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Geneva, February 10th, 1936.

LEAGUE OF NATIONS

**COMMITTEE FOR THE INTERNATIONAL
REPRESSION OF TERRORISM**

**REPORT TO THE COUNCIL ADOPTED
BY THE COMMITTEE ON JANUARY 15TH, 1936**

**REPORT ADOPTED BY THE COUNCIL
ON JANUARY 23RD, 1936**

CONTENTS.

	Page
1. Report to the Council, adopted by the Committee on January 15th, 1936	2
<i>Appendix I.</i> — Draft Convention for Prevention and Punishment of Terrorism .	3
<i>Appendix II.</i> — Draft Convention for the Creation of an International Criminal Court	8
<i>Appendix III.</i> — Observations received from Governments after the First Session of the Committee:	
Argentine Republic	13
Egypt	13
Netherlands	14
2. Report adopted by the Council on January 23rd, 1936	16

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I. REPORT TO THE COUNCIL ADOPTED BY THE COMMITTEE
ON JANUARY 15TH, 1936.

The Committee for the International Repression of Terrorism, set up under the resolution adopted by the Council on December 10th, 1934, held a second session at Geneva from January 7th to 15th, 1936.

The following were present at this session:¹

- His Excellency Count CARTON DE WIART (Belgium), Minister of State, *President*; 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.
- M. E. J. GAJARDO (Chile), Head of the Permanent Office accredited to the League of Nations.
- His Excellency M. Juan Manuel CANO Y TRUEBA (Spain), Minister Plenipotentiary, Head of the Legal Department of the Ministry for Foreign Affairs; substitute: M. José DE LAPUERTA Y DE LAS POZAS, Legal Adviser in the Legal Department of the Ministry for Foreign Affairs.
- M. Jules BASDEVANT (France), Professor at the Faculty of Law in Paris, Legal Adviser at the Ministry for Foreign Affairs of the French Republic.
- M. Béla DE SZENT-ISTVÁNY (Hungary), Ministerial Councillor at the Ministry for Foreign Affairs; expert: Colonel vitéz Aloyse BELDY.
- His Excellency M. Ugo ALOISI (Italy), President of Chamber of the Court of Cassation of the Kingdom of Italy; substitute: Professor Tommaso PERASSI, Professor of International Law at the University of Rome.
- M. Lucien BEKERMANN (Poland), Procureur in the Court of Cassation, Chief of Section in the Ministry of Justice.
- His Excellency M. V. V. PELLA (Roumania), Minister Plenipotentiary, Professor at the Faculty of Law at the University of Bucharest; substitute: M. Slavko STOJKOVITCH, Professor at the Faculty of Law of the University of Belgrade.
- M. E. DELAQUIS (Switzerland), Professor at the University of Geneva.
- M. Victor BROWN (Union of Soviet Socialist Republics), Secretary of Embassy.

The Committee considered the replies of the Argentine and Egyptian Governments and the observations submitted by the Netherlands Government² on the text appended to the report made to the Council by the Committee at its first session (document C.184.M.102.1935.V).

It also received from the United Kingdom member proposals for amendments to the first part of the Convention and a note on the scheme for an International Criminal Court.

Lastly, the model texts for the repression of terrorism adopted in September 1935 by the sixth International Conference for the Unification of Penal Law at Copenhagen were communicated to the Committee.

Taking into account the considerations suggested by these communications and the observations submitted to it by certain of its members during its second session, the Committee proceeded to a revision of the texts concerning the prevention and punishment of terrorism, and to an examination of the provisions submitted to it at its first session by the Belgian, French, Roumanian and Spanish members for an International Criminal Court.

The Committee considered that it would be preferable to submit two draft Conventions to States for their appreciation.

The purpose of the first Convention would be the prevention and punishment of terrorism (Appendix I) and that of the second the creation of an International Criminal Court (Appendix II).

The Committee was led to adopt this solution by the fact that differences of opinion were manifested both as to the principle and the timeliness of the creation of an International Criminal Court.

Under this system, States which, for reasons of principle or any other reason, feel unable to hand over an accused person to the International Criminal Court in any circumstances, will have the option of becoming contracting parties to the first Convention only.

