DEUXIÈME PARTIE

DISCOURS PRONONCÉS
ET DOCUMENTS LUS DEVANT LA COUR

PART II.

SPEECHES MADE AND DOCUMENTS
READ BEFORE THE COURT.
1.

S. EXC. LE MINISTRE DES AFFAIRES ÉTRANGÈRES DE TURQUIE AU GREFFIER DE LA COUR

TÉLÉGRAMME.

Angora, 8 octobre 1925.

A l'honneur vous accuser réception votre télégramme 26 septembre stop Gouvernement turc, tout en professant la plus haute estime et déférence vis-à-vis Cour Justice internationale comme il a eu occasion le faire entendre dans maintes circonstances à conviction que questions mentionnées dans Requête Conseil Société Nations datée 19 septembre et au sujet desquelles avis consultatif Cour a été demandé présentent caractère nettement politique qui, de l'avis du Gouvernement République, ne peuvent donner matière à interprétation juridique stop Pouvoirs conférés Conseil dans différend Mossoul en vertu rédaction définitive article 3 Traité Lausanne et déclarations antérieures feu lord Curzon qui ont motivé l'adoption par Turquie dit article excluent toute possibilité d'un arbitrage stop Par ailleurs le fait que Conseil a cru devoir lui-même demander avis consultatif Cour sur nature pouvoirs qu'il détient article 3 précité, met en évidence justice point de vue mon Gouvernement stop De son côté représentant britannique ayant déclaré par devant Conseil que engagements antérieurs pris sur ce point par son Gouvernement avaient perdu toute validité intention ainsi manifestée officiellement a résolu question sur laquelle aucun doute ne pouvait d'ailleurs subsister stop Crois devoir signaler attention Cour que mon Gouvernement a de même clairement et suffisamment exprimé sa manière envisager question concernant requête présentée par Conseil ainsi que sa compétence stop Aussi mon Gouvernement pense-t-il qu'il n'y a pas lieu pour lui se faire représenter dans session extraordinaire Cour qui aura à délibérer sur requête susvisée ayant déjà fait connaître son opinion à ce sujet stop Vous prie donner Cour connaissance de ce qui précède stop Ministre Affaires étrangères Turquie, TÉWFIK RUSCHDI.
May it please the Court, I have the honour to appear before this august Tribunal in company with my friends Sir Cecil Hurst and Mr. Fachiri in order to submit to this Court the considerations which, in the submission of His Majesty's Government, ought to lead to a correct decision upon the questions which have been submitted for an Advisory Opinion.

I should like in opening to express my regret that the Turkish Government, which is the other Power principally interested in these questions, has not seen its way to appear before the Court this morning. I regret it first because the Court is deprived of the advantage of having the assistance of the Turkish Government's arguments more fully stated, and secondly because it is a real embarrassment to an Advocate not to be able to hear what his opponent has to say and to deal with the contentions upon which he lays stress. Fortunately in the present case the telegram which has been read, and of which we had been informed by the courtesy of the Registrar, explains to the Court the grounds upon which the Turkish Government argues against the view to be submitted by His Majesty's Government. I propose in the course of my argument to deal with the points raised in the telegram and in the speech of His Excellency Tewfik Rouchdy Bey before the Council, which is referred to in the telegram 1, as containing the Turkish case, and I hope to be able to deal with those contentions and to show that they do not lead to the conclusion which the Turkish Government desires.

The object of the reference is to enable the Council of the League of Nations to ascertain from the Court its true position and powers in dealing with the dispute between Great Britain and Turkey in regard to the frontier between the latter country and Iraq. The questions submitted to the Court by the Council are pure questions of law. They have already been read at the opening of the Session by the Registrar.

It will be observed at the outset that Question 1 in terms limits the present enquiry to the interpretation of the Treaty of Lausanne. The issue framed is this: What is the character of the decision to be taken by the Council in virtue of Article 3, paragraph 2, of the Treaty of Lausanne?

Article 3, paragraph 2, of the Treaty of Lausanne is set out on the first page of the Memorial submitted by the British Government 2.

1 Page 17 of this volume.
2 Page 198 of this volume.
It forms one of a group of articles comprised in Section 1, Part 1, of the Treaty, and described as “Territorial Clauses”. I propose to quote the text of the article in the English language but it is right that I should draw attention to the fact that the French text is alone authentic; the English text is merely an official translation. The article is in these terms: “From the Mediterranean to the frontier of Persia the frontier of Turkey is laid down as follows: (1) With Syria. The frontier described in Article 8 of the Franco-Turkish Agreement of October 20th, 1921. (2) With Iraq.”—This is the paragraph upon which the opinion of the Court is asked.—“The frontier between Turkey and Iraq shall be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months. In the event of no agreement being reached between the two Governments within the time mentioned, the dispute”—the French text says _le litige_—‘shall be referred to the Council of the League of Nations. The Turkish and British Governments reciprocally undertake that pending the decision to be reached on the subject of the frontier”—in French: _en attendant la décision à prendre au sujet de la frontière_—“no military or other movement shall take place which might modify in any way the present state of the territories of which the final fate will depend on that decision” —in French: _dont le sort définitif dépendra de cette décision._

It is common ground, as stated in the British Memorial on page 2 of this volume, that the agreement contemplated by this paragraph failed to be reached with the result that the question of the Iraq frontier was referred to the Council of the League under the provisions of the paragraph on August 6th, 1924, by the British Government. The Turkish Government agreed in principle to this course and the Council of the League took seizin of the matter at its 30th Session in August and September 1924. It is unnecessary at the present stage to enter into the details of the Council’s proceedings; suffice it to say that they culminated on September 30th, 1924, in a Resolution embodying an undertaking by both Parties to the dispute which in effect constitutes the submission of the difference to the Council, and decided to set up a special Committee of investigation for the purpose of collecting information and making investigation with the object of assisting the Council in its final determination.

