
LEAGUE OF NATIONS

Board of Liquidation

THIRD INTERIM REPORT
(coversing the period December 1st, 1946 — February 28th, 1947)

Presented in accordance with the Assembly Resolution of April 18th, 1946.

CONTENTS

INTRODUCTORY REMARKS ........................................... 2

Chapter 1. — TRANSFERS EFFECTED SINCE NOVEMBER 30TH, 1946:
I. Assets, Funds, etc., transferred ........................................ 3
II. Activities transferred ...................................................... 3
III. Staff transferred on the Cessation of League Activities .......... 3

Chapter 2. — TRANSFERS PENDING AS AT FEBRUARY 28TH, 1947:
Assets, Funds, etc.:
A. Transfers to the United Nations awaiting completion ......... 4
B. Transfers to the International Labour Organisation awaiting completion ........................................ 5

Chapter 3. — NON-TRANSFERABLE SERVICES, FUNDS, ETC., LIQUIDATED SINCE NOVEMBER 30TH, 1946:
Staff Provident Fund ..................................................... 6

Chapter 4. — NON-TRANSFERABLE SERVICES, FUNDS, ETC., UNDER LIQUIDATION:
Nansen Office ................................................................. 6

Chapter 5. — STAFF QUESTIONS:
(a) Secretariat Staff Situation ............................................. 7
(b) Staff Sickness Insurance Association ............................... 8

Chapter 6. — CLAIMS:
(a) Claim of Mr. Manley O. Hudson ................................. 8
(b) Claims in respect of the League Buildings .................... 9
(c) Claim of M. van Eysinga that the Pensions of Members of the Permanent Court of International Justice are payable in gold Florins ......................... 10

Chapter 7. — FINANCIAL QUESTIONS:
(a) Liquidation Expenses for 1947 ................................... 10
(b) Audit of the 1946 Accounts ......................................... 10
(c) Position of Contributions received in 1947 and Contributions outstanding as at February 28th, 1947 ......................... 10
Annexes.

1. Actuarial valuation of the League of Nations Staff Pensions Fund as at July 31st, 1946: Report by Dr. H. Wyss, Consulting Actuary to the Pensions Fund . . . 13

2 (a). Administrative Board of the Staff Pensions Fund: Twelfth Report to the Liquidation Board as successor to the Assembly 15

(b). Thirteenth Report to the Liquidation Board as successor to the Assembly, and to the Governing Body of the International Labour Office 17

3. Accounts for the Financial Year 1946 of the Staff Pensions Fund, Staff Provident Fund, and the Pensions Fund of the Members of the Former Permanent Court of International Justice 19


(b). Supplementary Report (b), dated January 27th, 1947, by the Consulting Actuary 27

6 (a). Request addressed to M. Plinio Bolla, President of the Swiss Federal Tribunal, for a Legal Opinion on the Right claimed by Mr. Manley O. Hudson, a Former Member of the Permanent Court of International Justice, to Reimbursement by the League of Nations of the Taxes due by him in the United States on the Salary which he received from the League of Nations for the Period January 1st, 1941, to January 31st, 1946 28

(b). Legal Opinion given by M. Plinio Bolla, President of the Swiss Federal Tribunal 42

7. Statement of Contributions received in 1947 and Contributions outstanding as at February 28th, 1947 48

INTRODUCTORY REMARKS

The Board’s Third Interim Report 1 to States Members is presented in the confident expectation that its next report will be the final report which is called for by the Assembly resolution of April 18th, 1946, and which will record the completion of the Board’s task and its own dissolution.

At a series of meetings held from February 10th to 18th, 1947, the Board not only disposed of a number of questions which had been claiming its attention since it was first set up but also laid down the main lines to be followed for the prompt settlement of other issues, among them some of the most important with which it has had to deal, such as the future of the Staff Pensions and Judges’ Pensions Funds. It has also had preliminary discussions on the principal object of its task, on which a final decision, however, cannot be taken pending the closing of the accounts—namely, the determination of the share due to each State Member of the material and liquid assets of the League.

A more detailed account is accordingly given in the present report than was possible in its predecessors of the considerations which have led the Board to take decisions in some of the issues before it or to indicate the way in which a final solution should be sought in others.

While full details in regard to the financial situation are included in this report, it may be interesting to draw attention to the fact that in the second half of 1946, Swiss francs 10,109,956 were collected in respect of contributions and arrears and that since January 1st, 1947, Swiss francs 2,350,359.92 have been received. Discussions are proceeding with the few States whose obligations have not yet been fulfilled and it is reasonable to anticipate that further payments will be received before the end of March 1947.

1 The First and Second Interim Reports, to which reference is invited in connection with the present report, were issued as documents C.83.M.83.1946 and C.89.M.89.1946 respectively.
CHAPTER I

TRANSFERS EFFECTED SINCE NOVEMBER 30TH, 1946 1

I. Assets, Funds, etc., transferred

<table>
<thead>
<tr>
<th>Object</th>
<th>To whom transferred</th>
<th>Date of transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Movable assets of the New Delhi Branch Office</td>
<td>United Nations</td>
<td>Dec. 31st, 1946</td>
</tr>
<tr>
<td>High Commission for Refugees:</td>
<td></td>
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<tr>
<td>(a) Balance of Humanitarian Fund 2 3</td>
<td>Intergovernmental Committee on Refuges (for subsequent transfer to the International Refugees Organisation)</td>
<td></td>
</tr>
<tr>
<td>(b) Balance of Fund for Settlement of Saar Refugees 2 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Furniture and equipment of London Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Movable assets of the International Institute of Intellectual Co-operation over which the League had rights of property 4</td>
<td>United Nations</td>
<td>Feb. 7th, 1947</td>
</tr>
<tr>
<td>Balance of the Wateler Peace Prize Fund (Donation of the Carnegie Foundation) 5</td>
<td>do. do.</td>
<td>Feb. 27th, 1947</td>
</tr>
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II. Activities transferred

<table>
<thead>
<tr>
<th>Object</th>
<th>To whom transferred</th>
<th>Date of transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Commission for Refugees</td>
<td>Intergovernmental Committee on Refugees (for subsequent transfer to the International Refugees Organisation)</td>
<td>Jan. 1st, 1947</td>
</tr>
</tbody>
</table>

III. Staff transferred on the Cessation of League Activities

On January 1st, 1947, one official of the First Division (belonging to the staff of the New Delhi Branch Office) was transferred to the United Nations, and two officials (one of the First Division and one of the Second, belonging to the Treasury) were transferred to the International Labour Office. Both the last-mentioned officials have been temporarily seconded back by the International Labour Office to the Secretariat, where their assistance is indispensable for the completion of the liquidation.

Since the last report was published, other members of the Secretariat have accepted engagements with the United Nations and the specialised agencies.

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1 Transfers effected prior to December 1st, 1946, are enumerated in the First and Second Interim Reports.
2 The balances of the Humanitarian Fund (for relief of Nansen refugees) and the Saar Fund have been transferred on the understanding that they will be used exclusively for the assistance of the respective categories of refugees for whom they were established.
3 The amount of the balance actually transferred will be shown in the Board's final report.
4 On November 19th, 1946, the General Assembly of the United Nations passed a resolution whereby, in order to ensure, under the auspices of UNESCO, the continuity of the work performed by the International Institute of Intellectual Co-operation, the Secretary-General of the United Nations was invited to authorise UNESCO to utilise the assets of the Institute transferred by the League of Nations to the United Nations (Journal of the United Nations, No. 38; Supplement A-A.P.V. 49, of November 21st, 1946, page 325).
5 By telegram dated December 31st, 1946, the Secretary-General of the United Nations confirmed the acceptance of the balance of this donation on the conditions laid down by the League Assembly (see Report of the Supervisory Commission on the Work of its 100th Session, document A.19.1946.X, page 6).
CHAPTER 2
TRANSFERS PENDING AT FEBRUARY 28TH, 1947

ASSETS, FUNDS, ETC.

A. Transfers to the United Nations awaiting completion.

(a) Archives.

While the archives have been formally transferred to the United Nations, it was arranged between the two organisations to have consultations as to certain questions regarding the care and disposal of League archives.

The discussions not having taken place, it was represented in January to the United Nations Secretariat that a careful distinction should be made between working documents required for the current tasks of the United Nations and the League archives themselves. Working documents must obviously be made available to the new staff where needed. Every effort should be made, however, to avoid any unnecessary dispersal and to preserve as far as possible the unity of the archives, which are an important part of the record of international history between the wars.

The United Nations Secretariat has now fully recognised the importance of these representations and has undertaken to take all due care of this part of the heritage of the League of Nations.

(b) Assets the valuation of which is still pending.

By a resolution adopted on December 7th, 1946, the General Assembly of the United Nations approved the Agreement concerning the execution of the transfer to the United Nations of certain assets of the League of Nations and the Protocol concerning the execution of various operations in the transfer to the United Nations of certain assets of the League of Nations, arrived at in accordance with the provisions of the Common Plan with respect to the transfer of certain assets of the League of Nations.

The General Assembly further authorised the Secretary-General of the United Nations to prepare a definite schedule for establishing a final valuation of these assets, in accordance with the terms of the Common Plan, in consultation with the Advisory Committee on Administrative and Budgetary Questions and the League authorities, it being understood that such a schedule agreed upon by the Advisory Committee, the League authorities and the Secretary-General of the United Nations shall be considered as final.

The discussions provided for in the above-mentioned resolution are now nearing completion.

(c) Extra-budgetary Funds and Suspense Accounts.

(i) Léon Bernard Fund; Darling Foundation. — The Secretary-General of the United Nations having intimated on January 31st, 1947, that he is authorised by the General Assembly to accept the management of these two Funds for subsequent transfer to the World Health Organisation, the necessary procedures are under active discussion between the two administrations.

(ii) International Press House Fund. — The discussions for the transfer of the custody of this fund in accordance with the views of the Assembly are continuing.

(d) Library Endowment Fund.

The Secretary-General of the United Nations intimated on December 31st, 1946, that the General Assembly had agreed, on December 7th, 1946, to accept the Library Endowment Fund and that he proposes to adopt rules for the administration of the Fund which will ensure its being permanently earmarked for the purpose for which it was originally given.

With the letter, dated July 29th, 1946, by which he offered the Fund to the United Nations, the Secretary-General of the League, on the instructions of the Board, had forwarded a copy of certain "Revised Rules proposed for the Administration of the Fund after its Transfer to the United Nations".

Discussions on these revised rules are in progress.

(e) Assets of the Far-Eastern Bureau, Singapore.

The physical transfer to the United Nations of that portion of the Bureau's archives, library and office equipment which has survived the war will be effected as soon as the inventory requested from the local authorities has been received.

1 See footnotes 4 and 5 of the Schedule attached to the Common Plan, which is reproduced in the First Interim Report, Annex I, Appendix, page 13.
3 For text, see First Interim Report, Annex 2 (ii), page 14.
4 For text, see First Interim Report, Annex 2 (ii), page 16.
5 The Supervisory Commission's recommendation, approved by the Assembly on April 18th, 1946, as to the disposal of these funds will be found in the Commission's Report on the Work of its 100th Session (document A.19.1946 X, pages 7-8).
The funds appropriated to the expenses of the Bureau have in the past been made up partly from the Rockefeller gift to the Health Organisation, partly from contributions from States Members and Far-Eastern territories with a direct interest in the work of the Bureau and partly from subsidies voted by the Assembly in the annual budgets of the League.

Having regard to this circumstance and to the special interest involved in the early re-opening of the Bureau, the Board has decided that it would be in accordance with the wishes of the League Assembly to transfer to the United Nations, for subsequent transfer to the World Health Organisation, the credit balance remaining, on the final liquidation, in the Singapore Bureau account after deduction of payments authorised by the Board to two former officials of the Bureau for the loss of personal effects as a result of the Japanese occupation. The amount of the balance thus to be transferred will be indicated in the Board's Final Report.

B. Transfers to the International Labour Organisation awaiting completion.

Staff Pensions Fund and Judges' Pensions Fund.

As was stated in the Second Interim Report, the International Labour Organisation has agreed in principle to accept the Assembly's recommendation for the transfer to that body of the Staff and Judges' Pensions Funds on the understanding that appropriate financial provision will be made prior to its assumption of effective responsibility. The International Labour Conference having given the Governing Body discretion as to the detailed conditions of the transfer, negotiations are now proceeding between the Board of Liquidation and the ILO authorities. The Governing Body's next session has been called for March 5th, 1947.

In examining those aspects of the matter which concern the Staff Pensions Fund, the Board has kept in view the undertakings given by Members of the League in paragraph 16 (c) of the Assembly resolution of April 18th, 1946, which reads:

"Retired officials of the Secretariat and the Registry of the Permanent Court and their widows and children shall continue to receive the benefits due to them from the Fund, but, if the payment of these benefits involves a deficit for the Fund which has to be met by additional contributions from the International Labour Organisation, the amounts involved shall be divided among and form part of the contributions of those Members of the Organisation which were Members of the League at the date of the present resolution in the proportions in which those Members contribute to the other expenses of the International Labour Organisation."

It also had before it the Consulting Actuary's Report dated October 30th, 1946, on the actuarial valuation of the Fund as at July 31st, 1946, the Twelfth and Thirteenth Reports of the Administrative Board of the Staff Pensions Fund, the Accounts of the Fund as at December 31st, 1946, and a Report by the Auditor dated February 14th, 1947, giving, inter alia, the market value of the Fund's investments at that date. The last-named report shows that, on the present technical basis of the Fund (4.5%, yield), the assets of the Fund exceed the actuarial reserve by Swiss francs 5,391,000. In this connection, however, one of the elements for consideration is the fall in the market rate of interest since the Fund was established. The matter is still engaging the attention of the Board.

In regard to the Fund, the Board attaches importance to the following considerations:

(a) That, irrespective of the rate of interest to be adopted hereafter as a basis for the valuation of the Fund, there should be no question of increasing the capital sums payable in lieu of annuities to members of the Fund;

(b) That the Fund should remain closed to new entrants;

(c) That the position in regard to the Fund of States Members of the International Labour Organisation which are not Members of the League should not be overlooked.

In considering what provision should be made to strengthen the Judges' Pensions Fund prior to transfer to the International Labour Organisation, the Board has had before it a Report by the Consulting Actuary on the position of the Fund, dated May 11th, 1946, and a Supplementary Report, dated January 27th, 1947. The Board has taken steps to obtain from an insurance company a technical opinion on the amount to which the Fund should be increased on the assumption of a yield of 2.5%, and having regard to the present position of the Fund. It is expected that the reply will provide a basis for calculating the amount required to place the Fund in a satisfactory position before transfer.

The accounts of the Judges' Pensions Fund as at December 31st, 1946, are shown in Annex 3.
CHAPTER 3

NON-TRANSFERABLE SERVICES, FUNDS, ETC., LIQUIDATED SINCE NOVEMBER 30th, 1946

Staff Provident Fund—liquidated December 31st, 1946.

In accordance with the Supervisory Commission’s recommendation, approved by the Assembly on April 18th, 1946, the balance remaining in the Staff Provident Fund and amounting after repayment of the advance from the Reserve Fund to Swiss francs 47,916.40 was credited to the Staff Pensions Fund on December 31st, 1946.

The accounts of the Staff Provident Fund as at December 31st, 1946, appear in Annex 3 (pages 20 and 21).

CHAPTER 4

NON-TRANSFERABLE SERVICES, FUNDS, ETC., UNDER LIQUIDATION

Nansen Office.

After hearing a statement by M. de Reffye, Liquidator of the Nansen Office, the Board adopted the following decision:

"The Board of Liquidation of the League of Nations:

"Whereas, on the one hand:

"(1) In accordance with the report of the Second Committee of the Twenty-first Assembly approved on April 18th, 1946, it is for the authority charged with the liquidation of the League to take all necessary steps for the winding-up of the former International Nansen Office;"

"(2) M. de Reffye, the present Liquidator of the said Office, appointed by its Governing Body to whom he is directly responsible, has been invested by the Governing Body with very wide powers with a view to the liquidation of the Office at the earliest possible date;

"(3) The chief obstacle in the way of this liquidation, already considerably delayed by the second world war and subsequent events, appears to be the winding-up of the autonomous fund known as the Near East Fund;

"(4) The winding-up of the Near East Fund primarily concerns the Armenian refugees for whose benefit that Fund was established;

"(5) The Intergovernmental Committee on Refugees has agreed to take over the protection of Armenian refugees which, until December 31st, 1946, was ensured by the High Commissioner of the League of Nations;

"(6) One of the creditors of the Near East Fund is, moreover, the Humanitarian Fund for Nansen refugees, the administration of which was entrusted as from January 1st, 1947, to the Intergovernmental Committee on Refugees;

"And whereas, on the other hand:

"1. It is highly desirable that M. de Reffye’s final report be received by the Board of Liquidation of the League in good time before the close of its own work;

"2. Although the League can incur no responsibility whatsoever in respect of this liquidation, the Board nevertheless desires to satisfy itself that all the necessary precautions have been taken to enable the liquidation of the former Nansen Office to be effected in good and due form and in accordance with the directives laid down by the Governing Body of the Office:

"Takes note of the following statement on this matter made by M. de Reffye at the meeting on February 13th, 1947:

"1. M. Burnier, representative of the Office at Beirut, will be invited by telegram to close his accounts as at the end of February 1947 and to proceed immediately to Paris, bringing with him the accounts of his administration, together with the necessary vouchers.

"2. Before leaving for Paris, M. Burnier will hand over all the files of outstanding cases to the person whose name will be indicated to him by M. de Reffye.

"3. M. Burnier’s accounts will be examined and audited by the Board of Liquidation of the former Nansen Office. For this purpose the Board of Liquidation of the former Nansen Office will co-opt a member fully qualified to audit accounts. Payment for his services will, if necessary, be borne by the Near East Fund.

1 Services, funds, etc., liquidated prior to December 1st, 1946, are enumerated in the Board’s First and Second Interim Reports.


3 This advance, amounting to Swiss francs 174,100, was subsequently transferred to the Staff Pensions Fund.
4. When the audit has been completed, the Board of Liquidation of the former Nansen Office will give M. Burnier his discharge after payment of all his administrative expenses and of the remuneration to which he is entitled.

5. The balance of the Near East Fund, less the payments provided for under paragraph 4 above, will be distributed among the creditors of the Fund with due regard for the terms of the Loan Contracts and proportionately to their claims.

In this connection a report will be drawn up by M. de Reffye. This report, which must be approved by the Board of Liquidation of the Office, will be sent for information to the Board of Liquidation of the League of Nations. All the creditors of the Near East Fund, including the Intergovernmental Committee on Refugees in London, will receive copies of the report.