On the other hand, the acceptance by a State of the Convention for the Creation of an International Criminal Court is conditional on the acceptance by that State of the Convention for the Prevention and Repression of Terrorism.

¹ The following members of the Committee were not able to be present:
His Excellency M. Titus Komarnicki (Poland);
M. Eugène Hirschfeld (Union of Soviet Socialist Republics).

² See Appendix III.

The Soviet member considered that the Convention for Prevention and Punishment of Terrorism should contain a preamble emphasising the exceptional gravity of terrorist activities and the danger which they present to international relations. He also stressed the necessity of making it quite clear that the Convention refers to acts of political terrorism with a bearing on international relations.

The Committee considers that all forms of terrorism calling for international co-operation are covered by the texts which it has drawn up.

In the opinion of certain members of the Committee, States themselves should be put under an obligation to refrain from any acts likely to foster terrorist activities directed against public order and security in another State.

The Committee considered that such a provision would be superfluous, since international law imposes on every State the strict obligation, not only to refrain from resorting to such methods, but also to take measures on its own territory against any enterprise likely to endanger the public order and security of other States.

Lastly, the Chilean member, while recognising the connection which may exist between the prevention of terrorism and the subject of the falsification of passports, expressed the opinion that a Convention for Prevention and Punishment of Terrorism should not deal with this latter subject. In his opinion, this subject, which is of much wider range and regarding which certain recommendations now being put into force have already been made by an international conference, might be dealt with in an optional protocol annexed to the Convention.

The Committee thought, however, that provisions concerning the falsification of passports were necessary in a Convention for the prevention of acts of terrorism, since in most cases terrorists who carry on their activities in the territories of several States employ false passports for their journeys.

In submitting to the Council the results of its labours embodied in the present report and the texts annexed thereto, the Committee requests the Council, should it deem it desirable and opportune to do so, to forward the present report and its appendices to the Governments for their observations.

The observations of the Governments should reach the Secretary-General by July 15th, 1936, in order that they may be communicated to the Assembly at its ordinary session of 1936, at which a decision will have to be taken whether a diplomatic conference should be held in 1937 to draw up the Conventions contemplated by the Committee.

The Committee might, if necessary, hold a session shortly after the close of the next ordinary session of the Assembly in order to make a final revision of the texts to be submitted to the diplomatic conference, in the light of the observations of the Governments and the discussions of the Assembly.

January 15th, 1936.

(Signed) CARTON DE WIART,
Chairman.

Appendix I.

DRAFT CONVENTION FOR PREVENTION AND PUNISHMENT OF TERRORISM.

Article 1.

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

Article 2

With this object, each High Contracting Party should make the following acts criminal offences, whether they affect his own interests or those of another High Contracting Party, in all cases where they are directed to the overthrow of a Government or an interruption in the working of public services or a disturbance in international relations, by the use of violence or by the creation of a state of terror—viz.:

- (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) Members, officers or servants of Governments;
 - (d) Members of constitutional or legislative bodies;
 - (e) Persons holding judicial office;
 - (f) Diplomatic representatives or consuls;
 - (g) Members of the armed forces of the State;
- (2) Wilful destruction of, or damage to:
 - (a) Public buildings or other public property;
 - (b) Means of communication and transport or installations belonging thereto;
 - (c) Property belonging to public utility undertakings;

(3) Any wilful act calculated to endanger the lives of members of the public, and in particular interference with the working of means of communication, the use of explosives or incendiary materials, the propagation of contagious diseases, or the poisoning of drinking-water or food;

(4) Manufacture, possession, export, import, transport, sale, transfer or distribution of any material or object with a view to the commission of an act falling within the present article;

(5) Wilfully giving assistance by any means whatever to a person or an accomplice of a person who does any of the acts set out above.

Article 3.

1. Each High Contracting Party should also make criminal offences:

(1) Any attempt to commit any of the acts set out in Article 2;

(2) Any conspiracy, and any direct incitement, whether successful or not, to commit any of the acts set out in Article 2, any wilful complicity and any help given towards the commission of such an act, whether the conspiracy, incitement, complicity or help takes place or is given in the country where the act is, or is to be, committed or in another country.