The Resolution is set out in the British Memorial at page 2 of this volume. The terms of the Resolution and the circumstances under which it was passed are of vital importance, and I shall discuss them later, but in order to complete the outline of the history as it comes before the Court it may be well to remind the Tribunal that the Committee of investigation met, proceeded to Iraq and reported to the Council and that it was when the Council at its recent meeting...
in Geneva had received the Committee's report and embarked upon
the task of fixing the disputed frontier that the questions now before
the Court were raised.

I propose first to deal with the first question which has been
submitted for the opinion of the Court and since that question is
by its express language one as to the interpretation of Article 3,
paragraph 2, of the Treaty of Lausanne itself, it is of the first
importance that the canon of construction to be applied should be
definitely ascertained. It is a fundamental rule of English law
that a written document must be interpreted according to the
intention of the Parties as expressed in or to be gathered from its
actual terms. This rule applies equally to legislative enactments
as to contracts and agreements of all kinds. The rule has been laid
down in our law over and over again.

It may perhaps be well to quote what has been said by learned
judges in just two cases. In the case of the Queen v. Hertford
College, reported in Law Journal Reports in England, Vol. 47,
Law Journal, Queens Bench, page 649, which was decided in the
year 1878, dealing with the suggestion that the proceedings on a
Bill in Parliament show that the legislature intended to enact
something different from what the language of the Statute con­
veyed, the Court of Appeal at p. 658 said: "We are not concerned
with what Parliament intended. The Statute is clear and the
parliamentary history of a Statute is wisely inadmissible to explain
it if it is not."

In regard to contracts the law is equally well settled. Again
I take one example which happens also to be in the Law Journal
Reports. It is the case of McClean v. Kennard, 43, Law Journal
Reports, Chancery Division, page 323, 1874. Lord Justice James
at page 326 said this: "What the intentions of the plaintiffs were,
what they thought or believed or what the conversation was,
seems to me to be utterly inadmissible when once we have got a
written contract and have got the facts which were existing at the
time the written document was entered into, and it would be
utterly unsafe in the dealings of mankind—no one would be
safe—if a man could get rid of a document which he had signed
by saying that he had received some information—for that is
really what the plaintiffs' case comes to—that somebody or other
would be bound by it and that that in his mind was a great induce­
ment for him to enter into the agreement. The whole of that—
to my mind—is legally inadmissible as evidence and even if it were
admissible it seems to me to have not the slightest weight what­
ever."

The reason for the rule is well stated in Sir Frederick Pollock's
The learned author says: "The purpose of reducing agreements
to writing is to declare the intention of the Parties in a convenient
and permanent form and to preclude subsequent disputes as to
what the terms of the agreement were. It would be contrary to general convenience and in a great majority of cases to the actual intention of the Parties, if oral evidence were admitted to contradict the terms of a contract as expressed in writing by the Parties. Interpretation has to deal not with conjectured but with manifest intent and the supposed intent which the Parties have not included in their chosen and manifest form of expression cannot, save for exceptional causes, be regarded.” The reference to exceptional causes, of course, is to cases of fraud or the like. “Our law, therefore, does not admit evidence of an agreement by word of mouth against a written agreement on the same matter. The rule is not a technical one and is quite independent of the peculiar qualities of a deed.”

I have cited these statements of English law not because I wish to suggest that they are binding upon the International Court but because in my submission they are based on reasoning and on good sense, and their reasoning is as applicable to the interpretation of treaties between sovereign States as to contracts between private individuals. As is said by Wheaton (Dana’s Wheaton, Section 287), public treaties are to be interpreted like other laws and contracts.

But, even if the Court did not accept this principle of English and American law, the canon of French law would apparently lead to the same result in the present case. In one of the earliest cases brought before this Court (Advisory Opinion No. 2 as to the competence of the International Labour Office to deal with the conditions of agricultural production), the French Government submitted a memorandum in opposition to the admission of the discussions which took place in the course of the drafting of the Labour clauses of the Treaty of Versailles for the purpose of interpreting the articles of the Treaty as finally adopted. This memorandum is set out in the Court’s Official Publications, Series C, No. 1, page 181. At page 187 the following passage occurs which I quote as being an authoritative statement by the French Government of their own view of the French law.

“It is a principle of international law that, in interpreting a law, the preparatory work carries no weight as against the express text of the law. Laurent, in his Cours élémentaire de Droit civil, Préface, page 15, says: ‘Preparatory work cannot conflict with the text . . . Should it do so, it must be ignored, because an unascertained intention cannot be used to disprove an ascertained intention, and the intention expressed in the preparatory work is essentially unascertained’. Further he says: ‘Recourse must be had to the discussions for the interpretation of an obscure and doubtful text. It is not permissible to make use of the discussion in order to make the law mean something which it does not say.’

“François Geny, in his book Méthode d’interprétation et Sources en Droit privé positif, Paris, vol. 1 (1919), page 295, writes as follows: ‘In my opinion all that it is possible to say is that the
preparatory work in connection with a law must only be used as an authorized commentary on the text and for the purpose of ascertaining its intrinsic meaning, in so far as the ideas taken from the preparatory work have been expressed without serious contradiction and in circumstances which make it possible to attribute them to the author, or, more generally, to the authors of the law, and provided that the text of the latter is not incompatible with these additional explanations."