6. As regards the outstanding accounts referred to in paragraph 2 above, M. de Reffye will delegate his powers to a person selected by the Union générale arménienne de Bienfaisance and approved by the Liquidation Board of the former Nansen Office. This delegation of powers will be effected in accordance with the resolution which was adopted on November 25th, 1938, by the Governing Body of the Nansen Office and which provides, inter alia, that the liquidator has the right to appoint a deputy or to delegate his powers for the performance of some of his functions.

The Syrian and Lebanese Governments, which will be duly informed of this delegation of powers, will be requested to afford the liquidator's representative all necessary help and assistance in carrying out his duties.

7. The amount of the claims recovered by the delegate will be distributed through M. de Reffye to the creditors in accordance with the procedure laid down in the first sub-paragraph of paragraph 5 above. The report drawn up in this connection by the delegate at Beirut will be communicated to the creditors of the Fund, including the Intergovernmental Committee (or such other international body as may have definitively taken over the protection of Armenian refugees), through M. de Reffye, as soon as it has been approved by him.

8. The archives and any other documents relating to the liquidation of the properties situated in Syria and the Lebanon will be handed over to the competent Syrian and Lebanese authorities as soon as the liquidation of the Near East Fund has been completed.

The administrative archives will be placed at the disposal of such international organisation as shall have been charged with the protection of Armenian refugees.

Requests the Secretary-General:

1. To communicate, for all useful purposes, to the Director of the Intergovernmental Committee the text of the decision adopted this day 1 by the Board;

2. To request the Syrian and Lebanese Governments, to whom the text of this decision will also be transmitted, to be good enough to afford to M. de Reffye, the Liquidator of the former Nansen Office, and to his representative all the necessary facilities for the performance of their functions.

CHAPTER 5

STAFF QUESTIONS

(a) Secretariat Staff Situation.

The following table shows the progressive reduction of the Secretariat staff since June 1st, 1946:

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<thead>
<tr>
<th></th>
<th>1946</th>
<th>1947</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>June 1st</td>
<td>Aug. 1st</td>
</tr>
<tr>
<td>Principal Officers</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>1st Division</td>
<td>37</td>
<td>22</td>
</tr>
<tr>
<td>2nd Division</td>
<td>97</td>
<td>50</td>
</tr>
<tr>
<td>3rd Division</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>Not classified</td>
<td>87</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>246</strong></td>
<td><strong>76</strong></td>
</tr>
</tbody>
</table>

The above figures comprise all staff on the Secretariat pay-roll, including those engaged on the work of liquidation.

The right-hand column includes one official of the First and one of the Second Division who were transferred on January 1st, 1947, to the International Labour Office but are temporarily seconded back to the Secretariat.

1 Tuesday, February 18th, 1947.
(b) Staff Sickness Insurance Association.

The dissolution of the League and the consequent discharge of virtually all the Secretariat staff gave rise to the question of the future of the Staff Sickness Insurance Association. Although created by the League, the Association was an autonomous body, governed by an Executive Committee and the General Assembly of its members, which was alone competent, under the Association's Statutes, to take decisions as to its future.

The Secretary-General of the League, although represented on the Executive Committee, had no legal responsibility in respect of the Association; nor had the League, which contributed throughout the existence of the Association towards its expenses, any legal claim to a share in its assets, which belong to the Association as such.

Under the Association's Statutes, officials of the Secretariat are required upon the termination of their service to forfeit any claim they might have on the Association. This meant that the Association would have found itself, in the course of the autumn of 1946, when the majority of the Secretariat officials were transferred to the United Nations, without a sufficient membership to ensure its continuance. In order, therefore, to preserve the purpose for which the Association had been created, the General Assembly adopted an amendment to the Statutes whereby the title of the Association was altered to "Staff Insurance Association of the International Organisations at the Palais des Nations", making it possible not only for the ex-officials of the Secretariat to remain members of the Association but also for the officials of the United Nations serving at Geneva and officials of intergovernmental organisations having their seat at the Palais des Nations to join it.

The amendments to the Statutes having been made with the full concurrence of the Secretary-General's representative on the Executive Committee, and the purpose for which the Association had been created being thus safeguarded, the Board of Liquidation endorsed the decisions taken.

The assets of the Association, which, on July 31st, 1946, amounted to approximately 80,000 Swiss francs, have passed to the new Association. All former Secretariat officials who are now serving at the Palais des Nations with one of the above-mentioned organisations can thus continue to enjoy the benefits of insurance in case of sickness or accident, which was the purpose for which the League had created the former Association. They form the large majority of the members of the new Association.

Those former members of the Secretariat who took service elsewhere and cannot therefore, under the amended Statutes, adhere to the Association are permitted, in case of sickness or accident, on certain conditions, to apply to the Association for assistance, to be granted from a special fund earmarked by the General Assembly for this purpose.

CHAPTER 6

CLAIMS

At the series of meetings held in February 1947, the Board disposed of some of the claims against the League with which it has had to deal. Satisfactory progress has been made towards the settlement of others.

Those on which a final decision was reached are described below:

(a) Claim of Mr. Manley O. Hudson, formerly a member of the Permanent Court of International Justice, for the refund of income tax exacted by the American Commissioner of Internal Revenue on arrears of salary paid in 1946 for the period January 1st, 1941, to January 31st, 1946.

During the course of the war the Supervisory Commission had occasion to consider the claim of Mr. Manley O. Hudson, a citizen of the United States, to receive his salary as Judge of the Permanent Court of International Justice free of income tax. The legal basis of this claim is contained in Article 32 of the Statute of the Court, which reads:

"The members of the Court shall receive an annual salary. The above salaries shall be free of all taxation."

In this connection it should be observed that, in agreeing to accord an exceptional situation to the members of the Court, the Assembly was doubtless guided by the consideration that, as members of the international high court of justice, they should be placed in a position not only of equality as regards one another but also of financial independence, regardless of the volume of work awaiting the Court at any time. In 1940, the Supervisory Commission, as set forth in its Report for the Year 1940 and its First Report for the Year 1941, while ensuring the continued existence of the Court, had felt obliged to require a reduction in the salary normally attaching to members of the Court and from January 1st, 1947, to January 31st, 1948.

1 Article 32 of the Statute of the new International Court of Justice contains the same provision.
2 Documents C.152.M.139.1940.X and C.53.M.50.1941.X.
the remuneration of the Judges (other than the President of the Court) was limited to Swiss francs 500 a month. After the war, and as part of the arrangement for the dissolution of the Court, the whole question as between the League and the Judges was re-examined with the result that a payment of Dutch florins 106,730.61 was made to each member of the Court in settlement of arrears of salary. The circumstances of the settlement were reported in the Supervisory Commission's First Report for the Year 1945.

Some years prior to this decision, Mr. Hudson, who was then residing in the United States, had himself taken up the question of the liability of his salary as Judge of the Permanent Court of International Justice to United States income tax with the competent American authorities. The latter refused to take account of the argument that as the judges, being members of the highest international tribunal, received their salaries from funds provided by an international association of States they should be granted immunity from income tax. They maintained that the United States not being a party to the Statute of the Court, Mr. Hudson's salary as a member of the Court was, under United States law, subject to United States income tax. In these circumstances, Mr. Hudson contended that he was entitled to reimbursement by the League under Article 32 of the Statute of the Court, and his claim assumed increased practical importance when the decision to make a substantial payment in respect of arrears of salary was reached after the war.

It therefore fell to the Liquidation Board to pursue the examination of the question from the point to which it had been taken by the Supervisory Commission.

The legal issues raised points of doubt, and the Liquidation Board felt it to be necessary to obtain an advisory opinion from high judicial authority before it could arrive at a just conclusion on the matter. It therefore approached M. Plinio Bolla, the President of the Swiss Federal Tribunal, who kindly consented to advise it on the legal considerations involved in the case. In view of the importance of the issues raised, the Liquidation Board considers that it will be useful to place on record (1) the terms of the reference made to M. Plinio Bolla, and (2) the terms of his reply. These documents are accordingly appended to this Report.

It will be observed that, in M. Plinio Bolla's opinion:

1. The League of Nations is obliged, in the event of the United States authorities not granting tax exemption, to repay to Mr. Hudson the tax exacted from him by the American revenue on the whole of his arrears of salary for the period January 1st, 1941, to January 31st, 1946;

2. The amount to be refunded by the League is the difference between what Mr. Hudson will have to pay to the American revenue and what he would have had to pay if the League had not paid to him the arrears of salary amounting to Dutch florins 106,730.61.

3. The League is not called upon to reimburse Mr. Hudson for any tax that may be imposed by the United States authorities on the amounts refunded under (2) above.

The Liquidation Board, having given the question careful consideration in the light of M. Plinio Bolla's report, finds it its duty to accept his opinion. Mr. Hudson is being informed accordingly and action is being taken to determine the amount due. It should be mentioned that this decision was adopted on the understanding that Mr. Hudson would take all necessary steps to ensure that the United States authorities, in assessing his tax liability, take due account of the fact that the payments made to the Judges in 1946 represent not the salary of the year in which payment was made but arrears of salary in respect of five years and one month. He has since informed the Board of the ruling of the Commissioner for Internal Revenue that the payments made in 1946 must be regarded, for tax purposes, as forming part of his income for that year.

The Liquidation Board desires to place on record its sincere obligation to M. Plinio Bolla for the valuable opinion he has recorded on the case and for the help he has given to the Board in the settlement of this matter.

(b) Claims in respect of the League Buildings.

A compromise settlement has been reached on the two outstanding claims of the Entreprise sanitaire du Palais des Nations (E.S.) and the Entreprise du Chauffage et Ventilation du Palais des Nations (E.C.V.) in respect of the installations effected by them in the League buildings.

The two claims, which were first made in 1937, were subsequently referred to an Arbitral Tribunal.

Both contracting firms had claimed damages on the ground of delays in the construction of the new buildings, their combined claims amounting to Swiss francs 1,138,000. This amount included both compensation for alleged losses in respect of administrative expenses and alleged losses resulting from the devaluation of the Swiss franc. As regards the E.C.V., the claim also included compensation for work which, though not ordered by the architects, had been executed by the firm and subsequently accepted (enlarging of boilers and duplication of pipe-work).
Owing to the difficulties which both firms alleged they had encountered in the collection of material evidence in support of their claims, the arbitral proceedings, in spite of the Secretariat's efforts to expedite them, had not yet been terminated when the question came before the Board of Liquidation, and the latter therefore reached the conclusion that an attempt should be made to settle the two claims by offering a reasonable sum in full settlement. In doing so, it was guided by the following considerations. The arbitration proceedings were, in the circumstances of the two cases, likely to be protracted and might well have outlasted the final phase of the League's liquidation. In that event, it would have been necessary either to postpone the date of final liquidation or to deposit a sum of money in the hands of a trustee. It would, however, have been virtually impossible to predict the exact amounts which in the case of an adverse verdict the Arbitral Tribunal might award against the League and, in addition to these sums, there would have been increases in the lawyers' fees and in the League's share of the costs of the Tribunal. The Board therefore authorised the Secretary-General to reach as satisfactory a compromise settlement as possible and is now able to report the success of his efforts, a total of 130,000 Swiss francs having been accepted by the firms, who have given receipts in full settlement.

(c) Claim of M. van Eysinga that the pensions of members of the Permanent Court of International Justice are payable in gold florins.

The Board received from M. van Eysinga a claim in which he sought to establish that the League is under a legal obligation to pay the ex-Judges' pensions in gold florins.

The Board obtained legal opinion on M. van Eysinga's claim and was advised that it had no validity in law. It therefore unanimously decided that the claim should be rejected.

A number of other claims of minor importance either inherited from the past or presented since the Board came into being have been settled or are on the way to settlement. In all these cases, the Board, while giving sympathetic consideration to those in which hardship to individuals might seem to be involved, decided that it would not be proper for it to be guided by any argument other than those based on a legal liability.

CHAPTER 7

FINANCIAL QUESTIONS

(a) Liquidation Expenses for 1947.

In the Second Interim Report, it was stated that provision amounting to Swiss francs 200,100 had been authorised for expenses in connection with the liquidation of the League for the first quarter of 1947. At that time, it had been hoped that it might be possible to complete the liquidation by the end of the current month. As a result, however, of delays outside the Board's control, as well as of the anticipation that further payments will be made for contributions, it is now estimated that the final phase cannot be concluded until some time later. The Board has therefore authorised the Secretary-General to continue to incur expenses during April and, if necessary, May in the same monthly proportion as that approved for the first quarter of the year, and, if necessary, to defray expenditure in 1947 from the 1946 surplus.

(b) Audit of the 1946 Accounts.

The Board expects to be able to include in its next report the Auditor's statement on the accounts for the financial period 1946 of the Secretariat, the International Labour Organisation and the Permanent Court of International Justice.

(c) Position of Contributions received in 1947 and Contributions outstanding as at February 28th, 1947.

Annex 7 presents a detailed statement of contributions received in 1947 and contributions outstanding as at February 28th, 1947.

While the situation as a whole shows a certain improvement, the Board is constrained to draw attention to the relatively large amounts of arrears still due by a few States, especially some of those with which special arrangements were concluded either in 1935 or during the Assembly's last session or since the Board was set up. As regards the settlements made in 1935, the Board would draw attention to the following recommendation made by the Committee for the Settlement of Contributions in Arrear and approved by the 1935 Assembly:

"6. Finally, the Committee recommends that the Assembly should only approve an arrangement with a State for settlement of arrears on the condition that it punctually pays, not only its annual instalments under the arrangement, but also its current contributions. It recommends that, if either of these payments is not made in full in the year for which it is due, the arrangement itself should automatically be regarded as cancelled and the total debt revived." 1

1 Document A.73.1035.X.
Most of the arrangements concluded at the last Assembly in 1946 were made subject to prompt payment and contain a reservation similar to that mentioned above. States Members in arrear are reminded once again that, in the case of those to whom the reservations apply, the Board will, under the Assembly resolution of April 18th, 1946, have no alternative but to include their names in the list called for by that resolution and to set against them the full amount of their indebtedness to the League.

In order that the accounts may be finally closed on March 31st, 1947, and that the ascertainment of the percentage of the League's assets due to each State Member may not be unduly delayed, the Board has requested States in arrear to discharge their obligations not later than March 15th next. For the reasons given above, the Board attaches the highest importance to the prompt fulfilment of this request.
C. P. 99 (Geneva, October 1946).

ACTUARIAL VALUATION OF THE LEAGUE OF NATIONS STAFF PENSIONS FUND
AS AT JULY 31ST, 1946

Report by Dr. H. Wyss, Consulting Actuary to the Pensions Fund.

I.

Since the last actuarial valuation of the League of Nations Staff Pensions Fund, which showed the position on December 31st, 1944, half of the active members have resigned. The number of these members fell from 197 on December 31st, 1944, to 98 on July 31st, 1946. A large proportion of the members who resigned received the lump sum provided for in the regulations; a considerable number of former members, however, preferred a retiring pension. In consequence, the number of members who had retired on pension rose from 163 on December 31st, 1944, to 204 on July 31st, 1946. The data concerning the number of members, the salaries upon which the insurance scheme is based, the pensions which are payable, and all the other particulars are furnished by the card records of the staff which the Secretariat of the Fund has kept and which it has placed at my disposal for the purpose of making the calculations.

The most important data with regard to insured members are as follows:

Members insured on July 31st, 1946:

<table>
<thead>
<tr>
<th>Category</th>
<th>Active members</th>
<th>Retired members</th>
<th>Annual amount payable in respect of pensions Frans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretariat</td>
<td>97</td>
<td>118</td>
<td>563,367</td>
</tr>
<tr>
<td>International Labour Office</td>
<td>78</td>
<td></td>
<td>403,773</td>
</tr>
<tr>
<td>Permanent Court of International Justice</td>
<td>8</td>
<td></td>
<td>42,529</td>
</tr>
<tr>
<td>Total</td>
<td>98</td>
<td>204</td>
<td>1,007,669</td>
</tr>
</tbody>
</table>

II.

The Administrative Board of the Staff Pensions Fund has asked me to calculate the amount of the actuarial reserve of the members who are still active and of the members who had retired on July 31st, 1946, in separate groups, according to whether they belong or belonged to one of the following three organisations:

- The League of Nations Secretariat;
- The International Labour Office; and
- The Permanent Court of International Justice.

The actuarial reserve represents the present worth, determined by actuarial methods, of the future liabilities of the Pensions Fund in respect of each of its members, less the present worth of the contributions as fixed by the regulations which the Fund ought to receive in the future in respect of each of its active members.

The calculation has been made on the hypothesis that the Fund will continue to be liable in the future, either when a member is required to retire or when he resigns, for payment of the exact amounts fixed in the regulations; on the other hand, it has been assumed that the Fund will in future receive not the contributions fixed by the regulations but—as has been the case for several years past—increased contributions (18%, 16% or 15½% of the salary). These contributions and the interest on its investments are the only receipts of the Fund which have been taken into account.

In accordance with the instructions which I received, I have made two calculations:

1. The bases of valuation employed in making the first calculation are those adopted when the Fund was created, the actuarial rate of interest being fixed at 4½%. In accordance with the methods of calculation adopted hitherto, no regard has been paid to the supplementary liabilities which may in certain instances be imposed upon the Fund when, in the case of resignation, the payment made pursuant to the regulations (whether pension or lump sum) is greater than the available actuarial reserve.
2. If the Fund continues its operations, it can no longer rely on the guarantee of the League of Nations; it is therefore no longer possible to employ the former bases of valuation in estimating its future liabilities. In particular, it must not be assumed in future that the rate of interest on investments will be as high as 4 1/4% per annum unless a new guarantor undertakes to make good any future loss of interest.

It is for that reason that I have been asked to make a second calculation in accordance with bases of valuation better adopted to the circumstances which must be taken into account. With this object in view, the former bases of valuation have been modified as follows:

(a) The actuarial rate of interest has been reduced from 4 1/4% to 2 1/2% per annum; and

(b) In order to take sufficiently into account the fall in mortality, the figures adopted for the liabilities arising out of present retirement pensions and expectancy rights have been increased by approximately 10% as compared with those based upon the mortality table used hitherto.

These modifications have resulted in a complete transformation of the bases of valuation.