2. Acts of participation in the offences dealt with in the present Convention will be treated as separate offences when the persons committing them can only be brought to trial in different countries.

3. The as to obligation incitement shall be without prejudice to any rules of domestic law as to treating incitement which has not taken place in public and has not been successful as a criminal offence.

Article 4.

No distinction should be made as regards the protection afforded by the criminal law between acts falling under Articles 2 and 3 which are directed against the State itself, its nationals or its property, and the same acts when directed against another High Contracting Party, his nationals or his property, but this provision is without prejudice to the characterisation of offences and other special provisions of national law, in relation to certain persons mentioned at point (1) of Article 2.

Article 5.

1. In countries where the principle of the international recognition of previous convictions is accepted, foreign convictions for the offences 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. In countries where the principle of the extradition of nationals is not recognised, 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 punishable 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. This provision does not apply if in similar circumstances the extradition of a foreigner cannot be granted.

Article 8.

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 punished as though the act had been committed in the territory of that High Contracting Party, if the following conditions are realised—namely, that:

(a) Extradition has been demanded and could not be granted for a reason independent of the act itself;

(b) The law of the country of refuge, as a general rule, considers prosecution for offences committed abroad admissible;

(c) The foreigner is a national of a country which, as a general rule, considers the prosecution of foreigners for offences committed abroad admissible.

Article 9.

1. 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 as between themselves recognise the acts set out in Articles 2 and 3 as extradition crimes.

3. Extradition shall be granted in conformity with the law of the country to which application is made and be conditional on reciprocity.

Article 10.

Where in virtue of the present Convention a High Contracting Party has to bring to trial a person accused of one of the offences provided for by Articles 2 and 3, the law of that High Contracting Party shall determine what court shall have jurisdiction to try such person.

Article 11.

1. The carrying, possession and distribution of firearms (other than smooth-bore sporting-guns) and of munitions 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 objects.

2. Manufacturers of firearms (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, and to keep a register of the names and addresses of purchasers.

Article 12.

1. The following acts should be punishable without regard to whether the passports or equivalent documents concerned are national or foreign, and without regard to the purpose with which the act was performed:

(1) Any fraudulent manufacture or alteration;

(2) The bringing into the country, the obtaining or the possession of forged or falsified passports or equivalent documents knowing them to be such;

(3) The obtaining of passports or equivalent documents by means of false declarations or documents;

(4) The utilisation of passports or equivalent documents which are forged or falsified or were made out for a person other than the bearer.

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

Article 13.

Each High Contracting Party should take on his territory appropriate measures to prevent any activity contrary to the purpose of the present Convention.

Article 14.

1. The results of the investigation of offences provided for in Articles 2 and 3 shall 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 and 3 and should, as far as possible, keep itself 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 offence provided for in Articles 2 and 3, even if it is only a contemplated offence, such notification to be accompanied by descriptions, copies and photographs;

(b) Any search after, 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, 11 and 12.

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 contemplated by 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 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.

The High Contracting Parties agree that any disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations or by an arbitration arranged between the parties, be referred for decision to the Permanent Court of International Justice. If any or all of the High Contracting Parties who are parties to such a dispute should not be parties to the Protocol of December 16th, 1920, relating to the Permanent Court of International Justice, the dispute shall be referred, at the choice of the parties and in accordance with the constitutional procedure of each party, either to the Permanent Court of International Justice or to a court of arbitration constituted in accordance with the Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, or to some other court of arbitration.

Article 20.

1. The present Convention, of which the French and English texts are 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 which was represented at the Conference which drew up the present Convention or to which a copy is communicated by the Council of the League of Nations.

2. The present Convention shall be ratified, and the instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify their receipt 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 on behalf of any Member of the League of Nations and any of the non-member States referred to in Article 20 on whose behalf it has not been signed.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who will 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 ready 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 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 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, overseas territories, or the territories under his suzerainty or territories in respect of which a mandate has been confided 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, overseas territories, or the territories under his suzerainty or territories in respect of which a mandate has been confided to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt thereof 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 the declarations and notifications received in virtue of the present Article.

Article 25.