"This principle, which is so just in the case of a law, is still more so in the case of a treaty, because in the former case the sovereign State has power to retrace its steps, whereas, in the second case, that of a treaty, it has consented to abandon its sovereignty and cannot recover it.

"This principle, which is so just in the case of a treaty signed by two Powers, is still more so in the case of a convention which, besides being very wide in its scope, very complex and yet indivisible, is to constitute the law for Powers which have not all taken an equal part in the preparation of the text by which they were to be bound."

The rule of French law mentioned above appears to extend with equal or greater force to contracts. Article 1341 of the Code Napoléon provides that no evidence is receivable against or beyond the contents of written documents. Commenting on this Dalloz in his *Jurisprudence générale*, vol. 33, under the heading of Obligations, Section 4717, says: "The written document constituting plainly statements which have a direct connection with the object of the contract, it is not permissible to prove by evidence that these statements, owing to an intentional or unintentional mistake or inexactitude, are in contradiction with the intentions or the will of the contracting Parties. When the Parties reduce to writing and sign a document to set out their agreement, the law, equally with common sense, must presume that they have inserted in that written document all that it was useful to include in it and that it contains the exclusive and accurate expression of their respective wills. This is a presumption of law against which no evidence is admissible except in the case of deceit or fraud."

In our submission the text of the Treaty of Lausanne is clear and free from ambiguity, so that the ruling which His Majesty’s Government asks the Court to give in the present case is that where the meaning of a Treaty provision and the intention of the Parties appears from the final text to which they have affixed their signature, no recourse can be had to preliminary discussions for the purpose of contradicting or adding to that text.

As shown above, the principle is recognized not only by the Anglo-Saxon law, but also to this extent at least by the Latin system of law. I submit that it can properly be regarded as one of those general principles of law recognized by civilized nations which are referred to in Article 38 of the Statute of the Court.
The present contention has been developed at some length, because His Majesty’s Government regard the adoption of this principle of interpretation as one of the greatest possible importance for securing certainty in ascertaining the scope of international engagements and so ensuring their just observance.

I turn now to consider the language of the material provisions of the article, Article 3 of the Treaty of Lausanne. The article commences by stating that from the Mediterranean to the frontier of Persia the frontier of Turkey is fixée comme il suit—is fixed as follows. The use of the word fixée indicates that we may expect to find in the succeeding paragraphs provisions which do fix what are the frontiers of Turkey between the Mediterranean and Persia; and we find them, according to the submission of the British Government, in the two succeeding paragraphs. Indeed it is not suggested that if paragraph 2 of Article 3 does not fix the frontier there is to be found anywhere else any provision which remedies the omission. The article goes on to say that between Turkey and Syria the frontier is fixed as the frontier définie—defined—in Article 8 of the Franco-Turkish Agreement of October 20th, 1921. It is obvious, therefore, that so far as the Syrian-Turkish frontier is concerned the article is proceeding to fix the frontier. It then proceeds to deal with the frontier between Turkey and Iraq. It provides that that frontier shall be déterminée—shall be determined—by friendly arrangement between Turkey and Great Britain within nine months. If that happens, the frontier, of course, is fixed as soon as that friendly arrangement has determined what it shall be. It then goes on to deal with what is to happen in order to fix the frontier if no friendly arrangement is reached. It says that in the event of no agreement being reached between the two Governments within the time mentioned, the dispute—litige—shall be brought before the Council of the League of Nations. The use of the word litige is perhaps just worthy of commenting upon in passing. Its primary meaning according to the dictionary of the French Academy is: contestation en justice; that is to say, it imports a litigation terminating in a judgment or a decision. Moreover, it is to be observed that this is not the word used in the Covenant of the League of Nations with regard to disputes. The word used in Articles 12, 13, 14 and 15 of the Covenant is: différend—a wider and a vaguer term which embraces both a litigation calling for settlement by a judicial sentence or arbitral award and a dispute referable to mediation or recommendation.

The next paragraph of Article 3, however, really, in our submission, places the matter beyond doubt. It provides that the Turkish and British Governments reciprocally undertake that, pending the decision to be reached—la décision à prendre—on the subject of the frontier, no military or other movement shall take place which might modify in any way the present state of the
territories, of which the final fate will depend upon that decision—
dont le sort définitif dépendra de cette décision. The decision here is
plainly the decision of the Council, which is the Body charged with
deciding the dispute, and it seems, therefore, from the express
language of the article, that if the two Governments cannot reach
an agreement between themselves the dispute is to be brought before
the Council, the Council is to render a decision, and the final fate
of the territories in question will depend upon that decision.

How is it possible to say that a decision which finally determines
the fate of the territories is only a friendly recommendation, which
the Parties can ignore at their pleasure, and is not a final award or
judgment between the Parties, since it finally determines the point
at issue between them?

If that is so, Question 1 must be answered in the sense that the
decision to be taken by the Council is an arbitral award.

It is worth looking at some of the authorities on international
law in order that one may have clearly in mind what is the essential
characteristic which differentiates an arbitral award from a recom-
mandation or a mediation. It will be found that the essential
distinction is this—that a recommendation or mediation does not
import any decision by the mediator or recommender, and does not
bind the Parties, and that an arbitral award does import a decision
by the arbitrator, and does bind the Parties to the dispute. In
other words, the test to be applied in order to answer this question
is to see whether what the Council is asked to do is to make a
recommendation or to take a decision, and, further, to see whether
the recommendation or decision is one which the Parties can reject
or whether it is one which they bind themselves to accept.

