries :

. . . . . .

Who, having communicated their full powers which were found in good and due form, have agreed upon the following provisions :

M. PELLA (Roumania), Rapporteur, recalled that, in the text prepared by the Committee of Experts,[1] the word " international " had appeared in paragraph 2 of Article 1 (". . . prevention and punishment of such acts when they are of an international character "). In the text prepared by the Drafting Committee, it had been put in the preamble instead for the following reasons : as Article 1 defined only acts of terrorism, and as their international character appeared from Articles 2, 3 and 10, it was better to mention the international character of the acts in the preamble, since the original definition given in Article 1 did not give any information with regard to it.

Anticipating a remark by the Yugoslav delegate, M. Pella reminded the Conference of the Yugoslav suggestion that the preamble should read : " Désireux de rendre de plus en plus efficaces la prévention et la répression du terrorisme *présentant un caractère international* "[2] instead of " lorsqu'il présente un caractère international "[2]. M. Pella would be prepared to accept that amendment if no objection were raised by other members of the Conference.

M. DELAQUIS (Switzerland) thought that the text suggested by the Yugoslav delegate might be interpreted as meaning that every act of terrorism was international in character. In his view, the text submitted by the Drafting Committee was perfectly clear.

M. GIVANOVITCH (Yugoslavia) reminded the Conference that it had decided in plenary session[3] to delete the definition of acts of terrorism of an international character. The Drafting Committee, however, had introduced the idea " of an international character " into the preamble. This might give rise, at some future date, in connection with the execution of the Convention, to the question whether an act of terrorism was or was not of an international character. He therefore proposed the deletion of the words " *of an international character* ". His proposal was, he said, in conformity with the decision taken at the first reading of the draft Convention.

M. PELLA (Roumania), Rapporteur, said that he would be prepared to give full explanations concerning the international character of acts of terrorism when the Conference was examining Article 1.

M. GIVANOVITCH (Yugoslavia) said that he would not press his proposal. He had simply wished to emphasise the difficulties that might arise at some future date in deciding whether acts of terrorism were or were not of an international character.

The preamble was adopted without modification.

ARTICLE 1.[4]

1. The High Contracting Parties, reaffirming the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape, undertake as hereinafter provided to prevent and punish activities of this nature and to collaborate for this purpose.

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[1] See document C.222.M.162.1937.V (Ser. L.o.N. P. 1937.V.1), page 3. (See page 186.)

[2] No change in the English text : " terrorism of an international character ".

[3] See the discussion, at a first reading, of Article 1 (pages 71 to 83).

[4] Throughout the second reading of the draft Convention for the Prevention and Punishment of Terrorism the number of the Article in heavy type corresponds with that given in the text of the draft Convention prepared by the Committee of Experts (See pages 186 to 191).

2. In the present Convention the expression " acts of terrorism " means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons, or the general public.

M. PELLA (Roumania), Rapporteur, said that the Drafting Committee, in framing the text of Article 1, had taken as a basis the amendment proposed by the delegations of Czechoslovakia, Greece, Poland, Roumania, Turkey and Yugoslavia.[1] Paragraph 1 reaffirmed an unwritten principle of international law and then indicated the international obligations ensuing from that principle for the parties to the Convention. Paragraph 2 did not define acts of terrorism of an international character, but indicated the features which must characterise the acts referred to in the following articles if they were to come within the scope of the Convention. The reason that the international character of the acts was not defined in Article 1 was that the articles following stipulated the conditions which must be fulfilled for the acts to come within the scope of the Convention. Under the terms of Article 2, it was the fact of being directed against another State that made the acts in question international offences. The international character of the offence was therefore due to the nature of the injured interests.

In Article 3, the international character of the offence also resulted from the fact that the acts referred to in that article (combination or conspiracy, incitement, complicity, etc.) must be committed with a view to a terrorist offence directed against another State. Such acts were often committed in a territory other than that in which the offence was to be carried out or that in which it was to produce its effects. In certain cases, therefore, criminal activities for the purpose of committing a terrorist offence came to light in or extended to the territory of several States, so that, in such cases too, the offence assumed an international character.

Finally, in Article 10, even if the offence were directed against the State in the territory of which it had been committed, the international significance of repression resulted from the fact that the offender had taken refuge abroad. Consequently, all the cases liable to arise in practice were sufficiently defined in Articles 2, 3 and 10. The Rapporteur thought that his explanations would satisfy the Yugoslav delegate.

M. HIRSCHFELD (Union of Soviet Socialist Republics) insisted on the importance of inserting in paragraph 2 the words " *of an international character* ". He thought that all the features characteristic of an act of international terrorism should appear in one and the same clause. It was true that the international character of the acts of terrorism covered by the Convention was dealt with in the preamble, as the Rapporteur had pointed out. There was, however, a difference between the preamble and the provisions of the Convention; the preamble simply indicated its purpose. In order to avoid all misunderstanding, it was preferable to insert, in paragraph 2 of Article 1, a reference to the international character of the acts of terrorism to which the Convention applied. In that connection, M. Hirschfeld pointed out that the first paragraph of Article 2 alluded to the conception of acts of terrorism within the meaning of Article 1.

The PRESIDENT explained that paragraph 1 of Article 1 reaffirmed a principle of international law and then went on to indicate the general purpose of the Convention, stipulating that the parties undertook to prevent and punish terrorist activities directed against another State.

M. PELLA (Roumania), Rapporteur, pointed out the consequences which would ensue if the Soviet amendment were adopted. If the idea of " the international character of acts of terrorism " were introduced in Article 1, how were the words " if they constitute acts of terrorism within the meaning of Article 1 ", at the end of the first paragraph of Article 2 to be interpreted? Paragraph 2 of Article 1 must be regarded either as overlapping with Article 2 or as introducing a supplementary condition concerning the international character of the act of terrorism. If such a condition must be considered as existing, difficulties of interpretation might arise, since one would be inclined to think that the international character of the act referred to in Article 1 implied something else. The same applied to Articles 3 and 10. M. Pella hoped, therefore, that the Soviet delegate would not insist on his proposal, since the addition which he had suggested was unnecessary in certain cases and might give rise to controversy, seeing that it could be interpreted as introducing an international element other than those resulting from Articles 2, 3 and 10.

M. GIVANOVITCH (Yugoslavia) thanked the Rapporteur and said that he was quite satisfied with his statement. The Rapporteur had given a technical explanation of the international character of acts of terrorism. M. Givanovitch hoped that the explanation would be fully reported in the Minutes of the Conference to serve as an interpretation of the Convention.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked the Rapporteur for his statement, but said that he was not quite satisfied by his explanations. He pointed out that Article 2 was restrictive in scope in that it limited the application of the Convention to cases in which the acts in question were directed against a contracting party. He said, however, that he would not insist on the insertion of the words which he had proposed.

Article 1 was adopted without modification.

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[1] See page 108.

ARTICLE 2.

Each of the High Contracting Parties shall, if this has not already been done, make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any wilful act causing death or grievous bodily harm or loss of liberty to :

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity;

(2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party;

(3) Any wilful act calculated to endanger the lives of members of the public;

(4) Any attempt to commit an offence falling within the foregoing provisions of the present article;

(5) The manufacture, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

M. PELLA (Roumania), Rapporteur, said that the substance of the article had been left unchanged, and that only a few slight formal changes had been made in deference to the decisions taken by the Conference at the first reading.[1]

Article 2 was adopted.

ARTICLE 3.

Each of the High Contracting Parties shall make the following acts criminal offences when they are committed on his own territory with a view to an act of terrorism falling within Article 2 and directed against another High Contracting Party, whatever the country in which the act of terrorism is to be carried out :

(1) Conspiracy to commit any such act;

(2) Any incitement to any such act, if successful;

(3) Direct public incitement to any act mentioned under heads (1), (2) or (3) of Article 2, whether the incitement be successful or not;

(4) Wilful participation in any such act;

(5) Assistance, knowingly given, towards the commission of any such act.

M. PELLA (Roumania), Rapporteur, said that no changes had been made in the article beyond those decided upon at the first reading.[2]

He directed attention to sub-paragraph (5), in which the word " knowingly " had been added in order to make it clear that help should not be deemed to be a criminal offence unless it was known that it was being given towards the commission of an act of terrorism.

Anticipating that the Norwegian delegation might wish to submit observations concerning sub-paragraph (1), M. Pella explained that, whereas the former text had read " Any agreement to commit any of the acts mentioned in Article 2 (Nos. (1) to (4)) ", the new text read : " Conspiracy to commit any such act ". That amendment might give the impression that the scope of the text had been extended. In point of fact, the Committee of Experts had had undue scruples which were not justified from a scientific point of view. It had wished to exclude attempts to commit the offences mentioned in Article 2. Scientifically, however, that hypothesis was inconceivable. According to certain more restrictive conceptions, an " attempt " to commit an offence was the beginning of the execution of an offence interrupted by circumstances independent of the author's will. According to other conceptions, an attempt was an application of the means for committing the offence which had been interrupted or had failed owing to circumstances completely independent of the author's will.

Whatever the definition of an attempt might be, conspiracy for the purpose of committing an attempt was inconceivable, as the very notion of an attempt presupposed the intervention of circumstances completely independent of the author's will.

By explicitly excluding attempts, the impression would therefore be given that the legal significance of the term was not understood. That was why the Drafting Committee had decided on the formula " to commit any such act ".

M. BACHKE (Norway) said that he was satisfied by the Rapporteur's explanations concerning the expression " any such act ".

M. SEBESTYÉN (Hungary) thanked the Rapporteur for his explanations, but thought that the text of the Convention should be sufficiently clear to be understood and applied without recourse to such explanations. For that reason, he would prefer to see the expression " *any such act* " *in sub-paragraph* 1 *of the article under discussion replaced by an enumeration of sub-paragraphs* (1), (2) *and* (3) *of Article* 2. In order not to prolong the debate on a question of secondary importance, M. Sebestyén raised a point of order, in the sense that the Conference should take a decision, without discussion, concerning the expression " any such act ".

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[1] See pages 83 to 86.
[2] See pages 87 to 91.

M. PELLA (Roumania), Rapporteur, thought that the adoption of the formula " acts mentioned in Article 2 (sub-paragraphs (1), (2), (3) and (5)) ", which would expressly exclude sub-paragraph (4) of Article 2—that was to say, any attempt to commit an offence, was tantamount to disregarding the elementary principles of criminal law. The Rapporteur was convinced that the professors of criminal law taking part in the Conference would agree with him that the provision in question could not apply to an attempt to commit an offence.

M. DELAQUIS (Switzerland) and M. GIVANOVITCH (Yugoslavia) said that they were in full agreement with the Rapporteur.

The PRESIDENT understood that the Hungarian delegate's suggestion was that sub-paragraph (1) of Article 3 instead of merely referring to " any such act " should contain a reference to sub-paragraphs (1), (2), (3) and (5) of Article 2.

M. DELAQUIS (Switzerland) said that, if that list were inserted, he would ask that it should not include any reference to sub-paragraph (5).

The PRESIDENT noted that the Conference was prepared to adopt sub-paragraph (1) of Article 3 as it stood.

Article 3 was adopted without modification.

ARTICLE 3bis (Article 4 of the Final Text).

Each of the offences mentioned in Article 3 shall be treated by the law as a distinct offence in all cases where this is necessary in order to prevent an offender escaping punishment.

The PRESIDENT said that Article 3*bis*, if adopted, would become Article 4, the remaining articles of the Convention being re-numbered accordingly.

M. PELLA (Roumania), Rapporteur, said that the explanations which he had given at the first reading concerning Article 3, sub-paragraph (2),[1] applied also to Article 3*bis*. The substance of Article 3, sub-paragraph (2), had remained the same. The new wording was in keeping with the proposals made by M. Pella during the discussion at the first reading of the draft.

Article 3bis was adopted.

ARTICLE 4 (Article 5 of the Final Text).

Subject to any special provisions of national law for the protection of the persons mentioned under head (1) of Article 2, or of the property mentioned under head (2) of Article 2, each High Contracting Party shall provide the same punishment for the acts set out in Articles 2 and 3 whether they be directed against that or another High Contracting Party.

M. PELLA (Roumania), Rapporteur, said that only drafting amendments had been made in Article 4. He explained that the "special provisions of the national law" referred to the protection of Heads of States and their wives or husbands, persons charged with public functions, etc., and public property or property devoted to a public purpose. Those persons and that property were enumerated in sub-paragraphs (1) and (2) of Article 2. In such cases, special protection would be afforded. The Drafting Committee had followed the suggestions made by the Swiss delegate at the first reading,[2] in order to avoid controversy.

M. POLYCHRONIADIS (Greece) asked whether by "special provisions" were meant only those already in force or those which might be adopted in future.

M. PELLA (Roumania), Rapporteur, said that the phrase in question covered existing and future provisions.

Article 4 was adopted.

ARTICLE 5 (Article 6 of the Final Text).

(No change.)

Article 5 was adopted.

ARTICLE 6 (Article 7 of the Final Text).

(No change.)

Article 6 was adopted.

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[1] See pages 92 and 93.
[2] See page 96.

ARTICLE 6bis (deleted).

A High Contracting Party shall not derive from the provisions of Articles 5 and 6 of the present Convention any right to ask another Contracting Party to adopt in a particular case an attitude which the High Contracting Party himself could not under his own law adopt in a corresponding case.

M. BEKERMAN (Poland) said that Article 6*bis* concerned the general principles of the Convention. He reminded the Conference that the Polish delegation had submitted an amendment proposing the deletion of Articles 5 and 6.[1] The Polish delegation's view was that a State whose legislation did not permit of its fulfilling the obligations laid down in Articles 5 and 6 could not demand that another State possessing the necessary legislation should fulfil the obligations in question in regard to itself. It had been suggested that the objection raised by the Polish delegation concerning Articles 5 and 6 might be met by inserting in the Convention a clause stipulating that a State whose legislation was restricted in character could not require of another State with more comprehensive legislation the execution of undertakings which the first-named State was unable to fulfil : by that means, the inequality in the matter of obligations would be removed.

The Drafting Committee had discussed the above suggestion and had framed Article 6*bis*, which referred, however, only to the provisions of Articles 5 and 6. The scope of the new article was thus very limited. It did not satisfy the Polish delegation; the fact that Article 6*bis* did not refer to the other articles of the Convention made the situation even more uncertain than before.

Even in cases in which the general principles of international law might have been adduced in order to do away with inequality in the matter of obligations, that course was no longer possible owing to the provisions of Article 6*bis*. M. Bekerman added that the Polish delegation had raised that point concerning the inequality of obligations with the object of making the provisions of the Convention more explicit and creating an effective instrument in the campaign against international terrorism.

M. PELLA (Roumania), Rapporteur, said that the Polish delegate had emphasised several points. One of them, moreover, had been mentioned by M. Komarnicki during the general discussion.[2] The Polish delegation considered that the Convention should imply equal rights and equal duties as between the contracting parties. M. Pella understood the Polish delegation's view to be that if certain countries were able, by reason of their legislation or practice, to do more than certain other countries in giving effect to the Convention, the first-named countries were under no international obligation to take such action, but could do so if they wished. In other words, the fact that a State's legislation was more advanced did not imply any obligation in relation to the other contracting parties which were not in a position to fulfil the same responsibilities.

Article 6*bis* had been inserted by the Drafting Committee in order to meet the Polish delegation's view, but had not achieved that object. M. Pella pointed out, moreover, that since the international recognition of previous convictions was optional under Polish law, any international obligation that Poland might accept in the matter would also be purely optional. Article 6*bis* was, therefore, unnecessary and he asked for its deletion.

M. BEKERMAN (Poland) thanked the Rapporteur for his explanations. He said that he would support the proposal to delete Article 6*bis* on condition that that clause was inserted in some other part of the Convention as a general rule applicable to the Convention as a whole.

The PRESIDENT noted that Article 6*bis* did not satisfy the Polish delegation, which considered it inadequate and even open to objections. The Rapporteur had accordingly asked for the deletion of the article, a suggestion which was supported by the Polish delegation. The latter, however, reserved the right to submit later a general clause embodying the substance of Article 6*bis*. If no one wished Article 6*bis* to stand, it would be deleted.

Sir John Fischer WILLIAMS (United Kingdom) said that he did not insist on Article 6*bis* being maintained. That, however, must not be understood as meaning that he thought it ought to be introduced in a general form. He would regard such a suggestion as unfortunate.

Article 6bis *was deleted.*

ARTICLE 7 (Article 8 of the Final Text).

Paragraph 1.

(No change.)

Paragraph 2.

(No change.)

Paragraph 3.

(No change.)

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[1] See page 94.
[2] See page 57.

Paragraph 4.

The obligation to grant extradition under the present article shall be subject to any conditions and limitations recognised by the law or the practice of the country to which application is made.

M. PELLA (Roumania), Rapporteur, referred to the slight modification introduced in paragraph 4 of Article 7—namely, the insertion of the words " or the practice "—in deference to the Netherlands delegation's observation.[1] He explained that the term " practice " referred not only to administrative practice, but also to the system followed in countries in which extradition was not governed by legislative provisions but was left to the discretion of the Government. The Drafting Committee had also inserted in paragraph 4 the word " conditions "; that amendment did not affect the substance of the clause, the word having been introduced simply to indicate that the law of the country to which the request for extradition was made did not only involve limitations.

Article 7 was adopted.

ARTICLE 8 (Article 9 of the Final Text).

(No change.)

Article 8 was adopted.

ARTICLE 9 (Article 10 of the Final Text).

(No change.)

M. PELLA (Roumania), Rapporteur, said that the observations which he had made at the first reading [2] applied also to the text of Article 9. The latter was unchanged.

Article 9 was adopted.

ARTICLE 10 (Article 11 of the Final Text).

(No change.)

M. SEBESTYÉN (Hungary) reminded the Conference that he had submitted an amendment [3] which had been held over by the Drafting Committee. He announced that he would withdraw the amendment, since Article 18 allowed of the Hungarian Government adapting its legislation.

Article 10 was adopted.

ARTICLE 11 (Article 12 of the Final Text).

Each High Contracting Party shall take on his own territory and within the limits of his own law and administrative organisation the measures which he considers appropriate for the effective prevention of all activities contrary to the purpose of the present Convention.

M. PELLA (Roumania), Rapporteur, said that the original text of Article 11 had been redrafted in deference to the Netherlands delegation's views.[4] The purpose of the article was the effective prevention of any activity contrary to the purpose of the Convention. To that end, each of the contracting parties was required to take, on its own territory, whatever measures it deemed appropriate. The contracting parties were thus free to decide on the nature of the measures which should be taken, but those measures must be such as effectively to prevent terrorist activities. A second point had arisen : Must those measures necessarily be of a legislative or administrative character? Article 11 simply said that the measures must be taken within the limits of the law and administrative organisation of each country. The text had not been weakened, but had been made to correspond with the existing possibilities, which varied in the different countries.

M. POLYCHRONIADIS (Greece) thought that the expression " effective prevention of all activities contrary to the purpose of the present Convention " was too loose. Countries which had to pass new legislative measures to give effect to the Convention would not know exactly what was meant, as the obligation laid on Governments was not sufficiently explicit.

The PRESIDENT said that Article 11 was a fundamental provision, which it was difficult to draft. It had to state, in general terms, what Governments were expected to do, while leaving them free to decide what methods they should adopt. The article stated the object in view—namely, the effective prevention of all activities contrary to the purpose of the Convention. That purpose was shown by the preamble and by Article 1 and the other provisions of the Convention. The Governments were to use to that end the means available to them and to take whatever measures they considered appropriate. For example, during a period of difficulty, they might insist on passports for all travellers or only for certain individuals. The provisions of Article 11 were thus very elastic as regards the means of carrying out the obligation laid down in that article. As to the meaning of the expression " all activities contrary to the purpose of the present Convention ", that purpose was clear from the whole structure of the Convention.

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[1] See pages 99 and 102.
[2] See pages 104 to 106.
[3] See page 106.
[4] See page 107.

M. POLYCHRONIADIS (Greece) thought that the force of the expression " activities contrary to the purpose of the present Convention " was attenuated by the fact that the contracting parties were left free to decide what measures should be taken.

M. PELLA (Roumania), Rapporteur, said that although the choice of measures was left to the contracting parties, the international obligation to take appropriate and effective measures remained intact. It was impossible to refer to all the various objects of the Convention. He thought that the explanations given by the President and by himself would reassure the delegate of Greece.

Article 11 *was adopted without modification.*

ARTICLE 12 (Article 13 of the Final Text).

1. Without prejudice to the provisions of head (5) of Article 2 the carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition shall be subjected to regulation. It shall be a punishable offence to transfer, sell or distribute such arms or munitions to any person who does not hold such licence or make such declaration as may be required by domestic legislation concerning the possession and carrying of such articles; this shall apply also to the transfer, sale or distribution of explosives.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, shall be required to mark each arm with a serial number or other distinctive mark permitting it to be identified; both manufacturers and retailers shall be obliged to keep a register of the names and addresses of purchasers.

PARAGRAPH 1.