The present Convention shall not come into force until . . . ratifications or accessions on behalf of Members of the League of Nations or non-member States have been deposited. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the . . . th ratification or accession.

Article 26.

After the coming into force of the Convention in accordance with Article 25, each subsequent ratification or accession shall take effect on the ninetieth day from the date of its receipt by the Secretary-General of the League of Nations.

Article 27.

The present Convention may be denounced on behalf of any Member of the League of Nations or non-member State by a notification in writing addressed to the Secretary-General of the League of Nations, who will 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 operate only in respect of the Member of the League or non-member State on whose behalf it was notified.

Article 28.

The present Convention shall be registered by the Secretariat of the League of Nations on the date of its coming into force.

Appendix II.

DRAFT CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT.

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 of to-day's date is hereby established.

Article 2.

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

Article 3.

1. In the cases referred to in Article 10 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, 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.

Article 4.

The Court shall be composed of a body of judges chosen regardless of their nationality from amongst 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 appointment to judicial office in their own countries.

Article 5.

The Court shall consist of five regular judges and five deputy judges, each belonging to a different nationality.

Article 6.

1. Any Member of the League of Nations, and any non-member State, in regard to 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 will be requested to choose the regular and deputy judges from the persons so nominated.

Article 7.

1. Judges hold office for ten years. They may be re-appointed.
2. Judges shall continue to discharge their duties until their places have been filled.
3. Though replaced, judges shall finish any cases which they may have begun.

Article 8.

A judge appointed in place of a judge whose period of appointment had not expired will 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. Every two years, one regular and one deputy judge shall retire.
2. The order of retirement shall, in the first instance, be determined under the authority of the Council of the League of Nations by drawing lots.

Article 11.

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.

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 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 whose territory the offence was committed. Any dispute as to what is the applicable substantive law shall be decided by the Court.

Article 18.

If, for some special reason, a member of the Court considers he should not sit to hear a particular case, he shall so notify the President so 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.

Article 20.

Where 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.

So soon as the Court is seized of a case, the President 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.

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.

Article 23.

Any State or person injured by an offence may constitute itself or himself *partie civile* before the Court, inspect the file and submit a statement of its case to the Court.

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 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 thereto.

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 States mentioned in Article 21 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 regular members of a Bar who have been approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused and approved by the Court, the Court shall assign to each accused person not having an approved counsel for his defence a counsel selected from advocates duly admitted to a Bar.

Article 30.

1. The hearings before the Court shall be public.

2. Where, nevertheless, the Court decides, by a reasoned and unanimous judgment, that to hear particular witnesses or experts in public would be calculated to prejudice good international relations, it may decide that such hearing shall take place *in camera*.

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. 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.
3. The provisions of the preceding paragraph shall also apply where pecuniary penalties inflicted by the Court or costs of proceedings have to be recovered.

Article 36.

1. Sentences involving loss of liberty shall be executed, unless the Court otherwise decides, by the State whose substantive criminal law has been applied.
2. The Court shall determine the way in which any fines shall be dealt with.

Article 37.

Where sentence of death has been pronounced, the State on whose territory such sentence is to be executed shall be entitled to substitute therefor the penalty which, under the law applied by the Court, comes next in order of severity.

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

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 of 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 the next following article.

Article 44.

The High Contracting Parties agree that any disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations, be referred for decision to the Permanent Court of International Justice. If any or all of the High Contracting Parties who are parties to such a dispute should not be parties to the Protocol of December 16th, 1920, relating to the Permanent Court of International Justice, the dispute shall be referred, at the choice of the parties and in accordance with the constitutional procedure of each party, either to the Permanent Court of International Justice or to a court of arbitration constituted in accordance with the Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, or to some other court of arbitration.



Article 45.

1. The present Convention, of which the French and English texts are 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 or non-member State on whose behalf the Convention for Prevention and Punishment of Terrorism of to-day's date has been signed.

2. The present Convention shall be ratified and the instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph. Ratification shall only be allowable if the Member of the League or non-member State has ratified the Convention for Prevention and Punishment of Terrorism.

Article 46.