The function of a mediator is described in the Hague
Convention, No. 1, of 1899. Article 4 of that Convention says:

"The rôle of mediator consists in conciliating opposing
claims and reconciling the resentments which are produced
between States in conflict."

Article 5 goes on:

"The functions of a mediator cease from the moment when
it is settled either by one of the Parties to the dispute or by the
mediator himself that the means of conciliation proposed by
the mediator are not accepted."

Article 6 says:

"Good offices and mediation, whether arising from the
request of the Parties to the dispute, or at the initiative of
Powers who are strangers to the dispute, have exclusively the
character of advice, and never have any binding force."
The official report comments upon this article as follows:

"Article 6 insists on the essential character of good offices and of mediation. That character is one of giving advice alone. Mediation is not arbitration. The arbitrator is a judge and gives a binding sentence."

This description has the authority of the 26 signatory States behind it, including both Turkey and Great Britain, and, as I shall show, is in accordance with the views of all the principal writers on international law.

Vattel, immediately after the passage upon mediation which is cited in the British Memorial at the middle of page 31, which I will not again read, goes on to say:

"When Sovereigns cannot agree about their pretentions they sometimes submit the decision of their disputes to arbitrators chosen by common agreement. When once the contending Parties have entered into articles of arbitration they are bound to abide by the sentence of the arbitrators." (Law of Nations, Book II, § 329.)

Sir Frederick Pollock, in his book on the League of Nations, Second Edition, page 19, thus discusses the difference between arbitration and mediation:

"It may be well to make a few remarks on the nature of arbitral tribunals and the difference between an arbitral award and, on the one hand, the action of a mediator, on the other, the judgment of a Permanent Court of Justice, for erroneous assumptions and exaggerated statements on this matter are not infrequent.

"The functions of an arbitrator are so different from those of a mediator that confusion ought not to be possible. A mediator's business is to discuss the whole matter in dispute with the Parties and try to bring them together. He is not bound to form any opinion of his own on its merits, and if he does form one neither Party is bound to attend to it. He has to assist and advise, not to decide, and his action is in no way judicial."

Pausing there for a moment, "decision" is precisely what the Council of the League of Nations has here to give. That is the very thing which Sir Frederick Pollock points out the mediator never has to do.

It goes on a little lower down:

"An arbitrator, on the contrary, is appointed to hear and determine matters on which the Parties have specifically declared themselves to be at variance and agreed to abide by his decision. His business is to decide, not to advise."

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1 Page 201 of this volume.
Could anything be more apt to point to the character of the functions which are here entrusted to the Council than that language of the learned author, written, of course, long before this dispute was thought of?

To look at one or two other authorities, Calvo, in his *Dictionnaire de Droit international, “Arbitrage”*, volume 1, page 498, dealing with mediation, says:

"The object of mediation is to reconcile divergent interests and to suggest the basis of a friendly agreement, while leaving to the Parties directly at issue complete freedom to accept or not the proposed bargain. It is the suspensory character and the absence of any obligation in its results which distinguishes above all mediation from arbitration. Mediation has no compulsory character. One may either accept or refuse the proposed solution."

Under the title "Arbitrage", the same learned author, on page 51, defines that as a method of deciding disputes—*les litiges*—and again on page 55 he says that there is this difference between the arbitrator and the mediator—that the latter confines himself to proposing a method of amiably adjusting the dispute, leaving to the Parties the right to accept or to reject the proposition, while the arbitrator decides the questions under examination, and his judgment is obligatory on those who invoke it.

I do not wish to take up too much time by citing the authorities, but it will be found that Pradier-Fodéré, in his *Cours de Droit diplomatique*, volume 2, pages 467 to 472, deals with mediation and arbitration in the same way. Oppenheim’s *International Law*, Third Edition, Volume 2, Sections 9 and 12, draws the same distinction. Twiss’ *Law of Nations*, Volume on War, Second Edition, Section 7, points the same difference. Westlake’s *International Law*, Part 1, page 354, says the same thing. It is perhaps worth while quoting his language:

"The essential point is that the arbitrators are required to decide the difference — that is, to pronounce sentence on the question of right. To propose a compromise, or to recommend what they think best to be done, in the sense in which best is distinguished from most just, is not within their province, but is the province of a mediator."

I think the citations which I have given, which could be multiplied almost indefinitely, are ample authority for the proposition that mediation never involves, or indeed admits of, a decision. Arbitration always does. That is the very characteristic which distinguishes the two things. Where a dispute is referred to a third Party for decision, that is arbitration; where it is submitted for advice or conciliation, that is mediation.

In the present case it appears from the express language of Article 3 that the dispute is referred to the Council of the League-
SPEECH BY SIR DOUGLAS HOGG

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for decision, and it appears also from the express language of the article that the final fate of the territories in dispute will depend upon that decision—language which is meaningless and incomprehensible if the final fate of the countries was not affected by the decision, but the decision was merely a recommendation or suggestion which the Parties to the dispute could accept or reject at their pleasure.