M. PELLA (Roumania), Rapporteur, said that two amendments had been made in Paragraph 1. The words " Without prejudice to the provisions of head (5) of Article 2 ", had been introduced at the beginning of the paragraph in order that there might be no suggestion—as at the first reading [1]—that there was overlapping between paragraph 1 of Article 12 and the provisions of Article 2 concerning the criminal character of preparatory acts.

The Rapporteur also recalled that most of the provisions of Article 12 were based on the resolution concerning the carrying of arms (point 4), adopted by the Fifth International Conference for the Unification of Penal Law, which had met at Madrid in 1933. The discussions at the Madrid Conference were of great interest for the study of this question.

Paragraph 1 *was adopted.*

PARAGRAPH 2.

M. PELLA (Roumania), Rapporteur, said that the clause whereby retailers were obliged to keep a register had been introduced, on the Indian delegation's proposal,[2] in order to ensure the more effective prevention and punishment of terrorism. The addition would help to strengthen the preventive and repressive measures directed to that end.

When an attempt with a view to a terrorist act had been made and if the arm used by the author were found, it was almost impossible to identify that author if all that was done was to compel manufacturers of fire-arms to keep a register of the names and addresses of the buyers. Those buyers were wholesale or retail dealers. Even if their names were known, this would prove of little use, for the retail dealer, while confirming that he had sold the weapon in question, would in many cases be unable to designate the person who had bought it.

M. Pella had, on several occasions, asked the Committee of Jurists that it should be made compulsory for retail dealers to keep a register of the names and addresses of the buyers. The Committee had been unable to adopt that suggestion, as it considered that the introduction of such an obligation would necessitate certain modifications in national legislations.

The Rapporteur was happy to note that the Drafting Committee had recognised the need for making provision for such an obligation.

Paragraph 2 *was adopted.*

Article 12 *was adopted.*

The continuation of the discussion was adjourned to the next meeting.

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[1] See pages 84 and 85.
[2] See page 109.

SIXTEENTH MEETING.

Held on Saturday, November 13th, 1937, at 10.30 a.m.

President : M. BASDEVANT (France), *Vice-President.*

30. **Examination, at a Second Reading, of the Draft Convention for the Prevention and Punishment of Terrorism : Text prepared by the Drafting Committee** [1] (continuation).

ARTICLE 13 (Article 14 of the Final Text).

1. . . . (a) (No change.)

(b) (No change.)

(c) (No change.)

(d) **Wilfully using any such documents which are forged or falsified or were made out for a person other than the bearer.**

2. (No change.)

3. (No change.)

M. PELLA (Roumania), Rapporteur, said that a few small changes had been made in the text. Sub-paragraph *(d)* of paragraph 1 stipulated that the fact of wilfully using forged or falsified documents was punishable under the terms of the Convention. In paragraph 2, the word " réprimé " [2] had been substituted for the word " puni ".

Article 13 was adopted.

ARTICLE 14 (Article 15 of the Final Text).

1. Results of the investigation of offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 13 shall in each country, subject to the provisions of its law, be centralised in an appropriate service.

2. (No change.)

3. It shall furthermore bring together all information calculated to facilitate the prevention and punishment of the acts mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 13 ; it shall, as far as possible, keep in close contact with the judicial authorities of the country.

M. PELLA (Roumania), Rapporteur, said that the Drafting Committee had thought it useful to define the scope of Article 14, so as to restrict its application, as regards Article 13, to offences connected with preparations for committing acts of terrorism.

M. GIVANOVITCH (Yugoslavia) said that the wording of the French text was defective; it implied that the offences in question were offences against Article 13, whereas what was meant was the offences provided for in Article 13.

Article 14 was adopted, subject to the modification proposed by the Yugoslav delegate.

ARTICLE 15 (Article 16 of the Final Text).

(No change.)

Article 15 was adopted.

ARTICLE 16 (Article 17 of the Final Text).

1. The High Contracting Parties shall be bound to execute letters of request in accordance with their domestic law and practice.

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[1] Document Conf. R.T.27. (See Annex 4, page 196.) For the final text of the Convention, see page 5.
[2] English text : " punishable " (unchanged).

2. The transmission of letters of request relating to offences referred to in the present Convention should be effected :

(a) By direct communication between the judicial authorities;

(b) By direct correspondence between the Ministers of Justice of the two countries;

(c) By direct correspondence between the authority of the country making the request and the Minister of Justice of the country to which the request is made;

(d) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request, either directly or through the Minister for Foreign Affairs, to the competent judicial authority or to the authority indicated by the Government of the country to which the request is made and shall receive the papers constituting the execution of the letters of request from this authority either directly or through the Minister for Foreign Affairs.

3. In cases (a) **and** (b), **a copy of the letters of request shall always be sent simultaneously to the Minister of Justice of the country to which application is made.**

4. (No change.)

5. (No change.)

6. (No change.)

7. (No change.)

8. (No change.)

AMENDMENT TO ARTICLE 16.

Amendment proposed by the Egyptian Delegation.[1]

Add, at the end of paragraph 1, the following words : " *and Conventions already on subsequently concluded by them* ".

Aly SHAMSY Pasha (Egypt) explained the scope of the Egyptian amendment, which was in keeping with the spirit of Article 16. The Egyptian delegation wished to make it clear that the provisions of paragraph 2 of Article 16 would apply only in the absence of *ad hoc* conventions and that they would not conflict with conventions already or subsequently concluded concerning judicial assistance between States. It should therefore be explicitly stated that letters of request would be executed in accordance, not only with the domestic law and practice of the contracting parties, but also in accordance with conventions already or subsequently concluded in the matter.

M. PELLA (Roumania), Rapporteur, accepted the Egyptian amendment. It had been suggested to him also that it would be more logical to include in paragraph 1 the words " *relating to offences referred to in the present Convention* ". With the Egyptian amendment and the proposed formal modification, the text of the beginning of Article 16 would read :

" 1. *The High Contracting Parties shall be bound to execute letters of request relating to offences referred to in the present Convention in accordance with their domestic law and practice and any Conventions concluded or to be concluded by them.*

" 2. *The transmission of letters of request shall be effected :*

. . . . . .

The Rapporteur pointed out that the Drafting Committee had inserted a new clause in paragraph 2—sub-paragraph *(c)*—to cover a fourth case which might occur in connection with the transmission of letters of request.

Lastly, in sub-paragraph *(d)* of paragraph 2, the formula " through the Minister for Foreign Affairs " had been employed twice, in deference to a proposal by the Soviet delegate,[2] who had pointed out that, according to the existing practice, both the request and the reply often passed through the Minister for Foreign Affairs.

Article 16 *was adopted, with the amendments proposed by the Egyptian delegation and the Rapporteur.*

ARTICLE 17 (Article 18 of the Final Text).

(No change.)

Article 17 *was adopted.*

ARTICLE 18 (Article 19 of the Final Text).

The present Convention does not affect the principle that, subject to the acts in question not being allowed to escape punishment owing to gaps in the law, the characterisation of the various offences dealt with in the present Convention, the imposition of sentences, the methods of prosecution and trial, and the rules as to mitigating circumstances, pardon and amnesty are determined in each country by the provisions of domestic law.

M. PELLA (Roumania), Rapporteur, recalled the discussions at the first reading.[3] There had been a Soviet amendment proposing the deletion of the second sentence, which might give

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[1] Document Conf.R.T.30.

[2] See page 113.

[3] See page 114.

rise to misunderstanding. In the new text it was even more clearly stated that questions relating to the characterisation of the various acts, the imposition of sentences, the methods of prosecution and trial and the rules as to mitigating circumstances, the right of pardon and the right of amnesty were determined by the provisions of the law of each contracting party.

He assured the delegate of Norway that the principle of the expediency of prosecuting offenders was in no way affected. A distinction must, however, be made between the principle that such questions depended exclusively upon the rules of internal legislation and the exercise, in concrete cases, of the right of pardon or amnesty. If a State exercised that right in such a way as to make the repression of terrorism impossible, the other contracting parties would obviously be entitled to consider such action a violation of the obligations of the Convention, and might have recourse to the procedure described in Article 19.

M. Pella recalled that the former text had read " subject to the acts in question not being allowed to escape punishment ". That expression might have led to difficulties of interpretation. The authors of the text had assumed that the acts in question should not be allowed to escape punishment owing to gaps in the law. The contracting parties must therefore take the necessary measures to fill such gaps in the law as would enable those acts to escape punishment. The text had accordingly been amended to read " subject to the acts in question not being allowed to escape punishment owing to gaps in the law ".

M. Bachke (Norway) thanked the Rapporteur for his explanations. The Norwegian delegation wished also to thank the Drafting Committee for having given effect to its wishes.

M. Sebestyén (Hungary) regretted that he could not accept the Drafting Committee's text, even after hearing the Rapporteur's explanations. Article 18, as drafted, contained an obvious and manifest contradiction. It declared, on the one hand, that the exercise of the right of pardon and the right of amnesty depended in each country upon the rules of the domestic law, and, on the other, that the acts in question must never be allowed to escape punishment. No process of interpretation could disguise the contradiction between those two propositions. Nor did M. Sebestyén see how the difficulty could be eliminated by using the phrase " owing to gaps in the law ". That was a vague term, unsuited to such an important convention.

His objections were directed chiefly against the reasons for the amendment of the original text. If the Conference were anticipating the possibility of any abuse of the right of pardon such as to render the provisions of the Convention inoperative, it was wasting its time. The Convention was being concluded between States acting in good faith, none of which would dream of trying to shirk its responsibilities by making abusive use of the supreme rights vested in the highest representative organs of the State.

For those various reasons, M. Sebestyén *asked the Conference to revert to the original text of Article* 18. If it adopted the new text, he would be obliged to refer to his Government's right under Article 22 to make reservations, if necessary, at the moment of signing, ratifying, or acceding to the Convention.

M. Pella (Roumania), Rapporteur, said that the expression " gaps in the law " was not meant to apply to the right of pardon or the right of amnesty. The reason for introducing it was simply to indicate that every country that signed the Convention must take steps towards achieving its objects. The rights of pardon and amnesty, far from being gaps in the law, formed part of the series of institutions intended to ensure the operation and the elasticity of repression. In M. Pella's view, therefore, the term " gaps in the law " would therefore avoid any misunderstanding such as might have arisen with the original text.

Sir John Fischer Williams (United Kingdom) suggested that it might meet some of the Hungarian delegate's difficulties if, instead of saying " *d'une lacune de la loi* " the Conference adopted the phrase " *d'une lacune dans le texte (ou les textes) de la loi* ". That change would make it clear that the Conference was anxious that there might be a perfect code or set of legislations in which there were no gaps. It would make it clear also that the text was not directed against gaps resulting from administration, but against gaps resulting from the actual terms of the legislation.

M. Pella (Roumania), Rapporteur, said that if such precision were considered necessary, he would be prepared to accept the United Kingdom delegate's amendment, which exactly expressed the Conference's views.

The President asked whether the amendment proposed by the United Kingdom delegate met the Hungarian delegate's objection.

M. Sebestyén (Hungary) said that the United Kingdom delegate's proposal certainly improved the text. Seeing, however, that Article 23 laid down that ratification or accession by any contracting party implied an assurance by him that his legislation and his administrative organisation enabled him to give effect to the provisions of the Convention, the text now proposed would not serve any useful purpose. He would be prepared to accept the following formula :

> " . . . *subject to the acts in question not being allowed to escape punishment by reason of a fact other than the normal operation of mitigating circumstances, the right of pardon or the right of amnesty* ".

The use of the word " normal " would be a precaution against any abuse of the right of pardon or the right of amnesty.

M. PELLA (Roumania), Rapporteur, said that it was a matter for the Conference to decide. He would consider it regrettable, however, if, by accepting that text, States were deemed to have relinquished the rights acknowledged to be theirs by international law. Moreover, the expression " normal operation " was too vague. When the infringements were of an international character and affected the interests of another State than that exercising the right of pardon or of amnesty, there might obviously be serious differences of opinion between the States as to the normality or abnormality of the exercise of such a right. What, for one State, was the normal operation of the right of pardon or of amnesty might be regarded by another as a denial of justice.

M. SEBESTYÉN (Hungary) understood the Rapporteur's objection. He thought that it might be met by adding a provision stipulating that Article 18 did not in any way affect the rights of the contracting parties, under the recognised rules of international law, in the case of a denial of justice. The text would thereby be comprehensible to the judges without any need for explanations or interpretations, which would not always be available.

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that the Soviet delegation had proposed the deletion of the second sentence in Article 18,[1] on the grounds that it was ambiguous and might induce States to commit acts contrary to the spirit and purpose of the Convention. He was satisfied with the text submitted by the Drafting Committee, which reflected very much the same idea but in a more satisfactory form. He could not accept the Hungarian delegate's amendment, which would appreciably weaken the scope, not only of Article 18, but of the Convention as a whole. It was not enough to declare that the contracting parties were inspired by the best intentions and were prepared to safeguard the principles ensuing from unwritten international law. The Convention must contain something more positive and concrete in that particular sphere of international co-operation. He was in favour of the Drafting Committee's text, with the amendment proposed by the United Kingdom delegate.

M. MOMTCHILOFF (Bulgaria) suggested that the Conference might get over the difficulty by inserting in the text the words " *in criminal matters* ". That would restrict the idea of " gaps in the law " to criminal legislation without encroaching on constitutional matters.

M. PELLA (Roumania), Rapporteur, saw no objection to accepting the Bulgarian delegate's proposal. He wished it to be made perfectly clear, however, that the right of pardon and the right of amnesty could not be regarded as " gaps in the law ". On the contrary, the exercise of the right of pardon and the right of amnesty was perfectly in keeping with the legal system of any State.

M. MOMTCHILOFF (Bulgaria) agreed with the Rapporteur. He pointed out, nevertheless, that his suggestion would leave constitutional matters intact.

Sir John Fischer WILLIAMS (United Kingdom) supported what he described as the very happy suggestion made by the Bulgarian delegate. He did not share the Rapporteur's difficulty, as he had never envisaged the right of pardon or amnesty as constituting a gap in the law. The point of the amended text was to show that the right of pardon or amnesty belonged not to criminal law but to a wholly different sphere.

M. PELLA (Roumania), Rapporteur, maintained that, for the very reasons brought forward by the United Kingdom delegate, further precision was unnecessary. Nevertheless, he had no objection to the addition of the word " criminal ", although, from a legal point of view, he considered it unnecessary.

M. GIVANOVITCH (Yugoslavia) thought the Hungarian delegate's objection unfounded; the expression " gaps in the law " could not be meant to apply to the right of pardon or the right of amnesty. He was not prepared to support the Bulgarian amendment, since he considered that provision was made for the punishment of offences in all the laws and even in administrative regulations.

M. SEBESTYÉN (Hungary) said that, if the Conference rejected his proposal to revert to the former text of Article 18, he was prepared as a secondary solution to accept the Bulgarian delegate's suggestion, which satisfied him to some extent. Its adoption would make it clearer that the expression " gaps in the law " did not apply to provisions concerning the right of pardon or the right of amnesty. Moreover, the records of the Conference and the Rapporteur's explanations would confirm that interpretation.

M. MOMTCHILOFF (Bulgaria) proposed the following formula :

" . . . *provided the offender is not allowed to escape punishment owing to an omission in the criminal law* ".

Article 18 *was adopted together with the amendment proposed by the Bulgarian delegate.*

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[1] See page 114.

ARTICLE 18bis : New Article proposed by the Polish Delegation.[1]

A High Contracting Party shall not derive from the provisions of the present Convention any right to ask another High Contracting Party to adopt in a particular case an attitude which the High Contracting Party himself could not under his own law adopt in a corresponding case.

M. BEKERMAN (Poland) recalled that he had explained the reasons underlying the Polish proposal during the discussion, at the first reading, of Articles 5 and 6.[2] He had also explained his point of view in the Drafting Committee. There was no need, therefore, for him to repeat his arguments. The Rapporteur had explained how he interpreted the Polish point of view, and M. Bekerman agreed with his interpretation. The Polish delegation insisted on its amendment because it was convinced that it would introduce greater clearness and precision as regards the obligations of the signatory States to other States. Without such a clause States might find themselves in a difficult position owing to differences in their laws.

Sir John Fischer WILLIAMS (United Kingdom) said that the amendment which the Polish delegate had urged with so much persistence seemed to him to be of rather dangerous a character. He did not think that it would facilitate the working of the Convention, but felt rather that it would raise difficulties at every turn. That had been the point of view of the original Expert Committee, where the amendment had been moved but had not found favour, and also of the Drafting Committee, where the amendment had been discussed very fully.

As he understood it, the purpose of the amendment was as follows : any State when asked by another State to take some action under the Convention would have the right to refuse on the ground that the law of the second State was inferior to its own and that it would not be able to take similar measures in a similar case. That would appear to be a very unfortunate position and would certainly give rise to difficult questions between States. It would do precisely what the Conference had been engaged in avoiding : it would ensure immunity in a great number of cases.

If he were expressing the views of the man in the street with regard to the consequences of the proposed amendment, he might put them in the following form : If the amendment were adopted, the States would be somewhat in the position of people engaged in a tiger shoot, some mounted on elephants and armed with all the apparatus of modern science, while others had come with ancient or antiquated weapons. The tiger attacked one of the less fortunate individuals who made an appeal to his colleagues, and they replied : " We deeply sympathise with you, but regret that there is nothing we can do because, unfortunately, if we were being attacked by the tiger you would not be in a position to help us with arms of modern precision ". That situation was likely to result in the triumph of the tiger—in the present case terrorism—over the unfortunate member of the hunt who had not provided himself with sufficient weapons.

Surely, on reconsideration, the Polish delegate would realise that that rough and crude and possibly inaccurate view was one which might obtain a certain sympathy in uninstructed circles. Surely it would be possible to go back to the compromise which at one time the United Kingdom delegation had been ready to accept—namely, that the provision in question should apply to Articles 5 and 6. Personally, he would not welcome that solution. But Articles 5 and 6 were of comparatively little importance, and its introduction there could do no possible harm.

M. BEKERMAN (Poland) wished to dispel a misunderstanding, which might make it seem as if the Polish delegation were trying to weaken the scope of the Convention. On the contrary, it had from the outset done everything in its power to improve the Convention and ensure its efficacy. It had throughout been trying consistently to strengthen the measures for suppressing political terrorism. If a State found that its legislation were inferior to that of another State, it could modify it. If it did not modify it, that was because it was satisfied with it. The United Kingdom delegate's argument was not convincing, because the moment had not yet come to go tiger-hunting : the hunters had just reached the point where they were trying to collect weapons suitable for the purpose in view.

M. POLYCHRONIADIS (Greece) reminded the Conference that he had said, during the discussion, at a first reading, of the draft Convention,[3] that he was adverse to the over-strict application of the principle of reciprocity. He was accordingly opposed to the Polish delegation's proposal, which would appear to generalise the application of that principle.

M. PELLA (Roumania), Rapporteur, considered that if, as it seemed to him, the Conference did not share the point of view of the Polish delegation, the latter might perhaps consider bringing up the question again at a suitable moment. A text such as that which the Polish delegation had just proposed must, of course, be accepted by the majority of the Conference. Could not the Polish delegation consider another formula which would convert that text into a safeguarding clause simply to cover the case of Poland?

M. BEKERMAN (Poland) said that the majority of the Conference was, of course, under no obligation to accept the text which had been proposed; the Polish delegation's point of view remained unchanged.

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[1] Document Conf. R.T.31.
[2] See pages 94 to 98.
[3] See page 98.

The PRESIDENT, interpreting the feeling of the Conference, which was reflected in the opinions expressed and by the fact that the Polish proposal had not been supported by any other delegation, assumed that the Conference did not accept that proposal. He paid a tribute to the Polish delegation for its whole-hearted efforts to perfect the text of the Convention and for the moderation with which it had presented and defended its own point of view.

Article 18bis was not adopted.

ARTICLE 19 (Article 20 of the Final Text).

1. (No change.)

2. (No change.)

3. The above provisions of the present article shall not prevent High Contracting Parties, if they are Members of the League of Nations, from bringing the dispute before the Council or the Assembly of the League if the Covenant gives them the power to do so.

M. HIRSCHFELD (Union of Soviet Socialist Republics) recalled the declaration which he had made during the discussion on Article 19.[1] That declaration applied also to the corresponding article in the Convention for the Creation of an International Criminal Court.[2]

M. PELLA (Roumania), Rapporteur, said that a new paragraph—paragraph 3—had been inserted in Article 19 at the request of the Polish delegation,[3] which was satisfied with its provisions.

Article 19 was adopted.

ARTICLE 20 (Article 21 of the Final Text).

Insert the date of *May 31st*, 1938.

ARTICLE 21 (Article 22 of the Final Text).

Insert the date of *June 1st*, 1938.

The PRESIDENT pointed out that the Drafting Committee had inserted dates in Articles 20 and 21 in the spaces left blank in the original draft. In providing for time-limits which were rather longer than usual, both for signature and for accession, the Drafting Committee had been mindful of the fact that the Convention was an important one dealing with delicate points, and had thought it wiser not to fix the dates too early.

Articles 20 and 21 were adopted.

ARTICLE 22 (Article 23 of the Final Text).

1. (No change, except the substitution of "*three years*" for "*two years*".)