* * *

The results of the calculations, the details of which will be found in the Appendix to the present report, are as follows:

<table>
<thead>
<tr>
<th></th>
<th>I. Former bases of valuation</th>
<th>II. Modified bases of valuation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(actuarial rate of interest 4 1/4%)</td>
<td>(actuarial rate of interest 2 1/2%).</td>
</tr>
<tr>
<td>Actuarial reserve</td>
<td>Francs</td>
<td>Francs</td>
</tr>
<tr>
<td>Secretariat</td>
<td>7,404,078</td>
<td>9,891,975</td>
</tr>
<tr>
<td>I. L. O.</td>
<td>10,459,598</td>
<td>15,844,004</td>
</tr>
<tr>
<td>Permanent Court</td>
<td>545,962</td>
<td>730,183</td>
</tr>
<tr>
<td>Total</td>
<td>18,409,638</td>
<td>26,466,162</td>
</tr>
</tbody>
</table>

III.

If the Fund is to be enabled to fulfil its obligations in the future without receiving special guarantees, it must be furnished with a capital at least equal to the actuarial reserve.

In this connection, the result of the first calculation, based upon an actuarial rate of interest of 4 1/4%, could be taken into account only if the Fund receives a guarantee that its investments will be regularly productive of interest at 4 1/4%, or if, in the absence of such a guarantee, the loss of interest is compensated for by special grants. It would also be necessary to make good by special grants the losses arising out of the disparity between the mortality calculated in accordance with the former bases of valuation and the actual mortality (payment of retiring pensions over a longer period).

The hypotheses on which the second calculation is based would seem to be better adapted to future developments. But, even if the Fund is furnished with a capital of approximately 26.5 million francs, it needs the guarantee of a third party, chiefly because the remaining membership is relatively small and no longer provides a sufficient basis for the equalisation of risks. Moreover, the risk tends to become more and more uniform as the number of pensions paid increases. In these circumstances, it is to be feared that considerable fluctuations in the risk may occur in the years to come. If the second calculation were adopted, the guarantee which it would be necessary for the guarantor to furnish would naturally be much less important than in the case of the adoption of the first calculation, which clearly does not sufficiently take into account the realities of the situation. If 2 1/2% is adopted as the actuarial rate of interest, the risk of loss of interest is very much less than if 4 1/4% were adopted as the rate.

If, however, in the future it were not possible to obtain a regular rate of interest on investments of 2 1/2% per annum, the present worth of the Fund's estimated liabilities would have to be increased. If, for example, the actuarial rate of interest should be 2% per annum, the actuarial reserve for the number of members insured mentioned above would amount on July 31st, 1946, to about 29 million francs.

Zurich, October 30th, 1946.

The Consulting Actuary:
(Signed) Hans Wyss.

* * *
Appendix.

ACTUARIAL RESERVE AS AT JULY 31ST, 1946

<table>
<thead>
<tr>
<th></th>
<th>I Former bases of valuation (actuarial rate of interest 4 1/4%)</th>
<th>II Modified bases of valuation (actuarial rate of interest 2 1/2%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actuarial Reserve [Swiss francs]</td>
<td>Actuarial Reserve [Swiss francs]</td>
</tr>
<tr>
<td>(a) Active members.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secretariat</td>
<td>1 201,739</td>
<td>1 292,499</td>
</tr>
<tr>
<td>I. L. O.</td>
<td>97 5,592,021</td>
<td>97 9,408,921</td>
</tr>
<tr>
<td>Permanent Court</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total (a)</td>
<td>98 5,793,760</td>
<td>98 9,701,420</td>
</tr>
<tr>
<td>(b) Persons in receipt of pensions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Retired members:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secretariat</td>
<td>107 6,682,806</td>
<td>107 8,015,854</td>
</tr>
<tr>
<td>I. L. O.</td>
<td>58 3,807,328</td>
<td>58 5,025,800</td>
</tr>
<tr>
<td>Permanent Court</td>
<td>7 533,935</td>
<td>7 714,795</td>
</tr>
<tr>
<td>(ii) Widows and orphans:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secretariat</td>
<td>11 519,533</td>
<td>11 683,622</td>
</tr>
<tr>
<td>I. L. O.</td>
<td>20 1,060,249</td>
<td>20 1,409,283</td>
</tr>
<tr>
<td>Permanent Court</td>
<td>1 12,027</td>
<td>1 15,388</td>
</tr>
<tr>
<td>Total (i) + (ii):</td>
<td>118 7,202,339</td>
<td>118 9,599,476</td>
</tr>
<tr>
<td>Secretariat</td>
<td>78 4,867,577</td>
<td>78 6,435,083</td>
</tr>
<tr>
<td>I. L. O.</td>
<td>8 545,962</td>
<td>8 730,183</td>
</tr>
<tr>
<td>Permanent Court</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total (b)</td>
<td>204 12,615,878</td>
<td>204 16,764,742</td>
</tr>
<tr>
<td>Total (a) + (b)</td>
<td>302 18,409,638</td>
<td>302 26,466,162</td>
</tr>
</tbody>
</table>

ANNEX 2 (a)

ADMINISTRATIVE BOARD OF THE STAFF PENSIONS FUND: TWELFTH REPORT TO THE LIQUIDATION BOARD AS SUCCESSOR TO THE ASSEMBLY

The Administrative Board of the Staff Pensions Fund held a session at Geneva on December 10th, 1946, at which the following members and officials were present:

Mr. F. T. CREMINS, appointed by the International Labour Conference, Chairman;
Professor W. RAPPARD, appointed by the International Labour Conference, Vice-Chairman;
Miss J. STEMBERG, appointed by the International Labour Conference;
M. V. STENCEK, representing the Secretary-General of the League of Nations;
M. M. R. DE SALIS, representing the Director-General of the International Labour Office;
M. H. GALLOIS, International Labour Office;
M. P. SCHNAILT, Dr. Y. BIRAUD, representing the Members of the Fund;
M. J. H. B. LHOEST, M. P. WELPS, Acting Secretary of the Fund.

There were also in attendance:

Dr. H. WYSS, Consulting Actuary of the Fund.
Me. J. SECRETAN, Legal Adviser of the Fund.

I. COMPOSITION OF THE BOARD

The Chairman raised the question of the composition of the Administrative Board and asked whether the meeting was a meeting of the old Board or the new, entitled to speak for the present owners of the Pensions Fund.
The Board examined this question in the light of Article 16 of the Assembly Resolution for the Dissolution of the League of Nations (document A.32(1).1946.X) and noted that the conditions of this Article had not yet been fully complied with and that the Board was therefore sitting in an interim composition. The Board further agreed that its decisions would remain provisional until the conditions laid down in Article 16 of the Assembly Resolution were fulfilled.

2. Election of Chairman and Vice-Chairman

The Board re-elected Mr. Cremins as Chairman and Professor Rappard as Vice-Chairman.

3. Actuarial Valuation of the Fund

The Board examined the Report of the Actuary, Dr. Wyss, according to which the Fund was sound. It noted this with satisfaction. Dr. Wyss informed the Board that, if the Fund had been liquidated as at July 31st, 1946, on the basis of the actuarial reserve, there would have remained, after all liabilities calculated according to the old actuarial basis had been discharged, a balance of approximately 5.3 million Swiss francs. He added that, if the pensions annuities due to former members of the Secretariat and the Court were purchased from an insurance company, a supplementary payment of 2.5 million Swiss francs for the pensioned officials of the Secretariat and 0.2 million Swiss francs for the pensioned officials of the Court would have to be foreseen. This amount would not include administrative charges. Thus, even then, there would remain a balance of 2.6 million Swiss francs in the Fund.

4. Transfer of the Fund to the International Labour Organisation

The Administrative Board took note of the three resolutions concerning the Staff Pensions Fund, adopted by the International Labour Conference at its twenty-ninth session at Montreal, September-October 1946, namely:

(a) Resolution concerning the adoption of the revised Staff Pensions Regulations.

"Whereas the Governing Body of the International Labour Office decided at its ninety-eighth session held in Montreal in May 1946 that the International Labour Organisation should assume responsibility for financing and administering the Staff Pensions Fund on the basis indicated in paragraph 16 of the Resolution adopted on April 18th, 1946, by the twenty-first and last session of the Assembly of the League of Nations and on the understanding that arrangements would be made for the Pensions Fund to be examined again by the Consulting Actuary so that such financial provisions as circumstances indicated could be made from League funds by the Liquidation Board before transfer was effected:

"The Conference, having noted the proposals for amendments to the Staff Pensions Fund Regulations submitted to it by the Governing Body:

"Adopts the Staff Pensions Regulations revised as follows . . . ."

(b) Resolution concerning the contributions payable to the Pensions Fund in 1947.

"The International Labour Conference:

"Decides that the contribution of the International Labour Organisation to the Pensions Fund for 1947 under Article 7, paragraph (a), of the Staff Pensions Regulations shall be 10.5 per cent of the pensionable emoluments of the members of the Fund:

"Decides that, for the year 1947, the officials mentioned in Article 4, paragraph (a) (i), of the Staff Pensions Regulations shall continue to pay an additional one per cent of their pensionable emoluments, and those mentioned in Article 4, paragraph (a) (ii), an additional half per cent if their pensionable emoluments exceed 6,500 francs per annum, and an additional quarter per cent if these emoluments are 6,500 francs or below that figure:

"Resolves that, in continuation of the arrangement approved in previous years, the whole budgetary vote for 1947 in respect of Part II of the Budget shall be paid to the Fund."

(c) Resolution concerning the election of members of the Administrative Board of the Staff Pensions Fund.

"The Conference, in accordance with Article 3 of the Revised Staff Pensions Regulations, elects on the nomination of the Governing Body of the International Labour Office for a period of one year from October 9th, 1946, as members of the Administrative Board of the Staff Pensions Fund, Mr. F. T. Cremins (Ireland), Professor W. Rappard (Switzerland) and Professor H. Cramér (Sweden) and as substitute members, Miss Sternberg (Netherlands) (first substitute member) and Professor Kirkaldy (United Kingdom) (second substitute member)."
The Board was concerned that the Fund, after being transferred to the International Labour Organisation, should have the same guarantees as those given hitherto by the League of Nations. The Board noted with satisfaction that Article 13 of the Staff Pensions Regulations as adopted by the International Labour Conference contains the following stipulation:

"The International Labour Organisation guarantees the payment of all annuities or capital sums falling due under the present Regulations."

The Board noted further that, according to the provisions of Article 7 of the Pensions Regulations adopted by the Labour Conference, the International Labour Organisation will be responsible, from and after January 1st, 1947, for the contributions to the Fund which have hitherto been made by the League under Article 7 of the existing Regulations.

To implement its obligations, the International Labour Organisation has provided, in its budget for 1947, a credit of 703,660 Swiss francs composed of estimates of (a) contributions in respect of the staff of the International Labour Office at present members of the Fund, (b) cost of the administration of the Fund, and (c) contribution in respect of estimated interest deficiency on investments in 1947.

The International Labour Conference further decided that, in continuation of the arrangement approved in previous years, the whole budgetary vote for 1947 in respect of the Staff Pensions Fund should be paid into that Fund.

The Board did not feel bound to formulate any suggestions or proposals as to the financial provisions to be made from League funds by the Board of Liquidation prior to the transfer of the Fund, this being a matter for consideration by the Board of Liquidation. It is, however, satisfied that, as regards the legal position, all measures have been taken to ensure the satisfactory functioning of the Fund after its transfer to the International Labour Organisation.

5.

The Board gave further consideration to an appeal which had been made by a pensioner whose pension is paid in French francs. The pension in this case amounts to approximately 10,000 French francs a year, which sum in normal circumstances would allow of a very modest but nevertheless supportable existence. Owing, however, to the considerable depreciation in the purchasing power of the French franc, this amount is now much below the necessary minimum of existence and the pensioner requested a readjustment of her pension.

In its Tenth Report to the Assembly (document A.4.1946.X), the Administrative Board had already drawn attention to the existence of this and a few other cases. The Board, although unable under its statutes to grant relief, felt that some compassionate allowance to augment temporarily the annuity would be desirable. Amongst other suggestions, the Board examined whether it would be possible under the Regulations for the Board of Liquidation or the International Labour Conference, as an exceptional measure in these few cases in which pensions are paid in French francs, and without constituting a precedent, to convert the pension awarded in French francs into Swiss francs at the rate of 10 French francs to one Swiss franc, which was the official rate of the French franc at the time the pension was awarded. The Board suggests the alteration mentioned for favourable consideration by the Board of Liquidation or by the International Labour Conference.

ANNEX 2 (b)


ADMINISTRATIVE BOARD OF THE STAFF PENSIONS FUND: THIRTEENTH REPORT TO THE LIQUIDATION BOARD AS SUCCESSOR TO THE ASSEMBLY, AND TO THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE

The Administrative Board of the Staff Pensions Fund held a session at Geneva on February 17th, 1947, at which the following members and officials were present:

Mr. F. T. Cremins, appointed by the International Labour Conference, Chairman.
M. V. Stencel, representing the Secretary-General of the League of Nations.
Mr. G. A. Johnston, representing the Director-General of the International Labour Office.
Mr. S. Jacklin, representing the Director-General of the International Labour Office.
Mr. D. H. Blelloch, representing the Members of the Fund.

There was also in attendance: Mr. K. G. McKinlay, International Labour Office.
The Board had before it the Report made by the Consulting Actuary (document C.P.104) in response to the request made by the Director-General of the International Labour Office in accordance with the decisions taken by the Governing Body at its ninety-ninth session (Montreal, September 1946). The Administrative Board was asked to report on the following three questions:

(i) The amendments to the Staff Pensions Regulations that would be required to give effect to the proposals of the staff that the Fund should be opened to membership by all regular full-time officials of the International Labour Office and that such officials should be given the right to elect to have back service counted for pension purposes,

(ii) The financial provision that would be required to give effect to these proposals, having regard to the Consulting Actuary’s report; and

(iii) Any observations which the Board may wish to make on the possible consequences of the adoption of these proposals on the position of present members and pensioners of the Fund.

The Board first considered question (ii). It noted that the Consulting Actuary’s report had been established as requested on the hypothesis of a rate of interest of 2½% instead of 4½%, and taking account of additional charges for pensions due to the reduction in mortality rates. The Board considered that the proposals made by the Consulting Actuary involved a complete departure from the essential basis of the existing pensions scheme, in particular by providing for individual rates of contribution varying with the age on entry and sex of the officials. The Board noted the conclusions reached by the Consulting Actuary that, for the 100 persons whose cases had been taken into consideration the average total annual rate of contribution would be 28% of the salary; and that in the case of the same persons, if back service from the date of first appointment or reappointment to the staff of the Office were counted, the average total annual contribution would be 33% of the salary. Whilst realising that an increase in membership would be in the interest of the Fund, the Board did not consider that a scheme requiring such high contributions in respect of the higher age groups was practicable.

The Administrative Board also noted from the Second Report of the Consulting Actuary (document C.P.105) that, if the system of financing the Fund were to be altered on the lines indicated in his First Report (document C.P.104), it would be indispensable to adapt Article 9, paragraph 4 of the Regulations to these conditions and that in any case it would be necessary that the coefficients of reduction in the case of premature retirement should be altered if new bases of calculation—for example, a new rate of interest—were to be adopted.

With regard to (iii), the Administrative Board noted that the scale of contributions suggested by the Consulting Actuary would be sufficient to provide for the existing benefits under the Regulations of the Fund and would not require the payment into the Fund of any initial capital sum. The adoption of these proposals would therefore not prejudice the position of present members and pensioners of the Fund. The Board wished to place on record that it considers it essential to safeguard the existing rights of the present members and pensioners of the Fund.

The Board, dealing with (i), considered that, if effect were to be given to the proposals of the staff that the Fund should be opened to all regular full-time officials of the International Labour Office and that such officials should be given the right to elect to have back service counted for pension purposes, it would be necessary to amend the Staff Pensions Regulations in regard to the membership of such new members in particular on the following points, if the scheme suggested by the Consulting Actuary were approved. (It is understood that the existing rules would continue to apply to existing members and pensioners.)

Article 1, paragraph (i): delete last sentence, in order to provide for the possibility of entry to the Fund of those officials over 45 years of age who have hitherto been excluded.

A new paragraph 5 to be added to Article 1, to make provision for the admission of all regular full-time officials not at present members of the Fund, together with provision for counting back service prior to January 1st, 1947, of such officials, for the purpose of benefits falling due to them.

Article 4 would have to be modified in such a way as to make provision for the new rates of contribution and methods of assessment proposed by the Actuary.

Further, the Board decided to propose for adoption by the International Labour Conference the following resolution:

"The International Labour Conference:

"Decides that the contribution of the International Labour Organisation to the Pensions Fund for 1948 under Article 7, paragraph (a), of the Staff Pensions Regulations, shall be 10.5 per cent of the pensionable emoluments of the members of the Fund:

"Decides that, for the year 1948, the officials mentioned in Article 4, paragraph (a) (i), of the Staff Pensions Regulations shall continue to pay an additional one per cent of their pensionable emoluments, and those mentioned in Article 4, paragraph (a) (ii), an additional half per cent if their pensionable emoluments exceed 6,500 francs per annum, and an additional quarter per cent if these emoluments are 6,500 francs or below that figure;

"Resolves that, in continuation of the arrangement approved in previous years, the whole budgetary vote for 1948 in respect of Part II of the Budget shall be paid to the Fund."

ACCOUNTS OF THE LEAGUE OF NATIONS STAFF PENSIONS FUND

BALANCE-SHEET AS AT DECEMBER 31st, 1946

Liabilities.

<table>
<thead>
<tr>
<th></th>
<th>Swiss francs</th>
<th>Swiss francs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accumulated Fund</td>
<td></td>
<td>22,786,365.68</td>
</tr>
<tr>
<td>Sundry Creditors:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pensions due but not paid</td>
<td>252,806.20</td>
<td></td>
</tr>
<tr>
<td>Capital sums due but not paid</td>
<td></td>
<td>252,806.20</td>
</tr>
<tr>
<td>Insurance Premium Debt Reserve Fund</td>
<td></td>
<td>608.40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>23,039,780.28</td>
</tr>
</tbody>
</table>

Assets.