1. After . . . the present Convention shall be open to accession on behalf of any Member of the League of Nations and any of the non-member States referred to in Article 45 on whose behalf the Convention for Prevention and Punishment of Terrorism has been ratified but the present Convention has not been signed.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who will notify their receipt to all the Members of the League and to the non-member States referred to in Article 45.

Article 47.

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, overseas territories, or the territories under his suzerainty or territories in respect of which a mandate has been confided 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, overseas territories or the territories under his suzerainty or territories in respect of which a mandate has been confided to him. The Convention shall, in that case, cease to apply to the territories named in such declaration one year after the receipt thereof 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 all the non-member States the declarations and notifications received in virtue of the present Article.

Article 48.

The present Convention shall not come into force until . . . ratifications or accessions on behalf of Members of the League of Nations or non-member States have been deposited. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the . . . ratification or accession.

Article 49.

After the coming into force of the Convention in accordance with Article 48, each subsequent ratification or accession shall take effect on the ninetieth day from the date of its receipt by the Secretary-General of the League of Nations.

Article 50.

1. The present Convention may be denounced on behalf of any Member of the League of Nations or non-member State by a notification in writing addressed to the Secretary-General of the League of Nations, who will inform all the Members of the League and the non-member States referred to in Article 45. Such denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations, and shall operate only in respect of the Member of the League or non-member State on whose behalf it was notified.

2. Denunciation of the Convention for the Prevention and Punishment of Terrorism shall *ipso facto* involve denunciation of the present Convention.

Article 51.

A case brought before the Court before denunciation of the present Convention, or the making of a declaration as provided in Article 47, paragraph 3, shall, notwithstanding, continue to be heard and judgment be given by the Court.

Article 52.

1. The present Convention may be amended, either by the procedure by which it was concluded or by negotiations between the High Contracting Parties.

2. If the amended Convention does not secure acceptance by all the High Contracting Parties, it may notwithstanding be put into force by the majority of those Parties after three months' notice to the other High Contracting Parties.

3. At the end of the three months, the present Convention shall cease to be in force.

Article 53.

The present Convention shall be registered by the Secretariat of the League of Nations on the date of its coming into force.

Appendix III.

REPLIES FROM GOVERNMENTS ¹ RECEIVED AFTER THE FIRST SESSION OF THE COMMITTEE.

Argentine Republic.

[*Translation.*]

August 8th, 1935.

The Ministry for Foreign Affairs and Worship of the Argentine Republic has the honour to refer to the Circular Letter of the Secretary-General of the League of Nations (219.1934.V), and to transmit to him, for information, the following report by the police of the Federal capital:

With a view to the suppression of all criminal activities, the police keep a constant watch upon the movements of all suspected persons. Such being the case, they devoted special attention to preventing incitement to and the commission of terrorist offences. Joint international action by the Governments with a view to the suppression of such offences—as advocated in the attached report—would make for success in this sphere by ensuring full co-operation between the various countries, all of which are equally affected by the dissemination of extremist ideas; so dangerous indeed is the character of these ideas that their propagation has created a serious problem. The police, after consideration of the proposals for the suppression of such offences, are accordingly of opinion that the following suggestions might perhaps represent a useful contribution to the achievement of the end in view.

The pooling of information, which is a condition of the proposed co-operation, should take the form of an exchange of particulars regarding known or suspected terrorists, such as fingerprints, full details of parentage and previous history, together with photographs and the chief characteristics of the activities of such persons: constant supervision of all bodies, organisations, etc., which cannot establish their *bona fide* character and, more particularly, a close watch upon groups of suspected individuals; the immediate dissolution of any body proved to be contemplating terrorist action; the detention and careful identification of the members of such organisations without prejudice to the appropriate legal penalties, etc., together with confiscation of all periodicals, books, pamphlets or other publications designed to further terrorist propaganda, and the deportation to their own countries of all individuals regarded as dangerous.

Egypt.

[*Translation.*]

September 29th, 1935.

I have the honour to inform you that the Egyptian Government is in full sympathy with the aims of the Council of the League of Nations in taking steps for the framing of a preliminary draft international Convention to ensure the repression of conspiracies or crimes committed with a political and terrorist purpose.