2. In the event of any objection being received, the Secretary-General of the League of Nations shall inform the Government which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

M. PELLA (Roumania), Rapporteur, commented on the change in the time-limit for communicating reservations. After hearing the explanations of the Secretary-General of the Conference [4] on the scope of that innovation, it had been decided to consider extending the time-limit, and the Drafting Committee, at M. Pella's suggestion, had substituted three years for the period originally fixed at two years.

As regards the second paragraph of Article 22, the Rapporteur explained that the Drafting Committee had used the amendment proposed by the United Kingdom delegation which had been unanimously accepted, at the first reading, by the Conference.[5]

Article 22 was adopted.

ARTICLE 23 (Article 24 of the Final Text).

Ratification of or accession to the present Convention by any High Contracting Party implies an assurance by him that his legislation and his administrative organisation enable him to give effect to the provisions of the present Convention.

M. PELLA (Roumania), Rapporteur, explained that the Drafting Committee had amended the text in order to make it less rigid. The phrase " his legislation and his administrative organi-

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[1] See page 129.
[2] See Article 48 of the Convention (page 29).
[3] See page 128.
[4] See pages 131 and 132.
[5] See page 131.

sation are in conformity with the rules contained in the Convention " was too categorical. The signatory States might have some doubts as to whether the whole of their legislative and administrative organisation was in conformity with those rules.

He felt sure that if a less rigid formula had been adopted for the Convention for the Suppression of Counterfeiting Currency there would have been more ratifications and accessions.

Article 23 was adopted.

ARTICLE 24 (Article 25 of the Final Text).

1. (No change.)

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. In making such notification, the High Contracting Party concerned may state that the application of the Convention to any of such territories shall be subject to any reservations which have been accepted in respect of that High Contracting Party under Article 22. The Convention shall then apply, with any such reservations, to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations. Should it be desired as regards any such territories to make reservations other than those already made under Article 22 by the High Contracting Party concerned, the procedure set out in that article shall be followed.

3. (No change.)

4. (No change.)

M. Pella (Roumania), Rapporteur, said that the two new sentences introduced in paragraph 2 of Article 24 were based on a proposal by the United Kingdom delegation,[1] which had been unanimously accepted by the Conference. Its purpose was to define more precisely the method envisaged for reservations. The proposal had encountered no opposition at a first reading.

Article 24 was adopted.

ARTICLE 25 (Article 26 of the Final Text).

Insert the word " *third* " before " *instrument of ratification or accession* ".

M. Sebestyén (Hungary) did not propose to submit an amendment to the text of Article 25. He simply wished to make a general remark, which might perhaps be borne in mind by the Section of the Secretariat which dealt with the formal clauses of international treaties. The formal clauses of all the Conventions concluded under the auspices of the League of Nations contained the text which appeared in Article 25 of the present draft. That text, in his view, was not quite logical.

The contracting parties to a convention were free to fix the methods and the date of its entry into force, subject, of course, to the provisions of Article 18 of the Covenant. Thus the entry into force of a convention depended, in the first place, on the will of the contracting parties, and not on the material fact of registration. It would therefore be more logical to begin by saying that the Convention would enter into force on the ninetieth day following the receipt of the third instrument of ratification or accession, and then to say that it would be registered on the day of its entry into force as thus fixed.

Article 25 was adopted.

ARTICLE 26 (Article 27 of the Final Text).

Insert the word " *third* " after the words " *after the deposit of* ".

Article 26 was adopted.

ARTICLE 27 (Article 28 of the Final Text).

(No change.)

Article 27 was adopted.

ARTICLE 28 (Article 29 of the Final Text).

(No change.)

Article 28 was adopted.

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[1] See page 133.

The Convention for the Prevention and Punishment of Terrorism was adopted as a whole.[1]

DECLARATION BY THE POLISH DELEGATION.

M. KOMARNICKI (Poland) read the following declaration :

" The Polish delegation has, throughout this Conference, offered its sincere and active collaboration, in the belief that the draft Convention submitted to the Conference might be improved.

" The Polish delegation has accordingly submitted amendments with the object of remedying defects in the draft Convention, in order to ensure the effective repression of terrorist activities whether by extradition or trial.

" These proposals have not been adopted, although sympathetic consideration has been given to the reasons which prompted them. The text, as finally framed, unfortunately, does not, in the Polish delegation's opinion, represent any real advance on the present situation as determined by bilateral Conventions and the practice of States.

" The Polish delegation, while refraining from signing the Convention, for the reasons which I have just stated, desires to express the Polish Government's deep attachment to the principle of the real and effective repression of terrorist activities."

31. Second Report of the Committee appointed to examine the Credentials of the Delegates.

M. PARRA-PÉREZ (Venezuela), Chairman and Rapporteur of the Committee on Credentials, read the following report :

" The Committee appointed by the Conference on the International Repression of Terrorism to verify the credentials of delegates met again at 3 p.m. on November 12th, 1937, at the Secretariat of the League of Nations to examine the further documents communicated to the Secretary-General by the delegations.

" The delegates of the following countries submitted full powers from the head of the State authorising them to take part in negotiations and sign any instruments which might be adopted by the Conference :

" Albania, United Kingdom of Great Britain and Northern Ireland, Bulgaria, Egypt, France, Yugoslavia.

" The delegates of Ecuador and Norway have informed the Secretary-General of the League of Nations by letter that their Governments have just authorised them to sign the Convention for the Prevention and Punishment of Terrorism.

" The delegates of Turkey and Belgium have also informed the Secretary-General of the League of Nations by letter that they have been authorised by their Governments to sign any Conventions adopted by the Conference.

" The Hungarian delegation has communicated credentials sent by the Royal Minister for Foreign Affairs authorising the delegation to take part in the Conference's proceedings.

" As regards the other delegations mentioned in Points II and IV of this Committee's first report, [2] they are requested to provide themselves with the necessary documents authorising them to sign, if they so desire, the Conventions which the Conference proposes to adopt."

M. BACHKE (Norway) said that his instructions would permit him to sign the Convention for the Repression of Terrorism *ad referendum*, but not definitively.

The Conference took note of the second report of the Committee on the Credentials of the delegates.

SEVENTEENTH MEETING.

Held on Saturday, November 13th, 1937, at 3.30 p.m.

President : M. BASDEVANT (France), *Vice-President.*

32. Examination, at a Second Reading, of the Draft Convention for the Creation of an International Criminal Court: Text prepared by the Drafting Committee.[3]

TITLE OF THE CONVENTION.

Convention for the Creation of an International Criminal Court.

The title of the Convention was adopted.

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[1] For the final text of the Convention, see page 5.

[2] See pages 51 and 52.

[3] Documents Conf. R.T.28 and 28*(a)*. (See Annex 5, page 200.) For the final text of the Convention, see page 19.

PREAMBLE.

. . . . . .

Being desirous, on the occasion of concluding the Convention for the Prevention and Punishment of Terrorism, which bears to-day's date, of creating an International Criminal Court with a view to making progress in the struggle against offences of an international character,

Have appointed as their plenipotentiaries:

. . . . . .

Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions:

The preamble was adopted.

The PRESIDENT pointed out that the numbering of the articles of the draft Convention had been changed to make the order more logical.

ARTICLE 1 (former Article 1).[1]

(No change.)

M. PELLA (Roumania), Rapporteur, explained that, in the French text of the Convention drafted by the Experts, the terms " inculpé " or " individu " had been used in referring to persons sent for trial before the Court. The Drafting Committee had thought it preferable, if the Conference agreed, to use throughout the one term " accusé ", understood in the general sense of any person accused of any offence whatever its nature. It applied therefore to acts ranking as " crimes " or " offences ".

The Drafting Committee's proposal was adopted.

Article 1 was adopted.

ARTICLE 2 (former Article 3).

1. (No change in English text except that " tribunal " is replaced by " courts ").

2. A High Contracting Party shall further, in cases where he is able to grant extradition in accordance with Article 8 of the said Convention, be entitled to commit the accused for trial before the Court if the State demanding extradition is also a party to the present Convention.

3. The High Contracting Parties recognise that other Parties discharge their obligations towards them under the Convention for the Prevention and Punishment of Terrorism by making use of the right given them by the present article.

M. PELLA (Roumania), Rapporteur, said that certain changes had been made in Article 2 to make the meaning clearer.

Paragraph 1.—The words " au lieu de juger elle-même " had been replaced by the words " au lieu de faire juger par ses propres juridictions " in the French text, on the ground that it was not the contracting parties themselves which tried the accused, but the courts of the contracting parties. This was a merely formal change. The word " inculpé " in the French text had also been altered to " accusé " for the reasons above stated.

Paragraph 2.—The Netherlands delegation had pointed out to the Drafting Committee that a contracting party could only exercise the right to send the accused before the Court in cases where it considered it possible to grant extradition. Since it was not the intention of the Committee of Experts, nor of the Drafting Committee, indirectly to modify the character of extradition under Article 8 of the Convention for the Prevention and Punishment of Terrorism, the former text had been modified so as to make it quite clear that a State would only send the accused before the Court if it were able to grant his extradition. The scope of the text remained the same; the change was purely formal.

Article 2 was adopted.

ARTICLE 3 (former Article 2).

(No change.)

Article 3 was adopted.

ARTICLE 4 (former Article 15).

(No change.)

M. PELLA (Roumania), Rapporteur, was happy to note that the seat of the Court was to be at The Hague, in the Netherlands, the country which had been the very centre of international justice. He felt sure that he was voicing the sentiments of all the members of the Conference in thanking the Netherlands delegate for the attitude he had adopted in regard to the text of this article.

Article 4 was adopted.

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[1] Throughout the second reading of the draft Convention for the Creation of an International Criminal Court, the number of the article in heavy type corresponds with that of the final text of the Convention.

ARTICLE 5 (former Article 4).

(No change.)

Article 5 was adopted.

ARTICLE 6 (former Article 5).

(No change.)

Article 6 was adopted.

ARTICLE 7 (former Article 6).

1. (No change.)

2. The Permanent Court of International Justice shall be requested to choose the regular and deputy judges from the persons so nominated.

M. PELLA (Roumania), Rapporteur, said there was a purely formal change in the French text of paragraph 1. In paragraph 2, the Permanent Court of International Justice had been substituted for the Council of the League, which, in the earlier text, had been deputed to appoint the regular and deputy judges. The reasons for this change were to be found in the Conference's discussion on Article 6 during the first reading of the draft Convention.[1]

Article 7 was adopted.

ARTICLE 8 (former Article 10, paragraph 2).

(No change.)

M. PELLA (Roumania), Rapporteur, recalled that, owing to the solemn nature of the oath, the Czechoslovak delegation had urged that a special article should be devoted to it.[2] The present provision met the wishes of the Czechoslovak delegation.

Article 8 was adopted.

ARTICLE 9 (former Article 13).

(No change.)

Article 9 was adopted.

ARTICLE 10 (former Article 7).

1. (No change.)

2. (No change.)

3. The order of retirement for the first period of ten years, shall be determined by lot when the first election takes place.

4. (No change.)

5. (No change.)

6. (No change.)

M. PELLA (Roumania), Rapporteur, proposed that the last phrase in the third paragraph should be transposed, so as to make the paragraph read as follows :

"3. *For the first period of ten years and at the time when the first election takes place, the order of retirement shall be determined by lot.*"

Article 10 was adopted as amended.

ARTICLE 11 (former Article 11).

1. (No change.)

2. (No change.)

3. If a seat on the Court becomes vacant more than eight months before the date at which a new election to that seat would normally take place, the High Contracting Parties shall, within two months, nominate candidates for the seat in accordance with Article 7, paragraph 1.

M. PELLA (Roumania), Rapporteur, said that it had been necessary to complete the earlier text of the article by specifying the time-limit within which contracting parties must nominate their candidates for seats falling vacant before the normal date of new elections.

Article 11 was adopted.

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[1] See pages 123 to 125.
[2] See page 125.

ARTICLE 12 (former Article 12).

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

M. PELLA (Roumania), Rapporteur, said that the previous text might give the impression that, where a regular member of the Court was to be relieved of his functions, the vote was confined to the four other regular members, whereas the intention of the Experts was that a member of the Court should not be relieved of his functions except by an unanimous decision of all the other regular and deputy members. To make that intention quite clear, the new text read : " in the unanimous opinion of all the other members, including both regular and deputy judges ".

Article 12 *was adopted.*

ARTICLE 13 (former Article 8).

(No change.)

Article 13 *was adopted.*

ARTICLE 14 (former Article 14, paragraph 1).

(No change.)

Article 14 *was adopted.*

ARTICLE 15 (former Article 42).

(No change.)

Article 15 *was adopted.*

ARTICLE 16 (former Article 14, paragraph 2).

(No change.)

Article 16 *was adopted.*

ARTICLE 17 (former Article 41).

(No change.)

Article 17 *was adopted.*

ARTICLE 18 (former Article 19, paragraph 1).

The number of members who shall sit to constitute the Court shall be five.

M. PELLA (Roumania), Rapporteur, observed that the previous text might give the impression that the number of five members constituted a minimum which could be exceeded. As it was the intention of the authors of the draft Convention that the Court should not sit with more than five members, the Drafting Committee had adopted the text now before the Conference.

Article 18 *was adopted.*

ARTICLE 19 (former Article 10, paragraph 1, and former Article 18).

1. (No change, except for the substitution of the words " *in trying* " for the words " *in the settlement of* ".)

2. (No change, except for the substitution of the word " *try* " for the word " *hear* ".)

M. PELLA (Roumania), Rapporteur, explained that the words " in the settlement of " in paragraph 1 had been replaced by the words " in trying " as the more appropriate in criminal matters.

Article 19 *was adopted.*

ARTICLE 20 (former Article 9 and Article 19, paragraph 2).

1. Deputy judges shall be called upon to sit in the order laid down in a list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

3. If the presence of five regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

M. SEBESTYÉN (Hungary) did not think that the present disposition of the provisions of the previous texts was satisfactory. *It would, in his view, be more logical to put the present third paragraph first, and, after it, the second paragraph. That would render unnecessary the former first paragraph which should be omitted.*

M. PELLA (Roumania), Rapporteur, accepted the Hungarian delegate's suggestion.

Article 20, *as amended, was adopted.*

ARTICLE 21 (former Article 17).

(No change.)

Article 21 was reserved.[1]

ARTICLE 22 (former Article 20).

(No change.)

Article 22 was adopted.

ARTICLE 23 (former Article 16).

A High Contracting Party who avails himself of the right to send an accused person for trial to the Court shall notify the President through the Registry.

Article 23 was adopted.

ARTICLE 24 (former Article 21) and **ARTICLE 25** (former Article 22).

Article 24.

The President of the Court, on being informed by a High Contracting Party of his decision to send the accused persons for trial before the Court in accordance with Article 2 shall notify the State against which the offence was directed, the State on whose territory the offence was committed and the State of which the accused persons are nationals.

Article 25.

1. The Court is seized so soon as a High Contracting Party has committed an accused person to it for trial.

2. The document committing an accused person to the Court for trial shall contain a statement of the principal charges against him and the allegations on which they are based, and shall name the agent by whom the State will be represented.

3. The State which committed the accused person to the Court shall conduct the prosecution unless the State against which the offence was directed or, failing that State, the State on whose territory the offence was committed, expresses a wish to prosecute.

M. PELLA (Roumania), Rapporteur, asked the Conference to discuss Articles 24 and 25 together, as they dealt with the same question. He pointed out that the text drawn up by the experts was not sufficiently clear; it was uncertain whether the Court was seized of a case in virtue of the fact of the individual being sent before it by a State or in virtue of the indictment. The Drafting Committee had considered it necessary to amend the provisions of the former Articles 21 and 22 to make it clear exactly when, and how, the Court was seized of a case.

Article 24 had been revised accordingly; and the Committee had added the stipulation that the State of which the accused persons were nationals should be notified as soon as another State intimated its intention to send them for trial before the Court.

In short, two points had been made clear—first, that as soon as a State had sent the accused persons before the Court, the President was required to notify the interested States mentioned in Article 24, and, secondly, that, in virtue of Article 25 (paragraph 1), the Court was seized of the case by the fact that a contracting party had sent the accused person before it. Consequently, the Court was not seized of the case in virtue of the indictment, but in virtue of the sending of the individual before the Court.

Article 25 contained a second paragraph, which provided that a State sending an individual before the Court must briefly specify the grounds on which the case was based, so that the Court might know what other States were interested in the case, and might be in a position to take the necessary steps required by the Convention.

The former text of the provisions corresponding to the last paragraph of Article 25 (former Article 22, paragraph 2) was incomplete. A State might send an individual before the Court without assuming responsibility for the indictment. The individual could thus have been sent before the Court without a formal indictment. In order to provide for such cases, the Drafting Committee had stipulated that the State which sent the individual before the Court should conduct the prosecution. Obviously, if the States chiefly concerned—that was to say, the State against which the offence was directed and the State on whose territory it was committed—expressed the desire to do so, they could conduct the prosecution. The order of priority was as follows : the State against which the offence was directed; the State in whose territory the offence was committed; and, lastly, the State sending the accused before the Court. Accordingly, the State seizing the Court of the case would not conduct the prosecution, unless the other two States expressed no desire to do so. In the latter case, the State seizing the Court of the case would be obliged to conduct the prosecution.

M. SEBESTYÉN (Hungary) said that the use of the plural in the text of Article 24 gave the impression that all the accused persons were nationals of the same State. It would be better to use the singular. He proposed that the last phrase should be worded as follows : *" and the State of which the accused person is a national "*.

M. PELLA (Roumania), Rapporteur, accepted the Hungarian proposal.

Article 24 was adopted with the amendment proposed by the Hungarian delegation.

Article 25 was adopted without modification.

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[1] See page 171.

ARTICLE 26 (former Article 23).

1. Any State entitled to seize the Court may intervene, inspect the file, submit a statement of its case to the Court and take part in the oral proceedings.

2. Any person directly injured by the offence may, if authorised by the Court, and subject to any conditions which it may impose, constitute himself *partie civile* before the Court; such person shall not take part in the oral proceedings except when the Court is dealing with the damages.

M. PELLA (Roumania), Rapporteur, explained that the Drafting Committee had thought that a distinction should be made; whereas any State was entitled to intervene before the Court, inspect the file, submit a statement of its case to the Court and take part in the oral proceedings, any other juridical person or any individual directly injured by an offence coming within the competence of the Court was not entitled to take part in the oral proceedings and constitute himself *partie civile* unless authorised to do so by the Court, nor could they take part in the debates except when the actual subject of their intervention was under discussion—that was to say, when the Court was dealing with the damages. Such were the principles underlying the new text of Article 26.

It followed from the provisions of the article that the Court would first have to decide whether the accused was guilty and in that event to fix the penalty. It would then have to pronounce upon claims for damages. At that point any person directly injured could intervene. But in view of the fact that certain countries made no provision for the constitution of *parties civiles* and of the further fact that other countries might object to their constitution in certain cases, the Convention provided in a later article[1] for the possibility of reservations in regard to Article 26, paragraph 2.

Article 26 was adopted.

ARTICLE 27 (former Article 34).

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

M. PELLA (Roumania), Rapporteur, suggested that the word " *inculper* " should be replaced by " *juger* " in the French text, which would mean a slight formal amendment in the sequence of the article.[2] That would leave the Court free as regards the characterisation of the act for which the accused had been committed.

Article 27 was adopted, with the amendment to the French text proposed by the Rapporteur.

ARTICLE 28 (former Article 22, paragraph 4).

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is abandoned and not at once recommenced by a State entitled to prosecute.

M. PELLA (Roumania), Rapporteur, recalled that the former text had read : " The Court must not proceed further with the case if the charge is withdrawn ". A problem had arisen in the Drafting Committee : What was to be done with the accused if the charge were withdrawn? Was he to be kept in prison or conveyed to another territory? To avoid such difficulties, the Committee had adopted the following formula : " The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is abandoned." It might, of course, happen that, when one State abandoned the prosecution, another State duly entitled to prosecute recommenced it. The Committee had provided for that contingency by the phrase : " if the prosecution is abandoned and not at once recommenced by a State entitled to prosecute ".

M. Pella added that that text did not in any way prejudice the position of an accused person who had been discharged on the territory of the country in which the case was tried; that country was free to employ such measures as it was accustomed to take in the case of certain aliens. He hoped that his explanations would satisfy the Netherlands delegation.

M. VAN HAMEL (Netherlands) thanked the Rapporteur for his explanations.

Article 28 was adopted.

ARTICLE 29 (former Article 29).

(No change.)

The PRESIDENT said that, in conformity with the decision just taken, the word " *inculpé* " would be replaced by " *accusé* " in the French text.

Article 29 was adopted.

ARTICLE 30 (former Article 24).

(No change.)

Article 30 was adopted.

ARTICLE 31 (former Article 26).

(No change.)

Article 31 was adopted.

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[1] See Article 51, page 170.

[2] This observation affects the French text only.

ARTICLE 32 (former Article 25).

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards any other kind of evidence.

M. PELLA (Roumania), Rapporteur, pointed out that a sentence had been added at the end of the article at the request of the Yugoslav delegation.

Article 32 was adopted.

ARTICLE 33 (former Article 27).