<table>
<thead>
<tr>
<th></th>
<th>Swiss francs</th>
<th>Swiss francs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available Funds:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current account — Swiss francs</td>
<td>1,132,208.95</td>
<td></td>
</tr>
<tr>
<td>Current account — U.S.A. dollars ($235,341.39)</td>
<td>1,014,321.40</td>
<td></td>
</tr>
<tr>
<td>Current account — sterling (£44,388 2s. 2d.)</td>
<td>767,914.25</td>
<td></td>
</tr>
<tr>
<td>Current account — Canadian dollars ($23,827.77)</td>
<td>102,697.70</td>
<td></td>
</tr>
<tr>
<td>Gold deposit account (at cost)</td>
<td>8,338,949.95</td>
<td></td>
</tr>
<tr>
<td>Investments (at cost), for details see Schedule pages 22-23</td>
<td>11,609,409.43</td>
<td></td>
</tr>
<tr>
<td>Add: accrued interest</td>
<td>41,521.25</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>11,650,930.68</td>
</tr>
<tr>
<td>Sundry Debtors:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance premium debts</td>
<td></td>
<td>32,070.20</td>
</tr>
<tr>
<td>Sundries</td>
<td></td>
<td>687.15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>23,039,780.28</td>
</tr>
</tbody>
</table>

(Signed) O. Jenny,
Chief Accountant.
## STAFF PENSIONS FUND: RECEIPTS AND PAYMENTS

### Receipts

#### Balances as at January 1st, 1946:

**At Bank:**
- Current account — Swiss francs: 702,721.70
- Current account — U.S.A. dollars ($436,106.42): 1,879,618.65
- Current account — sterling (£2,797 18s. 10d.): 48,404.40
- Current account — Canadian dollars ($48,339.93): 189,492.50
- Current account — French francs (fr. 16,312.50): 8,361,846.75

**Investments (at cost) including accrued interest:** 13,066,309.98

**Sundry debtors:**
- Insurance premium debts: 30,836.75
- Sundries: 633.10

**Receipts during year:**

**Swiss francs**
- Contributions from Members of the Fund: 222,704.65
- Contributions from States Members of the Organisations:
  - Current contributions: 322,439.45
  - Unexpended balance on Part VI of the League Budget: 631,834.35
- Appropriation-in-aid (Part VI) (Contributions from non-member States): 164,410.—
- Amount recovered in respect of officials seconded from the International Labour Office: 3,279.90
- Annuity: 400,000.—
- League contribution paid by members of the Fund temporarily detached: 3,270.15
- Refunds in accordance with Article 19 of the Regulations: 6,347.50
- Interest: 190,956.30
- Net exchange profits on current accounts: 30,468.15
- Adjustments in respect of previous year: 1,744,668.35

**Remittances from the League of Nations representing the balances of:**
- The Fund to cover Exchange Losses: 285,129.75
- The Reserve Fund: 174,100.—
- The Staff Provident Fund: 47,916.40

**Balances as at December 31st, 1946:**
- Pensions due but not paid: 252,806.20
- Capital sums due but not paid: 608.40
- Insurance Premium Debt Reserve Fund: 253,414.60

**Total:** 27,018,727.98
ACCOUNT AS AT DECEMBER 31st, 1946

<table>
<thead>
<tr>
<th>EXPENDITURE</th>
<th>Swiss francs</th>
<th>Swiss francs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balances as at January 1st, 1946:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pensions due but not paid</td>
<td>181,896.60</td>
<td></td>
</tr>
<tr>
<td>Capital sums due but not paid</td>
<td>204,629.05</td>
<td></td>
</tr>
<tr>
<td>Insurance Premium Debt Reserve Fund</td>
<td>405.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>386,931.25</td>
</tr>
<tr>
<td>Expenditure during year:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital sums</td>
<td>1,926,346.65</td>
<td></td>
</tr>
<tr>
<td>Contributions refunded</td>
<td>414,192.70</td>
<td></td>
</tr>
<tr>
<td>Pensions</td>
<td>674,969.95</td>
<td></td>
</tr>
<tr>
<td>Invalidity pensions</td>
<td>94,284.40</td>
<td></td>
</tr>
<tr>
<td>Pensions to widows and orphans</td>
<td>110,130.—</td>
<td></td>
</tr>
<tr>
<td>Net losses on repaid investments</td>
<td>344,028.10</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous expenses</td>
<td>13,836.30</td>
<td></td>
</tr>
<tr>
<td>Adjustments in respect of previous year</td>
<td>4,322.35</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,592,016.45</td>
</tr>
</tbody>
</table>

Balances as at December 31st, 1946:

| At Bank: | |
| Current account — Swiss francs | 1,132,208.95 | |
| Current account — U.S.A. dollars | 1,014,321.40 | |
| (\$235,341.39) | |
| Current account — sterling | 767,914.25 | |
| (£44,388 2s. 2d.) | |
| Current account — Canadian dollars | 102,607.70 | |
| (\$23,827.77) | |
| Gold deposit account | 8,338,949.95 | |
| | | 11,356,092.25 |

Investments (at cost) including accrued interest | 11,650,930.68 |

Sundry debtors:

| Insurance premium debts | 32,070.20 |
| Sundries | 487.15 |
| | | 23,039,780.28 |

| (Signed) O. JENNY, |
| Chief Accountant. |

1 For conversion rates, see footnote on page 19.
<table>
<thead>
<tr>
<th>Investment</th>
<th>Nominal value</th>
<th>Cost price</th>
<th>Nominal value</th>
<th>Cost price</th>
</tr>
</thead>
<tbody>
<tr>
<td>4½% Brazil External Loan, 1937</td>
<td>U.S.A. $ 52,650</td>
<td>$ 27,625.---</td>
<td>116,083.90</td>
<td>---</td>
</tr>
<tr>
<td>7% Italian Credit Consortium, 1927-1947</td>
<td>U.S.A. $ 5,000</td>
<td>$ 4,651.---</td>
<td>23,583.50</td>
<td>---</td>
</tr>
<tr>
<td>1½% Dominion of Canada Nov. Ist, 1948</td>
<td>Can. $ 2,741,000</td>
<td>Can. $ 2,741,000</td>
<td>10,739,736.35</td>
<td>---</td>
</tr>
<tr>
<td>4% French Loan, 1939</td>
<td>F.1. 122,500</td>
<td>F.1. 110,536.75</td>
<td>255,859.75</td>
<td>---</td>
</tr>
<tr>
<td>5% Suez Canal (586 gold bills)</td>
<td>F.I. 1,074,408.30</td>
<td>225,923.55</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>1% Suez Canal (1 actions jouissance)</td>
<td>F.I. 357,299.40</td>
<td>7,651.88</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>4% Argentine Govt., 1933-1953</td>
<td>£ 8,500</td>
<td>£ 7,996.80</td>
<td>172,210.85</td>
<td>---</td>
</tr>
<tr>
<td>2½% British National Defence Bonds, 1944-1948</td>
<td>£ 44,900</td>
<td>£ 44,899.96</td>
<td>973,652.70</td>
<td>£ 2,560.67</td>
</tr>
<tr>
<td>2½% Norwegian Govt., 1946</td>
<td>Kr. 235,000</td>
<td>Kr. 234,475.---</td>
<td>525,310.50</td>
<td>Kr. 40,000.---</td>
</tr>
<tr>
<td></td>
<td>12,938,529.43</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Balance as at January 1st, 1946:</th>
<th>Swiss francs</th>
<th>Swiss francs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current account — Swiss francs</td>
<td>11,321.30</td>
<td></td>
</tr>
<tr>
<td>Current account — dollars (United States) (836,482.83)</td>
<td>157,241.---</td>
<td></td>
</tr>
<tr>
<td>Current account — sterling (£257 9s. 6d.)</td>
<td>4,454.35</td>
<td></td>
</tr>
<tr>
<td>Investments (at cost)</td>
<td>148,127.75</td>
<td></td>
</tr>
<tr>
<td>Sundry debtors</td>
<td>321,144.40</td>
<td>11.30</td>
</tr>
<tr>
<td>Contributions:</td>
<td>321,155.70</td>
<td></td>
</tr>
<tr>
<td>Secretariat</td>
<td>Swiss francs</td>
<td></td>
</tr>
<tr>
<td>Contributions by members</td>
<td>741.93</td>
<td></td>
</tr>
<tr>
<td>Contributions by Secretariat</td>
<td>667.71</td>
<td></td>
</tr>
<tr>
<td>International Labour Office</td>
<td>1,409.64</td>
<td></td>
</tr>
<tr>
<td>Contributions by members</td>
<td>1,721.20</td>
<td></td>
</tr>
<tr>
<td>Contributions by International Labour Office</td>
<td>1,549.40</td>
<td></td>
</tr>
<tr>
<td>Death and Invalidity Fund</td>
<td>3,270.60</td>
<td>653.95</td>
</tr>
<tr>
<td>INCOME FROM INVESTMENTS, INCLUDING BANK INTEREST</td>
<td>5,334.19</td>
<td></td>
</tr>
<tr>
<td>Less amount transferred to Capital Account, being provision for interest to December 31st, 1946, at 2½% per annum</td>
<td>9,028.10</td>
<td>2,322.49</td>
</tr>
<tr>
<td></td>
<td>6,705.61</td>
<td></td>
</tr>
<tr>
<td></td>
<td>333,195.50</td>
<td></td>
</tr>
</tbody>
</table>
### THE PENSIONS FUND

<table>
<thead>
<tr>
<th>Investments repaid during 1946</th>
<th>Profit</th>
<th>Loss</th>
<th>Cost price</th>
<th>Market value in Swiss francs</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Swiss francs</td>
<td>Nominal value</td>
<td>In Swiss francs</td>
<td>In Swiss francs</td>
<td>Nominal value</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>--------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>52,560</td>
</tr>
<tr>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>5,000</td>
</tr>
<tr>
<td>Fl. 1,000</td>
<td>—</td>
<td>2,402.50</td>
<td>248.55</td>
<td>Can.$ 2,741,000.00</td>
</tr>
<tr>
<td>386 bills</td>
<td>13,578.95</td>
<td>—</td>
<td>24,056.60</td>
<td>Can.$ 2,741,000.00</td>
</tr>
<tr>
<td>49,106.45</td>
<td>—</td>
<td>24,126.40</td>
<td>96.56%</td>
<td>F.f. 457,189.15</td>
</tr>
<tr>
<td>£ 700</td>
<td>5,190.00</td>
<td>—</td>
<td>888.43</td>
<td>£ 8,200</td>
</tr>
<tr>
<td>£ 47,100</td>
<td>824,780.00</td>
<td>—</td>
<td>208,209.50</td>
<td>£ 8,200</td>
</tr>
<tr>
<td>Kr. 85,000</td>
<td>78,888.50</td>
<td>—</td>
<td>17,835.70</td>
<td>Kr. 190,000</td>
</tr>
<tr>
<td>49,106.45</td>
<td>1,034,510.45</td>
<td>248.55</td>
<td>345,176.65</td>
<td>—</td>
</tr>
</tbody>
</table>

---

### STAFF PROVIDENT FUND (IN LIQUIDATION)

**AS AT DECEMBER 31st, 1946**

**EXPENDITURE**

**By Refunds consequent on Resignation, etc.:**

- **Secretariat.**
  - Members' account .................................. 19,361.63
  - Secretariat account ................................ 17,425.07
  - Total: 36,786.70

- **International Labour Office.**
  - Members' account .................................. 33,930.15
  - International Labour Office account ............... 30,538.55
  - Total: 64,468.70

**Net losses on repaid investments** .................................. 9,705.25

**SUNDARY EXPENSES** .................................................. 158.45

**Repayment of advance from the League of Nations Reserve Fund.** .................................. 174,100.00

**Final balance transferred to the Staff Pensions Fund** .................................. 47,916.40

**Total** ........................................................................ 333,195.50

(Signed) O. JENNY,
Chief Accountant.

---

1 Conversion rates:<br>1 U.S.A. dollar = 4.31<br>1 Canadian dollar = 4.31<br>1 pound sterling = 27.90<br>100 Swiss francs = 240.50 (fixed rate)<br>100 French francs = 1.635<br>100 Norwegian crowns = 86.61

2 No quotation.
ACCOUNTS OF THE PENSIONS FUND OF THE MEMBERS OF THE FORMER PERMANENT COURT OF INTERNATIONAL JUSTICE

STATEMENT AS AT DECEMBER 31ST, 1946

<table>
<thead>
<tr>
<th>Receipts</th>
<th>Accumulated Fund as at January 1st, 1946:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deposit account ................................</td>
</tr>
<tr>
<td></td>
<td>1,380,752.39 976,615.18</td>
</tr>
<tr>
<td></td>
<td>Allocation from the appropriation of 174,282.90 Swiss francs provided in the Budget of the Permanent Court of International Justice for the twenty-eighth financial period (1946) ..................................</td>
</tr>
<tr>
<td></td>
<td>1,554,035.29 1,099,886.61</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payments</th>
<th>Pensions paid during 1946:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in respect of pensions due for 1940 (Fl. 147,958.43) ..........</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Accumulated Fund as at December 31st, 1946:
Deposit account ............................ 1,344,349.59 929,648.05
1,555,035.29 1,099,886.61

(Signed) O. Jenny,
Chief Accountant.

ANNEX 4

AUDIT OF THE ACCOUNTS OF THE STAFF PENSIONS FUND FOR THE 1946 FINANCIAL PERIOD


I have examined the accounts of the Staff Pensions Fund of the League of Nations and have found them to agree in all respects with the books and with the balance-sheet as at December 31st, 1946.

During the 1946 financial period, the accumulated capital of the Staff Pensions Fund has decreased by 1,107,159.85 Swiss francs, whereas in 1945 it increased by 1,066,170.35 Swiss francs. This decrease is mainly due to the increase in 1946 in the capital sums paid out by 1,516,334.70 Swiss francs. On the other hand, it should be noted that the balances (as at January 1st, 1946), of the Fund to cover Exchanges Losses and of the Reserve Fund have been transferred to the Staff Pensions Fund together with the final balance as at December 31st, 1946, of the Staff Provident Fund. The total of these remittances amounted to 507,146.15 Swiss francs.

The balance of the Staff Pensions Fund was made up as follows on December 31st, 1946:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Swiss francs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sundry debtors</td>
<td>32,757.35</td>
</tr>
<tr>
<td>Accrued interest</td>
<td>41,521.25</td>
</tr>
<tr>
<td>Investments</td>
<td>11,609,409.43</td>
</tr>
<tr>
<td>Gold</td>
<td>8,338,949.95</td>
</tr>
<tr>
<td>Cash in hand</td>
<td>3,017,142.30</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>23,030,780.28</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Swiss francs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>less:</td>
<td></td>
</tr>
<tr>
<td>Pensions due but not paid</td>
<td>252,806.20</td>
</tr>
<tr>
<td>Reserve Fund for debts in respect of</td>
<td>608.40</td>
</tr>
<tr>
<td>insurance premiums</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>253,414.60</strong></td>
</tr>
</tbody>
</table>

However, it should be mentioned that the investments of the Fund are shown in the balance-sheet at cost price, viz. 11,609,409.43. Whereas, according to the quotation indicated by the banks to-day, the market value of these investments amounts to 12,623,702.40. With the result that there is an appreciation of 1,014,292.97 and consequently the real value of the Staff Pensions Fund now amounts to 23,800,658.65.

As regards the holding of 7% Italian Credit Consortium bonds (1927-1947) the Bank has received information to the effect that Italian securities issued in U. S. dollars are not quoted for the moment on the New York Stock Exchange.

(Signed) Uno Brunskog,
Auditor.
ANNEX 5 (a)

PENSIONS FUND OF THE MEMBERS OF THE FORMER PERMANENT COURT OF INTERNATIONAL JUSTICE (JUDGES' PENSIONS FUND)

CONSULTING ACTUARY'S REPORT, DATED MAY 11TH, 1946, ON THE POSITION OF THE FUND

Note by the Secretary-General.

On the instructions of the Supervisory Commission, the Treasurer of the League wrote on March 26th last to Dr. Hans Wyss, Consulting Actuary of the Judges' Pensions Fund, a letter requesting him to undertake an examination of the position of the Fund at the latest possible date and to estimate the sum of money (in florins) (1 florin = 1.625 Swiss francs) which should be made available to cover the annuities of the fourteen Judges still alive.

The Secretary-General has the honour to communicate below to the members of the Board of Liquidation, Dr. Wyss's reply, which is dated May 11th, 1946.

* * *

[Translation.]

In reply to your request of March 26th, 1946, I have the honour to give you the following information with regard to the position of the Pensions Fund of the Court of Justice:

1. The accounts of the Pensions Fund of the Court of Justice for the year 1945 show that the accumulated fund as at December 31st, 1945, amounted to 1,380,752 Swiss francs, or 849,694 florins, taking the rate of conversion as 1 florin = 1.625 francs, as mentioned in your letter. If it had been possible regularly to pay into the Fund the sums contemplated in the original plan, the accumulated fund would have amounted, at the end of 1945, to about 950,000 florins. In a statement drawn up in the form of a budget, it would have been possible to show on the asset side not only this but also the present value of the annual payments of 80,766 florins which were to have been made up to 1951—that is to say, about 450,000 florins. The fund would also have received annual contributions for three of its members until they reached the age of 65, the present value of which must be estimated at about 80,000 florins. Under the original plan, the assets of the Pensions Fund of the Court of Justice at the end of 1945 would have amounted to nearly 1,500,000 florins.

I have already referred in previous reports to the changes which have for various reasons been made in the original plan (see, for instance, my report of May 10th, 1945).

2. According to Annex V of your letter of March 26th, 1946, eleven judges are entitled as from February 1st, 1946, to pensions amounting to 156,189 florins per annum. At a later date, three other judges will be entitled to pensions amounting to a total of 35,495.83 florins, but these pensions will commence only when the beneficiaries reach the age of 65.

3. In previous reports (see, in particular, that of May 10th, 1945), I have frequently explained why there can be no question of a valuation of the Pensions Fund of the Court of Justice on actuarial principles. In order to give at least some guidance with a view to the establishment of a balanced budget, certain calculations were made as to interest on the basis of very simple assumptions, the effect of mortality being disregarded. When such calculations were made, it was always assumed that the League of Nations would in each case guarantee the payment of the pensions to the Judges.

If, in order to determine what sum would be required on July 1st, 1946, to guarantee the payment of the pensions to which fourteen judges will be entitled, we start from the main assumptions adopted by Professor Friedli when he drew up his first financial plan and take into account the new circumstances (retirement of all the judges either immediately or at the age of 65, cessation of annual payments and contributions), we obtain the following results:

Case (a): The Fund regularly earns interest at the rate of 2½%; pensions are paid as under 2 above to each judge until he reaches the age of 80; in this case, the fund required would be 1,165,000 florins. It would even be a little lower than the total assets which should have been available on December 31st, 1945, under the original plan as described under 1 above. The main reason for this is that, in many cases, payment of the pension began later than was allowed for in the budget.

Case (b): If the pensions were payable in the same conditions but with one difference—that is to say, until the beneficiary reaches the age of 85—the fund required on July 1st, 1946, would be 1,885,000 florins. This is more than the total assets as shown in 1 above in accordance with the original plan, for the reason that the budget provided for the payment of pensions only until the age of 80.
Case (b) would seem to correspond far more closely to the facts than case (a). In both cases, however, the fund which would be required is much higher than the amount which was actually available at the end of 1945.