I have said what I desired to say upon the language of the article, but before passing to my next point I look to the Turkish statement of their case as it is contained in the speech of the Turkish representative at the final meeting of the Council on September 19th, 1925, in order to find what his commentary is on the language of the article. I cannot deal with it because I find none. There are all sorts of suggestions that the question which the Court is asked here to decide is an essentially political one. I confess I do not understand how the construction of a document can be otherwise than a legal question. There is a suggestion that because the Council has asked the Court to give an Opinion as to the legal effect of the Treaty, that in some way shows that the article does not make the Council into an arbitrator, a contention which I frankly fail to appreciate. The only reference to the language of the Treaty, bearing upon the first question as distinguished from the second, is a reference to Article 16 of the Treaty, which appears in the latter part of page 5 of the report of the proceedings on September 19th, 1925, where H.E. Rouchdy Bey says this. He refers to Article 16. Article 16, if I may just remind the Court, is the article which provides that Turkey renounces all rights and titles whatsoever over and respecting the territories situated outside the frontiers laid down in the present Treaty, with certain exceptions which are not material. The wording of the French authentic text is: **au delà des frontières prévues par le présent Traité.** His Excellency comments on that by saying: "It is perfectly clear that the renunciation of territories situated beyond the frontiers laid down consists of the renunciation of the rights over the territories beyond fixed frontiers. As long as no frontier is fixed no frontier can exist, and a thing which does not exist cannot be considered to be laid down. The truth of this is made all the more clear by Article 3, which, in stating that "from the Mediterranean to the frontier of Persia the frontier of Turkey is laid down as follows", leaves unfixed the frontier with Turkey. In considering Article 16 in conjunction with Articles 2 and 3, one is forced to admit that Turkey has only renounced her rights beyond the frontiers fixed by the Treaty and not beyond the frontiers not yet fixed."

I have read that passage literally because I was afraid I might not do it full justice if I tried to summarize it, but in my submission Article 16 is a strong confirmation, if confirmation were needed, of the construction which the British Government seeks to put upon Article 3. The Turkish Government say that the renunciation
in Article 16 cannot apply because no frontier is fixed with Iraq, but when I look at Article 3 I find that the article itself says: "The frontier of Turkey from the Mediterranean to the frontier of Persia is fixed as follows". So that so far from Article 3 not fixing the frontier with Iraq, the language of the article is express—that that is precisely what it is doing. The Court will notice the use of the word *prévues* in Article 16. If it included, as we submit it clearly must, the territories beyond the frontier ultimately laid down by the Council between Turkey and Iraq, the word *prévues* is very apt, because at the date of the Treaty the frontier had not been laid down but provision had been made for fixing it. It is, therefore, a frontier which is not *déterminée* or *définie* by Article 3, but the fixing of it is *prévue* by that article, inasmuch as means are provided which must, if the Treaty is carried out, result in the fixing of the frontier. In my submission Article 16, very far from assisting the suggestion that Article 3 was not contemplating the fixing of the frontier, is a strong corroboration of the view that the article meant exactly what it said, and that the Parties to the Treaty, when they used the word *prévues* in Article 16, had in mind the fact that by the earlier article they had not laid down the frontier but they had provided a means of fixing what the frontier was to be.

[Afternoon Sitting on October 26th, 1923.]

May it please the Court. At the adjournment I had concluded the observations which I desired to submit upon the language of Article 3 of the Treaty of Lausanne, taking it by itself. I ventured to submit that that language was in itself quite clear. But, if there ever was any doubt as to the rôle of the Council under Article 3, paragraph 2, of the Treaty, then I submit that that doubt is completely settled and resolved by the express agreement of the Parties formally recorded in the Resolution of September 30th, 1924, which constitutes in effect the submission to arbitration in the present dispute. The matter is one of such importance that I would respectfully ask the Court to follow a little closely what happened in that month of September 1924 at Geneva.

The Court will remember that the negotiations for an amicable settlement by agreement between Turkey and Great Britain had broken down in July, and that in August the question had been brought to the notice of the League of Nations, the period stipulated by Article 3, paragraph 2, having elapsed. Thereupon, on August 30th, 1924, a telegram was dispatched to the Turkish Minister for Foreign Affairs at Angora which is set out on page 23 of the British Memorial ¹, inviting the Turkish Government to send

¹ Page 69 of this volume.
its representative to Geneva to be present on a footing of equality with the British Government at the discussions which were to take place on that question.

Accordingly H.E. Fethy Bey arrived at Geneva in the following month, and at the 11th meeting of the Council on September 25th, 1924 (set out on page 24 of the British Memorial). M. Branting, the Rapporteur for this particular business, brought the matter before the Council. His language, I submit, is of great importance. He said this: "The matter is submitted to the Council in virtue of Article 3, paragraph 2, of the Treaty of Lausanne. My colleagues will doubtless agree with me that it would be interesting to hear once more the views of both Delegations as to the exact meaning of this clause in the Treaty. In the first place, how do the British and Turkish Delegations understand the reference to the Council provided for in Article 3 of the Treaty of Lausanne?"

That is the precise question which the Court is now considering, or rather the Court is now considering how they ought to have understood it. "I believe", says M. Branting, "that I am right in thinking that according to the statements of the British Delegate, his Government considers itself bound in advance by the decision of the Council." The Court will observe, therefore, that the British Government has consistently maintained the attitude for which I am contending to-day. It is not an attitude which has been adopted at some late stage when it might appear to our advantage, but it is the attitude they stated to the Council before the Council embarked on the enquiry.

M. Branting goes on: "The Turkish Delegate has not, as far as I can gather, expressly indicated the views of his Government on this point. I am certain that my colleagues would be very glad to be furnished with definite information as to the attitude of the two Governments on this matter. It is obviously important that the Council should know exactly the part it has to play before continuing its discussion of a matter which has been submitted to it as the result of an agreement between the Parties." He then goes on to deal with a second question which is not now material.

