complete and final settlement of the question of reparations and of the constitution for this purpose of a committee of financial experts nominated by the six governments.[30] On December 22, 1928, the terms of reference to the committee were announced as follows:

> The Belgian, British, French, German, Italian and Japanese Governments, in pursuance of the decision reached at Geneva on September 16, 1928, whereby it was agreed to set up a committee of independent financial experts, hereby entrust to the Committee the task of drawing up proposals for a complete and final settlement of the reparation problem. These proposals shall include a settlement of the obligations resulting from the existing treaties and agreements between Germany and the creditor Powers. The committee shall address its report to the governments which took part in the Geneva decision and also to the Reparation Commission.[31]

The committee was constituted with two experts of the six nationalities mentioned in the terms of reference, and two American experts appointed by the German Government and the Reparation Commission acting jointly. Each expert appointed an alternate. The first regular meeting of the committee was held in Paris on February 11, 1930, and after holding continuous sessions over a period of seventeen weeks, the committee submitted its report on June 7, 1929. The text of the report is printed in the Supplement to this JOURNAL, page 81. Its provisions will be commented on in the next issue of the JOURNAL.

GEORGE A. FINCH.

THE CONCILIATORY POWERS OF THE WORLD COURT: THE CASE OF THE FREE ZONES OF UPPER SAVOY

In the order handed down on August 19, 1929, by the Permanent Court of International Justice in the dispute between France and Switzerland concerning the Free Zones of Upper Savoy and the District of Gex (Series A, No. 22) occurs the following notable paragraph as part of the considerations upon which the order is grounded:

> Whereas the judicial settlement of international disputes, with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such disputes between the parties; as consequently it is for the Court to facilitate so far as is compatible with its Statute, such direct and friendly settlement.

The question whether the court has jurisdiction under the statute to settle disputes by conciliatory procedure, either *ex officio* or by agreement of the parties, is of great importance. France and Switzerland, after protracted

[30] Final Act of the Hague Conference, Jan. 20, 1930. British Parliamentary Papers, Misc. No. 4 (1930), Cmd. 3484, p. 14.

[31] Report of the Committee of Experts, Supplement to this JOURNAL, p. 81.

negotiations, were unable to agree upon the interpretation of Article 435, paragraph 2, of the Treaty of Versailles, relating to the abrogation of the treaties of 1815 and supplementary acts neutralizing the Free Zones of Upper Savoy and the Gex District. France contended that the agreement with Switzerland entered into before the Treaty of Versailles gave the effect of abrogating the system established at the Congress of Vienna and permitted France to adjust her customs line in this region in conformity with the political frontier. Switzerland, on the other hand, contended that as between herself and France, Article 435, paragraph 2, with its annexes, was not intended to lead necessarily to the abrogation of the old system, but simply that the parties might abrogate it by mutual consent. It is true that paragraph 1 speaks of the agreement reached between the two parties as being one for the abrogation of the old stipulations; but in paragraph 2 the old system is spoken of only as "no longer consistent with present conditions and that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries."

Switzerland is not a party to the Treaty of Versailles and refused to acquiesce in its provisions as thus interpreted. The parties therefore submitted the dispute to the court by special agreement under which (1) the court is to determine whether the old system was abrogated by the Treaty of Versailles, having regard to all relevant facts anterior to the treaty; (2) as soon as it has concluded its deliberation on this question, and before rendering any judgment, the court is to "accord the two parties a reasonable time to settle between themselves the new régime to be applied in those districts, under such conditions as they may consider expedient"; (3) failing the conclusion and ratification of a convention between the two parties, the court shall pronounce in a single judgment its decision upon the question of abrogation, and also settle the status of the territories for a period to be fixed by the court.

It will be seen, therefore, that the parties thus requested the court to give an interlocutory decision closely resembling an advisory opinion; then to initiate conciliatory procedure to permit of a voluntary agreement between the parties; and finally, failing a compromise, to adjust the controversy by itself fixing the status as well as the period during which the conditions shall continue. The court decided that the clauses of the Treaty of Versailles were intended only to leave the settlement of the status of the territories to France and Switzerland, excluding the intervention of any other Powers, though they may have been parties to the Treaty of Vienna or subsequent acts; that Switzerland not being a party to the Treaty of Versailles, was bound by it only to the extent to which she had acquiesced; and the court fixed a period ending May 1, 1930, within which the parties are to settle between themselves the new régime to be applied.