4. Since the guarantee of the League of Nations in respect of the liabilities of the Pensions Fund of the Court of Justice has been withdrawn, another guarantor will have to be found to take the place of the League. The Pensions Fund could not function satisfactorily if left to its own resources. It could not afford to the judges an adequate guarantee that the liabilities incurred in respect of them would be met unless it were augmented beyond all due proportions.

In practice, there would seem to me to be only two possible solutions:

(a) A new Pensions Fund is to be established for the International Labour Organisation. It will probably take over the liabilities of the former Pensions Fund of the League. It might also assume responsibility for the liabilities of the Pensions Fund of the Court of Justice. In return, it would be equitable, from the actuarial standpoint, to pay into the Fund of the International Labour Organisation the sum of 1,650,000 florins.

(b) The liabilities of the Pensions Fund of the Court of Justice might be transferred to a private insurance company. I note, from the documents attached to your letter of March 26th, 1946, that this solution has already been considered. Two proposals have been made, as follows:

(aa) One comes from a Dutch undertaking (Nationale Levensverzekering Bank N.V.). This company would be prepared to pay to the fourteen judges the pensions referred to in 2 above in return for a single premium of 1,510,452 florins, taking account of the deaths of two judges.

(bb) The other proposal is from a British company. If the figures given by this company are converted into florins in order to facilitate comparison, the sum required in return for the same guarantee would be 1,693,158 florins.

A careful comparison of the two proposals shows that the difference would be even greater if the pensions payable under the proposal of the British company were absolutely identical with those payable under proposal (aa). Under the latter, the annuities would run from May 1st, 1946, and would be payable quarterly in arrears. The first instalments would therefore be payable on August 1st, 1946, provided the beneficiary were alive on that date. Subsequent instalments would be payable on November 1st, 1946, February 1st, 1947, and so on.

Under (bb), on the other hand, the annuities would run from July 1st, 1946. They would be payable in six-monthly instalments in arrears. The first instalments would therefore be due only on January 1st, 1947, the next on July 1st, 1947, and so on. In addition, under proposal (aa), the three pensions beginning to run at a later date would be higher by 200 florins than the corresponding annuities payable under proposal (bb). If the conditions were the same as under proposal (bb), the single premium payable to the Dutch company would be about 200,000 florins less than that demanded by the British company. It should be pointed out, however, in regard to this difference, that the cost of the insurance is not the only consideration. Other factors should also be borne in mind in selecting a company to take over the liabilities of the Pensions Fund of the Court of Justice.

5. To enable me, on the one hand, to form an opinion as to the proposals made by two life insurance companies and, on the other hand, to draw attention to the fact that the Société suisse d’Assurances générales sur la vie humaine also would be prepared to assume responsibility for the payment of the pensions in question to the fourteen judges, I have also obtained a proposal from this company.

Assuming that the annuities began to run on July 1st, 1946, a single premium of 1,591,816 florins would be required under this proposal in return for the payment, quarterly in arrears, of the life annuities shown in the table in Annex V of your letter of March 26th, 1946. For six-monthly instalments, as proposed by the British company, a single premium of 1,568,000 florins would be required.

The Société suisse d’Assurances générales sur la vie humaine is reputed to be a safe and conscientious undertaking. It has for a long time had considerable life annuity business. Even in recent years, it has regularly paid instalments of annuities in nearly all countries. As it is authorised to operate not only in Switzerland but also in the Netherlands and in France and has special offices in these countries, there would be no difficulty in paying annuities either in florins with Amsterdam as the place of execution or in Swiss francs with Switzerland as the place of execution, in accordance with the wishes of the beneficiary at the time of concluding the contract. I shall be glad to give you any explanations as to any questions which may arise on this matter. I should be prepared, should you so desire, to place a detailed proposal before you, together with all the documents necessary to enable you to form a judgment.

I hope I have given you all the information you required. I am entirely at your service if you need any further information.

(Signed) Wyss.
Supplementary report (b), dated January 27th, 1947, by the Consulting Actuary

Note by the Secretary-General.

In his report dated May 11th, 1946 (document B.L.13), the Actuary examined the position of the Fund as at July 1st, 1946, indicating the sum of money which should be available to cover the annuities of the fourteen judges still alive.

In a supplementary report, dated January 27th, 1947, the Actuary examines the position as at March 15th, 1947, on the assumption that no modification will have occurred at that date as regards the number of persons entitled to an annuity.

This report is reproduced below.

* * *

[Translation.]

By way of supplementing my letter of May 11th, 1946, I shall sum up the results of the calculations obtained by taking the date March 15th, 1947, on the assumption that at that date there will have been no change in the number of members entitled to a pension.

The calculations take into account the data communicated by the Secretariat, according to which eleven judges are in receipt of a pension. The total of these pensions amounts to 156,189 florins. Three other judges will later become pensionable and will receive pensions totalling 35,495.83 florins; the pensions will begin to run only after they have reached 65 years of age.

For the rest, I refer to the observations and reservations made in my above-mentioned letter of May 11th, 1946.

As the position of the accumulated fund at March 15th, 1947, is not yet known, I am obliged to indicate merely the amount that would be required in each of the different hypotheses described in greater detail in that letter. As soon as the amount of the accumulated Fund is known, it will thus be possible to calculate directly the sum by which the Fund would, if necessary, have to be strengthened.

Calculations made as at March 15th, 1947, on the assumption that benefits have been paid when due.

Case (a): The Fund regularly earns interest at 2 1/2%. The pension is paid to each judge until the age of 80. Fund required: 1,070,000 florins.

Case (b): The Fund regularly earns interest at 2 1/2%. The pension is paid to each judge until the age of 85. Fund required: 1,800,000 florins.

Case (c): The Fund regularly earns interest at 2 1/2%. The pension is paid to each judge until decease. The actuarial calculation, starting from the same technical bases as for the League Staff Pensions Fund but assuming a technical interest of only 2 1/2%, shows that a fund of 1,720,000 florins would be required.

To facilitate comparison, I mention the following cases also:

Case (d): The Fund earns no interest. The pension is paid to each judge until the age of 80. Fund required: 1,285,000 florins.

Case (e): The fund earns no interest. The pension is paid to each judge until the age of 85. Fund required: 2,185,000 florins.

* * *

From the actuarial point of view, it would in my opinion be appropriate to take the result based on case (c) (fund required: 1,720,000 florins) if the Judges' Pensions Fund is administered by the I.L.O. and enjoys the guarantee of the States Members of the League.

(Signed) Wyss.
REQUEST ADDRESSED TO M. PLINIO BOLLA, PRESIDENT OF THE SWISS FEDERAL
TRIBUNAL, FOR A LEGAL OPINION ON THE RIGHT CLAIMED BY Mr. MANLEY
O. HUDSON, A FORMER MEMBER OF THE PERMANENT COURT OF INTER-
ATIONAL JUSTICE, TO REIMBURSEMENT BY THE LEAGUE OF NATIONS OF
THE TAXES DUE BY HIM IN THE UNITED STATES ON THE SALARY WHICH
HE RECEIVED FROM THE LEAGUE OF NATIONS FOR THE PERIOD JANUARY
1ST, 1941, TO JANUARY 31ST, 1946

1. Although the United States was not a party to the Statute of the Permanent Court of
International Justice, it was considered desirable for an American citizen to be included among
the candidates at the elections to the Court.

Thus, Mr. Bassett Moore, Mr. Hughes and Mr. Kellogg were in turn elected judges of the
Court. Finally, Professor Manley Hudson was elected at the time of the general renewal of the
Court’s membership in September 1930 for a period of nine years from January 1st, 1931, to
December 31st, 1940.

2. In 1939, the Council and the Assembly were prevented by reason of the war from pro-
ceeding to the re-election of the judges whose term of office was on the point of expiry. Their
term of office was accordingly extended in virtue of Article 13 of the Statute, which reads:

“The members of the Court shall be elected for nine years.
They may be re-elected.
They shall continue to discharge their duties until their places have been filled . . . .”

3. In 1940, the Supervisory Commission decided to make a substantial reduction in the
Budget, to take effect on January 1st, 1941. It was consequently decided that, during the
emergency period, the judges (with the exception of the President) would until further notice
receive a monthly payment of 500 Swiss francs and that in addition an allowance would be paid
to them if there should be a meeting of the Court. The President of the Court reserved the judges’
rights on this question, and the Supervisory Commission, for its part, reserved its position.

In fact, no judicial session of the Court was held during the emergency period and, as a result
of the creation by the United Nations of the International Court of Justice to replace the Per-
manent Court of International Justice, all the judges of the latter, including Mr. Manley Hudson,
resigned with effect from February 1st, 1946.

By a decision mentioned in its report of November 20th, 1945, the Supervisory Commission
decided, in agreement with the President of the Court, that the judges should receive for the period
January 1st, 1940, to January 31st, 1946, an annual salary of 24,000 Dutch florins, less the monthly
allowance of 500 Swiss francs which had been paid to them previously. As a result of this payment
of arrears of salary, Mr. Manley Hudson received a sum of 106,730.61 Dutch florins, which was
paid to his account with a Swiss bank in Geneva.

4. The question of the taxation of the salary paid to Mr. Manley Hudson and to the other
judges of American nationality elected prior to Mr. Manley Hudson’s election had not arisen
previously so far as concerns the League. In his letter of February 26th, 1946 (Appendix, II, i(f]),
Mr. Manley Hudson states:

“In the past, I have paid taxes on salary received as a judge, except in years when I
was a bona fide non-resident of the United States for more than six months of the year.
I have not heretofore requested a reimbursement of taxes paid.”

The only issue here therefore is that of the tax payable on the sum of 106,730.61 Dutch florins,
representing arrears of salary.

As Mr. Manley Hudson resided continuously in the United States of America during the
period under consideration (1940-1946), the United States Revenue authorities intend to tax the
salary paid to him by the League.

It should be noted that the Statute of the Court required the judges “to hold themselves
permanently at the disposal of the Court” 4, but did not require them to reside at The Hague,
which was the seat of the Court. It was therefore permissible for judges to live in whatever
country suited their own convenience.

As mentioned above, no judicial session 5 was held by the Court during the emergency period
(the last judicial session took place in 1939). Moreover, the Netherlands were occupied by the
Germans from May 10th, 1940 onwards.

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3 These 106,730.61 Dutch florins represented 173,543.95 Swiss francs, the sum paid by the League of Nations on
February 23rd, 1946, to Mr. Manley Hudson’s account with the Société de Banque Suisse, Geneva.
4 Article 23 of the Statute reads:

“Members of the Court shall be bound, unless they are on regular leave or prevented from attending by illness
or other serious reason duly explained to the President, to hold themselves permanently at the disposal of the Court.”

5 The Court held an administrative session at the end of 1945.
Mr. Manley Hudson took up residence in the United States, his own country, resuming his professorial duties at Harvard University in October 1940.1

5. The United States, not being a party to the Statute of the Permanent Court of International Justice or a Member of the League of Nations, was not under any obligation at common law to exempt the judge’s salary of Mr. Manley Hudson from taxation.

6. Mr. Manley Hudson now requests the League to refund to him the amounts claimed from him by the American Revenue authorities in consequence of its payment to him of arrears of salary.2 He maintains that the League is legally bound in all circumstances to ensure the fiscal immunity of his salary as judge.

7. As regards the sum claimed by the American Revenue authorities from Mr. Manley Hudson, this amounts to the figure specified in his letter of February 26th, 1946, because, the arrears of salary having been paid in a lump sum, the Revenue authorities have included it in his income for 1946, the year in which Mr. Manley Hudson received the whole of these arrears.

Moreover, Mr. Manley Hudson explains that, had the whole of the arrears of salary paid to him represented his sole income for 1946, the tax would have been approximately $19,028 instead of $27,510.

8. The Board of Liquidation, having received Mr. Manley Hudson’s claim and being in doubt as to its legal aspect, has decided to have recourse to the high authority of the President of the Swiss Federal Tribunal and to request him to give his opinion on the question formulated hereunder. Should he be unable to comply with its request, the Board asks him to suggest the names of two jurists competent to give an opinion.

The question is the following:

Having regard to all the circumstances of the case, has the League of Nations a legal obligation to reimburse Mr. Manley Hudson for the tax levied by the American Revenue authorities on the total of the arrears of salary for the period January 1st, 1941—January 31st, 1946, amounting to 106,730.61 Dutch florins, paid to him on February 23rd, 1946?

It should be clearly understood that only the tax on salary plus surtax, or the global tax levied on the taxpayer in respect of salary received from the League enters in consideration to the exclusion in both cases, of the portion of the tax levied on income from other sources.

9. The jurist whose opinion is requested should ask the Secretary-General of the League for any explanations or information he may need.

* * *

10. Should the question be answered in the affirmative, the Board of Liquidation will endeavour, in the light of the available information, to ascertain whether it would have been possible for Mr. Manley Hudson by some lawful means to reduce the amount of his assessment, in particular, by arranging for it to be spread over the different years for which arrears of salary have been paid.

On this point a question was put to Mr. Manley Hudson (the question and the answer given will be found in the Appendix, II, 4).

11. Should the League refund to Mr. Manley Hudson the tax levied on his salary, the question would arise whether any sums thus refunded would not in their turn be taxed as new income.3

* * *

POSITION OF THE QUESTION

Having regard to all the circumstances of the case, has the League of Nations a legal obligation to reimburse Mr. Manley Hudson for the tax levied by the American Revenue authorities on the total of the arrears of salary for the period January 1st, 1941—January 31st, 1946, amounting to 106,730.61 Dutch florins, paid to him on February 23rd, 1946?

The right to repayment cannot be presumed. It exists only if it is contained in the provisions relating to the status of the judges.

1 Under Article 16 of the Statute (as amended in 1929), judges were forbidden to exercise professorial functions or any other professional functions.

Nevertheless, a new situation was created by the events of the war, which, on the one hand, made the holding of a session of the Court highly improbable, while on the other, it led to a reduction, possibly only temporary but for the time being very drastic, in the annual salary* of judges from 35,000 florins to 6,000 Swiss francs, in spite of the fact that Article 32 of the Statute provides that: "... they (i.e., these salaries) may not be decreased during the term of office ".

It was on account of this situation that the President of the Permanent Court of International Justice authorised Mr. Manley Hudson to resume his teaching work in the United States (see letter from Mr. Manley Hudson dated July 22nd, 1946).

2 See the figures given by Mr. Manley Hudson in his letter of February 26th, 1946 (paragraphs 7 and 8).

3 See Mr. Manley Hudson’s memorandum attached to the letter of February 26th, 1946.
The "status" of the judges—that is to say, their situation—derives from two kinds of instruments; on the one hand, the Statute of the Permanent Court of International Justice, which is the basic charter of the Court, and on the other, the Resolutions of the Assembly of the League of Nations, which determine certain points which the Statute left to the Assembly to decide. For instance, Article 32 of the Statute provides that the salaries, allowances and indemnities of the judges "shall be fixed by the Assembly of the League of Nations on the proposal of the Council ..."

Mr. Manley Hudson has referred to both these instruments: the Statute of the Court and the Resolutions of the Assembly.

I. The Statute of the Permanent Court of International Justice.

The Statute of the Permanent Court of International Justice is the basic instrument determining the judges' status, their rights and obligations.

The original Statute of the Permanent Court of International Justice, established by a Protocol dated December 16th, 1920, was silent on the fiscal immunity of the judges. Article 32 was amended by the Protocol concerning the revision of the Statute dated September 14th, 1929, the following (last) paragraph being added:

"The above salaries, indemnities and allowances shall be free of all taxation."

This Protocol came into force on February 1st, 1936; that is to say, prior to the period 1941-1945, in respect of which Mr. Manley Hudson received the salary which is being taxed by the American Revenue authorities.

The question to be determined is the scope of the last paragraph of Article 32 of the Statute having regard to the present case:

(a) Does this provision mean that the League is in all circumstances bound to ensure exemption of the salaries, indemnities and allowances of the judges from taxation in any country whatsoever, so that, if such taxation could not be prevented (as in the case of a country not a party to the Statute of the Court and not a Member of the League), the League would be obliged to refund to the judges the amount of the tax levied?

(b) Or, on the contrary, does this provision simply mean that the States parties to the Court's Statute have undertaken not to levy taxes on the salaries, indemnities and allowances of judges?

It might be held that, since States not parties to the Statute are obviously not bound by this provision, the League would have no need to take cognisance of the action of such States. The only case in which it would have to do so would be one in which the residence of judges in a country not a party to the Statute was due to a professional obligation (for instance, in the event of the temporary transfer of the Court to the United States).

Cannot it even be said that the sole obligation of the League is to assure the immunity of the salaries of judges at the seat of the Court and that, if States parties to the Statute of the Court, other than the State in which the seat is located, levy a tax on the salaries of judges in contravention of their obligations, the League has discharged its duty to the uttermost by making representations to those States urging them to fulfil their obligations?

II. The Resolutions of the Assembly.

The Assembly Resolutions do not contain anything not mentioned in the Statute revised in 1929. Resolution No. 4 relating to the Court, adopted by the Assembly on September 25th, 1930, concludes by saying:

"Allowances and salaries shall be free of all tax."

However, Mr. Manley Hudson refers to passages in reports submitted to the Assembly and to the statements of rapporteurs concerning the reimbursement to judges of taxes levied on their salaries. He also quotes a letter from M. Hammarskjöld, Registrar of the Court.

A. Letter from M. Hammarskjöld, Registrar of the Court, to Judge John Bassett Moore (United States citizen), dated November 9th, 1922.

After referring to a resolution adopted by the First Assembly of the League of Nations, the report by which that resolution was presented to the Assembly, and a verbal statement by M. Lafontaine, Rapporteur to the Assembly, M. Hammarskjöld says:

"The following conclusions seem to be warranted: (a) that the competent organisms of the League of Nations desired that the judges of the Permanent Court of International Justice should draw without any deductions the full amount of the indemnities allocated to them; (b) that the same organisms envisage the possibility of income tax being levied on such salaries in certain cases (if my memory does not altogether fail, the actual case

1 Records of the Eleventh Assembly (Plenary Meetings), page 132.
contemplated was that of a judge from the United States being elected); (c) that for this reason such judges as had to pay income tax should receive full compensation from the League of Nations.”

The opinion expressed by M. Hammarskjöld, Registrar of the Court, in a letter, does not of course create the law. It is a personal opinion, given by a person able to speak with authority, and the validity of the sources on which it is based should therefore be examined.

B. Reports to the Assembly and Oral Statements of Rapporteurs, Resolutions of the Assembly.

1. 1920 Assembly. — (a) M. Lafontaine, Rapporteur of the Third Committee, stated in his report to the Assembly:

“To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay.”