It will be observed, therefore, that M. Branting expressly points out the importance to the Council of being satisfied as to the exact part it has to play,—the very question which is now under discussion. At the end of his observations, M. Branting (on page 25) added that the note of what he was saying had been sent in advance to the representatives of the two Governments, so that they had had time to consider their reply.

Lord Parmoor then spoke first, and he said this: "To the first of the two questions which the Rapporteur has asked my reply is

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1 Page 77 of this volume.
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entirely in the affirmative. The British Government does regard the Treaty as placing the Council in the position of an arbitrator whose ultimate award must be accepted in advance by both Parties. Therefore, in the most explicit terms, I desire to say that the British Government would consider itself bound by the decisions of the Council."

Then H.E.-Fethy Bey (at the bottom of page 251) made his statement, and he began by formulating the two questions which had been asked. It is important to see that he precisely understood the question he was dealing with. Number 1, which he repeats for the sake of clearness, was this: "How do the two delegations understand the reference to the Council provided for in Article 3 of the Treaty of Lausanne; in other words, what part has the Council to play in the matter which has been submitted to it as the result of an agreement between the two Governments?"

Thereupon he gives his answer (at the top of the next page): "As to the first question," says His Excellency, "the Turkish Government recognizes the full powers of the Council conferred upon it by Article 15 of the Covenant, which is applicable to such disputes brought before the Council," and he finished up his observations (at the bottom of the page) by saying: "As I have the honour to inform the Council, the Turkish Government recognizes in this matter all the Council's powers as conferred upon it by Article 15 of the Covenant."

The Court will observe at once, of course, that there was there a difference of views between the two Governments as to what the rôle of the Council was. The British Government regarded it as being in the position of an arbitrator; the Turkish Government regarded it as merely having the powers conferred upon it by Article 15, which, as the Court will remember, consists in making a recommendation which is not binding upon the Parties, but which if unanimous (apart from the vote of the Parties) cannot be disregarded in the sense of going to war. There being that difference of opinion, M. Branting points out that this causes considerable difficulty, and he says this (page 272): "There is no need for me to lay stress on how important it is that the Council should know exactly what is the subject of the dispute which the two countries have agreed to submit to it"—that was the second question which he had propounded—"and what if any limits are to be set to the Council's powers"—that was the first question. "I think the discussion will once more have to be adjourned to enable me to consider in consultation with the two Parties the preliminary question of the precise duties of the Council." So that, there being at that stage a manifest difference between the views of the two Governments as to the powers and position of the Council,
The matter was adjourned in order that those differences might if possible be reconciled.

The session was resumed on September 30th, and, as the Court will see in a moment, the two views had been reconciled and the Parties had arrived at an agreement. The Parties were present and M. Branting made a report in which he began by saying (British Memorial, p. 27): "After a conversation with the representatives of both Parties concerned, I have ascertained with satisfaction that the divergence of views on the scope of the question submitted to the Council is not such as had at first appeared to me. Lord Parmoor reminded me that the effect of his declaration to the Council was "that his Government accepted in advance the Council's decision regarding the frontier between Turkey and Iraq." He then went on to deal with the second question as discussed with Lord Parmoor, and then he says: "His Excellency Fethy Bey, to whom I communicated the results of this conversation, informed me that the misunderstanding which had arisen appeared to him to be dispelled, and that he agreed to the question being submitted in the form indicated by Lord Parmoor"—that was the second point which was being debated. "I then reminded him," says M. Branting, "that the British Government had declared that they accepted in advance the Council's decision, whereas the Turkish Government, through the medium of their delegate, had declared that they would submit to the authority of the Council under the terms of Article 15 of the Covenant. I asked His Excellency Fethy Bey if he could on behalf of his Government now give an undertaking to accept the Council's recommendation." The answer is vital, and it must be remembered that this statement is made in the presence of H.E. Fethy Bey, as will be seen by looking at the record. "His Excellency Fethy Bey replied that on this point there was no disagreement between his Government and the British Government and that he would be prepared to make a declaration in the sense referred to"—i.e. that his Government accepted in advance the Council's recommendation and agreed to be bound by the Council's recommendation—"at the same time adding that he was convinced the Council would base its decision in the first place on the wishes of the inhabitants." "Then," says M. Branting, "as the doubts which might have arisen in regard to the exact definition of the question"—the second point—"and of the rôle of the Council"—the first point—"have now been removed, I wish to offer to my colleagues a suggestion in regard to the procedure to be followed." He thereupon proceeds to make a suggestion that a Commission should be appointed. Lord Parmoor and Fethy Bey both state their acquiescence in the statement which they have both heard and the Resolution was then passed which appears on page 29 and which concludes this question, which

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it is now sought to litigate, in these terms (at the top of page 29): "The Council, having had the question of the delimitation of the frontier between Turkey and Iraq referred to it under Article 3, paragraph 2, of the Treaty of Lausanne, having heard the statements of the Representatives of the British and Turkish Governments who undertook on behalf of their respective Governments to accept in advance the decision of the Council on the question referred to it . . . ." goes on to appoint a Commission.

Now, with great respect to the Court, how is it possible after the precise rôle of the Council under this article, has been raised at a meeting called for the precise purpose of determining it, after the two Governments have expressed their respective views, have then seen the Rapporteur of the Council and discussed the problem, have arrived at an agreement as to what the rôle is, have publicly accepted the view which is stated in this statement by M. Branting, and have been Parties to a Resolution which solemnly records their undertaking on behalf of their Governments to accept in advance the decision of the Council, for either of those Governments to ask the Council to hold that it has not got the power which each Government formally agreed that it did possess?

