LEAGUE OF NATIONS

COMMITTEE FOR THE INTERNATIONAL REPRESSION OF TERRORISM

REPORT TO THE COUNCIL ON THE FIRST SESSION OF THE COMMITTEE

Held from April 30th to May 8th, 1935.

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REPORT TO THE COUNCIL ON THE FIRST SESSION OF THE COMMITTEE.

The Committee for the International Repression of Terrorism was set up under the following 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."

In accordance with the above resolution, the Committee was constituted as follows:

His Excellency Count Carton de Wiart (Belgium), President.

Sir John Fischer Williams, C.B.E., K.C. (United Kingdom of Great Britain and Northern Ireland); substitute—Mr. L. S. Brass.

M. E. J. Gajardo (Chile).

His Excellency M. Juan Manuel Cano y Truera (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; substitute—M. Fouques-Duparc.

M. Béla de Szent-Istvany (Hungary), Ministerial Councillor at the Ministry for Foreign Affairs; substitute—M. Eugène Asztalos, Chief of Section at the Ministry of Justice; experts—Colonel vitéz Aloyse Beldy and Dr. Joseph Sombor-Schweinitzer.

M. Ugo Aloisi (Italy), President of Chamber of the Court of Cassation of the Kingdom of Italy; substitute—Professor Tommaso Perassi, Professor of Law at the University of Rome.

His Excellency M. Titus Komarnicki (Poland), Permanent delegate to the League of Nations; substitute—M. Lucien Bekerman.

His Excellency M. V. V. Pella (Roumania) Minister plenipotentiary, Professor at the Faculty of Law in Jassy; substitute—M. Slavko Stoykovitch, Extraordinary Professor at the Faculty of Law in Belgrade.

M. E. Delaquis (Switzerland), Professor at the University of Geneva.

M. Eugène Hirschfeld (Union of Soviet Socialist Republics), Councillor of Embassy of the Union of Soviet Socialist Republics.

The Committee as above composed held its first session at Geneva from April 30th to May 8th, 1935.

In execution of its terms of reference, and after having elected as its Chairman His Excellency Count Carton de Wiart, the Committee examined the proposals of the French Government and the observations and proposals which had been received from the Governments of Austria, China, Cuba, Denmark, Estonia, Guatemala, Hungary, India, Latvia, Roumania, Turkey, United States of America and Yugoslavia (Appendix III).

A draft Convention and explanatory memorandum drawn up by the Executive Bureau of the International Criminal Police Commission was also communicated to the Committee.

After a statement by the French delegate, who explained the scope of his Government’s proposals, and after a general exchange of views which enabled the other members to state their

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1 See Appendix IV.
opinions on the problem as a whole, the Committee took as the basis of its work a preliminary
draft drawn up by Professor Pella (document C.R.T.5).

The Committee found it advisable to express its views in the shape of a series of articles.
The adoption of the provisions drawn up by the Committee, which are intended to constitute
the first part of a Convention, was subject to a review in which the exact scope of certain of
these provisions may, if necessary, be finally defined.

The provisions adopted by the Committee will be found in Appendix I to the present document.
It should, however, be stated that, for the moment, the Committee has not pronounced upon
Article 9 of this Appendix. The Article serves solely to show the system contemplated by some
members of the Committee in the eventuality of an international criminal court's being set up.

Moreover, the second paragraph of Article 10 was inserted provisionally with a view to a
more thorough study of the question with which it deals during the Committee's next session.

The Committee has only had a general exchange of views on the subject of creation of an
international criminal court. It has reserved for its next session all decisions of principle on
this matter.

Nevertheless, a draft scheme and introductory note were submitted to the Committee by
the Belgian, French, Roumanian and Spanish delegates with the object of enabling the practical
aspects of the matter to be examined. This draft and accompanying note will be found in
Appendix II.

In thus notifying the Council in the present report of the point which its work has reached,
the Committee has the honour to inform the Council that it intends to hold another session on
a date following closely upon the close of the next Assembly of the League of Nations with a
view to drawing up the final report and the preliminary draft Convention which it has been
asked to frame.

May 8th, 1935.

(Signed) CARTON DE WIART,
Chairman.
Appendix I.

TEXTS ADOPTED BY THE COMMITTEE.

FIRST PART OF THE CONVENTION.

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.

The following should be punishable:

1. Intentional acts directed against the life, body, health or liberty of:
   a. Heads of States or persons exercising the prerogatives of the Head of the State or Crown Princes;
   b. Members of the Government;
   c. Diplomatic representatives;
   d. Members of constitutional, legislative, or of judicial bodies.

2. Intentional causing of a disaster by impeding the working of rail, air, sea or river communications, or interrupting certain public or public utility services; intentional causing of a disaster of any kind by employment of explosives or incendiary materials, propagation of contagious diseases, poisoning of drinking-water or food products; any other intentional act which creates a public danger imperilling human life.

3. Intentional destruction by means capable of creating a public danger of public buildings, ways and means of transport and communication and the equipment belonging thereto, waterworks, lighting, heating or power stations belonging to public services or public utility services.

4. Successful incitement to or wilful participation in or attempts to commit the acts mentioned in paragraphs (1), (2) and (3) of the present article.

5. The formation of an association or the entering into a conspiracy for the commission of the acts mentioned in paragraphs (1), (2) and (3) of the present article.

6. Incitement by any method of publicity whatsoever to the commission of the acts mentioned in paragraphs (1), (2) and (3).

7. The manufacture, possession, export, import, transport, sale, transfer or distribution of materials or objects with the knowledge that they are intended to be used for the preparation or execution of any of the acts mentioned in paragraphs (1), (2) and (3) above.

8. The intentional assisting by any means of persons committing such acts or the accomplices of such persons.

If the acts referred to in the preceding paragraphs are committed in different countries, each of them should be considered as a distinct offence.

Article 2.

No distinction should be made 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 High Contracting Party or his nationals or property.

Article 3.

In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences mentioned in Article 2 should, within the conditions prescribed by domestic law, be recognised for the purpose of establishing habitual criminality.

In the case of High Contracting Parties whose legislation allows a foreign conviction for a criminal offence to be recognised, under the conditions prescribed by that legislation, as giving rise to a legal incapacity, disqualification or interdiction, such incapacity, disqualification or
interdiction as may have been inflicted by or may flow from such a foreign conviction will be recognised *ipso jure* or will be declared operative as the result of special legal proceedings.

**Article 5.**

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

**Article 6.**

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 Article 2 should be punishable in the same manner as if the offence had been committed in their own territory, even in a case where the offender has acquired his nationality after the commission of the offence.

**Article 7.**

Foreigners who have committed abroad any offence referred to in Article 2, and who are in the territory of a country whose internal legislation recognises as a general rule the principle of the prosecution of offences committed abroad, should be punishable in the same way as if the offence had been committed in the territory of that country.

The obligation to take proceedings is subject to the condition that extradition has been requested and that the country to which application is made cannot hand over the person accused.

**Article 8.**

The offences referred to in Article 2 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.

The High Contracting Parties who do not make extradition conditional on the existence of a treaty or reciprocity, henceforward recognise the offences referred to in Article 2 as cases of extradition as between themselves.

Extradition shall be granted in conformity with the law of the country to which application is made.

**Article 9.**

In the cases mentioned in Articles 6, 7 and 8, provided always that the High Contracting Party considers that he can prosecute or grant extradition, and also in the case of an offence mentioned in Article 2 which has been committed on the territory of a High Contracting Party, the High Contracting Party shall be entitled to send the person thought to have committed the offence for trial before the International Criminal Court provided for in the second part of the present Convention, instead of prosecuting in his own courts or extraditing such person.

**Article 10.**

The carrying, possession and distribution of fire-arms, munitions, explosives and other lethal weapons should be subjected to regulation, and it should be a punishable offence to transfer, sell or distribute them to any person failing to produce such authorisation or declaration as may be required by the domestic legislation concerning the possession and carrying of such objects.