¹ The first series of replies is reproduced in document C.184.M.102.1935.V, Appendix IV.

While expressing its agreement with regard to the proposed bases for the conclusion of the above-mentioned international Convention, the Government feels bound to draw the Committee of Experts' attention to the fact that in view of the existence in its territory of the consular courts of the Capitulation Powers, it considers that recourse to the International Criminal Court should be compulsory whenever any offence, which in the Egyptian Government's opinion constitutes an act of political terrorism, is committed in Egyptian territory by a national of any of the Capitulation Powers. In such cases, it would be for the Egyptian Government, the public peace of whose territory and the harmony of whose international relations having been disturbed by the said offence, to send the guilty person for trial before the International Criminal Court.

Furthermore, as regards the rules applicable to passports and identity papers, provision should be made for a stipulation similar to that included in the Convention on the control of the international trade in arms (Article 30) to the effect that the Capitulation Powers would undertake to punish offences of this kind committed by their nationals in the territory of the foreign State, with the same penalties as those laid down by their national laws and applicable in their territory. The Egyptian Government, for its part, is prepared, failing the application of penalties by the consular courts, to undertake to expel any foreigner guilty of any of the offences enumerated in paragraph C¹ of the bases for the conclusion of the Convention.

In the last place, the Egyptian Government agrees to exclude, in its relations with all other States, whether parties to Capitulations or not, assassination from the category of political offences not giving rise to extradition both in the application of extradition treaties and in extradition on the basis of reciprocity.

Netherlands.

[*Translation.*]

September 5th, 1935.

With reference to the Circular Letter of the Secretariat of the League of Nations dated December 27th, 1934 (219.1934.V), concerning the international repression of terrorism, and after reading the report submitted to the Council on the first session of the Committee set up for this purpose, the Netherlands Government desires to submit the following observations and to request the Secretary-General to transmit them to the members of the said Committee in order that it may be aware of them before it meets for its second session.

The French Government in its memorandum and in the French representative's speech in the Council of the League of Nations on December 8th, 1934, expressed the opinion that there was every ground for considering whether international solidarity imposed on every State the duty of co-operating as far as possible in the repression of terrorist crimes for a political purpose. The Netherlands Government shares this opinion in principle; but it considers that the great divergences which at present exist in several countries as regards the fundamental bases of national policy calls for some caution in this connection.

The preliminary draft suggests in Article 2 that each State should render punishable a series of political offences. Most of these are offences which in several countries, including the Netherlands, are already punishable when they concern the country itself. The Netherlands Penal Code also renders punishable certain political offences directed against a foreign State; for example any attempt on the life or liberty of a reigning prince or other head of State is punishable.

As regards Article 2, the Netherlands Government supposes that it does not refer to offences which are not of an international character—*i.e.*, an offence committed by a national against his own State in the territory of that State, without the criminal having gone to another country. On this understanding, the Netherlands Government is prepared to consider an extension of the category of punishable offences as proposed in Article 2; but it cannot accept the text of Article 2 as drafted by the Committee. It considers that the enumeration of the categories of offences which are to be covered by the Convention is much too wide. In the Government's opinion, it would be desirable to limit the offences covered by this article both as regards the persons against whom they are directed and as regards the nature of the offences. The same applies to the later paragraphs of Article 2. If it is desired to render punishable all kinds of incitements and all attempts to commit the offences provided for in the first three paragraphs, too wide a field is covered. In the same connection, attention is drawn to the eighth paragraph, in which reference is made, not only to assistance given to the criminal himself, but also to assistance given to an accomplice of that criminal. Particularly as regards preparatory acts, the Netherlands Government considers that, in the campaign against terrorism, freedom of speech should only be limited to the extent that is strictly necessary.

The Netherlands Government also wishes to lay stress on the necessity of clearly defining the relation between Article 1 and Article 2. It supposes that the Committee has rightly wished to indicate that the offences mentioned in Article 2 only come within the scope of the Convention if they are covered at the same time by the definition given in Article 1. In other words, the term "intentional" which occurs several times in Article 2 means that the offences in question must be committed for the purpose of causing a change in or impediment to the operation of the public authorities or services of the contracting parties or a disturbance of international relations. The Netherlands Government suggests that the relation between Article 1 and Article 2 would be made clearer by reproducing Article 1 in the form of a preamble and by inserting in Article 2—which would then become Article 1—a very precise reference to the preamble.