(b) In submitting his report to the Assembly on December 18th, 1920, the Rapporteur said:

“I should like to add that, in order to equalise the position of all the judges, we propose that their salaries be exempt from taxation in every country. In the cases where in certain countries a tax is levied, the League of Nations will reimburse the judge for the amount which he may lose by the tax.”

(c) It is stated in the Minutes of the meeting that:

“The conclusions and resolution of the Committee were adopted.”

It will be noted that, as regards the fiscal immunity of the judges’ salaries, the resolution itself states simply that:

“All allowances and salaries are free of all tax.”

2. 1930 Assembly.—On September 25th, 1930, M. Pilotti, Rapporteur of the First Committee, submitted a written report to the Assembly on the remuneration of the judges, in which he made the following statement:

“One of the points which particularly struck the Committee was that, while the Regulations regarding salaries and allowances stipulate that these shall be free of all tax, there is no similar provision in the 1924 and 1929 texts in regard to pensions.

“In this connection, the Committee’s attention was drawn to the following passage in the report adopted by the Assembly in 1920 concerning the taxation of salaries of members of the Court:

‘To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay.’

“The First Committee trust that, pending the formal settlement of the question, the general principle set forth in this passage will be observed.”

After M. Pilotti had read his report, the President of the Assembly said: “I think I shall be interpreting the wishes of the Assembly if I add that the Assembly has duly noted the statement made by M. Pilotti on behalf of the First Committee.”

The Assembly also adopted a number of resolutions relating to the Court; the fourth, that concerning salaries, ends with the following paragraph, which states merely that:

“All allowances and salaries shall be free of all tax.”

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It will be for the distinguished jurist who is being consulted to give an advisory opinion on the question set forth above, taking all the various factors into consideration.

1 Records of the First Assembly (Plenary Meetings), page 766.
2 Ibidem, page 748.
3 Records of the Eleventh Assembly (Plenary Meetings), page 132.
Appendix.

List of Documents.

I. General Documents

1. Statute of the Permanent Court of International Justice:
   (2) Statute revised on September 14th, 1929, which came into force on February 1st, 1936 (Series D—Acts and Documents concerning the Organisation of the Court, No. 1—Fourth Edition, April 1940).

2. Records of the Assembly (see the series to which references are made).

II. Documents relating to the Case of Mr. Manley Hudson

1. Document C.C.1486—March 13th, 1946:
   Note by the Registrar of the Permanent Court of International Justice submitting copies of correspondence exchanged between Mr. Manley Hudson and various authorities concerning his liability to income tax in America
   (a) Letter dated November 16th, 1945, from Mr. Manley Hudson to M. Guerrero, President of the Permanent Court of International Justice
   (b) Letter dated December 1st, 1945, from Mr. Manley Hudson to M. J. López Oliván, Registrar of the Permanent Court of International Justice
   (c) Letter dated February 10th, 1943, from Mr. Manley Hudson to Mr. Henry Morgenthau, Jr., Secretary of Treasury, Washington, D.C.
   (d) Letter dated April 5th, 1943, from the Treasury Department, Washington, to Mr. Manley Hudson
   (e) Letter dated February 26th, 1943, from Mr. Manley Hudson to M. J. López Oliván
   (f) Claim of Mr. Manley Hudson, dated February 26th, 1946, to relief from United States income tax on arrears of salary as judge of the Permanent Court of International Justice (with Annex)
   Page 33

2. Document B.L.8—May 20th, 1946:
   Letter, dated May 13th, 1946, from Mr. Manley Hudson to the Secretary-General
   Page 37

3. Document B.L.8 (b)—July 1st, 1946:
   Note by the Registrar of the Permanent Court of International Justice
   Annex I:
   Letter dated November 6th, 1922, from Judge J. B. Moore to M. Hammarskjöld
   Letter dated November 9th, 1922, from M. Hammarskjöld to Judge J. B. Moore
   Page 39

   Annex II:
   Letter dated May 29th, 1946, from Judge G. H. Hackworth to M. Hambro
   Page 40

4. Document B.L.45 (a)—July 22nd, 1946:
   Questionnaire addressed to Mr. Manley Hudson and his answers thereto
   Page 40

5. Document B.L.45 (b)—July 23rd, 1946:
   Letter, dated July 22nd, 1946, from Mr. Manley Hudson to the Secretary-General
   Page 41

6. Document B.L.45 (c)—July 26th, 1946:
   Letter dated July 18th, 1946, from Mr. Charles Fahy, Legal Adviser to the Department of State, Washington, D.C. to Mr. Manley Hudson
   Page 41

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1 Not reproduced in this Report.
II. Documents relating to the Case of Mr. Manley O. Hudson


1. Note by the Registrar of the Permanent Court of International Justice

The Registrar of the Permanent Court of International Justice has the honour to submit to the Supervisory Commission copies of correspondence and a memorandum received from Mr. Manley O. Hudson, former Judge, concerning exemption from payment of income tax, in America, on the sum which he has recently received for arrears of salary.

(a) From Mr. Manley O. Hudson, to M. Guerrero, President of the Permanent Court of International Justice.

November 16th, 1945. Law School of Harvard University, Cambridge, Mass., U.S.A.

Will you permit me to raise an additional point upon which I should like to be protected?

In the past, I have been unable to persuade the Government of the United States to relieve me from paying an income tax on my salary from the Court, and I have regularly paid that tax during each year when I was not six months resident in Europe.

If a payment of back salary is now made to me, I shall have a very sizable American income tax to be paid to the Government of the United States.

I believe it has been the practice of the League of Nations to meet such burdens cast upon officials. I note that in the First Report of the Supervisory Commission for 1944 (document C.27.N.27.1944.X, page 18) certain officials of the League were reimbursed the sums paid to the United States as taxes on their salaries.

I hope you will find it possible in the current negotiations to see that a provision protecting me in this regard is included.

(Signed) Manley O. Hudson.

(b) From Mr. Manley O. Hudson to M. J. López Oliván, Registrar of the Permanent Court of International Justice.


1. Many thanks for your cable saying that agreement has been reached on the payment of back salaries to the amount of 106,730 florins. My warm congratulations to you!

2. I assume that the payment to me will be made in United States dollars, and I hope it will be made, not in 1945, but in 1946, when taxes will be lower and my own tax position more favourable.

3. A serious question will be presented to me if I am compelled to pay income tax to the United States in 1946 on the sum paid to me. It is important, first of all, that the payment should be characterised by the League as " back salary "; this would reduce my tax considerably, for it could then be figured on each of five tax-years. I hope you can see that the payment is thus described. Even so, the tax may amount to as much as 50 to 60% of the amount received, or perhaps even more. The computation depends on complicated and graduated surtax percentages, and they are so intricate that I cannot now give an approximate guess as to the amount.

4. If I have to pay income tax on what I receive, I assume that, under the decisions taken in the past, the amount paid will be refunded to me by the League. Yet unless an agreement can be reached with the United States Treasury, I shall again have to pay income tax on the refund, and technically I would again be entitled to a refund by the League—a process which would go on ad infinitum. From this point of view alone, I think the League should negotiate the matter with the United States Department of State.

5. Direct negotiations between the League and the United States Department of State might be undertaken with a view also to the application of the provision in Article 32 of the Statute that the salaries "shall be free of all taxation". I enclose copies of my correspondence with the Treasury in 1943. The Department of State might be more inclined than the Treasury to arrange for a waiver of the tax on my salary, and this is particularly true at the present time in view of current developments relating to the transfer of the League to the United Nations Organisation.

6. Can you suggest to the competent authority of the League the opening of negotiations with the United States Department of State on this matter?

(Signed) Manley O. Hudson.
Will you permit me to lay before you the following question, upon which I should appreciate it if you would be good enough to give me a ruling as soon as possible:

1. I am a Judge of the Permanent Court of International Justice. My permanent address is 251, Badhuisweg, The Hague, Netherlands; my temporary address is the Harvard Law School, Cambridge, Massachusetts.

2. During the year 1942 I received as payment on my salary as Judge of the Permanent Court of International Justice, $1,381.61.

3. Under Section 22 (b) (7) of the Internal Revenue Law "income exempt under treaty"—i.e., "income of any kind, to the extent required by any treaty obligations of the United States"—is not to be included in a report of gross income.

4. As a member of the International Labour Organisation, the United States is a party to the treaty instrument, which serves as the Constitution of the International Labour Organisation, proclaimed by the President on September 10th, 1934, and published in U.S. Treaty Series No. 874, 49 Stat. at Large 2712. Articles 416, 417, 418, 419, 420, and 423, the text of which is appended, confer various functions on the Permanent Court of International Justice. Under these Articles the United States has treaty obligations relating to the Court, and these obligations require the United States to respect the provisions of the Statute of the Court, and particularly the provisions of the Court's Statute relating to its structural character.

5. Article 32 of the Statute of the Court, attached to the Protocol of Signature of December 16th, 1920, and amended by a Protocol of December 24th, 1929, provided that the salaries, indemnities and allowances of the judges "shall be free of all taxation". I attach the text of Article 32.

6. I submit that the quoted provision in Article 32 of the Court's Statute has been made a treaty obligation of the United States by reason of its incorporation in Articles 416, 417, 418, 419, 420, and 423 of the Constitution of the International Labour Organisation, and that this obligation of the United States is covered by Section 22 (b) (7) of the Internal Revenue Law.

7. In line with this submission, I ask you to rule that I am not required to report as gross income the salary which I received from the Permanent Court of International Justice in 1942.

(Signed) Manley O. Hudson.

Further reference is made to your letter of February 10th, 1943, addressed to the Secretary of the Treasury, and transmitted to this office for consideration and reply since the subject-matter discussed therein relates to the treatment for the purposes of Federal income tax, of compensation received by you as a Judge of the Permanent Court of International Justice during 1942.

You state that you are a Judge of the Permanent Court of International Justice with a permanent address in The Hague, Netherlands, and a temporary address at the Harvard Law School, Cambridge, Massachusetts; and that during 1942 you received a salary of $1,381.61 as a Judge of the Court. It is your opinion that, as a member of the International Labour Organisation, the United States is a party to the "treaty instrument" which serves as the Constitution of the International Labour Organisation, proclaimed by the President, and that as Article 32 of the Statute of the Court contains a provision that the salaries paid the President, Vice-President and members of the Court as fixed by the Assembly of the League of Nations on the proposal of the Council of the League shall be free of all taxation, the salary received by you during the year 1942 is exempt from taxation under Section 22 (b) (7) of the Internal Revenue Code.

Although the United States is a member of the International Labour Organisation, it is not a member of the League of Nations of which that Office is a Department or Board and under which it is functioning. The mere fact that the Constitution of the Labour Organisation confers certain powers and functions on the Permanent Court of International Justice in labour cases does not, in the opinion of this office, operate to extend the treaty obligations created thereunder, and designed only for the uses and purposes of the signatories, to cover obligations created, not by a treaty to which the United States is a party, but by the Statute of the Court to which instrument the United States is not a party because of its failure to ratify the same. The United States is not a member of the Permanent Court of International Justice (a department of the League of Nations) to which reference is made in Articles 416 to 420, inclusive, and Article 423 of the Constitution of the International Labour Organisation.

The facts presented in your present enquiry are similar in all pertinent respects to those which formed the basis of a ruling dated December 30th, 1938, in which you were advised that the protocol of accession of the United States of America to the protocol of signature of the Statute
to the Permanent Court of International Justice will not enter into force until ratified by the President, with advice and consent of the Senate. Accordingly, in view of the recent information secured from the Department of State, Washington, D.C., in this respect, Article 32 of the Statute of the Permanent Court of International Justice, as amended, is not a "treaty obligation of the United States" within the meaning of section 22 (b) (7) of the Internal Revenue Code.

Therefore, assuming you were not a _bona fide_ non-resident of the United States for more than six full calendar months during 1942 the amount received by you as a Judge of the Permanent Court of International Justice constitutes gross income subject to the Federal income tax for the year 1942.

(Signed) Norman D. Cann,
Acting Commissioner.

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(e) From Mr. Manley O. Hudson to M. López Oliván.

Harvard Law School, Cambridge 38, Mass.,
February 26th, 1946.

On December 1st, 1945, I wrote to you requesting that direct negotiations between the League of Nations and the United States Government be undertaken with a view to relieving me of payment of income tax on the arrears of salary payable to me as a Judge.

I now enclose a memorandum on this subject which you may wish to forward to the competent authority of the League of Nations.

(Signed) Manley O. Hudson.

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(f) Claim of Manley O. Hudson to Relief from United States Income Tax on Arrears of Salary as Judge of the Permanent Court of International Justice.

February 26th, 1946.

1. Article 32 of the Statute of the Permanent Court provides that the salaries of Judges "shall be free of all taxation".

2. While the United States is not a party to the Statute, it is a party to the Constitution of the International Labour Organisation which confers jurisdiction on the Court. In the past, I have urged that by reason of the latter fact the United States is bound to take the Court as it is, and to respect the provision in Article 32 of its Statute. This contention has been rejected by the Commissioner for Internal Revenue, however.

3. In the past, I have paid taxes on salary received as a Judge, except in years when I was a _bona fide_ non-resident of the United States for more than six months of the year. I have not heretofore requested the reimbursement of taxes paid.

4. My present status is as follows: I have retained my legal residence at The Hague since 1937. However, during the years 1941-1946, I have not been and do not now plan to be actually resident outside the United States for as much as six months of the year. I am therefore subject to income tax on the arrears of salary paid in 1946. While it would be possible for such arrears to be spread for tax purposes over the years 1941-1945, this would effect no saving over the treatment of the arrears as 1946 income, the 1946 tax having been reduced.

5. I therefore request the League of Nations to seek to negotiate with the Government of the United States an arrangement by which I would be relieved from payment of the United States income tax on the arrears of salary to be paid to me in 1946. I find a precedent for such negotiation referred to in the First Report of the Supervisory Commission for 1944, page 18. In this connection, as a result of a United States Law of December 29th, 1945, the International Organizations Immunities Act, which liberalises the general policy of the United States (extracts in Annex), but does not exempt United States citizens. An Executive Order No. 9698, of February 19th, 1946, lists the organisations to which the Act applies—it includes the International Labour Organisation, but not the Permanent Court of International Justice.

6. If no arrangement can be negotiated with the Government of the United States to relieve me from paying income tax on the arrears of salary paid to me as Judge, I request the League of Nations to reimburse to me the amount which I shall have to pay. It is my understanding that, since 1920, the League of Nations has sought to relieve judges of inequality by reimbursing them for taxes payable and paid.

(a) In 1920, the Third Committee of the First Assembly stated in its report on judges' salaries (Records of First Assembly, Plenary, page 766): As "the decisions of the Assembly may be inoperative as against the fiscal laws applied in different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes they may be obliged to pay." This statement was repeated to the 1920 Assembly orally. (Ibid., p. 748.)
In 1930, the First Committee of the Eleventh Assembly quoted the passage from the 1920 report, and stated (Records of Eleventh Assembly, Plenary, page 132): "The First Committee trust that, pending the formal settlement of the questions, the general principle set forth in this passage will be observed."

It seems that the same general principle has been applied with reference to League officials other than the Judges. The principle of reimbursement was affirmed by the Supervisory Commission in its First Report for 1944. The Supervisory Commission there stated that "it had no other course open to it than to repay to the officials the sums disbursed by them on account of direct (United States) Federal taxes on their salaries." First Report for 1944, page 18.

The same general principle seems to have been adopted by the Fifth Commission of the United Nations General Assembly, on January 28th, 1946 (Journal No. 16, Supp. No. 5, A/C.5/13, page 16).

7. Treating the payment of arrears of salary (106,730.60 Dutch florins, roughly the equivalent of about $40,420) as 1946 income, the 1946 United States income tax, if payable, would be about $19,028.31, if this were my sole income.

8. However, I have other income which, after deductions allowed, I have estimated to be about $10,500; in an estimate already filed, I computed an estimated tax on this amount as a minimum of $2,688.75. However, the surtax is greater on larger sums, and I would roughly estimate my 1946 tax, if payable on both the arrears and my other income, to be about $27,510—i.e., an increase of $24,821.25.

(Signed) Manley O. Hudson.

Annex.

Section 1.—For the purposes of this title, the term "international organisation" means a public international organisation in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorising such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorised, in the light of the functions performed by any such international organisation, by appropriate Executive order to withhold or withdraw from any such organisation or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organisation or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorised, if in his judgment such action should be justified by reason of the abuse by an international organisation or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organisation under this section, whereupon the international organisation in question shall cease to be classed as an international organisation for the purposes of this title.

Section 4.—The Internal Revenue Code is hereby amended as follows:

(a) Effective with respect to taxable years beginning after December 31st, 1943, section 116 (c), relating to the exclusion from gross income of income of foreign Governments, is amended to read as follows:

(b) Effective with respect to taxable years beginning after December 31st, 1943, section 116 (h) (1), relating to the exclusion from gross income of amounts paid employees of foreign Governments, is amended to read as follows:

1. Rule for Exclusion.—Wages, fees, or salary of any employee of a foreign Government or of an international organisation or of the Commonwealth of the Philippines (including a consular or other officer, or a non-diplomatic representative, received as compensation for official services to such Government, international organisation, or such Commonwealth—

(A) If such employee is not a citizen of the United States, or is a citizen of the Commonwealth of the Philippines (whether or not a citizen of the United States); and

(B) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries or in the Commonwealth of the Philippines, as the case may be; and

(C) If, in the case of an employee of a foreign government or of the Commonwealth of the Philippines, the foreign government or the Commonwealth grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country or such Commonwealth, as the case may be.
2. Letter dated May 13th, 1946, from Mr. Manley Hudson to the Secretary-General.


Harvard Law School, Cambridge 38, Mass.,

May 13th, 1946.

I hope the Liquidating Board will give favourable consideration to my claim for reimbursement of the income tax which I shall have to pay to the Government of the United States on the salary paid to me during this year by the Court.

This is a very important matter to me. I have received approximately $41,000 as payment on my salary as Judge. I shall have to pay at least $25,000 of this amount as income tax in this country.

On December 18th, 1920, the Assembly of the League adopted a report of a Committee which clearly promised the reimbursement of taxes to the judges. This was repeated by the Assembly on September 25th, 1930. In 1936, Article 32 of the Statute was amended to provide for complete freedom from taxes for the judges. I think my legal claim to reimbursement is absolutely solid and unanswerable.

I submit to your consideration that, even during the years of the Court's inactivity, I have served it to the best of my ability. I represented the Court before the Supervisory Commission each year; before the Committee of Jurists in Washington in 1945; and before the San Francisco Conference (nine weeks) in 1945. In 1942 I published Volume IV of my World Court Reports. A treatise on the Court which I published in 1943 is now in daily use at The Hague. I have continued my annual articles on the Court in the American Journal of International Law. On my own initiative, I sought funds for the Court, and succeeded in getting a grant of $15,000 from the Carnegie Endowment.