Manufacturers of fire-arms (other than 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 11.**

The following 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;
5. The wilful issue by competent officials of passports or visas to persons known not to have the right thereto under the applicable laws or regulations for the purpose of helping any activity contrary to the purpose indicated in the first article of the present Convention.
Each High Contracting Party should take on his territory appropriate measures to prevent any activity of foreigners contrary to the purpose indicated by the first article of the present Convention.

The results of investigation of offences mentioned in Article 2 shall in each country and within the framework of the law of that country be centralised in an appropriate service.

Such service should be in close contact:

(a) With the police authorities of the country;
(b) With the corresponding services in other countries.

It should furthermore bring together all information calculated to facilitate the prevention and punishment of the acts mentioned in Article 2 and should, as far as possible, keep itself in close contact with the judicial authorities of the country.

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 mentioned in Article 2, 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 writings, arms, appliances or other objects connected with acts mentioned in Articles 2 and 11.

The High Contracting Parties shall be bound to execute letters of request in accordance with their domestic legislation and practice.

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 showing the execution of the letters of request.

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.

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.

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.

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

Execution of letters of request shall not be subject to payment of taxes or expenses of any nature whatever other than expenses of experts.

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.

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.

The present Convention does not affect the principle that the offences dealt with by it should in each country, without ever being allowed impunity, be defined, prosecuted and punished in conformity with the general rules of its domestic law.
SECOND PART OF THE CONVENTION.

[It is in this part that the provisions concerning the organisation and working of the International Criminal Court would, if adopted, be introduced.]

THIRD PART OF THE CONVENTION.

[Here would appear various formal provisions analogous to those contained in the second part of the Convention for the Suppression of Counterfeiting Currency—Articles 19 to 28.]

Appendix II.

INTERNATIONAL CRIMINAL COURT.

PROVISIONS PROPOSED BY THE BELGIAN, FRENCH, ROUMANIAN AND SPANISH MEMBERS.

Preliminary Note.

The following provisions, which are intended to be introduced in Part II of the preliminary draft, have been prepared by the Belgian, French, Roumanian and Spanish members of the Committee in order to enable the practical aspects of the question to be examined.

Part III of the preliminary draft should contain, as regards the composition of the Court, temporary provisions regulating the composition of the Court until the number of acceding States is sufficient to enable the system contemplated in this respect to be applied in full.

It might also contain a provision authorising any High Contracting Party to announce in advance that its legislation does not permit it, or that it does not intend, to refer cases to the International Criminal Court.

PART II OF THE CONVENTION:

ORGANISATION AND WORKING OF THE INTERNATIONAL CRIMINAL COURT.

Article 18.

An International Criminal Court shall be created.

The Court shall be a permanent body of judges but shall meet only when legal proceedings within its competence are taken.

Article 19.

The International Criminal Court shall consist of judges elected, without distinction of nationality, from among persons coming within either of the following descriptions:

(a) Criminologists possessing the qualifications required for appointment to the highest judicial offices in their own country or who are or have been members of courts of criminal law;
(b) Jurists who are acknowledged authorities on criminal law.

Article 20.

The Court shall be composed of five judges and five deputy judges.

Article 21.

The members of the Court shall be elected by the Council of the League of Nations from a list of persons submitted by the High Contracting Parties.

No High Contracting Party may submit more than two candidates.

Article 22.

The judges shall be elected first, and then the deputy judges.

An absolute majority of votes shall be necessary for election.

If two or more nationals of one and the same High Contracting Party are elected and have the same number of votes, the eldest alone shall be treated as elected.
Article 23.
If after three ballots there still remain seats to be filled, a simple majority shall suffice for election and if more than one candidate obtain the same number of votes, the eldest shall be elected.

Article 24.
The members of the International Criminal Court shall be elected for ten years. They shall remain in office until they are replaced. After they have been replaced, they shall continue to deal with cases which they have begun to hear.

Article 25.
A member of the Court elected to replace a member whose term of office has not expired shall complete his predecessor’s term.

Article 26.
Deputy judges shall be called upon in the order of the roster. The roster shall be drawn up by the Court on the basis, first, of priority of election and, secondly, of seniority in age.

Article 27.
One judge and one deputy judge of the Court shall retire every two years. On the first occasion, the Council shall determine by lot the order of retirement.

Article 28.
Any vacancy occurring through the expiry of a member’s term of office or for any other reason shall be filled in accordance with the rules laid down in Articles 21, 22 and 23.

Article 29.
Members of the Court may not be relieved of their functions unless, in the unanimous judgment of the other members, they have ceased to fulfil the required conditions.

Article 30.
The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 31.
The Court shall elect its President and Vice-President for two years; they shall be re-eligible. The Registry of the Court shall be the Registry of the Permanent Court of International Justice, if that Court consents.

Article 32.
The Court shall, as a rule, sit at The Hague.

Article 33.
Any High Contracting Party who, in accordance with Article 9, thinks fit to avail himself of his right to send a person for trial before the International Criminal Court shall notify the President through the Registry of the Court. He shall at the same time indicate whether the Court is to sit in his territory or at The Hague. The President shall list the case urgently. The High Contracting Party shall further be entitled to appoint a judge of his own nationality, if he has no national among the judges or deputy judges of the Court. If he avails himself of this right, the junior judge of the Court or, if two are of equal seniority, the younger of the two shall not sit.

Article 34.
If the offence was committed in the territory of the High Contracting Party indicated in Article 33, the criminal and procedural laws of that High Contracting Party shall be applied by the Court. If the offence was committed outside that territory and if the accused has taken refuge in that territory, the High Contracting Party shall indicate what law shall be applied, and shall be entitled to choose between his own law and that of the State in which the offence was committed.

Article 35.
Unless the State which has brought the case before the Court in accordance with Article 33 decides otherwise, the Court shall be presided over by the judge who is a national of that State. In other cases it shall be presided over by the President or, in his absence, by the Vice-President of the Court, elected as provided in Article 31.
Article 36.
If, for any special reason, one of the members of the Court feels that he should not sit in any particular case, he shall notify the President accordingly as soon as he is informed that the case has been brought before the Court.

Article 37.
Five members of the Court shall form a quorum.
If five judges are not available, the vacancies shall be filled by deputy judges.

Article 38.
The President of the Court shall take steps to ensure that the Court opens the hearing of every case within three months after the case has been listed.

Article 39.
If the Court is called upon, under Article 34, to apply the law of a State which has no judge sitting in that case, it may call upon one of its deputy judges who is a national of that State or, in the absence of any such deputy judge, another jurist who is an acknowledged authority on such law to sit in an advisory capacity.

Article 40.
The preliminary investigation and the collection of evidence shall be carried out, within the limits of their competence, by the organs of the State which has brought the case before the Court. That State may also appoint a representative to make a statement on the case to the Court. The file containing the results of the investigation and any exhibits shall be transmitted to the Court.

Article 41.
If another High Contracting Party or any other State thinks fit to transmit to the Court any evidence which he or it may have in his or its possession, the Court shall decide whether such evidence shall be added to the file of the case or not.

Article 42.
Within the limits laid down in Article 5, the joinder of any private parties in the proceedings before the Court shall take place within . . . days of the date on which the case was brought before the Court in accordance with Article 33.
A private party shall be notified of the results of the investigation referred to in Articles 40 and 41, according to the rules of the procedural law applicable.
A private party may submit a memorial to the Court within . . . days.

Article 43.
In accordance with the rules of the procedural law applicable, the person sent for trial to the Court shall be notified both of the results of the investigation contemplated in Articles 40 and 41 and of any private party's memorial.

Article 44.
The Court may hear witnesses and experts of its own motion.

Article 45.
As soon as the Court begins to sit, it shall decide whether the person who has been sent before it is to be placed, or to remain, under arrest.
If the person is at liberty or is set at liberty, he may not leave the place where the Court is sitting without the Court's permission.
For the purpose of taking the accused into custody, the State in whose territory the Court is sitting shall put at its disposal a suitable place of internment and the necessary staff of warders.