¹ See document C.184.M.102.1935.V, page 23.

The last paragraph of Article 2 seems somewhat obscure; it would be preferable to replace it by the text contained in the Roumanian Government's memorandum (page 17, No. 6, paragraph 4):

“ Acts of participation in the offences covered by the Convention should be deemed to be separate offences when committed in different countries.”

As regards Article 3, the Netherlands Government does not think it advisable to forbid States wishing to do so to make a distinction in their penal codes, in the scale of punishment for offences mentioned in Article 2, between acts directed against the State itself, its nationals or property, and acts directed against another contracting party or his nationals or property.

As the Netherlands does not recognise the principle of the international recognition of previous convictions, our Government is not concerned with the first paragraph of Article 4. As regards the second paragraph, the question of the recognition by other States of legal incapacity, etc., referred to here seems to be of too general a nature for a rule in this connection to be inserted in a draft Convention on terrorism.

In the Netherlands, in which the principle of the extradition of nationals is not recognised, and to which Article 6 therefore applies, Article 5 of the Penal Code stipulates that the Netherlands law covers any act committed by a Netherlands national abroad, on condition that this act constitutes a crime according to Netherlands penal law and is at the same time punishable under the law of the country in which it was committed. Nevertheless, Article 6 would not be wholly acceptable, unless the enumeration contained in Article 2 was considerably modified.

As regards Article 7, the Netherlands Government was doubtful as to the meaning of the expression “ a country whose internal legislation recognises as a general rule the principle of the prosecution of offences committed abroad ”. Would, for example, the Netherlands, which, in the above-mentioned Article 5 of its Penal Code, allows in certain cases for the prosecution of offences committed abroad, be considered as belonging to the category of countries covered by this article? If, so, the Netherlands Government could not accept Article 7 in the general form given to it by the Committee. In particular, in the Netherlands Government's opinion, penal law should not be made applicable to offences directed against a foreign State and committed by a foreigner outside its territory.

Article 8 regarding extradition gives rise to the following observations:

The Netherlands, which makes extradition conditional on the existence of a treaty, is not prepared to consider all the offences referred to in the present Article 2 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 allowed for political offences. In view of the wide 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 traditions as regards the hospitality offered to political refugees.

In Article 12, it would seem advisable to delete the words “ of foreigners ”, since States must also take appropriate measures to prevent any activity “ of nationals ” in the connection referred to.

In the Netherlands Government's opinion, it will be necessary to stipulate clearly the idea of reciprocity between the contracting parties as a basis for the new Convention. In this connection, it would be well to replace in some of the articles the expression “ abroad ” by the expression “ in the territory of one of the High Contracting Parties ”.

Her Majesty's Government considers that the establishment of an international jurisdiction would no doubt offer advantages. Particularly in cases in which the State on whose territory the accused has taken refuge objects to extraditing the accused to the injured State, proceedings before an international court might be a useful device likely to relieve the strain between the nations involved. Thus, the objections put forward above to the extension of extradition might be attenuated by the institution of an international court and by the application of Article 9 of the draft Convention.

Nevertheless, an examination of the provisions drawn up by the Belgian, French, Roumanian and Spanish members of the Committee with regard to the organisation and working of such a Court leads us to believe that the actual establishment of such an international jurisdiction may still encounter many obstacles; for there are numerous questions for which no satisfactory solution has yet been found. The Netherlands Government ventures to mention a few of these questions below.

As regards the composition of the Court, the chief aim must be to guarantee the absolute impartiality of this new organ. The Netherlands Government wonders whether it would not be preferable to modify Article 21 on these lines by introducing the rule contained in the Statute of the Permanent Court of International Justice, which lays down that the Assembly and the Council shall proceed to the election of judges independently of one another.