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

M. PELLA (Roumania), Rapporteur, said that the former text was not sufficiently elastic. The present text made provision for a less rigid system for the despatch of letters of request and covered any cases that might arise. No fundamental changes had been made in the article.

Article 33 was adopted.

ARTICLE 34 (former Article 28).

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and of the representatives of the States which are taking part in the proceedings or after these representatives have been duly summoned.

M. PELLA (Roumania), Rapporteur, said that, in connection with Article 34, the Drafting Committee had had to consider whether provision should be made for judgment by default. It had decided that it was preferable not to make provision for judgment by default in the case of the International Criminal Court, on the grounds that to do so might impair the authority of judgments of the Court and might create difficulties in practice, and also because no provision for judgment by default was made in a number of legislations which, nevertheless, worked quite satisfactorily.

Passing next to the provisions of Article 34, M. Pella said that the former text had provided for the procedure taking place in the presence of the parties, but that, owing to the distinction now introduced in the new Article 26 between States and all individuals or juridical persons entitled to constitute themselves *parties civiles*, the Drafting Committee had considered that Article 34 should be brought into line with Article 26, seeing that the individuals and persons in question were only entitled to take part in the proceedings when the Court was dealing with the damages. Consequently, all individuals and juridical persons other than the States were now excluded from the hearing.

Article 34 was adopted.

ARTICLE 35 (former Article 30).

1. (No change.)

2. Nevertheless, the Court may, by a reasoned judgment, decide that the hearing shall take place *in camera*. **Judgment shall always be pronounced at a public hearing.**

M. PELLA (Roumania), Rapporteur, referring to paragraph 2, recalled that the Greek delegation had proposed that a majority vote should suffice for a decision that the hearing should take place *in camera;*[1] the Conference had adopted that proposal at the first reading. The reason that there was no mention of a majority vote in paragraph 2 of Article 35 was that it was stipulated elsewhere that all decisions of the Court should be taken by a majority vote, unless otherwise provided.[2]

Article 35 was adopted.

ARTICLE 36 (former Article 31).

(No change.)

Article 36 was adopted.

ARTICLE 37 (former Article 32).

(No change.)

Article 37 was adopted.

ARTICLE 38 (former Article 33).

(No change.)

Article 38 was adopted.

ARTICLE 39 (former Article 35).

1. The Court shall decide whether any object is to be confiscated or be restored to its owner,

2. The Court may sentence the persons committed to it to pay damages,

3. (No change.)

4. (No change.)

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[1] See page 135.
[2] See Article 37, page 25.

M. PELLA (Roumania), Rapporteur, said that, in paragraph 1, in deference to a technical suggestion on the part of the Yugoslav[1] delegation, the reference to confiscation had been put first and the reference to restitution second.

Article 39 was adopted.

ARTICLE 40 (former Article 36).

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court; such consent may not be refused by the State which committed the convicted person to the Court for trial. The sentence shall always be executed by the State which committed the convicted person to the Court if this State expresses the wish to do so.

2. (No change.)

M. PELLA (Roumania), Rapporteur, said that the idea which the Drafting Committee wished to express in paragraph 1 was that the Court would designate the contracting party to execute sentences involving loss of liberty, with the consent of the said contracting party,but that if the contracting party which had committed the accused person to the Court for trial wished to execute the sentence in question, the Court would be obliged to designate that party. On the other hand, if the party which had committed the accused to the Court for trial did not ask to carry out the sentence, and if the Court could not see who else could be asked to do so, it could apply to the party which had committed the accused to the Court for trial, in which case, the latter would be obliged to carry out the sentence.

Article 40 was reserved.[2]

ARTICLE 41 (former Article 37).

(No change.)

Article 41 was adopted.

ARTICLE 42 (former Article 38).

(No change.)

M. HIRSCHFELD (Union of Soviet Socialist Republics) reminded the Conference that, at the first reading, Article 38 had been the subject of keen discussion, that several delegations had proposed amendments and that the Soviet delegation had suggested redrafting it.[3] The impression resulting from the debate had been that the majority of the Conference supported the exercise of the right of pardon by the injured State. The Soviet delegate enquired what was the final outcome of that exchange of views.

The PRESIDENT said that the question of the right of pardon had been examined at length by the Drafting Committee, which had come to the conclusion that it could not improve on the text now before the Conference.

M. PELLA (Roumania), Rapporteur, said that he had not supported the proposal that the State injured by the offence should be entitled to exercise its right of pardon. Very strong arguments based on internal public law had been advanced against that proposal in the Drafting Committee. It had been argued that if a State were entrusted with the duty of executing a sentence, that State, which alone possessed the right of pardon, could not be required to recognise the right of pardon on the part of some outside authority. Certain members of the Drafting Committee had declined to admit any other view.

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that M. Pella's arguments were not new. Reference had been made in the plenary Conference to the sovereignty of the State which had to execute the sentence. Logically, if that argument were pushed to the extreme, the State in question could refrain from executing the sentence. In the instance under consideration, however, the State was acting under a mandate from the Court. Its task was confined to the execution of the sentence and, consequently, it did not *ipso facto* possess the right of pardon. M. Hirschfeld considered that the text which had been submitted to the Conference was illogical in law and politically inexpedient.

M. PELLA (Roumania), Rapporteur, said that the principles of constitutional law had been emphatically affirmed by the Czechoslovak delegate in the Drafting Committee. The Czechoslovak delegate had said that he could not agree to the exercise of the right of pardon by a country other than the State which had to execute the sentence.

M. Pella admitted that the arguments of the delegate of the Soviet Union were not without weight, but they could only be admitted if the Drafting Committee had accepted the principle that the State carrying out the penalty would be a mere mandatory.

He could not, however, agree with M. Hirschfeld's contention that the system adopted by the Drafting Committee was illogical in law and politically inexpedient.

In the vast majority of cases, the execution of the penalty would, under Article 40, be entrusted to the State which had committed the accused for trial to the Court. But that State might

[1] See page 139.
[2] See page 172.
[3] See pages 140 to 142.

equally well have adopted the alternative course of having him tried by its own courts. Now, if the accused were sentenced by those courts would it be open to another State—that was to say, to the State against which the offence had been directed—to exercise the right of pardon? No.

M. Pella gave another example : an act of terrorism directed against Roumania was committed in French territory by a person who subsequently took refuge in Yugoslavia. Instead of sending the accused for trial by the International Criminal Court, Yugoslavia granted extradition to France. In France, the accused was sentenced to penal servitude and served his sentence in French territory. Could Roumania exercise the right of pardon? No.

It was clear from these two examples that the present legal position would not be affected in any way by the provisions of Article 42.

Article 42 was adopted.

ARTICLE 43 (former Article 39).

(No change.)

Article 43 was adopted.

ARTICLE 44 (former Article 40).

1. (No change.)

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

M. Pella (Roumania), Rapporteur, drew attention to the addition concerning the fees and expenses of council assigned to the accused by the Court. The Drafting Committee had adopted a comprehensive formula to cover cases in which such counsel were not paid, cases in which they were paid, and cases in which counsel assigned to the accused by the Court gave their services free of charge but were obliged to go abroad and were thus entitled to the refund of expenditure on that account.

Article 44 was adopted.

ARTICLE 45 (former Article 43).

1. (No change.)

2. If a High Contracting Party, not being the Party who sent the case in question for trial to the Court, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts and does not see his way to appear in the proceedings in order that the question may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 48.

M. Pella (Roumania), Rapporteur, said that the addition introduced by the Drafting Committee in paragraph 2 was intended to facilitate and expedite the settlement of disputes which might arise concerning the extent of the Court's jurisdiction in relation to the national courts of a State other than that by which the case had been referred to it; it provided that such disputes could be settled by the Court itself.

M. Hirschfeld (Union of Soviet Socialist Republics) said that, in accordance with the declaration made by the delegation of the Union of Soviet Socialist Republics with reference to Article 19[1] of the Convention for the Prevention and Punishment of Terrorism,[2] the delegation of the Union of Soviet Socialist Republics, if it should sign the instruments drawn up by the Conference, proposed with reference to Article 45 of the draft Convention for the Creation of an International Criminal Court, to attach to its signature a declaration to the effect that the Union of Soviet Socialist Republics does not, so far as it is concerned, intend to have recourse to the Permanent Court of International Justice. Moreover, eventual signature of, or accession to, the instruments drawn up by the Conference is not to be interpreted as modifying the point of view of the Union of Soviet Socialist Republics on the subject of arbitration as a means of settling international disputes.

The President said that the Soviet delegate's declaration would be included in the Minutes.

Article 45 was adopted.

ARTICLE 46 (former Article 44).

1. The representatives of the High Contracting Parties shall meet with a view to taking all necessary decisions concerning:

(a) The constitution and administration of the common fund, the division among the High Contracting Parties of the sums considered necessary to create and maintain such fund and, in general, all questions bearing on the establishment and the working of the Court;

(b) The organisation of the meetings referred to below in paragraph 3.

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[1] Article 20 of the final text, see page 13.

[2] See pages 129 and 159.

2. At their first meeting, the representatives of the High Contracting Parties shall also decide what modifications are necessary in order to attain the objects of the present Convention.

3. The Registrar of the Court shall convene subsequent meetings in conformity with the rules established to that effect.

4. All questions of procedure that may arise at the meetings referred to in the present article shall be decided by a majority of two-thirds of the High Contracting Parties represented at the meeting.

M. PELLA (Roumania), Rapporteur, said that the Drafting Committee had considered it essential to make provision for such modifications—due to unforeseen circumstances—as might be necessary to attain the objects of the Convention without recourse to the somewhat complicated procedure for the revision of international conventions. Such adaptation would be introduced under a decision taken by a two-thirds majority of the contracting parties represented at the meeting. At the first meeting of the contracting parties the Convention might therefore be modified in the manner provided in Article 46, paragraph 4, if circumstances arose making it impossible to achieve the purpose of the Convention. That purpose was the institution of an International Criminal Court to try, in the cases enumerated in Article 2 (paragraphs 1 and 2), persons accused of an offence under the Convention for the Prevention and Punishment of Terrorism. It was for that reason that the Drafting Committee had introduced the second paragraph of Article 46.

Article 46 was adopted.

ARTICLE 47 (New Article).

1. Until the present Convention is in force between twelve High Contracting Parties, it shall be possible for a judge and a deputy judge to be both nationals of the same High Contracting Party.

2. Article 18 and Article 20, paragraph 1, shall not be applied in such a manner as to cause a judge and a deputy judge of the same nationality to sit simultaneously on the Court.

M. PELLA (Roumania), Rapporteur, said that, under the proposed system, if there were to be five titular judges and five deputy judges not of the same nationality, there must be at least ten contracting parties. It was proposed that the Convention might come into force as soon as seven States had ratified or acceded to it. To provide for that eventuality, paragraph 1 of Article 47 stipulated that, until the Convention was in force between twelve contracting parties, it should be possible for a judge and a deputy judge to be both nationals of the same contracting party. The second paragraph was intended to prevent a judge and a deputy judge of the same nationality from sitting simultaneously on the Court.

Article 47 was adopted.

ARTICLE 48 (former Article 45).

(No change.)

Article 48 was adopted.

ARTICLE 49 (former Article 46).

(No change, except for the addition of the date, *May 31st*, 1938.)

Article 49 was adopted.

ARTICLE 50 (former Article 47).

(No change, except for the addition of the date, *June 1st*, 1938.)

Article 50 was adopted.

ARTICLE 51 (New Article).

Signature, ratification or accession to the present Convention may not be accompanied by any reservations except in regard to Article 26, paragraph 2.

M. PELLA (Roumania), Rapporteur, said that seeing that the purpose of the present Convention was to set up a Court and enable it to discharge its functions, there could be no reservations, since these might paralyse its working. Article 51 accordingly stipulated that no reservations might be submitted except in regard to Article 26, paragraph 2—that was to say, with reference to the constitution of *parties civiles*. The provision was simply intended to prevent reservations which might impede the actual functioning of the International Criminal Court—that was to say, reservations in regard to particular articles of the Convention, but not declarations regarding a Government's attitude to certain general questions.

Article 51 was adopted.

ARTICLE 52 (former Article 48).

(No change.)

Article 52 was adopted.

ARTICLE 53 (former Article 49).

1. The Government of the Netherlands is requested to convene a meeting of representatives of the States which ratify or accede to the present Convention. The meeting is to take place within one year after the receipt of the seventh instrument of ratification or accession by the Secretary-General of the League of Nations and has for object to fix the date at which the present Convention shall be put into force. The decision shall be taken by a majority which must be a two-thirds majority and include not less than six votes. The meeting shall also take any decisions necessary for carrying out the provisions of Article 46.

2. The entry into force of the present Convention shall, however, be subject to the entry into force of the Convention for the Prevention and Punishment of Terrorism.

3. The present Convention shall be registered by the Secretary-General of the League of Nations in accordance with Article 18 of the Covenant on the day fixed by the above-mentioned meeting.

M. PELLA (Roumania), Rapporteur, said that Article 53 constituted an innovation as compared with the provisions of other Conventions. As a rule, the Conventions concluded under the auspices of the League of Nations came into force automatically, as soon as a certain number of countries had ratified or acceded. In view of the special character of the new institution which the present Convention was designed to create, it had been agreed that the entry into force of the instrument should not be automatic, but that it should be subject to the decision of the contracting parties. The decision regarding the entry into force of the Convention was to be taken by a two-thirds majority and must include not less than six votes. If, for example, seven or eight contracting parties were represented at the meeting, a valid decision could not be taken unless at least six of them voted for the entry into force of the Convention on a given date.

Article 53 *was adopted.*

ARTICLE 54 (former Article 50).

A ratification or accession by a State which has not taken part in the meeting mentioned in Article 53 shall take effect ninety days after its receipt by the Secretary-General of the League of Nations, provided that the date at which it takes effect shall not be earlier than ninety days after the entry into force of the Convention.

Article 54 *was adopted.*

ARTICLE 55 (former Article 52).

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Articles 49 and 50. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

Article 55 *was adopted.*

ARTICLE 56 (former Article 53).

1. A case brought before the Court before the denunciation of the present Convention, or the making of a declaration as provided in Article 52, paragraph 3, shall nevertheless continue to be heard and judgment be given by the Court.

2. A High Contracting Party who before denouncing the present Convention has under the provisions thereof incurred the obligation of carrying out a sentence shall continue to be bound by such obligation.

M. PELLA (Roumania), Rapporteur, explained that the new clause constituting paragraph 2 provided that the fact of denouncing the Convention did not absolve a contracting party required to carry out a sentence passed prior to that denunciation from executing its obligations incurred in respect of that sentence.

Article 56 *was adopted.*

The PRESIDENT invited the Conference to examine Article 21 (former Article 17) and Article 40 (former Article 36), which had been reserved earlier in the meeting.[1]

ARTICLE 21 (former Article 17) *(continuation).*

(No change.)

M. VAN HAMEL (Netherlands) would have preferred that Article 21 should allow the Court to choose between different legislations, instead of providing that it should only apply the criminal law of the State on whose territory the offence had been committed. He proposed that the first sentence of Article 21 should be replaced by the following clause :

" In determining the substantive criminal law to be applied, the Court shall take into consideration the law of the territory on which the offence was committed and the law of the country which committed the accused to it for trial; it shall apply the law which is the least severe."

That text was in conformity with the usage under criminal law. It would improve the article, and the Netherlands Government would be glad if it could be adopted.

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[1] See pages 165 and 168.

M. PELLA (Roumania), Rapporteur, said that he had no objection to the substance of the Netherlands delegate's proposal. He wished, however, to submit one small observation concerning the form, which could not affect the substance. He assumed that by the law which was least severe, the Netherlands delegate meant the law which provided for the least severe penalty. As, however, the Netherlands delegate's proposal did not make that point quite clear, he would venture to suggest the following formula :

> " *The substantive criminal law to be applied by the Court shall be that which is the least severe. In determining what that law is, the Court shall take into consideration the law of the territory on which the offence was committed and the law of the country which committed the accused to it for trial.*"

M. VAN HAMEL (Netherlands) accepted the Rapporteur's proposal.

M. GIVANOVITCH (Yugoslavia) would have liked to suggest that the law of the delinquent's country of origin should also be taken into consideration. He realised, however, that there were difficulties in the way of such a proposal. He was in agreement with the Rapporteur's proposal, but pointed out that the expression " the law . . . which is the least severe " might give rise to difficulties of interpretation : Did that mean the law which was the least severe *in abstracto* or *in concreto*?

M. PELLA (Roumania), Rapporteur, said that as regards the order of priority in the matter of competence, the delinquent's own country came last for purposes of extradition. He asked the Yugoslav delegate not to press his suggestion that the national law of the delinquent should also be taken into consideration.

M. GIVANOVITCH (Yugoslavia) insisted that it should be clearly laid down whether the Court was to apply the law which was most favourable in principle or most favourable in practice.

The PRESIDENT, replying to the Yugoslav delegate, said that paragraph 2 of Article 21 provided that any dispute as to what substantive criminal law was applicable should be decided by the Court.

M. GIVANOVITCH (Yugoslavia) said that he did not propose to submit an amendment, but asked that his observations should be recorded in the Minutes.

Article 21 *was adopted, with the amendment proposed by the Rapporteur.*

ARTICLE 40 (former Article 36) [1] *(continuation).*

Article 40 *was adopted.*

The Convention for the Creation of an International Criminal Court was adopted as a whole.[1]

33. Examination and Adoption of the Draft Final Act of the Conference.[2]

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that, in accordance with the declaration made by the delegation of the Soviet Union with reference to Article 20 of the final text of the Convention for the Prevention and Punishment of Terrorism and Article 48 of the final text of the Convention for the Creation of an International Criminal Court,[3] the delegation of the Union of Soviet Socialist Republics, if it should sign the instruments drawn up by the Conference, proposed to attach to its signature the following declaration :

> " The Union of Soviet Socialist Republics does not, so far as it is concerned, intend to have recourse to the Permanent Court of International Justice. Moreover, eventual signature of, or accession to, the instruments drawn up by the Conference is not to be interpreted as modifying the point of view of the Union of Soviet Socialist Republics on the subject of arbitration as a means of settling international disputes."

M. VAN HAMEL (Netherlands) suggested that the Soviet delegate might be willing simply to have that declaration inserted in the Minutes. Any unilateral declaration should appear in the Minutes. The Soviet delegation's declaration would be included in the records of the Conference where it could always be consulted.

M. PARRA-PÉREZ (Venezuela) endorsed the remarks of the Netherlands delegate.

The PRESIDENT said that the question at issue was a matter of form. It was clear that the declaration made by the Soviet delegate would appear in full in the official Minutes of the Conference.

M. SEBESTYÉN (Hungary) supported his colleagues' observations and asked the Soviet delegate not to append any declaration to the Final Act. He added that if the Soviet delegate

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[1] For the final text of the Convention, see page 19.
[2] The draft text is not published. For the final text, see page 35.
[3] See pages 129, 159 and 169.

insisted on doing so, he would himself be obliged to ask for the insertion in the Final Act of a declaration reserving the freedom of the Hungarian Government with reference to the consequences ensuing from the Soviet declaration.

M. HIRSCHFELD (Union of Soviet Socialist Republics) said that if the Conference considered that a declaration recorded in the Minutes was of the same legal value as a declaration recorded in the Final Act, he would not insist on his proposal, provided that only a question of form was involved. Otherwise, the fact of not inserting its declaration in the Final Act might influence the decision of the Union of Soviet Socialist Republics with regard to the signing of the Convention.

The PRESIDENT said that the Final Act was simply a particularly solemn record, signed at the close of the proceedings of the Conference. The Minutes recorded what had happened at the Conference in greater detail than the Final Act. The Minutes were more lengthy and less solemn in character. At the same time, any declaration could be recorded in the Minutes. In the present instance, the Minutes would contain, instead of the summary of a speech, a declaration stating the views of a certain Government in categorical and official terms.

M. HIRSCHFELD (Union of Soviet Socialist Republics) thanked the President for his explanations and said that he would not insist on the Soviet declaration being inserted in the Final Act.

The Final Act was adopted.[1]

EIGHTEENTH MEETING.

Held on Tuesday, November 16th, 1937, at 4 p.m.

President : M. BASDEVANT (France), *Vice-President.*

34. Communications from Count Carton de Wiart, President of the Conference, and from Sir Denys Bray, Delegate of India.

The PRESIDENT read the following telegram, dated November 16th, 1937, from Count Carton de Wiart, President of the Conference :

> " I repeat my regrets and thanks and ask you and my other colleagues to accept my congratulations on the happy issue of the Conference."

He proposed that the following telegram should be sent in reply, in the name of the Conference :

> " The Conference warmly thanks its President and expresses its appreciation of the wisdom with which he has presided over its deliberations."

The President said that the telegram would be signed by the two Vice-Presidents.

The President's proposal was adopted.