Article 46.
The Court may send letters of request, which shall be transmitted by the State in whose territory the Court is sitting and shall be executed in accordance with Article 15.

Article 47.
Witnesses and experts may not be heard, nor may any examination or confrontation take place, on pain of nullity of the act, unless the counsel of the person on trial before the Court, of any private party and of the representative of the State indicated in Article 40 are present or have been duly summoned to be present.
Article 48.

The audiences of the Court shall be public.
When the representative of the State referred to in Article 40, any private party and the defence have presented their case and concluded their arguments or statements, the presiding judge shall declare the hearings closed.

Article 49.

The Court shall sit in secret to consider its judgment.

Article 50.

A record of each hearing shall be kept, signed by the President and the Registrar. Such records shall alone be treated as authentic.

Article 51.

The decisions of the Court shall be taken by a majority of the judges, and the judgment shall not state whether the decisions were taken unanimously or by a majority.

Article 52.

Every judgment of the Court shall be accompanied by a statement of the grounds therefor. The judgment shall be read in open Court by the President or by the judge replacing him. It shall be signed by the President and the Registrar and shall be deposited in the archives of the Court.

Article 53.

The Court may not indict any persons other than those sent for trial before it under Article 33.

Article 54.

In so far as is provided by the procedural law applicable, the Court may sentence the persons brought before it to make restitution or to pay damages.
The High Contracting Parties in whose territory objects to be restituted or property belonging to the sentenced persons is situated shall be bound to take all the measures provided by their own laws to ensure the execution of such sentences.

Article 55.

The provisions of the second paragraph of the preceding article shall also apply to the recovery of pecuniary penalties imposed by the Court or of costs of Court.

Article 56.

Sentences involving loss of liberty shall be executed in the territory of the State in which the Court sat.
If, however, the Court sat at The Hague, it shall, with the consent of such High Contracting Party, appoint a High Contracting Party to be responsible for the execution of the sentence.

Article 57.

If sentence of death is pronounced, the State in whose territory it has to be executed shall have the option of substituting for it the next lighter penalty under the law which the Court has applied.

Article 58.

The right of pardon in respect of sentences passed by the International Criminal Court shall be exercised by the Council of the League of Nations on the proposal either of the State in which the sentence is executed or of the State against which the crime was committed or of the State of which the person sentenced is a national.
The decision of the Council of the League of Nations shall be taken by a majority vote.

Article 59.

There shall be no appeal other than an application for revision against sentences passed by the Court in respect of offences provided for by the present Convention.
The conditions on which revision may be requested shall be those provided by the law which has been applied.
Revision may also be requested of the Court either by the State which brought the case before the Court or by the State against which the offence was committed.
Article 60.

The emoluments of judges and deputy judges shall be paid by the State of which they are nationals.

Costs of Court and other costs imposed by the judgment shall be borne by the State which brought the case before the Court, unless they are recovered from the person sentenced.

The emoluments payable to the Registrar for acting in that capacity shall be fixed by the Council of the League of Nations and borne upon the budget of the League of Nations.

Article 61.

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

Article 62.

The International Criminal Court shall decide any question that may arise in regard to its own competence during the trial of a case which has been brought before it; for that purpose, it shall apply the provisions of the present Convention and the general principles of law.

If a High Contracting Party other than the one who has brought the case before the Court contests the Court's competence in relation to his own national courts of law, such contestation shall be regarded as arising between that High Contracting Party and the High Contracting Party which brought the case before the Court and shall be settled as provided in Article . . . (see Article 19 of the Convention on Counterfeiting Currency).

If two or more High Contracting Parties have taken proceedings before the International Criminal Court in respect of the same facts, and if they cannot reach agreement with each other as to the application of Articles 33, 34 and 35 of the present Convention, the point shall be settled as provided for in Article . . . (see Article 19 of the Convention on Counterfeiting Currency).

Appendix III.

GOVERNMENT OBSERVATIONS.

Austria.

March 23rd, 1935.

The Austrian Federal Government greets with keen interest all efforts aimed at putting an end to terrorist activities.

In principle, therefore, it is quite prepared to sign a convention for the effective repression of terrorist acts in the international sphere.

Being anxious to co-operate in the work of the Committee of Experts appointed by the Council, it wishes to submit to that Committee the following two suggestions:

The Federal Government recognises the great importance of the right of asylum to the international community and, for its part, it has never refused hospitality to individuals pursued by their own countries for political offences.

But the experience of recent times has proved that, too often, political refugees abuse this hospitality to carry on propaganda against their own State on the soil of the State in which they have found refuge. This abuse is particularly regrettable inasmuch as the right of asylum, as generally recognised in favour of political refugees, has certainly not the purpose of permitting them to carry on, with impunity, propaganda which can too easily have effects on the good relations between the State granting asylum and the State attacked by propaganda.

It is such propaganda which creates the disturbed atmosphere in which fanatical individuals allow themselves to be carried away to the extent of committing acts of terrorism.

For these reasons, the Federal Government considers that it would perhaps be well to insert in the proposed convention a clause under which the contracting parties undertake only to grant asylum to political refugees on condition that they refrain, on pain of expulsion, from any political activity.

In the second place, the Federal Government thinks it would be advisable to supplement the enumeration contained in A (b) of the French statement by adding that attempts on water-supply

1 The text of this article is as follows:

"The High Contracting Parties agree that any disputes which might arise between them relating to the interpretation or application of this Convention shall, if they cannot be settled by direct negotiation, be referred for decision to the Permanent Court of International Justice. In case any or all of the High Contracting Parties parties to such a dispute should not be parties to the Protocol bearing the date 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."
systems, electric transmission lines and telegraph and telephone wires will also be covered by the convention; for recent events have proved that political terrorists preferably attack these objectives in order to injure the country whose policy they are combating.

The Foreign Affairs Department of the Federal Chancellory lastly ventures to draw the attention of the Committee of Experts to the "Preliminary Draft Convention" and to the "Statement of Reasons" prepared by the International Criminal Police Commission1 and submitted by it to the Committee of Experts—a work which, in the Federal Government’s opinion, contains certain very interesting suggestions.

The Federal Government would be particularly glad if the proposal contained in Article 15 of the Preliminary Draft, which provides for the constitution of a Central International Information Office, was accepted by the Committee of Experts, and if the contracting parties were requested by the Committee to utilise, pending the creation of this office, the International Bureau of the International Criminal Police Commission at Vienna as a provisional international bureau.

CHINA.

April 26th, 1935.

[Translation.]

The Chinese Government approves, in general, of the principle of the international repression of terrorism on the basis of an international agreement and, in particular, of the French Government's suggestions relating to the institution of an International Criminal Court and the reciprocal communication of information. The Chinese Government nevertheless considers that the International Criminal Court should be so constituted as to ensure equality of treatment between all the States signatories of the agreement and considers, as regards the communication of information, that the latter should not necessarily be confined to the particulars specified in Section D of the "Bases for the Conclusion of an International Agreement" submitted by the French Government and reproduced in document C.542.M.249.1934.VII.

Furthermore, the Chinese Government would suggest that the proposed international agreement should expressly stipulate:

(1) That, in countries where extra-territoriality is in force, foreigners entitled to the regime of consular courts should forfeit the benefit of this regime and become amenable to local jurisdiction whenever they are accused of any of the acts constituting terrorist action for political ends;

(2) That, in the case of countries in whose territory are situated "concessions, settlements or leased territories", every facility should be afforded to the authorities of such countries with a view to the repression, in the above-mentioned territories which are removed from their administration, of crimes committed for purposes of political terrorism.

The last two provisions, to which the Chinese Government attaches particular importance, would greatly facilitate the repression of terrorism in the event of the accused persons being in Chinese territory, and in consequence would contribute to the repression of terrorism in general.

CUBA.

March 25th, 1935.

[Translation.]