We are not concerned here with the merits of the controversy but with the

extent of the jurisdiction which the court conceives itself to have in promoting conciliation under a voluntary agreement. Fortunately, the court refused to agree to communicate the result of its deliberations as requested by the parties, in advance of a decision. Article 54, paragraph 3, of the statute requires that "the deliberations of the Court shall take place in private and remain secret." Any unofficial communication of the results of its deliberation is prohibited under Article 58. Even Article 32 of the rules, permitting the parties to propose variations in procedure for a particular case, subject to adoption by the court, could not override the mandatory provisions of the statute. The course of proceeding requested by France and Switzerland was not necessary to any function of conciliation which the court might possess. Indeed, to indicate in advance the result of its deliberations upon only a portion of the issues, besides being undignified, might easily lead to bargaining rather than to a composition of differences with an approach to justice. The court very wisely refused to comply with the terms of submission, holding them to be in contravention of the statute. It did, however, take upon itself a function of conciliation in entering its interlocutory order by which the parties are accorded a period expiring May 1, 1930, to reach an agreement upon the new régime.

The question whether the court has power under its fundamental law thus to facilitate "direct and friendly settlement" is open to argument. It does not seem to be the kind of order contemplated by Article 48 of the statute. If an interpretation without judgment is in essence an advisory opinion, the request should have proceeded from the Council or the Assembly of the League of Nations, under Article 14 of the Covenant and Article 72 of the Rules of Court. Judges Nyholm and Negulesco and Judge *ad hoc* Dreyfus do not agree with the reasoning of the court though they concur in the order. But Judge Pessoa remarks that as a judgment is ruled out by the agreement of submission and an advisory opinion had not been asked for by the Council or the Assembly, the court should have refused to entertain the case. The court itself seems to have sensed some irregularity because it points out that "special agreements whereby international disputes are submitted to the court should *henceforth* [italics ours] be formulated with due regard to the forms in which the court is to express its opinion according to the precise terms of the constitutional provisions governing its activities."

As the purpose of the court is to settle international disputes, though by judicial means, it may be found that the court is at present too restricted in the control over its own procedure, especially in the matter of facilitating agreement between the parties. There would seem to be no sufficient reason why the court should be limited, as it is under Article 48 of the statute, to make orders only "for the conduct of the case." In the Mavrommatis case (Judgment No. 11) the court interpreted its powers strictly in regard to the execution of a readaptation agreement between the parties,

ordered by its judgment in a prior submission. It has indicated in the present case that the order entered for voluntary adjustment is to be deemed exceptional. It would seem necessary and proper, however, for the court to have such power as part of its function of determining disputes under voluntary submissions. Such power would not extend its jurisdiction. It would serve to develop its usefulness as a court of conciliation where the conciliatory process is needed to supplement the determination of justiciable issues.

ARTHUR K. KUHN.

REVISING THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The committee of jurists which framed the Statute of the Permanent Court of International Justice in 1920 of necessity trod many new paths. The Permanent Court of Arbitration, the still-born Court of Arbitral Justice and the short-lived Central American Court of Justice afforded some precedents but failed to meet all the problems. The practical success of the plan evolved by the experts is a lasting testimonial to their wisdom and ingenuity. It would, however, be very surprising if years of operation did not reveal the possibility of improving some details. The realization of this seems to have animated the Assembly's resolution of September 20, 1928, which suggested to the Council the desirability of examining the Statute with a view to amending it in so far as experience demonstrated the desirability of amendments. The election of an entire new bench in September, 1930, indicated that the time was appropriate. There was no thought of radical change or of total revision. It might have been a wiser procedure to let the court itself take the initiative in this matter, but national precedents do not indicate that such privilege has commonly been accorded to the judiciary.

Pursuant to the Assembly's resolution, the Council appointed a committee of experts composed of MM. Scialoja (Chairman), van Eysinga, Fromageot, Gaus, Sir Cecil Hurst, Ito, Pilotti, Politis, Raestad, Elihu Root, Rundstein and Urrutia. The committee was assisted by M. Osusky, Chairman of the Supervisory Commission, and by Judges Anzilotti and Huber, President and Vice President of the court. The Registrar of the court, M. Hammarskjöld, was also present and rendered valuable assistance. The committee met in Geneva on March 11, 1929; its consideration of the problem of the accession of the United States has already been editorially considered in this JOURNAL.[1] The report of the committee was submitted to the Council and approved by it on June 12, 1929. It was discussed and slightly revised by a Conference of the Signatory States which met in Geneva in September. Finally, the report of the Signatory States was approved by

[32] See the writer's comment, this JOURNAL, Vol. 22, p. 383.

[1] January, 1930 (Vol. 24), p. 105. See also the recent Publication No. 44 of the Department of State, entitled "The United States and the Permanent Court of International Justice."