The PRESIDENT then read the following letter, dated November 16th, 1937, from the delegate of India :

> " I much regret that indisposition prevents me from being present at the final meeting of the Conference. I should have welcomed the opportunity of expressing the satisfaction of the Indian delegation at the conclusion of the Convention for the Prevention and Punishment of Terrorism. It will be a particular gratification to my Government that Article 13 has been strengthened by the inclusion of a new provision to which my Government attached much importance.
>
> " I am unfortunately unable to sign the Convention on India's behalf this afternoon, but I shall take the first opportunity of doing so.
>
> *(Signed)* Denys BRAY."

35. Printing of the Records of the Conference.

The PRESIDENT suggested that the records of the Conference might be printed and published in a single volume, as had frequently been done for other conferences.

Noting that the Conference approved his proposal, he asked the Secretary-General of the League of Nations, who was present, whether it was possible to give effect to the Conference's wishes.

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[1] For the text of the Final Act, see page 35.

The SECRETARY-GENERAL of the League of Nations replied that the Secretariat would be happy to comply with the wishes of the Conference, if the necessary credits were available.

The PRESIDENT thanked the Secretary-General.

36. Full Powers of the Spanish Delegate.

The PRESIDENT said that M. Jiménez de Asúa, the Spanish Government's delegate to the Conference, who had been provided with the necessary full powers, had now been obliged to leave Geneva. He read the following telegram, dated November 15th, 1937, from M. Giral, the Spanish Minister for Foreign Affairs :

> " I have the honour to inform you that full powers will be despatched by the next courrier, authorising M. Cipriano Rivas Cherif, Spanish Consul-General at Geneva, to sign, in the name of the Spanish Government, the instruments of the Conference of which you are President. As these full powers cannot reach Geneva before to-morrow, I would ask you to accept this telegram as conveying authority to sign.—GIRAL."

Having consulted the Chairman of the Credentials Committee, he proposed that the telegram should be regarded as entitling M. Cipriano Rivas Cherif to sign the instruments of the Conference.

The President's proposal was adopted.

37. Signature of the Instruments of the Conference: Declarations made by Certain Delegations at the moment of Signature.

The PRESIDENT invited the delegates to sign the instruments of the Conference.

When their country's name was called, the delegates came forward to sign the various Acts.[1]

The Final Act was signed by the delegates of the following countries :

Afghanistan, Albania, Argentine Republic, Belgium, United Kingdom, Bulgaria, Denmark, Dominican Republic, Egypt, Ecuador, Spain, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Monaco, Norway, Netherlands, Peru, Poland, Roumania, Switzerland, Czechoslovakia, Turkey, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

The Convention for the Prevention and Punishment of Terrorism was signed by the Plenipotentiaries of the following countries :

Albania *(ad referendum)*, Argentine Republic, Belgium *(ad referendum)*, Bulgaria, Dominican Republic, Egypt, Ecuador, Spain, Estonia, France, Greece, Norway *(ad referendum)*, Netherlands, Peru, Roumania, Czechoslovakia, Turkey, Venezuela, Yugoslavia.

The Convention for the Creation of an International Criminal Court was signed by the Plenipotentiaries of the following countries :

Belgium *(ad referendum)*, Bulgaria, Spain, France, Greece, Netherlands, Roumania, Czechoslovakia, Turkey, Yugoslavia.

The delegations of Haiti, India, Mexico, the Republic of San Marino and Uruguay sent apologies for their absence.

At the moment of signing the instruments of the Conference, the following declarations were made :

United Kingdom of Great Britain and Northern Ireland :

Sir John Fischer WILLIAMS : In view of the remarks which I had the honour to make on behalf of the delegation of the United Kingdom on the first day of the meeting of this Conference,[2] it will be no surprise to the members of the Conference to hear that His Majesty's Government in the United Kingdom is not, at the moment, signing the Convention for the Prevention and Punishment of Terrorism. In thus abstaining, His Majesty's Government has no intention or desire to indicate that it takes any exception to the aim of the Convention or to the ideals which inspire it. His Majesty's Government feels, however, that, at the present time, it is not prepared to accept an international obligation to introduce into its legislation in the very near future changes of so extensive a character, especially as, up to the present time, no difficulty has occurred in the United Kingdom in the discharge of its international duties towards other States on the matters included in the Convention. His Majesty's Government proposes, however, to give renewed and careful examination to the proposals contained in the Convention, with a view to seeing how far it may be possible for His Majesty's Government subsequently to accede to this instrument, possibly with certain reserves.

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[1] In calling the countries, the French alphabetical order was observed.

[2] See pages 52 *et seq.*

As to the proposal for the erection of an international court with criminal jurisdiction for the trial of offences of a terrorist and international character, His Majesty's Government in the United Kingdom will watch with great interest the progress of this institution, but it does not contemplate participating in the experiment. It wishes, however, to express its satisfaction that the Conference adopts the view that, in present conditions, it is impracticable to invite the Council of the League to assume the responsibility of electing judges of the Court or otherwise putting the Court into direct relation with the League.

Norway :

M. Bachke : On signing, *ad referendum*, the Convention for the Prevention and Punishment of Terrorism, I desire to state that this form of signature does not bind my Government from the point of view either of ratification or of accession; it simply means that I consider the Convention of sufficient interest to submit it to my Government for serious consideration and subsequent decision. I would ask you to interpret this signature *ad referendum* as a proof of the intention and interest to which I refer.

Switzerland :

M. Delaquis : I desire to refer to the declaration which I made, on behalf of the Swiss Federal Council, at the general discussion on Tuesday, November 2nd.[1] No material modification having been made in the substance and scope of the Convention for the Prevention and Punishment of Terrorism, the attitude of the Swiss Federal Council remains unchanged. It is not able to sign that Convention, still less the Convention for the Creation of an International Criminal Court. Nevertheless, the Swiss Federal Council is prepared, as in the past, to afford such assistance as lies within its power, as regards co-operation in police matters.

Union of Soviet Socialist Republics :

M. Hirschfeld : At the moment of signing the Final Act of the Conference, I have the honour to define the scope of my previous declarations, and to state as follows :

The Government of the Union of Soviet Socialist Republics, if it should sign or accede to the instruments drawn up by the Conference, proposes to make a declaration to the effect that, with regard to the settlement of disputes relating to the interpretation or application of the Conventions framed by this Conference, it will assume no obligations other than those devolving upon it as a Member of the League of Nations. It is accordingly the intention of the Government of the Union of Soviet Socialist Republics to append this declaration in the event of its signing the instruments of the Conference.

The Conference took note of the foregoing declarations.

38. **Close of the Conference.**

M. Givanovitch (Yugoslavia) said that the delegation of Yugoslavia, a country whose interest in the work of the Conference was explained by her anxiety for the maintenance of international peace and the part she had played in convening the Conference, wished to make a declaration. With his authorisation that declaration would be made on behalf of the Yugoslav delegation by M. Gavrilovitch, expert.

M. Gavrilovitch (Yugoslavia).—The Yugoslav delegation welcomes with the keenest satisfaction the success of the Diplomatic Conference on the International Repression of Terrorism. It recalls the fact that it was in response to the action taken by the Yugoslav Government after the tragic events of Marseilles that the problem of the prevention and punishment of terrorism was first discussed on an international plane. Inspired by a feeling of respect for its great King and for the other victims of the Marseilles tragedy, the Yugoslav Government participated in the preliminary work which led to the convening of the Diplomatic Conference, and which owed its origin to the French Government's nobility of purpose and outlook. We feel that no higher tribute can be paid to the memory of the glorious victims of that terrible crime than to associate their names with the work for the prevention and punishment of terrorism which has now been achieved in the interests of the whole civilised world.

We must remember that the fact that we are in a position to-day to celebrate the success of our work in which eminent jurists, representing many countries, have taken part, is due primarily to two distinguished men who, from the outset, have directed our proceedings and guided our efforts. We can never adequately express our gratitude to our Presidents, Count Carton de Wiart and Professor Basdevant, for the unequalled authority, learning and tact with which they have presided over our discussions. Any words we could find must indeed fall short of our profound respect and admiration for them. Our sincerest thanks are due also to our Rapporteur, M. Pella, the first pioneer of the International Criminal Court, whose profound learning, powers of persuasion and infinite patience, employed in the service of those humanitarian ideals which inspire him, have enabled us to bring to a successful conclusion the important and

[1] See page 61.

difficult task entrusted to us. I desire also to express our sincere thanks to the Secretary-General of the League of Nations, M. Avenol, to the Secretary-General of the Conference, M. Podesta Costa and to the League of Nations Secretariat, whose enthusiasm, conscientiousness and ready response in the performance of their duties we have all admired.

The value of the Conventions we have drawn up cannot be estimated in terms of the legal obligations which they impose on the contracting States. These instruments represent a prudent compromise between the long traditions of the different nations and the practical necessities of present-day international life. We regard them primarily as a moral achievement of great importance from the point of view of the future happiness of generations more fortunate than our own. The two Conventions rank essentially as a demonstration of international solidarity in the face of the most odious forms of international crime. We look to their moral force and preventive influence to achieve the most significant results. We pray that few occasions may arise on which it may be necessary to enforce either of them. But, if that day should come, we can only hope that they may be interpreted and enforced in the spirit of wide comprehension, goodwill and reciprocal loyalty in which they have been conceived.

We have concluded a task for which—to repeat the eloquent words of our President's opening speech—all honest men must be forever indebted to us. Our achievements must now stand the test of time and future events. To quote Portalis : Laws shape themselves; they are not made. In conclusion, we can only express the hope that, after the accession of Governments, the international laws which we have framed will find strong support, in the future, in the lasting approval and unanimous welcome of the civilised world.

M. Sasserath (Belgium).—Before we part, may I be allowed, in the name of the Belgian delegation, to express our profound satisfaction at the successful outcome of our work.

The results which have been achieved are due to the enlightened contribution made by all the delegates, in a spirit of mutual concession and conciliatory understanding. We have thus been enabled to frame two Conventions in which is reaffirmed the principle of an international agreement to combat crime, in the defence of law which is our common heritage.

I shall, I feel sure, be interpreting the views of the whole Conference in acknowledging our debt to Professor Basdevant who has placed his great learning as an international jurist at our disposal, who has played an outstanding part first in the work of the Committee of Experts and now in the work of the present Conference and who, in the absence of Count Carton de Wiart, has presided over our meetings with unequalled tact and authority.

The Conventions which are the outcome of our deliberations have solved two difficult problems : that of respecting the full sovereignty of the High Contracting Parties, more particularly in the delicate matter of extradition, and that of enabling them to carry out their obligations within the framework of their national institutions and traditions.

Reservations have been expressed concerning the efficacy of the Conventions, which some countries would prefer to have framed on more radical lines.

We must not forget, however, that international law can proceed only by a wise and slow process of evolution, keeping pace with the progress of public opinion in the different countries, where ancient traditions and a variety of social conditions are reflected in the national laws. Any important innovation—such as the International Criminal Court— is naturally viewed with some hesitation, particularly in international law, but time achieves its purpose, and what is important is first to set up new institutions to safeguard good relations between the States, so that States which desire to co-operate may accede at some future date.

Those who urged the establishment, and were responsible for establishing, the Permanent Court of International Justice at The Hague—which has proved so admirable and effective an instrument of peace—will remember the scepticism and mistrust which that project once aroused. It was maintained in some quarters that the Permanent Court would never function. Now opinion has come round. No one questions the usefulness of that institution and States are having recourse to it increasingly for the settlement, by fair arbitration, of countless international disputes which formerly constituted a serious menace of war.

The same applies to the International Criminal Court, and the day will come when it will be universally recognised as a welcome innovation, marking an important date in the history of international relations, and as a contribution towards the safeguarding of law and of the sacred cause of peace. This achievement calls for a public tribute to our eminent colleague, M. Pella. The idea of the Court was his, and it is he who, for close upon fifteen years, has been spreading that idea, by means of his writings and speeches, both in his own country and in international circles. He has pursued his objective with the conviction and perseverance of an apostle; he has had to overcome incredulity and scepticism on the one hand and mistrust on the other. To-day his persevering efforts are rewarded. Several delegations are already prepared to sign, on behalf of their Governments, the Convention whereby the International Criminal Court will soon become a living reality.

M. Pella will, I hope, allow one of those who have followed his efforts from the beginning to convey to him this friendly testimony of sympathy and admiration.

I have been authorised to sign the two Conventions *ad referendum*. I would ask you to regard this formula, so far as my country is concerned, simply as a formal reservation due to the fact that the new Belgian Government has not yet been constituted and that it is necessary

to reserve the right of appreciation of the future Government which will have to defend the Conventions before the Legislative Chambers responsible for their ratification.

In conclusion, may I express the hope that the Conventions will be ratified by a large number of States, that our work will be productive of the happiest results, and that with God's help it may serve to protect the works of peace.

M. Ruíz Guiñazú (Argentine Republic).—On behalf of my colleagues of Latin America, I desire to express our satisfaction at the positive results achieved by this Diplomatic Conference. The work which we have just completed represents real progress in criminal law and a new trend in international co-operation.

The Latin-American delegations have adopted a waiting attitude as regards the Convention for the Creation of an International Criminal Court, but they welcome any effort directed towards the repression of crime which will ensure international co-operation and the impartial dispensing of justice.

I shall, I think, be interpreting the views of my colleagues of Latin America in expressing our sincere admiration for the work of Count Carton de Wiart, who has presided over our deliberations with such authority, of Professor Basdevant, and of M. Pella, our Rapporteur, to all of whom we are greatly indebted.

M. Koukal (Czechoslovakia).—I wish, in the name of Czechoslovakia, to associate myself entirely and unreservedly with all that my esteemed friend, M. Gavrilovitch, has said on behalf of the Yugoslav Government. I desire, also, to add a few words, in order to emphasise the legal bearing of the two Conventions which we have just signed.

It has been realised, for some time, that certain property is common to the whole of the civilised world, or rather, to the whole of mankind, and that the protection of that property is a duty devolving upon every State which is a member of the international community. A list has accordingly been established of universal crimes, or, if you prefer it, of world crimes, such as traffic in women, piracy, traffic in obscene publications, the damaging of submarine cables, counterfeiting currency, traffic in dangerous drugs, etc. Inter-State co-operation in regard to such matters has been achieved only by means of Conventions concluded with that object in view. In adopting this procedure, it has, of course, been realised that such property cannot be safeguarded simply by substituting a uniform law for the national law of the several States. On the contrary, in the work of assimilating the factual elements and harmonising even the criminal penalties in the form of contractual obligations, it has been necessary to bear in mind the peculiarities of the national laws, such as the so-called territorial principle in English law, or the principle of the expediency of prosecution in the law of certain Scandinavian countries.

When, after the tragic events at Marseilles in 1934, the French Government suggested that to the list of property enjoying universal protection should be added international inter-State co-operation for the prevention of terrorist crimes, we realised that the only way of extending the list of offences was to follow the principle and employ the form adopted in the past to meet similar contingencies. The draft Convention on Terrorism which the Committee of Experts, consisting of eminent jurists and other highly qualified persons, succeeded in framing after three years close work and careful study of the problem, is based on that same idea—namely, that the property in question should be given universal protection within the framework of the national law of each contracting State.

The Czechoslovak delegation, when informed of this project, accepted the underlying principle and offered its sincere and active co-operation in the search for a positive solution. The Convention which we have just signed reaffirms the general principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to refuse to tolerate such acts on its territory. In addition to this general principle, which is binding on every State, even apart from any conventional obligation, the States signatories to the present Convention have thought it useful to enter into certain contractual undertakings with a view to rendering the prevention and punishment of international terrorism more effective in their relations with one another, under conditions stipulated in the Convention.

The Czechoslovak Government considers the results thus obtained satisfactory, and undertakes, by its signature, to co-operate effectively with the contracting parties in the pursuit of this object, under the conditions laid down in the Convention.

As regards the second Convention, concerning the Creation of an International Criminal Court, I desire to make the following observations. As all of us are aware who have had anything to do, in theory or in practice, with the problem of international arbitration, the setting-up of international courts has been a difficult matter. Going back to the earliest sources, we find traces of the idea of international arbitration in the famous project of King George Podibrad in 1463 and in that of Henry IV of France in 1596. In the eighteenth and nineteenth centuries the idea of international arbitration reappears again in various scientific works and in certain projects which, at that time, were considered premature and even chimerical. Finally, however, by restricting the main idea to the pacific settlement of disputes which might arise between States only and to violations of law committed by States only, it became possible to consider setting up certain international courts of a permanent character, having the characteristics of real courts, such as the Prize Court, the Permanent Court of Arbitration, and, lastly, the Permanent Court of International Justice.

When, in 1920, the Statute and Rules of the Permanent Court of International Justice were being framed, the question was discussed at length whether, and if so to what extent, the Court

might be called upon to exercise jurisdiction in criminal matters, possibly even in the case of certain offences committed by private individuals. At that date, however, the moment was not yet considered opportune to extend the jurisdiction of the Court to criminal affairs properly so called. Nevertheless, the idea of an International Criminal Court thus emerged from the realms of pure fantasy and entered the offices and studies of men versed in the science of law, where it began to assume a concrete form. As everyone knows, our Rapporteur, M. Pella, in particular, devoted himself heart and soul to the idea of an International Criminal Court and employed in the pursuit of that idea his eminent qualities as an international criminal jurist. When the idea was revived in connection with the international repression of terrorism, we examined it with the close attention which it deserved.

We have come to the conclusion that, in this very delicate matter of the repression of punishable acts directed against international inter-State relations, the International Criminal Court might prove a useful factor of appeasement in an embittered and envenomed atmosphere, and might serve also to re-establish confidence in the force of law and to strengthen the guarantees of objective and impartial justice for all concerned in the proceedings. It is with this in view that we have decided to sign the Convention concerning the Criminal Court.

I should like to point out also that the fact that States representing upwards of a hundred million persons have decided to accept the idea of an International Criminal Court is an historical event and landmark in the development of international criminal law.

Before concluding this brief speech, I desire to pay a tribute to the members of the Committee of Experts who, with so much care and authority, prepared the bases for our discussions. I wish also to thank our Presidents, Count Carton de Wiart and Professor Basdevant, who have presided over the work of this Conference in so tactful and conciliatory a manner.

I should like to lay particular emphasis on the contribution of our General Rapporteur, M. Pella, who has placed his profound knowledge of the problem and eminent personal qualities so unreservedly at the disposal of the cause of international justice.

M. Polychroniadis (Greece).—I desire to make the following declaration in the name of the Balkan *Entente* :

The States Members of the Balkan *Entente* attach particular importance to the signature of these two instruments. They have from the outset followed, with the deepest interest and closest attention, the long work of preparation to which so many eminent jurists have contributed and which has resulted in the successful conclusion of these two Conventions.

The countries of the Balkan *Entente* view the two instruments from two different angles. They see in them, in the first place, a posthumous tribute to the memory of the Martyr King of Yugoslavia and to the important personalities who fell the victims of an odious crime. That crime, which so cruelly deprived Yugoslavia of a great king, had its repercussions in the whole of the Balkan *Entente*, of which King Alexander was one of the founders and one of the moving spirits. But the countries of the Balkan *Entente* regard these Conventions also as a real step forward, as an effort in the sphere of international co-operation which is designed to avoid friction between States and which, notwithstanding this modest beginning, holds out infinite promise for the future. The Balkan *Entente*, whose purpose it is to maintain and serve the cause of peace, attaches particular importance to these two Conventions.

M. van Hamel (Netherlands).—The Netherlands Government, which had authorised me, at the beginning of this Conference, to sign the two Conventions, will certainly be interested and happy to learn of the successful outcome of our work and will undoubtedly wish to thank the Conference for having selected The Hague, the beautiful residence of our august Sovereign, as the future seat of the International Criminal Court. The Netherlands will be deeply gratified to know that the Conference has so well realised the character our Government and people are desirous of conferring on The Hague, which is already the centre of institutions of international justice, and which will, I hope, be able to render further services to what the Netherlands Government will surely regard as an ideal of appeasement and international understanding. From both these points of view, we have from the outset recognised the usefulness of this undertaking. Our President and General Rapporteur are entitled to feel a legitimate pride in the active contribution which they have made towards the successful achievement of this task. No one, I think, will deny that, without their wise guidance, the work which we are now concluding could not have been brought to a successful conclusion, or that it is thanks to their learning and powers of co-ordination that this result has been obtained.

Sir John Fischer Williams (United Kingdom).—I should like very briefly to associate the United Kingdom delegation with the tributes paid to those who have contributed so much to the success of the Conference.

First, I naturally mention M. Pella, who has already received so many expressions of appreciation for the untiring energy with which he has pursued to a triumphant conclusion a hope which lay so near to his heart. Next, I should like to mention—although he is absent—the debt which we owe to the tact, experience and authority of Count Carton de Wiart; and lastly, Mr. Chairman, I should like, if I may, with all the warmth at my disposal, to express the thanks which we feel for the great services which, with your universal reputation as a jurist and the prestige which you derive as representative of your great country, you have rendered to the Conference and for the way in which you have presided over our deliberations.

M. KOMARNICKI (Poland).—I do not propose to repeat to-day the declarations which I made at one of our last meetings.[1] This is the moment for paying compliments, and Poland's voice must not be silent on this occasion. I associate myself wholeheartedly with the well-merited tribute paid to our President, Professor Basdevant, and our General Rapporteur. I desire also to thank the Secretary-General of the Conference. Every one has given proof of exceptional competence and praiseworthy zeal in the achievement of this work of international co-operation.