After studying the French proposals, the Cuban Government has no objection to raise and fully recognises the desirability of concluding such an agreement, in view of the imperative necessity for preventing acts of terrorism in a large number of countries.

Cuba will have no objection to signing the agreement to be concluded in accordance with these bases, which are founded on lofty, moral and juridical principles.

The Government of the Republic is considering the possibility of establishing an international central office similar to that already created for dealing with the forgery of passports; for this purpose, the countries acceding to the agreement should send finger-prints and photographs of any persons arrested or sentenced for acts of terrorism, so that the courts of each State, and likewise the International Criminal Court which it is proposed to set up, may possess these means of identification and other judicial data relating to every terrorist accused or arrested who has taken refuge in any country or is amenable to its jurisdiction. In combating these criminal acts, whatever their nature, account should also be taken of the methods of prevention or punishment to be employed, since social defence, which is based on preventive and repressive measures alike, will also encourage the intensification of an appropriate educational campaign, emphasising the futility of terrorism as a political weapon and a factor of evolution, and teaching individuals and nations to use other more effective and civilised methods. The Government of the Republic also considers it desirable to obtain control over explosive substances as a means of suppressing these acts, since this would assuredly prevent their execution from either political or mercenary motives.

1 Kept in the Archives of the Secretariat.
DENMARK.

March 4th, 1935.

The Danish Government does not desire to make any observations for the moment. The question of terrorism will form the subject of discussion at a conference which the International Bureau for the Unification of Penal Law proposes to convene at Copenhagen in August 1935. The competent authorities prefer, therefore, not to express their definite view until this conference has taken place.

ESTONIA.

February 21st, 1935.

After considering the statement of general principles put forward by the French Government, the competent Estonian authorities have expressed themselves in favour of an international convention for the repression of terrorism. The Estonian authorities are, however, of opinion that the enumeration under A of criminal acts constituting terrorist action should be completed by adding:

"Acts preparatory to overthrowing by violence the established political system of a country".

UNITED STATES OF AMERICA.

February 28th, 1935.

The Secretary of State informs the Secretary-General that the Government of the United States views sympathetically the motives which prompt investigation of the possibilities of curbing criminal and terrorist activities throughout the world. The careful consideration which it has been happy to accord the resolution adopted by the Council of the League of Nations on December 10th, 1934, does not offer this Government, for the present, any suggestions which the Committee of Experts might find serviceable, though it is always the hope of the United States Government that, where conditions demonstrate the necessity, the methods for protecting law-abiding persons of all nationalities may be improved.

GUATEMALA.

April 11th, 1935.

On being consulted, the Committee of Legal Experts appointed to codify the penal law of Guatemala expressed the opinion that the suggestions made by the French Government and reproduced in document C.542.M.249.1934.VII, which you were good enough to attach to your note, covered the whole scope of the question and that the formula proposed was of a nature to fulfil satisfactorily the purposes aimed at, subject to the reservation, however, that Article 30 of the Constitution of Guatemala prohibits extradition for political offences and kindred common-law offences.

HUNGARY.

April 18th, 1935.

The Royal Hungarian Government is ready to accept, as a basis of discussion, the suggestions which have already been presented to the Council by the French Government. It reserves, however, the right of its expert on the Committee to submit to the Committee, when the various aspects of the question of the repression of political terrorism are under examination, any observations or proposals which he may think useful to put forward.

INDIA.

April 16th, 1935.

I am directed to inform you that the Secretary of State, having consulted the Government of India, desires to offer the following observations on the suggestions presented to the Council by the French Government as to the general principles on which such a convention (for the repression of conspiracies and crimes committed with a political and terrorist purpose), which would be warmly welcomed by the Government of India, should be based.

2. As regards head A, sub-head (d), of the suggestions made by the French Government ("Possession of arms, ammunition, explosives or incendiary appliances with a view to the commission of terrorist acts"), the experience of the Government of India indicates that the potential danger of a terrorist would be reduced very considerably if steps could be taken to prevent
him from arming himself with revolvers and pistols. They would therefore press strongly for the inclusion in the proposed convention of suitable provision to ensure that the manufacture and sale of easily concealed fire-arms, such as sub-machine guns, revolvers and pistols, are carefully controlled; that possession of such weapons is only permitted to reputable persons who shall be bound to account for them when called upon to do so; and that the fullest co-operation should exist among contracting States to prevent the smuggling of such weapons from one State to another. As an example of legislation governing the manufacture and trade in arms, the Secretary of State would instance the Belgian Law of January 3rd, 1933.

LATVIA.

April 26th, 1935.

Our competent authorities have pronounced in favour of the conclusion of a convention for the international repression of terrorism, and have put forward the following suggestions regarding the proposals contained in the document in question:

Ad Chapter A, point (b). — It would be desirable that the list of criminal acts constituting terrorist action should be extended to cover attempts on private buildings, since the possibilities of such attempts for political reasons is generally admitted.

Ad Chapter A, point (d). — This provision should be extended to include asphyxiating, poisonous or similar gases, bacterial and other methods capable of producing fatal results (poisons, etc.).

Furthermore, an undertaking should be given, not merely to execute letters of request (Chapter A, eighth paragraph), but also to afford all such assistance as may be required for the arrest of the culprit and his accomplices and the production of the necessary evidence.

ROUMANIA.

April 9th, 1935.

The Roumanian Government has considered with the keenest interest the general principles formulated by the French Government with a view to an international convention for the repression of terrorism.

The Roumanian Government is in entire agreement with those general principles (document C.542.M.249.1934.VII), and considers that, by framing a convention for the prevention and punishment of terrorism and securing its adoption by the States, the League of Nations would be performing its duty to the great benefit of peace.

Moreover, Roumania was the first country to propose to the League that a convention for the repression of terrorism should be framed. By its letter of November 20th, 1926, in reply to the League questionnaire on questions which appeared ripe for international regulation, the Roumanian Government proposed: " ... (4) Preparation of an international convention to render terrorism universally punishable . . . irrespective of the place where such acts of violence or depredations are committed or of the nationality of the guilty party " (see League of Nations, Committee of Experts for the Codification of International Law, Replies of Governments, document C.106. M.70.1927.V, page 221).

A. SUBJECT OF THE CONVENTION.

1. Legal Aspect and Definition of Terrorism.

The first question to be settled is what is the actual subject of the convention. In other words, in what does terrorism consist, and what are the arguments in favour of international co-operation for its prevention and punishment?

Unlike the subjects of the conventions already in force for the suppression of certain offences such as counterfeiting currency, the traffic in women and children, the drug traffic, slavery, the circulation of obscene publications, etc., terrorism is not an offence sui generis. It is not " a distinct and uniform type of criminal activity " (Beling, " Die Lehre vom Tatbestand ", page 3). Terrorism is the name applied to a number of crimes and offences the great majority of which are punishable under national laws. In certain circumstances, however, these crimes and offences assume an international character, whether because their preparation is a process that takes place in the territory of several States, or because they involve damage to highly valuable lawful property, the protection of which is an essential condition of the maintenance of friendly relations between States, and hence of international peace.

A study of certain recent monographs and of the proceedings of the International Conferences for the Unification of Criminal Law, which have been continually engaged since 1930 with the problem of the prevention and punishment of terrorism, will bring to light the various aspects of that problem (cf. Records of the Brussels Conference, 1930, and Professor Gunzburg's report; Records of the Paris Conference, 1931, and the reports of Professor Jean Radulesco and Professor Lemkin; Records of the Madrid Conference, 1933, and Professor Roux's report, as well as the memorandum by M. d'Amelio and M. Aloisi. See also Pella: " La répression des crimes contre la personnalité de l'Etat. Les actes de terrorisme ", Recueil des cours de l'Académie de droit international de La Haye, 1930).

1 The French proposals (see appendix IV).
So far from taking the form of a single act, terrorism is constituted by a series of acts of odious barbarity or vandalism, designed to spread terror and at the same time depress the community by paralysing its powers of reaction and removing its leaders.