The Netherlands Government wishes to thank the delegations which drew up the rules for the Court for suggesting that The Hague should be chosen as the seat of the new international jurisdiction. While associating itself in principle with the rules contained in the draft with regard to the seat of the Court, our Government wishes to suggest that the court itself should also be entitled to decide whether it should sit in the territory of the contracting party which desires to send a person for trial before the Court; on the basis of the present text of Article 33, paragraph 2, the Court would not possess this right.

Article 34, paragraph 2, also seems to give too much latitude to the contracting party who sends a person for trial before the Court; a general rule in this connection would be preferable.

Contrary to Article 35, paragraph 1, the Netherlands Government would prefer not to entrust the presidency of the Court to a judge who is a national of a State specially concerned in the case.

Articles 40 to 44 regarding preliminary investigations will not be sufficient in cases in which such investigations have not yet taken place in the territory of the State which has brought the case before the Court.

Articles 56 and 57, which deal with the execution of the sentence, raise several questions. Can a State on whose territory the Court has sat and to which the latter has applied with a view to the execution of the penalty be expected to give effect to this request if that State is not itself responsible for the choice of the seat? As regards Article 57, it should be borne in mind that the penalty which is regarded as the next lighter penalty by the law which the Court has applied might be one which could not be applied in the State in whose territory it would have to be executed; an example is the Netherlands, in which not only the death penalty does not exist, but the Penal Code provides neither for forced labour nor deportation.

In the Netherlands Government's opinion, the Council of the League of Nations, which is an eminently political body, does not seem to be an appropriate body for exercising the right of pardon referred to in Article 58.

As regards Article 59, paragraph 2, allowance must be made for cases in which the law that has been applied makes no provision for revision of cases.

2. REPORT ADOPTED BY THE COUNCIL ON JANUARY 23RD, 1936.

[C.60.1936.V.]

On December 10th, 1934, the Council adopted a resolution setting up a Committee of experts, to be designated by certain Governments selected by the Council, for the purpose of studying the question of international co-operation against terrorism, and drawing up a preliminary draft international Convention on the subject. The Council referred to the Committee for consideration certain suggestions formulated by the French Government and any suggestions which other Governments might desire to make. A number of Governments, accordingly, sent proposals and observations to the Committee. Included among the suggestions of the French Government was a proposal for the establishment of an international criminal court competent in certain contingencies to try persons accused of acts of terrorism.

A report on the first session of the Committee, held in April-May 1935, was drawn up by the Committee and circulated to the Council and the Members of the League (document C.184.M.102.1935.V).

As the result of a second session in the present month, the Committee has now presented to the Council a report putting forward a draft Convention for International Prevention and Punishment of Terrorism and a draft Convention for the Creation of an International Criminal Court. Differences of opinion existed in the Committee as to the principle and utility of the establishment of the international criminal court, and it was, therefore, thought wise to embody the provisions dealing with this subject in a separate instrument which the parties to the Convention dealing with terrorism would be free to accept or not.

The Council's resolution of 1934 provided that the procedure laid down for the conclusion of conventions in a resolution of the Assembly of September 25th, 1931, should be followed. In accordance with this procedure, the Committee asks that the Council will circulate its report and the annexed draft Conventions to the Governments for their observations, and that the report and draft Conventions, together with the Governments' observations, shall be submitted to the Assembly at its session of this year. The Committee further suggests that the Assembly, as it is entitled to do under its resolution of 1931, should consider this year whether the procedure laid down in the resolution might not be shortened and a diplomatic conference for consideration of the draft Conventions be convened in 1937. If necessary, the Committee could meet before the conference to make any alterations in the drafts which might seem desirable in the light of the Governments' observations and the discussion in the Assembly.

It is not necessary for the Council to discuss the work of the Committee now. I propose that it should accept the procedure recommended by the Committee and accordingly adopt the following resolution:

“ The Council,

“ Having received the report of the Committee for the International Repression of Terrorism:

“ Directs the Secretary-General to transmit the report to the Governments of the Members of the League and of Germany, the United States of America, Brazil, Costa Rica, Danzig, Egypt and Japan, with the request that these Governments will be so good as to transmit to him, by July 15th next, any observations which they may wish to make;

“ And decides to place the report of the Committee, together with the draft Conventions and the Governments' observations, on the agenda of the next ordinary session of the Assembly.”