M. PELLA (Roumania), Rapporteur.—I will be brief. I may add that I will be frank, and I would ask you to regard my sincerity as a proof of my real belief in the future of the work we have done here.

As delegate of the Roumanian Government, I associate myself entirely with the declarations made by the delegates of Yugoslavia and Czechoslovakia and with that made by the delegate of Greece in the name of the Balkan *Entente*.

The conclusion of the two Conventions which we have just signed marks the completion by the League of Nations of the very complex and delicate mission entrusted to it as a result of the request submitted by the three Governments of the *Petite Entente* on November 22nd, 1934.

The strength of these two Conventions lies in the compound of the virtues and sacrifices which have gone to their making, for they are destined to prevent the repetition of activities which cost Yugoslavia the life of her Sovereign and France that of one of her most brilliant statesmen.

The common history of the States of the *Petite Entente* will enshrine the memory of the knightly king, Alexander I, whose perspicacity, practical power of appreciation and rapid decision and whose powers of intuition and genius had made him one of the outstanding personalities of our age. And how could I pass over in silence at this moment the name of Louis Barthou, that great Frenchman and great European, whose memory is destined to be always associated with that of King Alexander?

Roumania, in signing the two Conventions, which are the outcome of the need to enforce minimum rules of morality in international relations, is in a position, without any modification of her laws, at once to participate effectively in the campaign against terrorism, since the Penal Code of King Carol II, which came into force on January 1st, 1937, goes far beyond the conventional stipulations which Roumania has just accepted.

May I be allowed now to add a few words as Rapporteur-General of the Conference?

Those who have followed our discussions and those who may have occasion to read the records of the Conference cannot fail to appreciate the spirit of wide comprehension and co-operation which has prevailed throughout these debates.

You, gentlemen, have had the courage to express your opinions frankly on certain problems of criminal law and international law, many aspects of which reflect the moral and intellectual crisis through which the world is now passing. You have shown once again that jurists cannot cut themselves off from the main currents of opinion which dominate mankind, but that they must, on the contrary, be alive to these relative issues and react, as it were, against the immobility of the absolute.

Notwithstanding the difficulties attaching to any radical reform of the national laws, notwithstanding the Conference's desire to leave untouched the legal particularism of certain countries, the principles affirmed by the two Conventions and the tendencies so clearly reflected in the texts as a whole bear witness to the feeling of solidarity and co-operation which exists between the States in the campaign against the activities of terrorists, against the enemies of the human race, who must be relentlessly tracked down and prevented from injuring their fellow creatures.

In examining certain questions, we have, of course, had to cope with many prejudices, since, as has already been said, criminal law, unlike other branches of law, is not based on pure abstractions and logic but necessarily appeals to the emotional, as well as the intellectual, faculties of man.

By surmounting all these difficulties, you, gentlemen, have embodied in the first Convention the conditions for international co-operation with a view to the effective prevention and repression of terrorism. In the second Convention, dealing with the International Criminal Court, you have—by accepting newly formulated truths, made newly manifest—rendered it possible, through the creation of an international criminal jurisdiction, to achieve a work which must be carried through with due regard to practical possibilities but, at the same time, without losing sight of the final objective.

Thus the Preamble to this second Convention affirms that the creation of the Court is destined to ensure progress in the struggle against offences of an international character. The competence of the Court might be extended at some future date to cover other offences mentioned in the International Conventions. It might even—if States agreed to entrust this task to it—give judgment in certain positive conflicts, and above all in negative conflicts, of competence in criminal matters. It might, to quote the great Boullenois, contribute towards the reign of peace and harmony " in the Republic of criminal laws ".

If, in the work which has resulted in the creation of the International Criminal Court, I have been able to play my small part and have defended vigorously the ideas which I first put forward in 1919 and which I have constantly developed since then, and if some of you have been good enough to express your appreciation of my efforts, may I in my turn express my gratitude towards the League of Nations Committee which prepared the two Conventions and to the President,

[1] See page 161.

Count Carton de Wiart, whose generous conceptions and personal authority have always been there to support my efforts.

May I also express my gratitude to the Chairman of the Drafting Committee of our Conference, Professor Basdevant, whose moderation and lucidity have made his learning so effective a contribution to the progress of positive international law.

Lastly, allow me to associate with this work the Legal Section of the League of Nations, whose valuable technical assistance we have all had an opportunity of appreciating.

May I express to M. Podesta Costa my unqualified appreciation of his own work and that of his eminent collaborators, and may I, without mentioning all of them, refer to Mr. McKinnon Wood, who since 1935, so competently carried out the responsible duties of Secretary to the Committee of Jurists.

My concluding words are addressed to the members of the Conference. Whatever your views and the views of your Governments concerning the International Criminal Court, you have all contributed by your learning and experience towards the founding of an institution which opens up new and wider horizons in the matter of criminal law.

The signature of the Convention for the Creation of the International Criminal Court must be regarded as a memorable date in the history of criminal law.

Although the idea of the International Criminal Court was viewed by many with scepticism in the past, I am convinced that when once it is functioning, faith and hope will take the place of doubt.

As for myself, I regard this as a red-letter day, marking the culmination of our most disinterested hopes—allow me to thank you.

The PRESIDENT.—Our work is ended, and the results are known to you all. The Final Act has been signed in the name of thirty States, the first Convention in the name of nineteen States and the second Convention in the name of ten States.

Now, at the conclusion of our work, we naturally regret more than ever the absence from this presidential chair of Count Carton de Wiart. The nobility of his conceptions, his competence as a statesman and his own personal authority, coupled with the high moral reputation so rightly enjoyed by his country, would have enabled him on this occasion to describe in fit terms the spirit which has prevailed throughout this Conference. He himself has been our wise and trusted guide, just as he had been before the wise and trusted guide of the Committee of Experts. Throughout the various stages of our undertaking he has been our master worker. I feel sure that I shall be expressing your unanimous feeling if I, too, reiterate—this time on behalf of all of us here present—the tributes which on every side have been paid to our President.

With no further claim than the indulgence which, at his request, you have been good enough to show me, I must now try to do as best I can what he would have done so easily, that is, to cast a retrospective glance over our work, in the hope that this may serve a useful purpose at this moment.

Our work has been permeated by the spirit which led to its inception, a methodical spirit and a spirit of good faith—a methodical spirit which has involved no dangerous haste. Allow me briefly to recall the stages of our work.

On the morrow of that grievous event just referred to in such lofty terms, we find a French proposal, its acceptance in principle by the Council of the League of Nations, two successive sessions of the Committee of Experts, preceding and following the consultation of Governments; then an important debate in the First Committee of the Assembly and a further examination by the Committee of Experts, which amended its original drafts. The Governments duly received those drafts, studied them and appointed their delegates, and the Conference has now met in its turn. It, too, has worked methodically; it has made no radical changes in the drafts submitted by the Committee of Experts. On the contrary, it has examined them with the closest attention. There was a general discussion, an examination, at a first and second reading, with an exhaustive scrutiny, between those two readings, by a committee known as the Drafting Committee, but which was, at the same time, a committee of compromise and agreement. And the whole of this methodical work has been carried on in a spirit of good faith. The drafts had previously been studied very carefully. Criminal science—I do not know if I am employing quite the correct terminology : I feel very doubtful about these questions of terminology—criminal science was represented at the Conference by jurists of world renown. The Conference declined, however, to engage in purely academic debates, for all of you realised that what was expected of you was a practical achievement, an achievement of which the political and moral implications were apparent and received affirmation from the very first day.

As was only to be expected, divergent opinions have been expressed. I note this fact, but not with any critical intention, for uniformity is not the law of this world. We have endeavoured to understand these divergent views, to appreciate and to reconcile them; the result is embodied in the two Conventions which have just been signed and one of which is held by some not to go far enough, while the second is considered by some to be over bold. But these are simply differences of degree in the appreciation of what was throughout a common effort.

International co-operation when, as in the present case, it assumes the ordered form of conventional law, is perhaps the more certain of success, because its objects, being more modest, are, for that reason, easier to realise. Moreover, it must be admitted that not every innovation is necessarily a mistaken one. The innovation introduced by the Convention for the Creation of an International Court, important though it is—I am the first to recognise that fact, just as I was the first to proclaim it at the beginning of this Conference—is nevertheless cautious in character, by reason of the essentially optional nature of the jurisdiction of that Court.

Whatever the differences of opinion between us—not as regards the substance of the problem but as regards method—we have concluded an agreement in good faith, in order to permit of a loyal trial, on the one hand, of the form of co-operation laid down in the first Convention and, on the other, of the form of jurisdiction instituted by the second.

Still guided by the methodical spirit which has presided over our work up to this point, we have decided not to fix too early a date for the signature of these two Conventions. For that purpose, we have allowed a long time, over six months. We have done this because we realised that it would be a mistake to be over-precipitate, having regard to the complex problems which may in some cases necessitate adjusting to the provisions of the Conventions the national legislation in the matter of criminal law as well as the existing legal and administrative practice. We had in mind also those not present at the Conference, and that is why we fixed the time limit for signature as far off as May 31st, 1938. Some States have already announced that, although unable to sign to-day, they hope to be able to do so a little later. Again, by adopting this procedure we have made it clear that we have no wish to precipitate matters, but that we shall pursue our undertaking wisely, methodically and without undue haste.

That is how our work has grown and taken shape. We have said what we had to say and accepted our responsibilities in the name of our Governments, and having done so we are now going to place in their hands the results we have achieved.

Our task is ended. You paid me the honour of inviting me to accept office as Vice-President, and fate has willed that I should be called upon to preside over the last stages of your work. When I took up my duties a week ago, I realised that the task which I had accepted—at first perhaps somewhat lightheartedly—was in reality no light task. It has, however, proved to be unexpectedly easy of fulfilment, and this I owe, gentlemen, to all of you who, without forgetting your own duties, have facilitated my task, thanks to the good understanding which has reigned throughout and has brought us to the successful issue on which our President congratulated us in his recent telegram. I thank you from the bottom of my heart.

My duties have therefore not been exacting, and I do not really deserve the compliments so courteously addressed to me. It is you who have done everything, and my rôle has been confined, as it were, to a few ritual gestures.

I wish to thank the Bureau of the Conference, which has always been so ready to give me the benefit of its advice, and in particular my colleague and fellow Vice-President, M. Ruíz Guiñazú. I desire also to reiterate the well merited tributes which have been paid to the work of the General Rapporteur. No praise is too high for his amazing competence, which it would be a mistake to qualify by any commentary. With that competence has been coupled tireless activity, attendance at all our meetings, useful participation in all our discussions and an ingenuity of mind which has enabled us to surmount whatever difficulties we encountered on our path.

I desire on behalf of the Conference to address to the Secretary-General of the Conference and his collaborators in the League of Nations Secretariat our thanks for their valuable assistance, which we have been able to count on in connection alike with important matters and with the smallest details.

And now may I express the hope, which you will I am sure all reiterate, that our work may have as its corollary final decisions and concerted action on the part of the Governments.

I declare the Conference on the International Repression of Terrorism closed.

4. ANNEXES.

LIST OF ANNEXES.

ANNEX 1.

RESOLUTIONS ADOPTED BY THE COUNCIL AND BY THE ASSEMBLY.

I. Resolution adopted by the Council on December 10th, 1934.

The Council, considering that the rules of international law concerning the repression of terrorist activity are not at present sufficiently precise to guarantee efficiently international co-operation in this matter :

Decides to set up a Committee of experts to study this question with a view to drawing up a preliminary draft of an international convention to assure the repression of conspiracies or crimes committed with a political and terrorist purpose;

Decides that this Committee shall be composed of eleven members, the Governments of Belgium, the United Kingdom, Chile, France, Hungary, Italy, Poland, Roumania, the Union of Soviet Socialist Republics, Spain and Switzerland each being invited to appoint a member;

Refers to this Committee for examination the suggestions which have been presented to the Council by the French Government, and requests other Governments which may wish to present suggestions to send them to the Secretary-General, so that they may be examined by the Committee;

Invites the Committee to report to the Council so that the latter may apply the procedure laid down in the resolution of the Assembly of September 25th, 1931, concerning the drawing-up of general conventions negotiated under the auspices of the League of Nations.

II. Resolution adopted by the Assembly on October 10th, 1936.

The Assembly,

Having taken cognisance of the second report of the Committee for the International Repression of Terrorism and of the two draft Conventions annexed thereto (document A.7.1936.V);

Recognising the utility for the consolidation of peace of the conclusion of a convention for the prevention and punishment of terrorism;

Considering, however, that the replies of the Governments regarding the draft drawn up by the Committee and the discussions in the First Committee have shown that certain Governments feel doubts which it is desirable to remove :

Expresses the view that the contemplated convention, founding itself upon the principle that it is the duty of every State to abstain from any intervention in the political life of a foreign State, should have as its principal objects :

(1) To prohibit any form of preparation or execution of terrorist outrages upon the life or liberty of persons taking part in the work of foreign public authorities and services;

(2) To ensure the effective prevention of such outrages and, in particular, to establish collaboration to facilitate early discovery of preparations for such outrages;

(3) To ensure punishment of outrages of a terrorist character in the strict sense of the word which have an international character either in virtue of the place in which preparations for them were made or the place in which they were carried out, or in virtue of the nationality of those participating in them or their victims;

Notes that certain Governments have disputed the advisability of creating an international criminal court, but that the trial of persons guilty of such outrages by such a court is felt by other Governments to constitute an alternative which, in certain cases, would be preferable to extradition or to prosecution, and that on this ground the second convention has been regarded by the latter Governments as valuable, even if it is not capable of securing general acceptance;

Recommends that the Committee revise its conclusions regarding its two drafts in the light of the observations to be found in the Governments' replies or formulated in the course of the debates, in order that the Council may convene a diplomatic conference in 1937.

III. Resolution adopted by the Council on May 27th, 1937.

The Council,

In view of its resolution of December 10th, 1934, concerning the international repression of terrorism;

In view of the Assembly's resolution on the same subject of October 10th, 1936 :

Decides that a conference to consider the two draft conventions drawn up by the Committee for the International Repression of Terrorism (document C.222.M.162.1937.V)—namely :

The draft Convention for the Prevention and Punishment of Terrorism;
The draft Convention for the Creation of an International Criminal Court;

shall be convened at Geneva for Monday, November 1st, 1937;

Empowers its President, acting in consultation with the Secretary-General, to appoint the President of the Conference;

Directs the Secretary-General to invite the following Governments to be represented at the Conference by delegates having full powers to participate in the work of the Conference and eventually to sign such conventions as the Conference may draw up :

(1) The Governments of the Members of the League;

(2) The Governments of Germany, United States of America, Brazil, Costa Rica, Free City of Danzig, Iceland, Japan, Liechtenstein, Monaco, San Marino.

ANNEX 2.

Conf. R.T.2.(1).

RULES OF PROCEDURE, ADOPTED BY THE CONFERENCE ON NOVEMBER 1ST, 1937.

Article 1.

The Conference consists of the delegations appointed by the Governments invited to the Conference.

Each delegation is composed of one or several delegates who may be accompanied by supplementary delegates, advisers and secretaries.

Article 2.

The President opens, suspends and closes the meetings; he submits to the Conference all communications, the importance of which appears to justify this measure; ensures the observation of the rules of procedure, accords the right to address the Conference, pronounces the closure of discussions, puts questions to the vote and announces the result of the vote.

The Conference shall elect two Vice-Presidents, who shall replace the President when necessary.

Article 3.

The Bureau of the Conference shall consist of the President of the Conference, the two Vice-Presidents, and six other members.

Article 4.

The Conference may, at any time, decide to sit in plenary conference or constitute itself as committee or set up special committees.

Article 5.

All meetings of the Conference shall be public, unless a decision is taken to the contrary. Decisions taken at private meetings shall be announced at a public meeting. The special committees and sub-committees shall decide whether their meetings will be public or private.

Article 6.

No delegate may address the Conference without having previously obtained the authorisation of the President. The President may withdraw the permission to speak if the delegate's remarks are not relevant to the subject of the debate.

In the course of the discussion of any question, any delegate may raise a point of order, which shall immediately be decided.

The technical delegates and experts accompanying the delegates may be allowed to speak under the same conditions as the delegates.

Article 7.

Speeches in French shall be interpreted in English and *vice versa* by an interpreter belonging to the Secretariat.

A delegate speaking in another language must himself provide for a translation of his speech into French or English.

A delegate may cause to be distributed documents written in a language other than French or English, but the Secretariat is not obliged to have them translated or printed.

Article 8.

No draft resolution, amendment or motion shall be discussed or voted upon at any meeting, of which copies have not been communicated to the delegates before the meeting, except in the following cases :

(1) The Conference may at any meeting decide by a two-thirds majority to allow a draft resolution or motion proposed at the meeting to be discussed and voted upon;

(2) The President may, during the debate on any resolution or motion, allow any amendment to the resolution or motion which may be proposed during the debate to be discussed and voted upon, if the text of the amendment is communicated to him in writing.

Article 9.

A delegate may, at any time, request that the debate be closed. The President shall take the opinion of the Conference upon the motion of closure. If the majority of the Conference approves the motion, the President shall declare the closure of the debate.

Article 10.

Each Government represented shall have one vote. Delegations which abstain from voting shall be considered as absent.

Voting on resolutions to be taken by the Conference shall, unless the Conference decide otherwise, be taken by a roll call, the delegations being called in the French alphabetical order of the names of the Governments represented.

All elections shall be made by a secret ballot unless they are made by acclamation.

Article 11.

At the conclusion of each meeting, Minutes shall be prepared by the Secretariat and circulated to the delegates as soon after as possible.

The record of the meeting shall become final forty-eight hours after circulation.

ANNEX 3.

Series of Publications : 1937.V.1. *Official No. :* C.222.M.162.1937.V.

REPORT OF THE COMMITTEE FOR THE INTERNATIONAL REPRESSION OF TERRORISM, ADOPTED BY THE COMMITTEE ON APRIL 26TH, 1937.

CONTENTS.

The Committee for the International Repression of Terrorism, set up under the resolution adopted by the Council on December 10th, 1934, held its third session at Geneva from April 20th to 26th, 1937.

The following were present at this session of the Committee : [1]

His Excellency Count CARTON DE WIART (Belgium), Minister of State, *Chairman; accompanied by* M. Simon SASSERATH, Advocate in the Brussels Court of Appeal, Professor in the Belgian Institute of Graduate Studies.

Sir John Fischer WILLIAMS, C.B.E., K.C. (United Kingdom of Great Britain and Northern Ireland);

Substitute : Mr. L. S. BRASS, Assistant Legal Adviser, Home Office.

Mme. Matilde HUICI (Spain), Advocate;

Substitute : M. Cipriano RIVAS CHERIF, Consul-General of Spain at Geneva.

M. Jules BASDEVANT (France), Professor in the Faculty of Law of Paris, Legal Adviser to the Ministry of Foreign Affairs of the French Republic.

M. Paul SEBESTYÉN (Hungary), Ministerial Counsellor of Section in the Ministry of Foreign Affairs;

accompanied by M. Eugène ASZTALOS, Chief of Section in the Ministry of Justice.

M. Lucien BEKERMAN (Poland), Public Prosecutor in the Court of Cassation, Chief of Section in the Ministry of Justice.

His Excellency M. V. V. PELLA (Roumania), Roumanian Minister at The Hague, Professor in the Faculty of Law of the University of Bucharest;

Substitute : M. Slavko STOYKOVITCH, Chief Representative of the Yugoslav Government in the Mixed Arbitral Tribunals.

M. E. DELAQUIS (Switzerland), Professor in the University of Geneva.

M. Victor BROWN (Union of Soviet Socialist Republics), Secretary of Embassy.

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[1] M. E. J. GAJARDO (Chile), His Excellency M. Ugo ALOISI and Professor Tommaso PERASSI (Italy) were not present at this session.

The Committee considered the report and resolution on the international repression of terrorism (document A.72.1936.V [1]) which were adopted by the Assembly of the League on October 10th, 1936, together with the observations contained in the replies received from Governments or formulated during the discussions in the First Committee of the Assembly.[2]

In the light of the new material afforded by a study of the above-mentioned documents, the Committee proceeded to hold a general discussion on the problem of the international prevention and punishment of terrorism, and this was followed by a final review of the two draft Conventions drawn up by the Committee at its second session (January 1936).

When revising the first draft, which deals with the prevention and punishment of terrorism (Appendix I), the Committee thought it proper to define the situations in which acts of terrorism assume an international character, and which are the primary justification for international co-operation to prevent and punish such acts.

Furthermore, to meet a trend of opinion which received definite expression in the First Committee of the 1936 Assembly, the Committee embodied in the draft Convention a clause emphasising that States are under an obligation—imposed, indeed, by international law—themselves to refrain from any act designed to encourage terrorist activities directed against the safety and public order of any other State.

With the object of avoiding difficulties in the interpretation of the Convention and defining the exact sense and scope of some of its clauses, the Committee found it necessary to lay down in a general provision what is to be understood by " acts of terrorism " within the meaning of the proposed Convention.