Terrorism consists primarily in crimes and offences committed either directly against heads of States, Ministers in office and certain other representative personalities, or by means capable of producing a danger to the community (arson, explosion, destruction, etc.) and imperilling human life and limb or human health, or directed against property, or, lastly, by means designed to undermine the credit of the State.

Such acts are generally committed under the influence of the collective spirit which dominates most of the secret societies established for the very purpose of imposing certain political doctrines by terror. It is in such societies that crimes are prepared. The societies do not work in isolation; often they have ramifications in other countries. To carry out their outrages, those organisations secure the assistance of common malefactors. The authors of such crimes include a number of hardened criminals who have nothing to lose—a regular army of crime.

These criminal associations do not confine their activities to serious offences against persons and property, but cause other acts to be committed with the intention of provoking disorder—e.g., public incitements to commit crimes and offences, defences of criminal acts, incitements to disobedience, incitements to acts intended to reduce output, etc.

All these acts are committed with the object of destroying discipline, increasing poverty and suffering, and so paralysing the State's powers of reaction.

To secure the co-operation of all States against the scourge of terrorism, which, in view of its international aspects and the interests that it injures, may be regarded as a veritable crime against civilisation, is to ensure the safety of all States, regardless of their social or political organisation, and to protect international order as such.

2. International Criminal Law and the Impunity of Terrorism.

The existing principles of international criminal law reveal a conception at once strange and contradictory.

By extradition conventions, States mutually undertake to capture the authors of injury done to the legal rights of their respective subjects. Yet those same States refuse to surrender or punish the authors of serious offences against highly valuable legal rights of the State itself, such as the existence, independence, safety and other fundamental interests of the community.

A man who kills a private person, or sets a cottage on fire, or commits a theft, however petty, sets efficiently in motion the machinery established by extradition conventions to bring about the punishment of such acts.

Impunity is assured, on the other hand, in numerous cases involving the assassination of a head of a State or a member of a Government, or outrages against public buildings, railways, or ships by arson, explosion, etc.—outrages that may result in the loss of thousands of human lives.

This suggests that, with the existing principles of international criminal law, there is "a singular solidarity" in assuring impunity for those very crimes which are the most serious from the standpoint of morality and ordinary law, for crimes which injure the interests of all States, for crimes which offend against "the universal conscience of mankind".

The proposed convention is in no way intended to oblige States to change their general attitude as to the right of asylum for political refugees.

Its sole object is to remove the impunity which is now enjoyed by the authors of certain odious crimes and offences against persons and property, and which in some cases might lead to serious international disputes.

It is also necessary to devise means of preventing such crimes and offences by thoroughly effective international co-operation.

How is such impunity to be removed?

The problem is a much simpler one than it seems at first sight.

In respect of the offences which it covers, the convention must lay down the principle formulated by Grotius, "aut dedere aut punire". States would therefore be asked to enter into an undertaking either to punish acts of terrorism or to surrender the offenders.

As early as 1927—long before there was any question of a convention for the prevention and punishment of terrorism—Roumania embodied certain provisions to this effect in her draft criminal code. Those provisions were retained in the draft criminal code passed by the Roumanian Senate on March 7th, 1935. Under Article 11 of the draft, acts of terrorism committed by foreigners abroad are punishable in Roumania if the offenders are in Roumanian territory.

A very full list of acts of terrorism is given in Article 27 of the draft.

So far as most acts of terrorism are concerned, moreover, these provisions have been embodied in the Convention on Extradition and Judicial Co-operation in Criminal Matters concluded between Roumania and Portugal on February 6th, 1930. Article 3, paragraph 7, of that Convention gives a list of acts of terrorism and establishes the conditions under which they are punishable:

(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; (c) counterfeiting or altering money, falsifica-
tion of scrip, share certificates, bonds, cheques, and other securities, and of stamps employed as instruments of payment.

"The offences covered by (a), (b) and (c) of the previous paragraph shall in no case be regarded as political offences for the purposes of extradition.

"The offences referred to in the previous paragraph, whether connected with or involved in political offences or not, and any other offences under ordinary law which have no connection with a political offence committed by the same person, shall be punished by the contracting party to whom application is made, in the same way as if they had been committed in his own territory. The party to whom application is made shall not be subject to this obligation unless he is unable to surrender the person claimed."

If the principles of the Roumanian draft criminal code and the Convention of February 6th, 1930, are compared with those proposed by the French Government, it will be seen that Roumania cannot but subscribe wholeheartedly to the latter, inasmuch as she has already established and, indeed, exceeded them.

3. The Offences to be covered by the Convention according to the French Proposals.

In laying down the rule " aut dedere aut punire ", the French proposals mention the acts to which such rule should apply.

In this connection, the caution and accuracy displayed in the French system are worthy of all praise. Instead of attempting to circumscribe the various acts which go to make up terrorist action in a general formula, the French Government enumerates those acts one by one. This system has the great advantage of precluding any controversy as to the nature of the crimes and offences to which the rules in the future convention would apply.

The system of exhaustive enumeration was, moreover, advocated both in 1930 at the Brussels Conference for the Unification of Criminal Law, and in 1931 at the Unification Conference in Paris.

As regards more especially the acts listed in Section A (a) of the French proposals, it must be borne in mind that, quite apart from the odious character of such crimes as attempts on the life or liberty of heads of States or members of Governments or political assemblies, the increasingly international nature of contemporary social life and the interdependence of peoples make it essential that additional penal protection should be provided for such representative personalities.

In view of modern methods of international negotiations, which oblige them to establish direct and continuous relations with corresponding personalities in other countries, and consequently to be abroad—that is to say, in areas where they can no longer be protected by their own police and detective services—much more often than formerly, it has become the duty of every State to co-operate in preventing and punishing the acts of terrorism of which such personalities may become the victims.

Furthermore, if the authors of acts of terrorism knew that they could take refuge in another country with impunity because that country, on the ground that the act was a political one, would refuse either to punish or to extradite them, it is open to question whether the normal conduct of any State organisation or of any Government would still be conceivable.

Referring to the " attentat " clause and the attempts that were made to extend it at the close of the nineteenth century, and having regard to the resolutions adopted by the Institut de Droit international at its Geneva session in 1892 (Rules 13 and 14), which make it clear that acts of terrorism are to be regarded as " criminal acts directed against the bases of all social organisation ", the Roumanian Government is of opinion that the crimes and offences listed under Section A (a), (b), (c) and (e) of the French proposals (which, incidentally, are punishable under the laws of all countries) must be effectively punished, even if they are directed against foreign personalities or against the interests of foreign States.

In the case of such crimes or offences, the refusal of a State to grant extradition or to punish the offenders if they have taken refuge in its territory would amount to contempt of one of the most elementary rules of honour and justice upon which international relations must be based.

4. Other Offences to be introduced into the Convention.

Since the French Government thinks that " the question should be considered, having regard to the laws in force in the different countries, whether other acts should be added " to the list which it proposes, it seems reasonable to suggest that the whole problem of acts of terrorism likely to produce a common danger should be considered.

Experience has shown that, quite apart from attempts on the life or liberty of certain prominent persons and attempts on public buildings, railways, etc., terrorists also commit other acts with the object of striking terror into the population; for example, they cause floods, spread infectious diseases, dislocate public services or public utility services, etc.

Moreover, as regards more especially paragraph (b) of the French proposals, more careful consideration should be given to the question of punishing acts intended to bring about a catastrophe or to interfere with communications by land, air, sea or river (irrespective of the national or international character of such communications), and particularly of " serious offences in connection with wireless communications, more especially the transmission or circulation of distress signals or calls which are false or deceptive ".
The reports on terrorism submitted to the Brussels Conference in 1930 and to the Paris Conference in 1931, and the actual proceedings of those Conferences and of the International Bureau for the Unification of Criminal Law, will be of considerable assistance in deciding what crimes and offences should be covered by the convention.