The question which this Court is asked to decide—what is the rôle of the Council—is the question which in September 1924, when the Council were first asked to undertake the duties conferred on them under Article 3, was, with great prudence, if I may say so, raised by the Rapporteur of the Council, so that there might be no question as to it hereafter, and, having been raised and fully discussed, both Parties agreed that the rôle of the Council was to give a decision which both Governments accepted in advance and by which they agreed to be bound. After that, what possible answer to the question of what the rôle of the Council is can there be other than the one which I am submitting to the Court, namely that the rôle of the Council is that which both Parties agreed to give it, namely the power to give a decision which binds both Parties when given: in other words, to give an arbitral award.

I have looked with some interest in the speech of the Representative of the Turkish Republic at Geneva last September to see what answer is made to this argument, and I find that the only answer which can be made is to suggest that H.E. Fethy Bey had no power to bind his country. That appears on page 5 of the Report of the proceedings of September 19th, 1925. It certainly is difficult to treat that answer seriously. H.E. Fethy Bey was sent as the accredited representative of the Turkish Government at the invitation of the League for the express purpose of dealing with this dispute before the Council. There is in fact no evidence before the Court either that there was any need to obtain any

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2 ... 119 ...
ratification of the National Assembly of Turkey, nor indeed that if such a ratification were necessary, it was not obtained. But of course the relations between sovereign States would become impossible if it were contemplated that when a representative is sent for the express purpose of dealing with a particular dispute as the accredited representative of his country, a clear and unconditional statement on behalf of his country made by him deliberately after discussion and consideration could be repudiated more than a year after it was given upon any such pretext.

But the matter does not even rest there. After the Resolution to which I have called attention had been passed and communicated both to the Turkish and British Governments, the Commission contemplated by the Resolution was set up. It was sent to Iraq. It was accompanied to Iraq by representatives of the Turkish Government officially appointed for that purpose, as will appear by looking at its report. It pursued its investigation there for many weeks. The Turkish representative and the Commission were given full facilities and protection by the British Government on the faith of this Resolution and undertaking, and it is not until after the Commission has returned, has made its report and has laid that report before the Council, that any suggestion is made that the Resolution or the undertaking embodied in it was not binding upon all Parties.

It is obvious, in my submission, that such a contention cannot now be admitted, even if it were capable of proof, which so far as appears does not happen to be the case in the present instance. For this reason, His Majesty's Government submits that whatever doubt was left when the Treaty of Lausanne was signed in July 1923, as to the precise rôle of the Council under Article 3, paragraph 2, that doubt was finally and for ever set at rest and resolved by the express agreement of the Parties, accepted and acted upon by both of them and by the Council, to whom they had agreed to refer the dispute.

That completes my argument upon the interpretations of the article based on its language and based upon the conventional value given to it by the Parties in September 1924. I may perhaps be allowed to repeat that in the view of His Majesty's Government the basis upon which I have dealt with the matter—that is to say, to construe the Treaty as it stands—is the correct one. But, as the negotiations before the signature of the Treaty have been referred to by the Turkish Representative at the recent meetings of the Council, I propose to deal also with that topic, in order to show (as I hope I can show) that the negotiations both before and after the signature of the Treaty, so far from disturbing the conclusion which I have already reached, really tend to confirm it. In doing so, however, I desire respectfully to make it clear that the Government whom I have the honour to represent maintains its objection to the admissibility of the evidence. It is not possible to argue out
that question, in the unfortunate absence of Turkey, and therefore I proceed to deal with the matter subject to that reservation.

The history of the negotiations is described in the British Memorial, pages 7 to 14, and in Annexes 2 to 10. I shall not trouble the Court by going over the whole ground which is set out in these pages again; I will confine my attention to the salient points.

The question of the frontier between Turkey and Iraq was brought formally before the Conference at Lausanne on the morning of January 23rd, 1923. Lord Curzon on behalf of the British Government, and Ismet Pasha on behalf of the Turkish Government, made lengthy speeches relating to the merits of the dispute, but the divergence between the two Governments was so great that Lord Curzon finally made the proposal to refer the question to the League of Nations. His language is to be found at the top of page 32 of the British Memorial. He says this: “But since we cannot agree, and since each side appears to be so confident of its own solution, my Government is quite content, relying upon the strength of its case, to refer this matter to independent enquiry and decision and to abide by the result.” Lord Curzon goes on to suggest that the League of Nations is the most appropriate Body to entrust with that duty, the duty being that of inquiry and decision by the result of which the Parties were to abide—in other words, an arbitration.

Ismet Pasha refused that offer. His answer is at the bottom of page 32. It was not given at the same session, but at the evening meeting on the same day. He says: “It would not be fair to submit a territorial question of such importance as that of Mosul to arbitration by the League of Nations.” A little lower down he goes on: “The Delegation of the Government of the Grand National Assembly could not allow the fate of a great region like the vilayet of Mosul, which formed an integral part of their country, or the fate of its population and resources”—that is where the word “fate” (sort) comes from in the article—“to be made dependent upon any arbitration.” It is therefore quite clear that Ismet Pasha understood that the suggestion which Lord Curzon was making was the suggestion of an arbitration, because he refuses it on the very ground that his Government could not accept arbitration upon such a point. It was in reply to this refusal that Lord Curzon made the observations upon which the Turkish Government has laid so much stress, and which in my opinion it seems completely to have misapprehended.