With regard to the clauses providing for various forms of co-operation between States in the prevention and punishment of terrorism, the Committee came to the conclusion that certain amendments were necessary in order to make it clearer that the legal rules held by the different contracting parties as to political offences are not affected.

The Committee's attention was also drawn to the question of civil war. The Committee took the view that this is a question which is clearly outside the scope of the Convention.

The other amendments to the original draft Convention are due to the Committee's desire either to make the text clearer or to limit the scope of the Convention to those situations of which it is absolutely to take account if acts of terrorism of an international character are to be effectually prevented and punished.

In revising the second draft Convention—that for the creation of an International Criminal Court (Appendix II)—the Committee was chiefly influenced by the desire expressed by the First Committee of the 1936 Assembly. It is plain from the new amendments that States which become parties to this Convention cannot rely upon the International Criminal Court in their relations with States which are parties only to the first Convention (that for the prevention and punishment of terrorism).

The other amendments to the second Convention are mainly due to the observations made by various Governments on the organisation and working of such a Court.

In submitting the present report and the two draft Conventions appended embodying the results of its work, the Committee expresses the hope that it may have provided a useful basis for the deliberations of the Diplomatic Conference which, in accordance with the resolution adopted by the Assembly of the League on October 10th, 1936, is to meet in 1937.

April 26th, 1937. *(Signed)* H. Carton de Wiart,
Chairman.

Appendix I.

Draft Convention for the Prevention and Punishment of Terrorism.

[*Translation.*]

Article 1.

1. Acts of terrorism within the meaning of the present Convention are criminal acts which are directed against a State and which are intended or calculated to create a state of terror among individuals, groups of persons or the general public.

2. The object of the present Convention is to ensure co-operation between the High Contracting Parties for the prevention and punishment of such acts when they are of an international character, it being the duty of States to refrain from any act designed to encourage terrorist activities directed against the safety and public order of another State.

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[1] See Minutes of the First Committee of the Seventeenth Ordinary Session of the Assembly (1936), pages 84-85.

[2] See documents A.24.1936.V, A.24*(a)*.1936.V, C.552.M.356.1936.V and C.194.M.139.1937.V.

Article 2.

Each of the High Contracting Parties should make the following acts committed on its own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any act intended to cause death or grievous bodily harm or loss of liberty to :

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

(2) Wilful destruction of or damage to public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

(3) Any wilful act calculated to endanger the lives of members of the public.

(4) The manufacture, obtaining, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present Article.

(5) Any attempt to commit any of the acts falling within the present Article.

Article 3.

1. Each of the High Contracting Parties should also make the following actions criminal offences when they are committed on his own territory with a view to acts of terrorism directed against another High Contracting Party, whatever the country in which the acts of terrorism are to be carried into execution :

(a) Any agreement to commit any of the acts mentioned in Article 2 (Nos. (1) to (4));

(b) Any direct public incitement, whether successful or not;

(c) Any successful private incitement;

(d) Any wilful complicity;

(e) Any help given towards the commission of such an act.

2. Acts of participation in the offences falling within the present Convention shall be treated as separate offences when the persons committing them can only be brought to trial in different countries.

Article 4.

Without prejudice to the characterisation of offences and to other special provisions of national law relating to the persons and property mentioned in Article 2, no High Contracting Party shall make any distinction as regards the protection afforded by criminal law between acts, falling under Articles 2 and 3, directed against the Party itself and similar acts directed against another High Contracting Party.

Article 5.

1. In countries where the principle of the international recognition of previous convictions is accepted, foreign convictions for any of the acts mentioned in Articles 2 and 3 will, within the conditions prescribed by the domestic law, be taken into account for the purpose of establishing habitual criminality.

2. Such convictions will, further, in the case of High Contracting Parties whose law recognises foreign convictions, be taken into account, with or without special proceedings, for the purpose of imposing, in the manner provided by that legislation, incapacities, disqualifications or interdictions whether in the sphere of public or of private law.

Article 6.

In so far as *parties civiles* are admitted under the domestic law, foreign *parties civiles*, including, in proper cases, a High Contracting Party, should be entitled to all rights allowed to nationals by the law of the country in which the case is tried.

Article 7.

1. Without prejudice to the provisions of paragraph 4 below, the acts set out in Articles 2 and 3 shall be deemed to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty shall henceforward, without prejudice to the provisions of paragraph 4 below and subject to reciprocity, recognise the acts set out in Articles 2 and 3 as extradition crimes as between themselves.

3. For the purposes of the present Article, any act specified in Articles 2 and 3, if committed in the territory of the High Contracting Party against whom it is directed, shall also be deemed to be an extradition crime.

4. The obligation to grant extradition under the present Article shall be subject to any limitations recognised by the law of the country to which application is made.

Article 8.

1. When the principle of the extradition of nationals is not recognised by a High Contracting Party, nationals who have returned to the territory of their own country after the commission abroad of an offence mentioned in Articles 2 or 3 should be prosecuted and punished in the same manner as if the offence had been committed in their own country, even in a case where the offender has acquired his nationality after the commission of the offence.

2. The provisions of the present Article shall not apply if, in similar circumstances, the extradition of a foreigner cannot be granted.

Article 9.

Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the acts set out in Articles 2 and 3 should be prosecuted and punished as though the act had been committed in the territory of that High Contracting Party, if the following conditions are fulfilled—namely, that :

(a) Extradition has been demanded and could not be granted for a reason not connected with the act itself;

(b) The law of the country of refuge recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners;

(c) The foreigner is a national of a country which recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners.

Article 10.

The provisions of Articles 8 and 9 shall also apply to acts referred to in Articles 2 and 3 which have been committed in the territory of the High Contracting Party against which they were directed.

As regards the application of Articles 8 and 9, the High Contracting Parties do not undertake to pass a sentence exceeding the maximum sentence prescribed by the law of the country where the offence was committed.

Article 11.

Each High Contracting Party should take on his own territory appropriate measures to prevent any activity contrary to the purpose of the present Convention.

Article 12.

1. The carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition and explosives should be subjected to regulation, and it should be a punishable offence to transfer, sell or distribute them to any person who does not hold such licence or make such declaration as may be required by the domestic legislation concerning the possession and carrying of such articles.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, should be required to mark each arm with a serial number and factory mark permitting it to be identified, and to keep a register of the names and addresses of purchasers.

Article 13.

1. The following acts should be punishable :

(a) Any fraudulent manufacture or alteration of passports or other equivalent documents;

(b) Bringing into the country, obtaining or being in possession of such forged or falsified documents knowing them to be forged or falsified;

(c) Obtaining such documents by means of false declarations or documents;

(d) Using any such documents which are forged or falsified or were made out for a person other than the bearer.

2. The wilful issue of passports, other equivalent documents, or visas by competent officials to persons known not to have the right thereto under the laws or regulations applicable, with the object of assisting any activity contrary to the purpose of the present Convention, should also be punishable.

3. The provisions of the present Article shall apply irrespective of the national or foreign character of the document.

Article 14.

1. The results of the investigation of offences provided for in Articles 2, 3 and 13 should in each country and within the framework of the law of that country be centralised in an appropriate service.

2. Such service should be in close contact :

(a) With the police authorities of the country;

(b) With the corresponding services in other countries.

3. It should furthermore bring together all information calculated to facilitate the prevention and punishment of the acts mentioned in Articles 2, 3 and 13 and should, as far as possible, keep in close contact with the judicial authorities of the country.

Article 15.

Each service, so far as it considers it desirable to do so, should notify to the services of the other countries, giving all necessary particulars :

(a) Any act mentioned in Articles 2 and 3, even if it has not been carried into effect, such notification to be accompanied by descriptions, copies and photographs;

(b) Any search for, any prosecution, arrest, conviction or expulsion of persons guilty of acts dealt with in the present Convention, the movements of such persons and any pertinent information with regard to them, as well as their description, finger-prints and photographs;

(c) Discovery of documents, arms, appliances or other objects connected with acts mentioned in Articles 2, 3, 12 and 13.

Article 16.

1. The High Contracting Parties shall be bound to execute letters of request in accordance with their domestic law and practice.

2. The transmission of letters of request relating to offences referred to in the present Convention should be effected :

(a) By direct communication between the judicial authorities; or

(b) By direct correspondence between the Ministers of Justice of the two countries, or by direct communication from the authority of the country making the request to the Minister of Justice of the country to which the request is made; or

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request direct to the competent judicial authority, or to the authority indicated by the Government of the country to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

3. In cases *(a)* and *(c)*, a copy of the letters of request shall always be sent simultaneously to the superior authority of the country to which application is made.

4. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method or methods of transmission mentioned above which he will recognise for the letters of request of the latter High Contracting Party.

6. Until such notification is made by a High Contracting Party, his existing procedure in regard to letters of request shall remain in force.

7. Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

8. Nothing in the present Article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws.

Article 17.

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the general question of the limits of criminal jurisdiction as a question of international law.

Article 18.

The present Convention does not affect the principle that, subject to the acts in question not being allowed to escape punishment, the characterisation of the various acts dealt with in the present Convention and the determination of the applicable penalties and of the methods of prosecution and trial depend in each country upon the general rules of the domestic law. It, further, does not impair the right of the High Contracting Parties to make such rules as they consider proper regarding the effect of mitigating circumstances, the right of pardon and the right of amnesty.

Article 19.

If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the parties concerning the settlement of international disputes.

If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice,

if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 20.

1. The present Convention, of which the French and English texts shall be both authentic, shall bear to-day's date. Until . . . it shall be open for signature on behalf of any Member of the League of Nations and on behalf of any non-member State represented at the Conference which drew up the present Convention or to which a copy thereof is communicated for this purpose by the Council of the League of Nations.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 21.

1. After the . . ., the present Convention shall be open to accession by any Member of the League of Nations and any of the non-member States referred to in Article 20 on whose behalf the Convention has not been signed.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their receipt to all the Members of the League and to the non-member States referred to in Article 20.

Article 22.

Any Member of the League of Nations or non-member State which is prepared to ratify the Convention under the second paragraph of Article 20, or to accede to the Convention under Article 21, but desires to be allowed to make reservations with regard to the application of the Convention, may so inform the Secretary-General of the League of Nations, who shall forthwith communicate such reservations to all the Members of the League and non-member States on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. Should the reservation be formulated within two years from the entry into force of the Convention, the same enquiry shall be addressed to Members of the League and non-member States whose signature of the Convention has not yet been followed by ratification. If, within six months from the date of the Secretary-General's communication, no objection to the reservation has been made, it shall be treated as accepted by the High Contracting Parties.

Article 23.

Ratification of or accession to the present Convention by any High Contracting Party implies an assurance by him that his legislation and his administrative organisation are in conformity with the rules contained in the Convention.

Article 24.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may at any time declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States referred to in Article 20 the declarations and notifications received in virtue of the present Article.

Article 25.

The present Convention shall, in accordance with the provisions of Article 18 of the Covenant, be registered by the Secretary-General of the League of Nations on the ninetieth day after the receipt by the Secretary-General of the . . . ratification or accession.

The Convention shall come into force on the date of such registration.

Article 26.

Each ratification or accession taking place after the deposit of the . . . instrument of ratification or accession shall take effect on the ninetieth day following the date on which the instrument of ratification or accession is received by the Secretary-General of the League of Nations.

Article 27.

A request for the revision of the present Convention may be made at any time by any High Contracting Party by means of a notification to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to all the other High Contracting Parties and, if it is supported by at least a third of those Parties, the High Contracting Parties undertake to hold a conference for the revision of the Convention.

Article 28.

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 20. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

In faith whereof the Plenipotentiaries have signed the present Convention.

Done at Geneva, ... in a single copy, which will be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States referred to in Article 20.

Appendix II.

Draft Convention for the Creation of an International Criminal Court.

[*Translation.*]

Article 1.

An International Criminal Court for the trial, as hereinafter provided, of persons accused of an offence dealt with in the Convention for Prevention and Punishment of Terrorism is hereby established.

Article 2.

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for an offence within its jurisdiction.

Article 3.

1. In the cases referred to in Articles 2, 3, 8 and 9 of the Convention for Prevention and Punishment of Terrorism, each High Contracting Party to the present Convention shall be entitled, instead of prosecuting before his own tribunal, to send the accused for trial before the Court.

2. A High Contracting Party shall further be entitled in the cases mentioned in Article 7 of the said Convention, instead of extraditing, to send the accused for trial before the Court if the State demanding extradition is also a Party to the present Convention.

3. The provisions of the present Article shall be applicable only if the accused is a national of a State which is a Party to the present Convention and if the offence is directed against the interests of a High Contracting Party to the present Convention.

Article 4.

The Court shall be composed of judges chosen from among jurists who are acknowledged authorities on criminal law and who are or have been members of courts of criminal jurisdiction or possess the qualifications required for such appointments in their own countries.

Article 5.

The Court shall consist of five regular judges and five deputy judges, each belonging to a different nationality, but so that the regular judges and deputy judges shall be nationals of the High Contracting Parties.

Article 6.

1. Any Member of the League of Nations and any non-member State in respect of which the present Convention is in force may nominate not more than two candidates for appointment as judges of the Court.

2. The Council of the League of Nations shall be requested to choose the regular and deputy judges from the persons so nominated.

Article 7.

1. Judges shall hold office for ten years.

2. Every two years, one regular and one deputy judge shall retire.

3. For the first period of ten years, the order of retirement shall be determined under the authority of the Council of the League of Nations by drawing lots.

4. Judges may be re-appointed.

5. Judges shall continue to discharge their duties until their places have been filled.

6. Nevertheless, judges, though replaced, shall finish any cases which they have begun.

Article 8.

A judge appointed in place of a judge whose period of appointment has not expired shall hold the appointment for the remainder of his predecessor's term.

Article 9.

1. Deputy judges shall be called upon to sit in the order laid down in a list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

Article 10.

1. Members of the Court may not participate in the settlement of any case on which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

2. Every member of the Court shall, before taking up his duties, give a solemn undertaking in open Court that he will exercise his powers impartially and conscientiously.

Article 11.

1. Any vacancy, whether occurring through the expiration of a judge's term of office or for any other cause, shall be filled as provided in Article 6.

2. In the event of the resignation of a member of the Court, the resignation shall take effect on notification being received by the Registrar.

Article 12.

A member of the Court cannot be dismissed unless in the unanimous opinion of the other members he has ceased to fulfil the required conditions.

Article 13.

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

Article 14.

1. The Court shall elect its President and Vice-President for two years; they may be re-elected.

2. The work of the Registry of the Court shall be performed by the Registry of the Permanent Court of International Justice, if that Court consents.

Article 15.

The seat of the Court shall be established at The Hague. For any particular case, the President may take the opinion of the Court and the Court may decide to meet elsewhere.

Article 16.

A High Contracting Party who avails himself of the right to send a person for trial before the Court shall notify the President through the Registry.

Article 17.

The Court shall apply the substantive criminal law of the State on the territory of which the offence was committed. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

Article 18.

If, for some special reason, a member of the Court considers that he should not sit to hear a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Article 19.

1. The presence of five members shall be necessary to enable the Court to sit.

2. If the presence of five regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

Article 20.

If the Court has to apply, in accordance with Article 17, the law of a State of which no sitting judge is a national, the Court may invite a jurist who is an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Article 21.

As soon as the Court is seized of a case, the President of the Court shall notify the State against which the offence was directed, and the State on the territory of which the offence was committed. These States, and any other States, may put before the Court the results of their investigations and any evidence and objects connected with the crime which they have in their possession; these shall be included in the file of the case.

Article 22.

1. The Court shall be seized of a case by an indictment issuing from a High Contracting Party.

2. The right to conduct the prosecution shall rest with the State against which the offence was committed. Failing that State, it shall belong to the State on the territory of which the offence was committed, and failing also that latter State, then to the State by which the Court was seized.

3. The State which seizes the Court shall at the same time name the agent by whom it will be represented.

4. The Court must not proceed further with the case if the charge is withdrawn.

Article 23.

Any State or person injured by an offence may constitute itself or himself *partie civile* before the Court, inspect the file, submit a statement of its or his case to the Court, and take part in the debates.

Article 24.

The file of the case and the statement of the *partie civile* shall be communicated to the person who is before the Court for trial.

Article 25.

The parties may propose the hearing of witnesses and experts by the Court, which shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts.

Article 26.

1. The Court shall decide whether a person who has been sent before it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Article 27.

Any letters of request which the Court considers it necessary to have despatched shall at its demand be addressed by the High Contracting Party on the territory of which the Court is sitting to the State competent to give effect to such letters of request.

Article 28.

No examination of the person sent to the Court for trial, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for that person, the representatives of the State against which the offence was directed or on the territory of which the offence was committed or which laid the case before the Court and the representatives of the *parties civiles*, or after due summons to such persons to be present.

Article 29.

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused person a counsel selected from advocates belonging to a Bar.

Article 30.

1. The hearings before the Court shall be public.

2. Nevertheless, the Court may, by a reasoned and unanimous judgment, decide that the hearing shall take place *in camera*. Judgment shall always be pronounced at a public hearing.

Article 31.

The Court shall sit in private to consider its judgment.

Article 32.

The decisions of the Court shall be by majority of the judges.

Article 33.

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Article 34.

The Court may not entertain charges against any person except the person sent before it for trial, or try any accused person for any offences other than those for which he has been sent for trial.

Article 35.

1. The Court may sentence the persons sent before it to restore property or to pay damages.

2. The Court shall decide whether any restitution or confiscation of any object is to be made.

3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons is situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences.

4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Article 36.

1. Sentences involving loss of liberty shall be executed by the High Contracting Party which shall be designated by the Court.

2. The Court shall determine the way in which any fines shall be dealt with.

Article 37.

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall be entitled to substitute therefor the most severe penalty in its national legislation involving loss of liberty.

Article 38.

The right of pardon shall be exercised by the State which has to enforce the penalty. It shall first consult the President of the Court.

Article 39.

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in Article 22, and the persons mentioned in Article 29, shall have the right to ask for a revision.

Article 40.

1. The salaries of the judges shall be payable by the States of which they are nationals on a scale fixed by the High Contracting Parties.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Article 41.

The Court's archives shall be in the charge of the Registrar.

Article 42.

The Court shall establish regulations to govern its practice and procedure.

Article 43.

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention and of the Convention for Prevention and Punishment of Terrorism and the general principles of law.

2. Should a High Contracting Party, not being the Party who sent the case in question for trial to the Court, dispute the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts, this issue shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 45.

Article 44.

1. The representatives of the High Contracting Parties shall meet with a view to taking all necessary decisions concerning :

(a) The election of judges;

(b) The organisation of the Registry;

(c) The constitution and administration of the common fund, the division among the High Contracting Parties of the sums considered necessary to create and maintain such fund and, in general, all financial and administrative questions bearing on the establishment and the working of the Court;

(d) The organisation of the meetings referred to below in paragraph 3.

2. The Government of the Netherlands shall be requested to convene this meeting as soon as possible after the present Convention enters into force.

3. The Registrar of the Court shall convene subsequent meetings in conformity with the rules established to that effect.

4. On all questions of procedure that may arise at the meetings referred to in paragraphs 2 and 3, decisions shall be taken by a majority of the High Contracting Parties represented at the meeting.

Article 45.

If any dispute should arise between the High Contracting Parties relating to the interpretation or application of the present Convention, and if such dispute has not been satisfactorily solved by diplomatic means, it shall be settled in conformity with the provisions in force between the Parties concerning the settlement of international disputes.

If such provisions should not exist between the parties to the dispute, the parties shall refer the dispute to an arbitral or judicial procedure. If no agreement is reached on the choice of another court, the parties shall refer the dispute to the Permanent Court of International Justice, if they are all parties to the Protocol of December 16th, 1920, relating to the Statute of that Court; and if they are not all parties to that Protocol, they shall refer the dispute to a court of arbitration constituted in accordance with the Convention of The Hague of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 46.

1. The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date. Until . . ., it shall be open for signature on behalf of any Member of the League of Nations or any non-member State on whose behalf the Convention for Prevention and Punishment of Terrorism has been signed.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League. The Secretary-General shall notify their deposit to all the Members of the League and to the non-member States mentioned in the preceding paragraph. The deposit of an instrument of ratification of the present Convention shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of or accession to the Convention for the Prevention and Punishment of Terrorism.

Article 47.

1. After . . ., the present Convention shall be open to accession by any Member of the League of Nations and any non-member State which has not signed this Convention. Nevertheless, the deposit of an instrument of accession shall be conditional on the deposit by the same High Contracting Party of an instrument of ratification of or accession to the Convention for the Prevention and Punishment of Terrorism.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations to be deposited in the archives of the League; the Secretary-General shall notify their deposit to all the Members of the League and to the non-member States referred to in Article 46 and the first paragraph of the present Article.

Article 48.

1. Any High Contracting Party may declare, at the time of signature, ratification or accession, that, in accepting the present Convention, he is not assuming any obligation in respect of all or any of his colonies, protectorates or oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted to him; the present Convention shall, in that case, not be applicable to the territories named in such declaration.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. The Convention shall, in that case, apply to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time, declare that he desires the present Convention to cease to apply to all or any of his colonies, protectorates, oversea territories, territories under his suzerainty or territories in respect of which a mandate has been entrusted

to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt of this declaration by the Secretary-General of the League of Nations.