5. Possession of Arms, Ammunition, or Other Objects intended for the Preparation and Execution of Terrorist Outrages.

It is impossible to lay too much stress on paragraph (d) of the French proposals, which concerns the possession of arms, ammunition, explosives or incendiary appliances with a view to the commission of acts of terrorism.

To make such acts special offences is one of the most effective ways of preventing certain acts of terrorism.

At the same time, the Roumanian Government thinks that it would be desirable to adopt a more complete and consequently more effectual formula, which would cover, not merely the possession, but also the unauthorised export and import and the conveyance of objects intended for the preparation or execution of acts of terrorism.

It might be possible to arrive at a formula directly based on Article 2 of the texts adopted on the subject of terrorism (on the basis of Professor Roux's report and of the memorandum by M. d'Amelio and M. Aloisi) by the Fifth Conference for the Unification of Criminal Law (Madrid, October 1933).

Again, if, in order to prevent acts of terrorism, it is necessary to make the possession of objects intended for the execution of such acts a punishable offence, then it would be desirable, in order to prevent such possession, to forbid dealers in arms and ammunition to sell their murderous wares to any person who cannot produce authority to carry or possess arms.

Just as chemists may not supply narcotic drugs except on a medical prescription, so armourers should not be allowed to sell arms except to persons who can produce authority to carry or possess them.

This is the case under the laws of many countries, and could be made so in all countries which have any legislation regulating the carrying and possession of arms.

Realising the importance of this point for the prevention of crime, the Fifth International Conference for the Unification of Criminal Law (Madrid, 1933) adopted some very full texts dealing with the carrying and possession of arms and ammunition (see the preparatory report submitted to the Conference by Mr. Temple Grey on behalf of the International Law Association, and the general report by Professor Gunzburg). Among these texts, mention should be made first and foremost of Article 4, which reads: "Any person conveying, selling, or distributing arms to a person who cannot produce the authority or declaration required under the laws on the possession and carrying of such arms shall be liable upon conviction to . . . ."


The Roumanian Government entirety agrees with the proposals contained in the last three paragraphs of the French proposals (Section A).

As regards the general conditions of punishment, more especially for the acts of terrorism, listed under (a), (b), (c), (d) and (e) of the French proposals, it is of opinion that the Convention should establish the principle of equality of legal protection against crime.

In other words, in no country should the law draw any distinction, in regard to punishments and safety measures, between acts of terrorism directed against the authorities and nationals of the State itself and the like acts directed against the authorities or nationals of a foreign State.

Moreover, to prevent impunity in certain cases, acts of participation in the offences covered by the convention should be deemed to be separate offences when committed in different countries.

The system of the "active personality" of States should be established in all countries which do not allow the extradition of their nationals if the latter have committed acts of terrorism abroad.

In the case of acts of terrorism committed by foreigners abroad, the system of universality should be accepted either in the form that the primary jurisdiction belongs to the judex deprehensionis in virtue of the rule "ubi te invenero ibi te judicabo", or in the form of a subsidiary jurisdiction based on the principle of "aut dedere aut punire".

Having regard to the attitude of its delegates to the various international conferences, and bearing in mind the draft criminal code, which treats acts of terrorism as offences against international law, the Roumanian Government desires to state forthwith that it prefers the principle of the primary jurisdiction of the judex deprehensionis.

Although the proposed international convention is not to deal with the general problem of habitual offenders, which will continue, as hitherto, to be settled by the different codes, there is one highly important question that must be dealt with in the convention—namely, that of the international habitual offender. Inasmuch as terrorism is bound up with the problem of international crime, owing to the extent of the field in which the offenders operate, every State must have regard, in inflicting punishment, to the past history of the offender, as established by his previous convictions in different countries. In other words, confirmed terrorists constitute so serious a danger that all States must recognise the conception of the international habitual offender in this sphere.
It would also be desirable—and would be a concrete demonstration of international solidarity in the struggle against terrorism—that a sentence involving disability pronounced upon a terrorist in one country should also have effect in other countries. This idea is, indeed, to be found in the existing laws of several countries, and in numerous proposals; it appears in the two following forms:

(a) In the case of nationals who have received sentences involving disability abroad, proceedings for deprivation of civil rights may be instituted for the purpose of giving effect to such sentences in the country of which the offender is a national.

(b) The recognition of extra-territorial force for all sentences in cases of terrorism which carry with them certain prohibitions, disqualifications or deprivations, if such sentences are imposed by the courts of the State of which the convicted person is a national.

7. Crimes against the Safety of Foreign States.

A convention for the suppression of terrorist acts could not produce its effects, nor would the possibility of serious international disputes be precluded, unless provision were made, in the form of special stipulations in the Convention, for the punishment of crimes against the safety of foreign States.

The Roumanian Government has laid before the Moral Disarmament Committee of the Conference for the Reduction and Limitation of Armaments a series of proposals, including one to the effect that each State should make the preparation and execution in its territory of acts directed against the safety of foreign States a punishable offence.

The Moral Disarmament Committee appointed a Committee of Jurists, which submitted, on June 12th, 1933 (document Conf.D./C.G.142), a series of texts referring to the proposals of the Roumanian delegate (document Conf.D./C.D.M.20). In this connection, we should mention Article 2: "The High Contracting Parties undertake to adopt legislative measures empowering them to penalise: (1) the preparation and commission in their respective territories of acts directed against the security of a foreign Power"; Article 3: "The High Contracting Parties further undertake: (1) to prevent the activities of organisations committing any of the acts enumerated in Article 2 and to treat them as organisations pursuing illegal aims under the municipal law of the country".

The Roumanian Government considers that the punishment by a State of crimes committed in its territory and directed against the security of a foreign State is simply the fulfilment of a duty incumbent on every State in virtue of its membership of the international community as consolidated through the coming into force of certain international agreements, more particularly the Covenant of the League of Nations and the Paris Pact.

Such punitive action is a direct consequence of the obligations incurred by States under Article 10 of the Covenant of the League, which is "the expression of a rule of law based on that community of interests which grows up in every nascent society". As M. Titulesco said on March 7th, 1932, at the extraordinary session of the Assembly: "This article is the keystone of the League of Nations". "The Pact of Paris, which forbids war as an instrument of national policy and contains a pledge that resort will be had only to pacific means to settle international disputes, thereby entails, for those who have signed it, an obligation identical with that in Article 10 concerning respect for the territorial integrity and existing independence of each State" (see Official Journal, Special Supplement No. 101, 1932, page 60: speech by M. Titulesco).

If, according to Article 10, the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League, they are thereby precluded from allowing their territory to be used for the preparation of crimes the effect of which would be to impair the highly valuable legal rights guaranteed by this text.

Furthermore, if the obligation on the part of Members of the League to maintain the territorial integrity and political independence of the other Members also implies an obligation to re-establish such integrity and independence, Members are, a fortiori, also bound to punish crimes committed in their territory that might adversely affect fundamental rights which it is precisely their duty to respect, preserve and, if necessary, restore.

Impunity in the territory of one State for crimes against the political independence and territorial integrity of another State is tantamount to ignoring the direct obligations imposed on every State by Article 10 of the Covenant of the League and the provisions of the Paris Pact.

Crimes against the security of foreign States should be punished as special offences by States in whose territory they have been prepared.

If no act of terrorism has been committed during the preparation or consummation of these crimes, they should be punishable in accordance with the principle of territoriality of criminal jurisdiction (cf. PELLA, "The Safeguarding of Peace by Municipal Law", "Crimes against the Person of Foreign States").

Crimes against the security of a foreign State are punishable under some bodies of law and in numerous draft Penal Codes (see Austrian Penal Code; Finnish Penal Code; Belgian Law of March 5th, 1858, Article 5; former German Penal Code of 1871, Section 102; German and Austrian drafts, Sections 122, 116 and 117; Swiss draft, Article 263; Greek draft, Article 123).