In this situation I venture to hope that the Liquidating Board will feel that I have tried to do my best. If it takes this view, I hope the Board will give me my legal rights.

(Signed) Manley O. Hudson.

3. Note by the Registrar of the Permanent Court of International Justice

B.L.8 (b) (Geneva, July 1st, 1946).

In conformity with the instructions given by the Board at its last meeting, enquiries concerning the reimbursement of taxes on judges' salaries were addressed to the Registry at The Hague, and to Judge Hackworth in Washington, and studies were made of the official pronouncements on the subject. The Registrar now has the honour to communicate to the Board the results of these enquiries and studies.

I.

The enquiry at The Hague yielded a copy of a letter addressed to Judge John Bassett Moore by M. Hammarskjöld, on November 9th, 1922. After quoting relevant texts, M. Hammarskjöld reached the following conclusions:

"(a) That the competent organisms of the League of Nations desired that the judges of the Permanent Court of International Justice should draw without any deductions the full amount of the indemnities allocated to them;

"(b) That the same organisms envisaged the possibility of income tax being levied on such salaries in certain cases (if my memory does not altogether fail, the actual case contemplated was that of a judge from the United States being elected);

"(c) That for this reason such judges as had to pay income tax should receive full compensation from the League of Nations."

The full texts of Judge Moore's enquiry and of M. Hammarskjöld's reply are annexed hereto.

II.

The enquiry at Washington yielded a letter addressed to M. Hambro by Judge Hackworth, on May 29th, 1946. Specific information as to past practice did not seem to be available to Judge Hackworth. The text of his letter is annexed hereto.
III.

The result of the study of the official documents is as follows:

The question of reimbursing judges for the amounts which they might be obliged to pay as income taxes on their salaries was first considered by the Assembly of the League of Nations in 1920, in connection with the determination of the salaries to be paid the judges. A British proposal was placed before the Assembly on December 15th, 1920, which included the provision: "All salaries and allowances to be free of tax" (Records of First Assembly, Committees, I, page 583). The Third Committee of the Assembly made the following statement in its report (Records of First Assembly, Plenary, page 766):

"To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly might be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay."

In presenting this report to the First Assembly on December 18th, 1920, M. Lafontaine, acting as rapporteur of the Committee, stated orally:

"I should like to add that, in order to equalise the position of all the judges, we propose that their salaries be exempt from taxation in every country. In the cases where in certain countries a tax is levied, the League of Nations will reimburse the judge for the amount which he may lose by the tax." (Ibid., page 748.)

When the President of the Assembly "put to the vote the conclusions of the Committee", the "conclusions and the resolution of the Committee were adopted" (Ibid., page 748). The resolution provided that "allowances and salaries are free of all tax".

The Protocol on the amendment of the Statute of the Court, of September 14th, 1929, embodied an amendment to Article 32 of the Statute to incorporate the conclusion adopted by the First Assembly in 1920. The concluding paragraph of the amended text of Article 32 reads:

"The above salaries, allowances and compensation shall be free of all taxation."

The text of this Protocol was approved by the Tenth Assembly on September 14th, 1929. The 1929 Protocol did not enter into force until February 1st, 1936.

On September 12th, 1930, the Council proposed to the Eleventh Assembly a resolution fixing an interim scale for the salaries of the judges, which stated that "allowances and salaries shall be free of all taxes". (Records of Eleventh Assembly, First Committee, page 101.)

In the Eleventh Assembly, on September 22nd, 1930, M. Pilotti, Rapporteur, stated to the First Committee that, in presenting its written report, he would give the Assembly some verbal explanations "based on the discussion which has taken place in this Committee" (Records of Eleventh Assembly, First Committee, page 41). On September 25th, 1930, M. Pilotti made the following statement to the Assembly (Records of Eleventh Assembly, Plenary, page 132):

"In this connection, the Committee's attention was drawn to the following passage in the report adopted by the Assembly in 1920 concerning the taxation of salaries of Members of the Court. "To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay. "The First Committee trusts that, pending the formal settlement of the question [i.e., in the Protocol of September 14th, 1929], the general principle set forth in this passage will be observed."

This statement was "duly noted" by the Assembly. A resolution offered by the First Committee, approved by the Supervisory Commission and the Fourth Committee, was adopted by the Assembly on September 25th, 1930. This resolution stated that "allowances and salaries shall be free of all taxes."

In its reports in 1931 and 1932, the Supervisory Commission considered the question of exempting from taxation the pensions of judges. Declining to approve such an extension of the exemption to pensions, the Supervisory Commission said in 1931:

"As regards the question of exemption from taxation, the Commission noted that the resolution of December 18th, 1920, with regard to the salaries of members of the Court stated that "allowances and salaries shall be free of all taxes". Further, the report adopted by the 1920 Assembly concerning the organisation of the Permanent Court of International Justice contained the following passage on the question:

"To ensure an equal position for all the members of the Court of International Justice by neutralising the different degrees in which their salaries may be affected by
taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay.

"The Supervisory Commission has always considered, and still considers, that the idea of equality thus put forward as a basis for exemption from taxation only holds good while the judges are performing their duties. There seems no reason to grant the former holders of high international posts, once they have retired into private life, a privilege giving them an advantage over the other nationals of the countries in which they live."

IV.

The available information does not indicate that any claim has previously been made by a judge for the reimbursement of income taxes paid on his salary.

Annex I.

Letter from Judge J. B. Moore to M. Hammarskjöld.

Paris, November 6th, 1922.

Although it was intended that the pay of the judges and deputy-judges should be exempt from income tax in the countries of which they are citizens, I am not sure that this exemption has in all cases been assured. Have you definite information on this question? I of course do not include the United States in this enquiry, my own case being exceptional as yet.

(Signed) J. B. Moore.

Letter from M. Hammarskjöld to Judge J. B. Moore.

November 9th, 1922.

I have your letter of November 6th concerning payment of income tax on the salaries and indemnities of members of the Permanent Court of International Justice.

I have heard of no difficulties in this respect except as concerns the emoluments of the President. These difficulties, however, are of quite a special nature: they arise out of the question whether diplomatic privileges and immunities as granted officials of the League of Nations when engaged on business of the League shall apply also to persons of a given nationality in their own country. We are at present in correspondence with the Geneva Secretariat in order to find out what is the system followed in the present respect by the Swiss Government.

For your convenience, I quote texts which may be applicable. First there is a passage of the resolution adopted by the First Assembly of the League of Nations concerning the salaries of the judges: "Allowances and salaries are free of all tax."

Secondly, there is a passage of the report on which the resolution in question was adopted. "To ensure an equal position for all the members of the Court of International Justice by neutralising the different degrees in which their salaries might be affected by taxation in the various countries, the Committee (Third Committee of the First Assembly) proposes that all salaries and allowances are to be free of taxation. As, however, the decision of the Assembly might be inoperative as against the fiscal laws applying in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may have been obliged to pay."

There, further, is the following passage of the oral report of M. Lafontaine to the First Assembly concerning the question of taxation: "I should like to add that in order to equalise the position of all the judges we propose that their salaries be exempt from taxation in every country. In the cases where in certain countries the tax is levied, the League of Nations will reimburse the judge for the amount which he may lose by the tax."

The verbatim report of the thirty-first meeting of the First Assembly states "that the conclusions and resolutions of the Committee were adopted."

The report then refers to an annex which reproduces the two documents from which the two first quotations above are made.

Article 32 of the Statute provides that the salaries of the judges shall be determined by the Assembly of the League of Nations, upon the proposal of the Council. The Council's prerogative under this Article was, however, delegated by it to the Third Assembly Committee. The Council decision in this respect is embodied in one letter addressed by the Secretary-General to M. Léon Bourgeois, President of the Third Committee of the First Assembly, and in another letter addressed by the Secretary-General to M. Paul Hymans, President of the First Assembly. The letter mentioned contains the following passage: "I have the honour to inform you that the Council of the League of Nations has decided at its meeting to-day (December 10th, 1920) to ask the Third Committee of the Assembly to be so good as to prepare and submit to the Assembly a proposal to be made on behalf of the Council of the League of Nations. In consequence, the report with regard to the salaries question which shall be submitted to the Assembly by the Third Committee
should be considered as the proposal which, according to the terms of the said draft scheme, should be submitted to the Assembly by the Council."

The following conclusions seem to be warranted: (a) that the competent organisms of the League of Nations desired that the judges of the Permanent Court of International Justice should draw without any deductions the full amount of the indemnities allocated to them; (b) that the same organisms envisage the possibility of income tax being levied on such salaries in certain cases (if my memory does not altogether fail, the actual case contemplated was that of a judge from the United States being elected); (c) that for this reason such judges as had to pay income tax should receive full compensation from the League of Nations.

I may add that, as the 1923 Budget does not provide any funds for the purpose, such funds would, should the occasion arise, have to be asked of the next Assembly for payment in 1924.

(Signed) A. HAMMARSKJÖLD.

Annex II.

Letter from Judge G. H. Hackworth to M. Hambro.

Washington, May 29th, 1946.

I have your letter of May 11th transmitting an enquiry by M. López-Oliván as to whether the American judges of the Permanent Court of International Justice were taxed by the United States on their salaries.

I have put the matter informally to a member of the Internal Revenue staff of the Treasury Department, but he has not been able up to this moment to make a categorical answer. It appears that the official records of income-tax returns are filed in the various area offices rather than in Washington and, hence, are not readily available. In the case of the older returns, they may even have been destroyed.

Furthermore, there is some question whether the information can be given out informally in view of the Treasury’s traditional rule against the disclosure of the details of income-tax reports of individuals. It seems likely, however, that an official request for the information directed to the Treasury Department through the Department of State, showing that the information is needed by the Liquidating Board of the League of Nations would avoid this difficulty. I have not asked the Department of State to take this matter up with the Treasury since the extract from M. Oliván’s letter quoted by you seems to call for a less formal approach.

It may be that the specific facts as to the income-tax payments by the American judges will not be deemed to be required in view of the provision of the income-tax law that was in force prior to the adoption of the Revenue Act of 1943. The earlier law exempted from tax income earned by an individual citizen from sources outside of the United States, providing the citizen was a non-resident of the United States for more than six months during the taxable year (Internal Revenue Code 1939: Sec. 116). The law on this point was apparently unchanged during the period from the institution of the Permanent Court of International Justice until the taxable year 1943 (58 Stat. 21, 32).

Consequently, the question whether the American judges on the Permanent Court were liable to income tax in the United States on salary received as such judges would seem to depend upon whether they claimed and were allowed exemption on the basis of residence abroad for at least six months of each taxable year—assuming, of course, that there was no other basis for exemption. Since the rule was in force during most of Judge Hudson’s service, he should have no difficulty in making clear his own experience.

I hope that this information may be of some assistance to M. Oliván. I regret that it is not more complete.

(Signed) Green H. HACKWORTH.

4. Questionnaire addressed to Mr. Manley Hudson by the Drafting Committee and his answers thereto.

B.L.45 (a) (Geneva, July 22nd, 1946).

1. (a) On what date did you resume your professorial duties at Harvard University?
   (b) Up to what date did you continue to discharge them?
   (a) October 1940.
   (b) Have continued since, but with various periods of leave. Have always been at disposition of the Court.

2. What emoluments did you receive in respect of the above service?
   Annual salary $12,000, with some deductions. Only half-salary was paid from 1942 to 1944.
3. Before taking up your professorial work, did you receive any authorisation, either written or oral, from the President of the late Permanent Court of International Justice?

Yes.

If you received a written instruction, could you kindly attach a copy thereof?

Various letters were exchanged. I do not have copies here.

4. What steps have you taken with the American fiscal authorities to secure that the assessment should be as low as possible under the law—e.g., by explaining that the arrears represent salary payments covering a period of five years, or by any other means open to you?

In April 1946, I asked the Department of States to arrange for exemption. They took up the question with Treasury, which has not replied.

5. Can you kindly give a reference to the American fiscal law or laws applicable to your case?

Internal Revenue Code, Chapters 1 and 2—especially Section 107 (d) on back pay.

Regulations III, Section 29, 107-3.

July 21st, 1946.

Manley O. Hudson.

5. Letter, dated July 22nd, 1946, from Mr. Manley Hudson to the Secretary-General


Hôtel d’Angleterre,

Geneva,

July 22nd, 1946.

Supplementing my answers to the questionnaire, may I say that to-day I received a reply to my request for exemption from the American tax, denying the exemption which I sought.

(Signed) Manley O. Hudson.

6. Letter, dated July 18th, 1946, from Mr. Charles Fahy, Legal Adviser to the Department of State, Washington, D.C., to Mr. Manley Hudson

B.L.45 (c). (Geneva, July 26th, 1946).

Department of State,

Washington,

July 18th, 1946.

Reference is made to your letter of April 8th, 1946, and to the Department’s acknowledgment thereof of April 23rd, 1946, concerning the exemption from Federal income taxes on arrears of salary to be paid to you as Judge of the Permanent Court of International Justice.

The Department of State has now received a reply to its letter to the Treasury Department in which information was requested as to the possibility of your obtaining exemption from the Federal income tax on the arrears of salary to be paid to you.

The Treasury Department has informed the Department of State as follows:

"A citizen of the United States is liable for Federal tax on his entire income from whatever source derived except such income as may be specifically exempted from the tax by statutory provisions.

"In view of the fact that the United States did not become a party to the Statute of the Permanent Court of International Justice drafted in 1920 pursuant to the Covenant of the League of Nations under the provisions of which the salaries of the judges of the Court are exempt from all taxation and as there is no provision in the Internal Revenue Code whereby such salaries are specifically exempted from the tax, it is held that the amount payable as arrears of salary for services performed as a judge of the Permanent Court of International Justice is subject to Federal income tax.

"Prior to 1943, section 116 (a) of the Internal Revenue Code provided that an American citizen’s earned income from sources without the United States was exempt if he were a bona fide non-resident of the United States for more than six months for the taxable year. From 1943 on, the citizen has been required to be a bona fide resident of a foreign country during the entire taxable year to obtain such exemption. Without a more complete statement of the facts than is contained in his letter, this Department cannot state whether the Honorable Mr. Hudson by using section 107 of the Internal Revenue Code, which provides special treatment for compensation rendered for a period of thirty-six months or more and back pay, could qualify for relief under section 116."

(Signed) Charles Fahy,

Legal Adviser.
Lausanne, October 5th, 1946.

To the Board of Liquidation of the League of Nations, Geneva

(through M. Daniel Secretan, Counsellor of Legation at
the Federal Political Department, Berne).

Gentlemen,

You have been good enough to ask me for my legal opinion on the following question:

"Having regard to all the circumstances of the case, has the League of Nations a legal
obligation to reimburse Mr. Manley Hudson for the tax levied by the American Revenue
authorities on the total of the arrears of salary for the period January 1st, 1941—January
31st, 1946, amounting to 106,730.61 Dutch florins, paid to him on February 23rd, 1946?"

I have the honour to give you this opinion herewith—basing myself upon the facts emerging
from your document B.L.45 and the annexes thereto (cf. letter of August 9th, 1946, from M. Emile
Giraud, acting Legal Adviser of the League of Nations, to M. Daniel Secretan, Counsellor of
Legation at the Federal Political Department, Berne).

These facts, in so far as in my opinion they affect the solution of the dispute, may be
summarised as follows:

Although the United States of America was not a party either to the Covenant of the League
or to the Statute of the Permanent Court of International Justice (hereinafter referred to as the
Court), Professor Manley Hudson was elected judge of the Court, at the general renewal of the
Court's membership in September 1930, for a period of nine years from January 1st, 1931, to
December 31st, 1939; he was chosen to occupy the seat held in succession by his eminent fellow

In 1939, in consequence of the war, the Council and the Assembly of the League were unable
to re-elect judges to replace the members of the Court whose term of office was on the point of
terminating.

In 1940, the Supervisory Commission appointed by the League Assembly resolved to effect
a substantial reduction in the Court's budget—a reduction which was to take effect on January 1st,
1941. It was consequently decided that, during the emergency period, the judges (with the
exception of the President) would until further notice receive a monthly payment of 500 Swiss
francs and that an additional allowance would be paid to them if there should be a meeting of
the Court.

As a matter of fact, no judicial session of the Court was held after 1939. An administrative
session was held at the end of 1945. As a result of the creation by the United Nations of the
International Court of Justice to replace the Court, all the judges of the latter, including Mr. Manley
Hudson, handed in their resignations with effect from February 1st, 1946.

By a resolution of November 20th, 1945, the Supervisory Commission decided, in agreement
with the President of the Court, that the judges should receive for the period January 1st, 1940—
January 31st, 1946, an annual salary of 24,000 Dutch florins, less the monthly allowance of 500
Swiss francs which had been paid to them previously. As a result of this payment of arrears of
salary, Mr. Manley Hudson received on February 23rd, 1946, the sum of 106,730.61 Dutch florins.

Mr. Manley Hudson resided continuously in the United States during the period January 1st,
1940—January 31st, 1946; from October 1940 onwards he resumed his activity as a professor at
Harvard University, and he did so with the authorisation of the President of the Court.

The United States Revenue authorities accordingly propose to tax the 106,730.61 Dutch
florins which Mr. Manley Hudson received from the League as arrears of salary for the period

Mr. Manley Hudson requests the League to refund to him the amounts claimed from him
by the American Revenue authorities in consequence of its payment to him of 106,730.61 Dutch
florins in respect of arrears of salary for the period January 1st, 1941—January 31st, 1946. The
arrears of salary having been paid in a lump sum in 1946, the American Revenue authorities
have included the amount in Mr. Manley Hudson's income for that year. The arrears of salary
in question were not Mr. Manley Hudson's only taxable income in the United States in 1946.
The rate of income tax in the United States increases with the amount subject to tax.

These facts suggest, in my opinion, the following legal considerations:

1. It is in his capacity as a judge of the Permanent Court of International Justice during
the period January 1st, 1941—January 31st, 1946, that Mr. Manley Hudson claims from the
League the repayment of the taxes due by him to the American Revenue in consequence of his recovery in 1946 of arrears of salary amounting to 106,730.61 Dutch florins.

The rights and obligations of the Court judges in relation to the League are defined by the Statute of the Court.

The original Statute, established by a Protocol of December 16th, 1920, was revised. The revision resulted in the establishment of a Protocol, dated September 14th, 1929, which came into force on February 1st, 1936.