4. The Secretary-General of the League of Nations shall communicate to all the Members of the League of Nations and to the non-member States mentioned in Articles 46 and 47 the declarations and notifications received in virtue of the present Article.

Article 49.

The present Convention shall, in accordance with the provisions of Article 18 of the Covenant, be registered by the Secretary-General of the League of Nations on the ninetieth day following the receipt by the Secretary-General of the . . . instrument of ratification or accession.

The Convention shall come into force on the date of such registration. Nevertheless, its entry into force shall be subject to the entry into force of the Convention for the Prevention and Punishment of Terrorism.

Article 50.

Each ratification or accession taking place after the deposit of the . . . instrument of ratification or accession shall take effect on the ninetieth day following the date on which the instrument of ratification or accession is received by the Secretary-General of the League of Nations.

Article 51.

A request for the revision of the present Convention may be made at any time by any High Contracting Party by a notification to the Secretary-General of the League of Nations. Such notification shall be communicated by the Secretary-General to all the other High Contracting Parties and, if it is supported by at least a third of those Parties, the High Contracting Parties undertake to hold a conference for the revision of the Convention.

Article 52.

1. The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Articles 46 and 47. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

2. Denunciation of the Convention for the Prevention and Punishment of Terrorism shall *ipso facto* involve denunciation of the present Convention.

Article 53.

A case brought before the Court before the denunciation of the present Convention, or the making of a declaration as provided in Article 48, paragraph 3, shall nevertheless continue to be heard and judgment be given by the Court.

In faith whereof the Plenipotentiaries have signed the present Convention.

Done at Geneva, ... , in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States represented at the Conference.

ANNEX 4.

Conf.R.T.27.

Geneva, November 10th, 1937.

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF TERRORISM.

Texts submitted to the Conference by the Drafting Committee.

Title.

Convention for the Prevention and Punishment of Terrorism.

Preamble.

. . . . . .

Being desirous of making more effective the prevention and punishment of terrorism of an international character;

Have appointed as their Plenipotentiaries :

. . . . . .

Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions :

Article 1.

1. The High Contracting Parties, reaffirming the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities

directed against another State and to prevent the acts in which such activities take shape, undertake as hereinafter provided to prevent and punish activities of this nature and to collaborate for this purpose.

2. In the present Convention, the expression " acts of terrorism " means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.

Article 2.

Each of the High Contracting Parties shall, if this has not already been done, make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any wilful act causing death or grievous bodily harm or loss of liberty to :

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity;

(2) Wilful destruction of or damage to public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party;

(3) Any wilful act calculated to endanger the lives of members of the public;

(4) Any attempt to commit an offence falling within the foregoing provisions of the present article;

(5) The manufacture, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

Article 3.

Each of the High Contracting Parties shall make the following acts criminal offences when they are committed on his own territory with a view to an act of terrorism falling within Article 2 and directed against another High Contracting Party, whatever the country in which the act of terrorism is to be carried out :

(1) Conspiracy to commit any such act;

(2) Any incitement to any such act if successful;

(3) Direct public incitement to any act mentioned under heads (1), (2) or (3) of Article 2, whether the incitement be successful or not;

(4) Wilful participation in any such act;

(5) Assistance knowingly given towards the commission of any such act.

Article 3bis.

Each of the offences mentioned in Article 3 shall be treated by the law as a distinct offence in all cases where this is necessary in order to prevent an offender escaping punishment.

Article 4.

Subject to any special provisions of national law for the protection of the persons mentioned under head (1) of Article 2, or of the property mentioned under head (2) of Article 2, each High Contracting Party shall provide the same punishment for the acts set out in Articles 2 and 3, whether they be directed against that or another High Contracting Party.

Article 5.

(No change.)

Article 6.

(No change.)

Article 6bis.

A High Contracting Party shall not derive from the provisions of Articles 5 and 6 of the present Convention any right to ask another High Contracting Party to adopt in a particular case an attitude which the High Contracting Party himself could not under his own law adopt in a corresponding case.

Article 7.

1. (No change.)

2. (No change.)

3. (No change.)

4. The obligation to grant extradition under the present article shall be subject to any conditions and limitations recognised by the law or the practice of the country to which application is made.

Article 8.

(No change.)

Article 9.

(No change.)

Article 10.

(No change.)

Article 11.

Each High Contracting Party shall take on his own territory and within the limits of his own law and administrative organisation the measures which he considers appropriate for the effective prevention of all activities contrary to the purpose of the present Convention.

Article 12.

1. Without prejudice to the provisions of head (5) of Article 2, the carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition shall be subjected to regulation. It shall be a punishable offence to transfer, sell or distribute such arms or munitions to any person who does not hold such licence or make such declaration as may be required by domestic legislation concerning the possession and carrying of such articles; this shall apply also to the transfer, sale or distribution of explosives.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, should be required to mark each arm with a serial number or other distinctive mark permitting it to be identified; both manufacturers and retailers shall be obliged to keep a register of the names and addresses of purchasers.

Article 13.

1. . . . *(a)* (No change.)

(b) (No change.)

(c) (No change.)

(d) Wilfullyu sing any such documents which are forged or falsified or were made out for a person other than the bearer.

2. (No change in English text.)

3. (No change.)

Article 14.

1. Results of the investigation of offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 13 shall in each country, subject to the provisions of its law, be centralised in an appropriate service.

2. (No change.)

3. It shall furthermore bring together all information calculated to facilitate the prevention and punishment of the offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 13; it shall as far as possible keep in close contact with the judicial authorities of the country.

Article 15.

(No change in English text.)

Article 16.

1. The High Contracting Parties shall be bound to execute letters of request in accordance with their domestic law and practice.

2. The transmission of letters of request relating to offences referred to in the present Convention should be effected :

(a) By direct communication between the judicial authorities;

(b) By direct correspondence between the Ministers of Justice of the two countries;

(c) By direct correspondence between the authority of the country making the request and the Minister of Justice of the country to which the request is made;

(d) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request, either directly or through the Minister for Foreign Affairs, to the competent judicial authority or to the authority indicated by the Government of the country to which the request is made and shall receive the papers constituting the execution of the letters of request from this authority either directly or through the Minister for Foreign Affairs.

3. In cases *(a)* and *(d)*, a copy of the letters of request shall always be sent simultaneously to the Minister of Justice of the country to which application is made.

4. (No change.)

5. (No change.)

6. (No change.)

7. (No change.)

8. (No change.)

Article 17.

(No change.)

Article 18.

The present Convention does not affect the principle that, subject to the acts in question not being allowed to escape punishment owing to gaps in the law, the characterisation of the various offences dealt with in the present Convention, the imposition of sentences, the methods of prosecution and trial, and the rules regarding mitigating circumstances, pardon and amnesty are determined in each country by the provisions of domestic law.

Article 19.

1. (No change.)

2. (No change.)

3. The above provisions of the present article shall not prevent High Contracting Parties, if they are Members of the League of Nations, from bringing the dispute before the Council or the Assembly of the League if the Covenant gives them the power to do so.

Article 20.

(Insert the date of May 31st, 1938.)

Article 21.

(Insert the date of June 1st, 1938.)

Article 22.

1. (Printed text of the article with the substitution of " three years " for " two years ".)

2. In the event of any objection being received, the Secretary-General of the League of Nations shall inform the Government which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

Article 23.

Ratification of or accession to the present Convention by any High Contracting Party implies an assurance by him that his legislation and his administrative organisation enable him to give effect to the provisions of the present Convention.

Article 24.

1. (No change.)

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that he desires the present Convention to apply to all or any of the territories in respect of which the declaration provided for in the preceding paragraph has been made. In making such notification, the High Contracting Party concerned may state that the application of the Convention to any of such territories shall be subject to any reservations which have been accepted in respect of that High Contracting Party under Article 22. The Convention shall then apply, with any such reservations, to all the territories named in such notification ninety days after the receipt thereof by the Secretary-General of the League of Nations. Should it be desired as regards any such territories to make reservations other than those already made under Article 22 by the High Contracting Party concerned, the procedure set out in that article shall be followed.

3. (No change.)

4. (No change.)

Article 25.

(Read " third " ratification . . .)

Article 26.

(Read " third " instrument . . .)

Article 27.

(No change.)

Article 28.

(No change.)

ANNEX 5.

Conf.R.T.28.

Geneva, November 12th, 1937.

DRAFT CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT.

TEXTS SUBMITTED TO THE CONFERENCE BY THE DRAFTING COMMITTEE.

Preamble.

. . . . . .

Being desirous, on the occasion of concluding the Convention for the Prevention and Punishment of Terrorism, which bears to-day's date, of creating an International Criminal Court with a view to making progress in the struggle against offences of an international character;

Have appointed as their plenipotentiaries :

. . . . . .

Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions :

Article 1 (former Article 1).

(No change in English text.)

Article 2 (former Article 3).

1. (No change in English text except that " tribunal " is replaced by " courts ".)

2. A High Contracting Party shall further, in cases where he is able to grant extradition in accordance with Article 8 of the said Convention, be entitled to send the accused for trial before the Court if the State demanding extradition is also a party to the present Convention.

3. The High Contracting Parties recognise that other Parties discharge their obligations towards them under the Convention for the Prevention and Punishment of Terrorism by making use of the right given them by the present article.

Article 3 (former Article 2).

(No change.)

Article 4 (former Article 15).

(No change.)

Article 5 (former Article 4).

(No change.)

Article 6 (former Article 5).

(No change.)

Article 7 (former Article 6).

1. (No change in English text.)

2. The Permanent Court of International Justice shall be requested to choose the regular and deputy judges from the persons so nominated.

Article 8 (former Article 10, paragraph 2).

(No change.)

Article 9 (former Article 13).

(No change.)

Article 10 (former Article 7).

1. (No change.)

2. (No change.)

3. The order of retirement for the first period of ten years shall be determined by lot when the first election takes place.

4. (No change.)

5. (No change.)

6. (No change.)

Article 11 (former Article 11).

1. (No change.)

2. (No change.)

3. If a seat on the Court becomes vacant more than eight months before the date at which a new election to that seat would normally take place, the High Contracting Parties shall, within two months, nominate candidates for the seat in accordance with Article 7, paragraph 1.

Article 12 (former Article 12).

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

Article 13 (former Article 8).

(No change.)

Article 14 (former Article 14, paragraph 1).

(No change.)

Article 15 (former Article 42).

(No change.)

Article 16 (former Article 14, paragraph 2).

(No change.)

Article 17 (former Article 41).

(No change.)

Article 18 (former Article 19, paragraph 1).

The number of members who shall sit to constitute the Court shall be five.

Article 19 (former Article 10, paragraph 1, and former Article 18).

1. No change, except for the substitution of the words " in trying " for the words " in settlement of ".

2. No change, except for the substitution of the word " try " for the word " hear ".

Article 20 (former Article 9 and Article 19, paragraph 2).

1. Deputy judges shall be called upon to sit in the order laid down in a list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

3. If the presence of five regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

Article 21 (former Article 17).

(No change.)

Article 22 (former Article 20).

(No change.)

Article 23 (former Article 16).

A High Contracting Party who avails himself of the right to send an accused person for trial to the Court shall notify the President through the Registry.

Article 24 (former Article 21).

The President of the Court, on being informed by a High Contracting Party of his decision to send the accused persons for trial before the Court in accordance with Article 2, shall notify the State against which the offence was directed, the State on whose territory the offence was committed and the State of which the accused persons are nationals.

Article 25 (former Article 22).

1. The Court is seized so soon as a High Contracting Party has committed an accused person to it for trial.

2. The document committing an accused person to the Court for trial shall contain a statement of the principal charges against him and the allegations on which they are based, and shall name the agent by whom the State will be represented.

3. The State which committed the accused person to the Court shall conduct the prosecution unless the State against which the offence was directed or, failing that State, the State on whose territory the offence was committed expresses a wish to prosecute.

Article 26 (former Article 23).

1. Any State entitled to seize the Court may intervene, inspect the file, submit a statement of its case to the Court and take part in the oral proceedings.

2. Any person directly injured by the offence may, if authorised by the Court, and subject to any conditions which it may impose, constitute himself *partie civile* before the Court; such person shall not take part in the oral proceedings except when the Court is dealing with the damages.

Article 27 (former Article 34).

(No change in English text, except the substitution of the word " committed " for the words " sent for trial ".)

Article 28 (former Article 22, paragraph 4).

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is abandoned and not at once recommenced by a State entitled to prosecute.

Article 29 (former Article 29).

(No change.)

Article 30 (former Article 24).

(No change.)

Article 31 (former Article 26).

(No change.)

Article 32 (former Article 25).

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards any other kind of evidence.

Article 33 (former Article 27).

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Article 34 (former Article 28).

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and of the representatives of the States which are taking part in the proceedings or after these representatives have been duly summoned.

Article 35 (former Article 30).

1. (No change.)

2. Nevertheless, the Court may, by a reasoned judgment, decide that the hearing shall take place *in camera*. Judgment shall always be pronounced at a public hearing.

Article 36 (former Article 31).

(No change.)

Article 37 (former Article 32).

(No change.)

Article 38 (former Article 33).

(No change.)

Article 39 (former Article 35).

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.

2. The Court may sentence the persons committed to it to pay damages.

3. (No change.)

4. (No change.)

Article 40 (former Article 36).

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court; such consent may not be refused by the State which committed the convicted person to the Court for trial. The sentence shall always be executed by the State which committed the convicted person to the Court if this State expresses the wish to do so.

2. (No change.)

Article 41 (former Article 37).

(No change.)

Article 42 (former Article 38).

(No change.)

Article 43 (former Article 39).

(No change.)

Article 44 (former Article 40).

1. (No change.)

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Article 45 (former Article 43).

1. (No change.)

2. If a High Contracting Party, not being the Party who sent the case in question for trial to the Court, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts and does not see his way to appear in the proceedings in order that the question

may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 48.

Article 46 (former Article 44).

1. The representatives of the High Contracting Parties shall meet with a view to taking all necessary decisions concerning :

(a) The constitution and administration of the common fund, the division among the High Contracting Parties of the sums considered necessary to create and maintain such fund and, in general, all questions bearing on the establishment and the working of the Court;

(b) The organisation of the meetings referred to below in paragraph 3.

2. At their first meeting, the representatives of the High Contracting Parties shall also decide what modifications are necessary in order to attain the objects of the present Convention.

3. The Registrar of the Court shall convene subsequent meetings in conformity with the rules established to that effect.

4. All questions of procedure that may arise at the meetings referred to in the present article shall be decided by a majority of two-thirds of the High Contracting Parties represented at the meeting.

Article 47 (new article).

1. Until the present Convention is in force between twelve High Contracting Parties, it shall be possible for a judge and a deputy judge to be both nationals of the same High Contracting Party.

2. Article 18 and Article 20, paragraph 1, shall not be applied in such a manner as to cause a judge and a deputy judge of the same nationality to sit simultaneously on the Court.

Article 48 (former Article 45).

(No change.)

Article 49 (former Article 46).

(No change, except for the addition of the date, May 31st, 1938.)

Article 50 (former Article 47).

(No change, except for the addition of the date, June 1st, 1938.)

Article 51 (new article).

Signature, ratification or accession to the present Convention may not be accompanied by any reservations except in regard to Article 26, paragraph 2.

Article 52 (former Article 48).

(No change.)

Article 53 (former Article 49).

1. The Government of the Netherlands is requested to convene a meeting of representatives of the States which ratify or accede to the present Convention. The meeting is to take place within one year after the receipt of the seventh instrument of ratification or accession by the Secretary-General of the League of Nations and has for object to fix the date at which the present Convention shall be put into force. The decision shall be taken by a majority which must be a two-thirds majority and include not less than six votes. The meeting shall also take any decisions necessary for carrying out the provisions of Article 46.

2. The entry into force of the present Convention shall, however, be subject to the entry into force of the Convention for the Prevention and Punishment of Terrorism.

3. The present Convention shall be registered by the Secretary-General of the League of Nations in accordance with Article 18 of the Covenant on the day fixed by the above-mentioned meeting.

Article 54 (former Article 50).

A ratification or accession by a State which has not taken part in the meeting mentioned in Article 53 shall take effect ninety days after its receipt by the Secretary-General of the League of Nations, provided that the date at which it takes effect shall not be earlier than ninety days after the entry into force of the Convention.

Article 55 (former Article 52).

The present Convention may be denounced on behalf of any High Contracting Party by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Articles 49 and 50. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall be operative only in respect of the High Contracting Party on whose behalf it was made.

Article 56 (former Article 53).

1. A case brought before the Court before the denunciation of the present Convention, or the making of a declaration as provided in Article 52, paragraph 3, shall nevertheless continue to be heard and judgment be given by the Court.

2. A High Contracting Party who before denouncing the present Convention has under the provisions thereof incurred the obligation of carrying out a sentence shall continue to be bound by such obligation.

IN FAITH WHEREOF the Plenipotentiaries have signed the present Convention.

DONE at Geneva . . ., in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations; a certified true copy thereof shall be transmitted to all the Members of the League of Nations and all the non-member States represented at the Conference.

Part III.

LIST OF REFERENCES TO PREPARATORY DOCUMENTS NOT REPRODUCED IN THE PRESENT VOLUME.

COUNCIL OF THE LEAGUE.

Debate preceding the adoption by the Council, on December 10th, 1934, of the resolution setting up the Committee of Experts.	Council Minutes, eighty-third session (*Official Journal*, 15th Year, No. 12, Part II), pages 1694, 1712-28, 1730-38, 1739-60.
Suggestions presented to the Council by the French Government as the bases for the conclusion of an international agreement with a view to the suppression of crime committed for purposes of political terrorism.	*Idem*, pages 1839-40 (these suggestions are also reproduced as an annex to document C.184.M.102. 1935.V).

REPORTS OF THE COMMITTEE OF EXPERTS.

First Report, adopted on May 8th, 1935.	C.184.M.102.1935.V.
Appendix I : Texts adopted by the Committee.	
Appendix II : International Criminal Court : Provisions proposed by the Belgian, French, Roumanian and Spanish members of the Committee.	
Second Report, adopted on January 15th, 1936.	A.7.1936.V.
Appendix I : Draft Convention for Prevention and Punishment of Terrorism.	
Appendix II : Draft Convention for the Creation of an International Criminal Court.	

ASSEMBLY OF THE LEAGUE, 1936.

Discussions in the First Committee.	*Official Journal*, Special Supplement No. 156, pages 28-33, 34-62, 72.
Report of the First Committee and resolution adopted by the Assembly on October 10th, 1936.	*Idem*, pages 84-85.

OBSERVATIONS SUBMITTED BY GOVERNMENTS.

I. *Observations submitted to the Committee of Experts at its sessions held in* 1935 *and* 1936.

Argentine Republic	A.7.1936.V, page 13.
Austria	C.184.M.102.1935, page 11.
China	C.184.M.102.1935, page 12.
Cuba	C.184.M.102.1935, page 12.
Denmark	C.184.M.102.1935, page 13.
Egypt	A.7.1936.V, page 13.
Estonia	C.184.M.102.1935.V, page 13.
Guatemala	C.184.M.102.1935.V, page 13.
Hungary	C.184.M.102.1935.V, page 13.
India	C.184.M.102.1935.V, page 13.
Latvia	C.184.M.102.1935.V, page 14.
Netherlands	A.7.1936.V, page 14.
Roumania	C.184.M.102.1935.V, page 14.
Turkey	C.184.M.102.1935.V, page 21.
United States of America	C.184.M.102.1935.V, page 13.
Yugoslavia	C.184.M.102.1935.V, page 21.

II. *Observations submitted to the Assembly in* 1936.

Australia	A.24.1936.V, page 1.
Austria	A.24.1936.V, page 1.
Belgium	A.24.1936.V, page 2.
Bolivia	A.24.1936.V, page 3.
United Kingdom of Great Britain and Northern Ireland	A.24.1936.V, page 4.

China	A.24*(b)*.1936.V, page 1.
Czechoslovakia	A.24*(b)*.1936.V, page 2.
Estonia	A.24.1936.V, page 5.
Finland	A.24.1936.V, page 5.
Hungary	A.24.1936.V, page 5.
India	A.24.1936.V, page 8.
Latvia	A.24.1936.V, page 8.
Netherlands	A.24.1936.V, page 10.
Norway	A.24.1936.V, page 9.
Poland	A.24*(a)*.1936.V, page 1.
Roumania	A.24*(a)*.1936.V, page 3.
Siam	A.24.1936.V, page 12.
Union of Soviet Socialist Republics	A.24.1936.V, page 12.
Venezuela	A.24.1936.V, page 12.

INDEX

ABBREVIATIONS

Art.	=	Article
Int.	=	International
Conf.	=	Conference
Conv. C.C.	=	Convention for the Creation of an International Criminal Court
Conv. P.P.T.	=	Convention for the Prevention and Punishment of Terrorism
Cttee.	=	Committee
Del.	=	Delegation

Note.

Unless otherwise stated, the numbers of the articles given in the index are those of the final text. The corresponding numbers of the draft articles are given in brackets under the headings " Convention, etc.".