The Yugoslav Penal Code of 1929 provides for the protection of foreign States by the criminal law, even in the case of crimes committed by foreigners abroad. Section 7 of this Law lays down that the provisions of the Yugoslav Code shall also apply to foreigners "who, outside the frontiers of the Kingdom of Yugoslavia, may have committed a crime against a foreign State, provided they
enter the Kingdom of Yugoslavia and provided either that their extradition has not been requested or, having been requested, has not been granted and that proceedings be instituted by order of the Minister of Justice.

The Czechoslovak draft Penal Code of 1926 (Section 144) makes it a punishable offence "to endeavour to modify by force the Constitution of a foreign State or to incorporate the whole or part of the territory of that State in the territory of another foreign State ".

The Roumanian draft Penal Code, adopted by the Senate on March 7th, 1935, makes punishable a series of offences of this kind, for which provision is made in a special chapter entitled "Offences against the Security of Foreign States, the Law of Peace and International Relations ". As an example of such offences, we may quote the provisions of Article 224, which is worded as follows: "Any person who, in the territory of the Roumanian State, commits against the internal or external security of a foreign State not at war with Roumania any of the offences specified in Chapter I, Book II, of this Code (' Crimes and Offences against the Internal or External Security of the Roumanian State ') is to be deemed guilty of an offence against the security of foreign States and shall be punished with imprisonment."

8. Letters of Request.

As regards the execution of letters of request and, in general, the procedure to be followed in the matter of judicial co-operation, the Roumanian Government entirely agrees with the French proposals. It agrees, moreover, that the provisions of Article 16 of the Convention for the Suppression of Counterfeiting Currency and the work of the League Committee of Experts for the Progressive Codification of International Law (Professor Schücking's report) might be taken into consideration for the purpose of ensuring rapidity of procedure.

The Roumanian Government desires to point out that, as far back as 1927, in its letter dated December 23rd of that year to the Secretary-General of the League of Nations, it had already declared that it was in favour of a general convention for the unification of the method of transmitting letters of request. In this letter, the Roumanian Government " unreservedly accepts the proposal to prepare a draft convention concerning the communication of judicial and extra-judicial acts in penal matters, and considers that this will constitute an important first step towards the elaboration of an international penal code " (see document A.15,1928,V).

B. Jurisdiction, Judgment and Enforcement of Penalties.

1. Priority of National Jurisdiction.

The Roumanian Government entirely agrees with all the proposals of the French Government contained in Section B.

It fully recognises that, in present circumstances, the system advocated by the French Government would be the one most easily realisable in practice. Though maintaining the basic principle of priority of jurisdiction for national courts, the French proposals do not exclude the possibility of investing an international court with certain powers. This system does not in any way curtail a State's right to try persons who have committed acts of terrorism in its territory or persons guilty of such acts who have taken refuge therein.

Exercise of jurisdiction by an international court would therefore only be conceivable if the State which held the accused in custody voluntarily renounced its right to exact punishment. It might even be said that this conception resembles to a certain extent the idea of jurisdiction by delegation.

2. Need for an International Jurisdiction.

The Roumanian Government entirely agrees with the French Government that, in the matter of terrorism, " 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 ".

As to what this jurisdiction should be, the Roumanian Government would draw attention to the fact that, repeating proposals made as far back as 1924 by its representatives at the various international Conferences, it asked, during the ninth Assembly of the League of Nations in 1928, that the Permanent Court of International Justice should be vested with a criminal jurisdiction (see proposals of the Roumanian delegate to the First Committee of the Assembly, Official Journal, 1928, Special Supplement No. 65, and the statements made with regard to the Roumanian proposal at the plenary meeting of the Assembly on September 20th, 1928, by M. Cassin, Rapporteur to the First Committee, and M. Carton de Wiart, delegate of Belgium).

Roumania, therefore, cannot but endorse the French proposals, which are fully in keeping with the recent movement in favour of creating an international criminal court—a movement which, as M. Politis has said, " is destined to acquire increasing scope and force because it is in conformity with the evolution of law in all human communities " (see POLITIS, " Nouvelles tendances du droit international ", 1927; cf. FERRI, " La solidarieté degli Stati nella lotta contro la delinquenza ", Milan, 1926; Lord PHILLIMORE in the British Year-Book of International Law, Vol. III, 1922-23, pages 79-86; PELLA, " La Criminalité collective des États; Cour criminelle internationale ", 1925; DONNEDIEU DE VABRES, " La Cour permanente de Justice internationale et sa vocation en matière criminelle ", Revue internationale de droit pénal, 1st Year, Nos. 3-4;
Le Fur, "Précis de droit international"; Saldana, "Preliminary Draft International Penal Code").

As regards the organisation of the International Criminal Court, the establishment of which is requested by the French Government, Roumania proposes to submit in due course to the Committee set up by the Council of the League of Nations certain suggestions based on a single and precise system. This system would avoid most of the difficulties which, at the present time, the organisation and working of such a court would encounter. (See, in connection with the organisation of an International Criminal Court, the proposals of the International Law Association and the Association internationale de droit pénal. See also, as regards the various systems suggested, the introduction by Counsellor Caloyanni and the report by Professor Pella which preceded the proposal of the Association internationale de droit pénal, Paris, 1928, published by Godde).

C. Other Questions.

1. Right of Asylum and its Limits.

Though recognising that the future convention should not adversely affect the right of asylum accorded to political refugees—a right which in Roumania is embodied in the Constitution—the Roumanian Government considers it necessary that the convention should contain certain indications concerning the limits of this right.

In this connection, it might be well to examine the extent to which the point of view unanimously affirmed in international doctrine could be definitely specified in the convention.

Though States may be free to grant asylum to political refugees, they are not entitled to tolerate in their territory any plotting against the tranquillity of other States. Whether intrigues of this kind be directed against the political or the social order of foreign States, every Government should watch the refugees within its borders; that is an international duty. The right of asylum has its limits and has certain duties as a corollary; the right of asylum can only exist in so far as it is not contrary to the equally sacred rules of international law—i.e. the security of other States (cf. Calvo, "Le droit international théorique et pratique", Vol. III, page 156; Oppenheim, "International Law", 4th edition, 1928; Renault, Journal du droit international privé, page 6, 1880; Bluntschi, Westlake, Martens, in the Year-Book of the Institute, Vol. I, page 83; Saldana, Revue générale du droit, 1882, page 528; Pradier-Fodére, France judiciaire, 1887, Part I, pages 28 et seq.).

Account should also be taken of the situation of States bordering on the refugee'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.

2. The Bona-fide Nature of Passports and Documents of Identity.

The Roumanian Government entirely agrees with the French Government's proposals to ensure the bona-fide nature of passports and documents of identity.

Obviously, international criminal protection should be afforded in the case of passports, in view of the "communément international" function.

It is absolutely necessary to investigate the most effective means of preventing and punishing the forging of passports. In this connection, the Roumanian Government is of opinion that most of the provisions of the Convention for the Suppression of Counterfeiting Currency could be applied. Passports should be protected by international criminal law as effectively as currency is.

Moreover, the Roumanian Government considers that the proposals of the French Government should be supplemented by reference to another aspect of the problem—namely, punishment of the illegal issue of passports. In order to avoid abuse, which may in certain cases involve the responsibility of the State, severe punishment should be inflicted on officials found guilty of such abuse. In certain particularly serious circumstances to be defined by the convention, these officials should be treated as forgers.


The Roumanian Government entirely agrees with the French Government's proposals (Section E). It desires to point out that, on the proposal of the Roumanian delegate, the International Conference of Central Police Offices convened by the Council of the League, which met in Geneva in March 1931, adopted the following resolution:

"The Conference recommends that the Council of the League of Nations should, if it thinks fit and expedient, in view of the increasingly international character of crime in its various aspects, study the possibility of preparing a convention on international co-operation between police forces and the establishment of an official police information bureau forming a link between the various police forces, with the general object of ensuring more effective prevention and punishment of crime" (see document C.193.M.76.1931.II.A, page 5).
The Roumanian Government also considers that, as regards police co-operation, the preliminary draft Convention on Terrorism prepared by the International Criminal Police Commission is an extremely valuable document. It hopes that the International Criminal Police Commission, whose assistance was appreciated by all during the preparation of the Convention for the Suppression of Counterfeiting Currency, will also be invited to assist in preparing those provisions of the convention on terrorism which relate to police co-operation.