It is therefore the revised Statute that determines the rights and obligations of the Court judges during the period January 1st, 1941—January 31st, 1946, to which Mr. Manley Hudson's claim relates. The term of office of Mr. Manley Hudson, who was elected for the period January 1st, 1931—December 31st, 1939, was extended on its expiration, as it was not possible to re-elect judges in 1939, and Article 13, paragraph 3, of the revised Statute provides that the judges "shall continue to discharge their duties until their places have been filled."

The original rules made provision, in the case of the judges, for the payment of an annual salary and of an indemnity for each day on which they sat—the whole to be fixed by the League Assembly on the proposal of the Council (Article 32 of the Statute of 1920): the amended Statute (Article 32) substituted for these payments, in the case of the members of the Court, an annual salary to be fixed in the same manner. Whereas the point was not referred to in the original Statute, Article 32, paragraph 8, of the revised text of 1929 provides that "the above salaries, indemnities and allowances shall be free of all taxation."

2. The League Assembly believed, however, that the absence of any reference to this point in the original Statute was made good by its resolution of December 18th, 1920.

We have seen that, under the original Statute, the Assembly was competent to fix the amount of the annual salary and allowances due to the judges. It was to have done this on the proposal of the Council. On December 10th, 1920, however, the Council delegated this prerogative to the Third Committee of the Assembly (cf. the two letters of December 10th, 1920, addressed by the Secretary-General to M. Léon Bourgeois, Chairman of the Third Committee of the First Assembly, and M. Paul Hymans, President of the First Assembly, published in the Records of the First Assembly of the League of Nations, 1920, Meetings of the Committees, pages 578 and 579). The matter was submitted to the Third Committee in a memorandum by the Secretariat (ibid., pages 580-582): the question of the taxation of the salaries and allowances of the judges of the Court is not referred to in that document. During the Committee's session, however, a British proposal was put forward which, after suggesting figures for the salaries and allowances, ends by stating: "All salaries and allowances to be free of tax" (ibid., page 583). This proposal was adopted by the Committee in its draft resolution: "Allowances and salaries are free of all tax" (ibid., page 587). The motives by which the Committee was guided on this point will be found in the written report submitted to the Assembly by M. H. Lafontaine (ibid., page 586, and the Records of the First Assembly of the League of Nations, 1920, Plenary Meetings, page 766):

"To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay."

The Rapporteur, M. H. Lafontaine, made the following additional oral commentary at the thirty-first plenary meeting on December 18th, 1920 (ibid., page 748):

"I should like to add that, in order to equalise the position of all the judges, we propose that their salaries be exempt from taxation in every country. In the cases where in certain countries a tax is levied the League of Nations will reimburse the judge for the amount which he may lose by the tax."

At the same meeting the conclusions and resolution of the Committee were adopted (ibid., page 748).

3. In the light of the explanations furnished by the Rapporteur, the bearing of the Assembly's resolution of December 18th, 1920, was therefore quite clear.

There was no question of imposing upon the State in whose territory the seat of the Court was established,—i.e., the Netherlands (cf. Article 22, paragraph 1, of the Statute both in its original and in its amended form: "The seat of the Court shall be established at The Hague")—an obligation not to levy taxes on the salaries and allowances of the judges and deputy judges. Any such idea would have been all the more misplaced in that under the original Statute the Court did not sit continuously but held only one session a year; there was no need to fear that the Netherlands Revenue authorities would seek to tax the judges by reason of their attendance at The Hague during the annual session. Moreover, fiscal exemption at The Hague ought to have formed the subject of a convention with the Netherlands and not of a resolution of the League Assembly.

Nor was it intended to impose upon the States parties to the Statute an obligation not to tax the salaries and allowances of the judges. The Assembly was not competent to impose such an obligation on the States Members of the League. The League had no direct authority of constituti-
At the time of the revision of the Statute which led to the establishment of the Protocol of September 14th, 1920, the Assembly resolution of December 18th, 1920, concerning exemption of the judges' allowances and salaries from all taxation became Article 32, paragraph 8, of the amended Statute, which reads: "The above salaries, indemnities and allowances shall be free of all taxation." The only modification as compared with the text of the resolution is that exemption now applies expressly to indemnities as well.

It is desirable to enquire into the origin of Article 32, paragraph 8, of the amended Statute.

In resolutions dated December 13th and 14th, 1928, the Council of the League instructed a Committee of Jurists to undertake a re-examination of the Court's Statute. This Committee sat from March 11th to 16th, 1929, and adopted a report on the amendments which might be made in the Statute (League of Nations Official Journal, 11, 1929, page 1113). This report (ibid., pages 1194 et seq.) says nothing about the fiscal exemption of the judges' salaries, etc.; it merely proposes in this connection that the following paragraph be added to Article 32: "The above salaries, indemnities and allowances shall be free of all taxation." The only modification as compared with the text of the resolution is that exemption now applies expressly to indemnities as well.

5. The revised Statute was to have come into force on September 1st, 1930. As the conditions for its coming into force had not been fulfilled, a committee of three jurists was appointed on September 9th, 1930, to submit definite recommendations to the Assembly (League of Nations Official Journal, 11, 1930, page 1313): the object was to achieve as far as possible by provisional measures the objects aimed at by the revision of the Court's Statute. The Committee of Jurists, in its report of September 10th, 1930 (ibid., pages 1496 et seq.) proposed a resolution fixing again the salaries and allowances of the members of the Court, and added, as in the resolution of December 18th, 1920: "Allowances and salaries are free of all tax." The proposed resolution was adopted, at its meeting on September 12th, 1930, by the League Council (ibid., page 1322), which decided to transmit it to the Assembly (League of Nations Official Journal, 11th Ordinary Session, 1930, Special Supplement, page 130). The Assembly sent the question to the First Committee for examination. The First Committee appointed a Rapporteur, M. Pilotti (see his report, ibid., pages 498-500), who, at the Assembly's meeting on September 25th, 1930, submitted draft resolutions which corresponded as regards fiscal exemption to the proposal of the committee of three jurists and of the League Council. M. Pilotti at the same meeting submitted "certain explanations of the proposed resolutions" (ibid., page 131) and stated, inter alia (ibid., page 132):

"One of the points which particularly struck the Committee was that, while the Regulations regarding salaries and allowances stipulate that these shall be free of all tax, there is no similar provision in the 1924 and 1929 texts in regard to pensions.

"In this connection, the Committee's attention was drawn to the following passage in the report adopted by the Assembly in 1920 concerning the taxation of salaries of members of the Court:

"'To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay'."

"The First Committee trusts that, pending the formal settlement of the question, the general principle set forth in this passage will be observed."

At the same meeting of the Assembly on September 25th, 1930, the First Committee's draft resolutions were adopted after the Chairman had declared (ibid., page 133): "I think I shall be interpreting the wishes of the Assembly if I add that the Assembly has duly noted the statement made by M. Pilotti on behalf of the First Committee."
In its Reports for the years 1931 and 1932, the Supervisory Commission elected by the League Assembly examined the question whether the judges' pensions also should be exempted from taxation. It refused to agree to such exemption and stated in its report for 1931:

"As regards the question of exemption from taxation, the Commission noted that the resolution of December 18th, 1920, with regard to the salaries of members of the Court, stated that 'allowances and salaries are free of all tax'. Further, the report adopted by the 1920 Assembly concerning the organisation of the Permanent Court of International Justice, contained the following passage on the question:

"To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries may be affected by taxation in the various countries, the Committee proposes that all salaries and allowances should be free of taxation. As, however, the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may be obliged to pay'.

"The Supervisory Commission has always considered, and still considers, that the idea of equality thus put forward as a basis for exemption from taxation only holds good while the judges are performing their duties. There seems no reason to grant the former holders of high international posts, once they have retired into private life, a privilege giving them an advantage over the other nationals of the countries in which they live."

6. It is an incontrovertible fact that the fiscal exemption of the Court judges underwent a formal change of character when, on February 1st, 1936, it ceased to be an Assembly resolution and became a provision of the Court's Statute: from a mere recommendation by the Assembly, not binding even on the States Members of the League, it became an article of a protocol—i.e., a treaty—and consequently an international rule of law resulting from an agreement between States and valid for all the States parties to that agreement. When at the League's Assembly meeting on September 25th, 1930, M. Pilotti spoke of a formal settlement of the question, he was specifically referring to the new legal character which the fiscal exemption de quo agitur would acquire as soon as the Protocol of September 14th, 1929, came into force. For, when it came into force, the fear expressed by M. Lafontaine in his written report in December 1920 that "the decisions of the Assembly may be inoperative as against the fiscal laws applied in the different countries" ceased to be grounded, theoretically at any rate, in respect of the countries signatory to the Protocol of September 14th, 1929. Must we conclude that Article 32, paragraph 8, of the amended Statute was intended to do away with the League's obligation to reimburse the members of the Court for any taxes which they might be required to pay—an obligation which had been an integral part of the fiscal exemption resulting from the Assembly resolution of December 18th, 1920? This question must, in my opinion, be answered in the negative. Had it been intended to modify the concrete effect of the exemption such as it had always been recognised by the League, some trace of this intention to make a material innovation would have remained in the records of the League; we have seen, however, that that is not the case. The obligation to repay to the Court judges the amount of the taxes which they might be obliged to pay did not lose its entire raison d'être as a result of the new legal character which fiscal exemption acquired by its incorporation in a treaty. Apart even from the possibility that a country signatory to the Protocol of September 14th, 1929, might not respect its undertaking, the judge, not being obliged to have his fiscal domicile—or one of his fiscal domiciles—in the Netherlands (see below, section 7), might have it in a State which had not signed the Protocol of September 14th, 1929. There is more.

Under the terms of the Statute, both in its original and in its revised form (Article 2), the Court judges were to be elected regardless of their nationality and might therefore be nationals of States which were not parties to the Statute; in 1929 it was known that a judge of the United States, a country not a party to the Statute, had continuously been a member of the Court (Bustamante: Droit international public i, page 586): even the revised Statute did not prohibit a judge who was a citizen of the United States from maintaining his home there (cf. Article 23, paragraph 2, of the Statute as revised in 1929)—a fact which might expose him to claims by the American fisc on his income as a member of the Court. The whole tendency of the revision of the Statute in 1929 was to improve the material situation of the judges, the judicial functions losing their casual character and becoming fixed and the rules as to incompatibilities becoming stricter (Pereira da Silva: La réforme de la Cour permanente, pages 130 and 150): it would have been contrary to this tendency to weaken the effect of the fiscal exemption by doing away with the subsidiary guarantee of the League. Such a guarantee even under the new regulations was alone susceptible of ensuring the object constantly aimed at by the League: equality of treatment. This object, and this object alone, is the point at issue in M. Lafontaine's written report of December 1920, in his verbal commentary uttered at the meeting on December 18th, 1920, in the explanations given by M. Pilotti at the meeting on September 25th, 1930, and in the Supervisory Commission's report for 1931: it is an object which could of course have been achieved on the coming into force of the Protocol of September 14th, 1929, without the obligation for repayment by the League, but only if the Protocol had been binding on all States—a condition of universality which, to the knowledge of the signatories, was far from being fulfilled, chiefly by reason of the absence of the United States, although it was nevertheless intended to associate that country with the Court's activities by reserving for it a permanent seat thereon.
It is, moreover, clear that, by the provisional measures rendered necessary by the delay in the putting into force of the Protocol of September 14th, 1929, the League Assembly merely sought to anticipate, so to speak, the effects of the Protocol; and—the reference by M. Pilotti to M. Laïontaine's report at the meeting of September 25th, 1930, leaves no doubt on this point—the Assembly desired, by the provisional measures in question, to maintain the rule as to the repayment to the Court members of the taxes which they might be obliged to pay.

The purpose which the League Assembly wished to secure, under the régime of the original Statute, by its resolution of December 18th, 1920, under the régime of the revised Statute, by the provisions of Article 32, paragraph 8, and under the provisional régime during the interval between the adoption and the coming into force of the revised Statute, by its resolution of September 25th, 1930, was what M. Pilotti described, on the same September 25th, as a "general principle" 7. It results from the foregoing that the League is, in my opinion, obliged in principle to repay to Mr. Manley Hudson the tax due by him to the American Revenue on the whole of the arrears of salary which were paid to him on February 23rd, 1946, for the period January 1st, 1941—January 31st, 1946.

This principle would cease to apply if Mr. Manley Hudson had incurred the liability for the payment of this tax through a violation of his duties to the League.

In this connection it should be noted in the first place that the revised Statute did not, any more than the original Statute, impose upon the judges the obligation to have their domicile—in particular their fiscal domicile—at The Hague, or, more generally, in the Netherlands. It was sufficient that the members of the Court should hold themselves permanently at the Court's disposal (Article 23, paragraph 3, of the revised Statute). Article 23, paragraph 2, of the revised Statute granted to members whose homes were situated at more than five days' normal journey from The Hague six months' leave every three years, not including the time spent in travelling. The judges whose homes were situated at a shorter distance from The Hague were therefore regarded as being entitled to reside at their homes provided they held themselves permanently at the Court's disposal. This was the line adopted, at the Conference which resulted in the Protocol of September 14th, 1929, by M. Politis: "The judge must be at the disposal of the Court when the latter called upon him. But that did not imply compulsory residence at The Hague when there was nothing to do." (Minutes of the Conference, page 39). The same line is taken by M. Pereira da Silva (op. cit., page 110).

It is true that in 1939 the United States, whither Mr. Manley Hudson had transferred his residence, was situated at more than five days' normal journey from The Hague and that the leave conditions laid down in Article 23, paragraph 2, of the revised Statute were not fulfilled. But the Court held no judicial session after 1939, the second world war broke out at the beginning of September 1939, the Netherlands was occupied by the German army in May 1940 and was only liberated in the spring of 1945. Mr. Manley Hudson would have had nothing to do at The Hague during the war—to employ the expression used by M. Politis—and his residence in the United States did not prevent him from accomplishing any of his duties as a member of the Court.

Moreover, the substantial reduction in the salary of the judges, decided upon in 1940 by the Supervisory Commission, was in fact justified by the cessation of the Court's activities and, furthermore, the President of the Court, by authorising Mr. Manley Hudson to resume his professional duties at Harvard University in October 1940, implicitly consented to his residing in the United States during the war, or at any rate during the occupation of the Netherlands by Germany.

There is another aspect of the question whether Mr. Manley Hudson did not contravene his obligations to the League and thereby give rise to the creation of the fiscal liability to the United States of which he asks to be relieved.

Under Article 16 of the revised Statute, "The members of the Court may not exercise any political or administrative function, nor engage in any other occupation of a professional nature." The functions of a university professor are undoubtedly an occupation of the last-mentioned character. The Conference which resulted in the Protocol of September 14th, 1929, expressed its agreement with the opinion put forward by one of the rapporteurs of the Committee of Jurists, M. Fromageot, to the effect that the judges of the Court should thereafter be forbidden to occupy posts as university professors (Pereira da Silva, op. cit., page 138). Mr. Manley Hudson, however, resumed his duties as a professor of Harvard University in October 1940. But he did so with the authorisation of the President of the Court at a time when, in consequence of the emergency, the Court was in suspense and its members were receiving only a monthly allowance of 500 Swiss francs—which was really nothing but a token payment. It follows that it would be unseemly for the League to reproach Mr. Manley Hudson for having, with the consent of the President of the Court, employed otherwise the time during which he was unoccupied owing to the latter's inactivity.

It is a general principle of law that every man is bound to exercise his rights and to discharge his obligations in accordance with the rules of good faith (cf. Article 2, paragraph 1, of the Swiss Civil Code).

Mr. Manley Hudson was therefore under an obligation towards the League to employ in resisting the claim of the American fisc to tax the arrears of salary de quo agitatur any means of fact or of law likely to be recognised, whether directed against the principle of taxation itself or against the quantum.
Mr. Manley Hudson satisfied this requirement by endeavouring, in his letter of February 10th, 1943, to Mr. Morgenthau, Secretary of the Treasury, to prove that the United States as a party to the International Labour Organisation should respect the provisions of the Court's Statute and therefore could not tax him, Article 22 (b) (7) of the Internal Revenue Code of the United States providing that "income exempt under treaty" is not to be included in gross income. This argument was, however, rejected in the letters of April 5th, 1943, from the Treasury Department, and of July 18th, 1946, from Mr. Charles Fahy, Legal Adviser to the Department of State, to Mr. Manley Hudson.

It will, in my opinion, be Mr. Manley Hudson's duty to endeavour to induce the American Revenue authorities to spread the arrears of salary paid to him by the League over the years 1941-1945, if that should result in a reduction of the total tax due; Mr. Manley Hudson denies that this would be the case as the tax schedules for 1946 have been reduced as compared with those in force in previous years; it is not possible from the dossier to say whether this contention is correct.

As regards the quantum to be refunded by the League, the amount, in my opinion, is the difference between what Mr. Manley Hudson will have effectively to pay to the American revenue and what he would have had to pay if the League had not remitted to him the arrears of salary amounting to 166,730,61 Dutch florins. The fiscal exemption granted by the League to the Court judges involves the payment, if necessary, by the League not only of the tax on income received from salary but also of the increase in the tax on the taxpayer's other income resulting from the application of graduated scales.

9. Mr. Manley Hudson, in a letter dated December 1st, 1945, to M. J. López Oliván expresses the opinion that, if the League reimburses him for the tax de quo agitur, he will again be obliged to pay tax on the income represented by this reimbursement and will theoretically again be entitled to reimbursement by the League. I do not share Mr. Manley Hudson's opinion on this point. When it has repaid the tax due by Mr. Manley Hudson to the United States on the arrears, the League will have discharged its obligation. It cannot be supposed that the League intended to assume an obligation which would continually re-arrise from its ashes and whose extent it would be impossible to determine—the process being repeated indefinitely. The League undertook to refund to the judges the taxes levied on their salaries but not any taxes levied on the sums which it might have to pay to them by way of reimbursement of taxes.

I believe that I have now replied to the question which you were good enough to put to me. Thanking you for the proof of confidence which you have accorded to me, I am, Gentlemen, etc.

(Signed) Plinio Bolla,
President of the Swiss Federal Court and Member of the Permanent Court of Arbitration.
# ANNEX 7

**STATEMENT SHOWING THE STATES WHICH HAVE NOT PAID THEIR CONTRIBUTIONS AS AT FEBRUARY 28TH, 1947**

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<th>State</th>
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### Notes
- Although the full payments provided for in the arrangements made with the Governments of Argentina (1940-1946), Bolivia (1945-1946) and Luxemburg (1946) have not been effected, this statement reflects the result of these arrangements. On the other hand, as the Governments of Cuba and Ecuador have effected no payment, no account has been taken in this statement of the arrangements made with these States.