4. Exclusion of Assassination from the Category of Political Offences.

The Roumanian Government entirely agrees with the French Government's last proposal to endorse partially the theory of elimination recommended by the Institut de droit international at its session at Geneva in 1892—i.e., to exclude assassination from the category of political offences.

The draft Roumanian Penal Code and certain recent extradition treaties concluded by Roumania with other countries contain specific clauses to this effect.

In requiring the exclusion of assassination from the category of political offences, the Roumanian Government is merely supporting a view that it has long held.

Even for less serious offences, such as counterfeiting currency, the Roumanian Government has always upheld the theory of elimination.

The conclusion at Geneva, in 1929, on the proposal of Roumania, of an optional protocol endorsing this view—a protocol which is at present in force—is striking proof of the unequivocal and consistent attitude that the Roumanian Government has always adopted concerning the punishment of offences which are so odious that they should be regarded as crimes of lèse-humanité, as crimes against society, and as offences tending to undermine the foundations of all organised and civilised life.

Turkey.

[Translation.] March 31st, 1935.

Having studied the annexed document (C.542.M.249.1934.VII) with the attention which it merits, the Ministry for Foreign Affairs has the honour to inform the Secretary-General that it has no new suggestions to add to the proposals presented by the French Government to the Council and which are now submitted to the Committee.

Yugoslavia.

[Translation.] March 26th, 1935.

The Royal Delegation of Yugoslavia has the honour to submit to the Committee of Experts appointed to draw up a preliminary draft international convention on the repression of political terrorism the following suggestions on behalf of the Yugoslav Government:

A. Ad (a). — After the words "attempt on the life or liberty either of heads of States" add the words "or heirs to the throne and persons exercising royal power according to the constitutional rules in force in the contracting countries".

It also seems necessary to insert the words "civil and military" before the word "officials".

Ad (b). — In this enumeration, special mention should also be made of attempts on public monuments, aerodromes and military depots and arsenals.

Ad (d). — Among the objects which might be employed to commit acts of terrorism and the possession of which is made punishable, mention should also be made of poison and chemical and bacteriological preparations.

Moreover, it does not seem sufficient to make only the possession of the above punishable. Clauses should also be provided punishing the preparation, supply, distribution of, and traffic in, etc., such objects.

Ad (e). — The different technical methods which can be employed in incitement to acts of terrorism and in defence of such acts should be more precisely indicated.

Ad Paragraph 6. — Among the acts which should be added to those already enumerated, mention should be made of "material support given with a view to the commission of acts of terrorism, and assistance afforded to the authors of such acts, by facilitating their movements and providing them with shelter", in so far as the general rules regarding complicity are not sufficient in this connection.

Ad Paragraph 7. — Delete the word "even" or replace it by the word "especially".

In addition, it would be necessary, in view of the special nature of terrorist offences, to specify in greater detail what constitutes complicity.

B. In drawing up the statute and rules of procedure of the International Criminal Court, special attention should be devoted to the question of investigation of the cases submitted to the court. It would perhaps be useful to place special means of investigation at the court's disposal, if necessary. Similarly, it will be necessary to distinguish the respective rights and duties of the
organs of the court and of the State organs which will be responsible for investigation, in order to avoid difficulties and friction likely to hinder the court's efficiency.

As regards the law enforceable by the court, it would seem that the law of the State against which the terrorist crime is directed should, as a general rule, be declared to be applicable.

C.

It would be desirable to provide in the convention for the contracting States' following common rules in regard to the make, issue and endorsement of passports, so as to render more effective the verification of the bona-fide nature of passports and documents of identity by the authorities of countries other than the country in which the document was issued.

D.

The Yugoslav Government is of opinion that the proposed convention would not fulfil its purpose if it was not reinforced by a system of preventive measures against terrorist acts. In this connection, the Yugoslav Government considers that it would be necessary to define in clear terms the extent of the right of asylum in regard to political émigrés, and particularly to prevent, by suitable measures, their concentration in special camps and their establishment in groups in the vicinity of the State against which the activity of such émigrés is directed.

Similarly, the contracting States should assume the obligation to supervise closely the movements of conspirators and terrorists whose activities are brought to their attention by the authorities of the country concerned, and there should also be a stipulation providing for effective co-operation between the authorities of the contracting States in the exchange of information regarding such individuals.

The Yugoslav Government reserves the right to communicate to the Committee of Experts, when the latter begins its work, more detailed suggestions regarding the points raised in the present communication.

Appendix IV.

SUGGESTIONS PRESENTED TO THE COUNCIL BY THE FRENCH GOVERNMENT.

December 9th, 1934.

The sole object of the convention to be concluded will be to facilitate the suppression of criminal acts directed against persons or property and constituting terrorist action with a political object.

A.

The acts referred to are the following:

(a) Attempts on the life or liberty either of heads of States, or members of Governments or political or administrative assemblies or judicial bodies, or of officials, or of private persons by reason of their political attitude;
(b) Attempts on public buildings, railways, ships, aircraft or other means of communication;
(c) Associations with a view to the commission of the said acts;
(d) Possession of arms, ammunition, explosives or incendiary appliances with a view to the commission of the said acts;
(e) Incitement to commit the acts specified above or the defence of such acts.

The question should be considered, having regard to the laws in force in the different countries, whether other acts should be added to this list.

An undertaking would be assumed by the contracting Powers to suppress acts of this kind, or attempts to commit such acts or complicity in the commission of such acts, even where they are directed against another contracting State or its authorities or nationals.

An undertaking would be assumed to execute letters of request issued by the authorities of a contracting State in connection with prosecutions in respect of the acts above mentioned.

As regards the details, the Convention of April 20th, 1929, for the Suppression of Counterfeiting Currency should serve for guidance.

B.

The suppression of the acts above referred to will rest with the courts of each State. Nevertheless, an International Criminal Court would be set up at the same time, composed of five members and established on a permanent basis, though meeting only when prosecutions are instituted relating to matters which fall within its competence.

The International Criminal Court would have to try individuals accused of any one of the acts above mentioned in the following cases:

(a) Where the accused has taken refuge in a country other than that which desires to prosecute him, and the country of refuge prefers to bring up the accused for judgment before the International Criminal Court rather than grant extradition to the State applying for it;
(b) Where the State on whose territory the act was committed prefers to waive prosecution before its own courts in the particular case concerned.
The establishment of such an International Criminal Court meets the double requirement 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 penal law to be applied by the International Criminal Court will have to be determined. On the pronouncement of each sentence, the court would decide which of the contracting States must provide for the execution of the sentence. The right of pardon, in connection with sentences pronounced by the International Criminal Court, would be exercised by the Council of the League of Nations, on the motion either of the State in which the sentence was to be carried out, or of the State against which the acts were directed, or of the State of which the sentenced person is a national.

C.

The convention should contain suitable provisions to ensure the _bona-fide_ nature of passports and documents of identity.

The parties should undertake to punish the manufacture of false identity documents, the forgery of such documents and the use of false or forged documents, even if the parts forged are the seals or signatures of a foreign authority.

D.

Practical provision should be made:

(a) For the communication of all information concerning the preparation in one country of criminal acts coming within the scope of the convention, when such acts would seem likely to be committed in another contracting country;

(b) The communication of information concerning proceedings taken and sentences pronounced on matters coming within the scope of the convention's application;

(c) The communication of information concerning the forgery of documents of identity and their use.

* * *

In addition to the proposed convention, Members of the League of Nations should be recommended to insert, in any of their extradition treaties which do not already contain such a stipulation, a clause excluding assassination from the category of non-extraditable political offences.