The statement made by Lord Curzon is set out in full on pages 33 and 34 of the British Memorial. Lord Curzon began by pointing out that the British proposal was that the question should be

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1 Pages 207-215 and 226-235 of this volume.
2 Page 140 of this volume.
3 Page 143 of this volume.
4 Pages 144-146 of this volume.
referred for examination and decision to the League of Nations. He points out how that proposal had been approved by the other Parties to the Conference and criticizes the action of Turkey in this language: “Turkey has so little confidence in her case that she dare not submit it to arbitration of any kind. Ismet Pasha has just rejected arbitration in general, and he therefore presumably rejects arbitration by the League of Nations. I will now tell him”, says Lord Curzon, “what it is that he has rejected.” Quite clearly, therefore, what Lord Curzon thought, as Ismet Pasha thought, was that the proposal which was being debated, which he had put forward and which Ismet Pasha had refused, was a proposal for arbitration by the League of Nations.

Then, holding the Covenant of the League in his hand, he proceeds to give an account of what he appears to have thought at the moment were its contents. What he says is this: “If the dispute were referred to the League and Turkey was not a Member, Article 17 would apply. Turkey would be invited to become a Member for the purpose of the dispute.” Then he goes on: “The Council would then institute an enquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.” Those words are taken almost verbally from Article 17, but with this difference, that in Lord Curzon’s speech they suggest that the enquiry and recommendation of the Council had to take place after Turkey had accepted the invitation to become a Member, whereas, under Article 17, of course, the enquiry and recommendation take place before acceptance of the invitation. Finally, he said that the Council would have to decide what method of examination to adopt, and he went on to say—and this is the passage which has been so much misunderstood: “The Council will have to decide what method of examination to adopt. It may ask the Turks and the British for their respective views. It may decide to send a Commission to take the views of the Kurds, Turks, Arabs and Christians on the spot. It may hold an enquiry in Europe, or it may appoint a single arbitrator to settle the matter. I do not know what it will do, but my point is that the Turkish Delegation will be there, just like ourselves, and when the two cases have been stated you will get the most impartial examination which it is possible to secure. Further, Article 5 of the Covenant provides that the decision of the Council upon which the Turkish Government will be represented, will have to be unanimous, so that no decision can be arrived at without their consent.”

Now, when one looks at the passage, it seems clear in my submission that what Lord Curzon is there dealing with is the method of examination which the Council is going to decide to adopt. For that reason he suggests several alternatives—a Commission, a statement of cases by both sides, an enquiry in Europe or a single arbitrator—and he points out that since Turkey will be invited
to attend, therefore, by virtue of Article 5, the Council cannot decide which method to adopt without the consent of the Turkish Government. Quite obviously he cannot have meant to say that the decision on the merits of the case could not be reached without the Turkish Government concurring in that decision, because the Court will observe that one of the methods of examination which he had suggested just above, was an award by a single arbitrator who was to settle the matter. Obviously an award by a single arbitrator settling the matter could not be a decision to which either Great Britain or Turkey would have to consent or would have to be a Party. What he is saying is that before the Council decides what method of examination they will undertake, the Turkish Government and the British Government will have a chance of expressing their views and will have to agree, but, when they have decided what method of examination to adopt, then of course the examination will go forward according to the plan adopted, and in the instance which I have just quoted of a single arbitrator settling the matter, it would be ridiculous to suppose that he was saying the Turkish Government would have to acquiesce in the award which the arbitrator gave.

Even a most cursory examination of the Covenant will show that it contains no provision that Turkey would be a Party to the decision on the merits. Article 5 begins with the words “except where otherwise expressly provided in this Covenant”, and Article 15 which is the only provision of the Covenant which it is suggested could apply supposing that the matter came within the Covenant at all, does expressly provide that the concurrence of the Parties to the dispute is not required to make a recommendation operative. It is obvious, therefore, that Lord Curzon cannot have been saying that Turkey would have to be a Party to a decision on the merits, since the only possible article expressly says that neither Party need be a Party to the recommendation.

I need not point out that Article 11 cannot have been the article in his mind, first because there was no war or threat of war. He himself says just below: “I am here to make a Treaty of Peace. I am not here to make war.” And, secondly, because he does refer to Article 11 a little later on in his speech at the top of page 34, when he states what will happen if Turkey refuses to accept the proposal of arbitration by the Council which he was putting forward. He refers to the article in these terms: “There is another article in the Covenant, Article 11, to which I have not yet referred . . . If the Turkish Delegation refuse my proposal I shall act on that article.”

As to Article 15 I venture to submit that where under a Treaty two States have agreed to refer a given and existing dispute to the Council for decision, as here, there is a submission to the arbitration

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There is, therefore, a submission to arbitration which, under the first paragraph of Article 15, excludes the dispute so submitted from the operation of the article. The Court will remember that Article 15 only applies when there arises between Members of the League a dispute likely to lead to a rupture which is not submitted to arbitration under Article 13. When once the Parties have agreed to submit the case for decision to the Council or to any other Body, then Article 13 has been complied with. The Council (if that is the Body agreed upon) becomes the Court agreed upon by the Parties to the dispute or stipulated in any convention existing between them as provided by Article 13. Under Article 15 there is no provision for a decision by the Council. Its functions are limited to endeavouring to effect a settlement, that is mediation, or to making recommendations. The recommendations are not binding, even if unanimously agreed to by the members of the Council other than the representatives of the Parties to the dispute. The only obligation in that event is to refrain from making war upon the Party which complies with the recommendations, and even that obligation only binds Members of the League. If the Council is not unanimous (in the sense referred to), the majority recommendations, under Article 15, have no effect at all. Article 15, further, is entirely inconsistent with the present submission to the Council, which, as Lord Curzon himself said at the top of the previous page, is "a submission for enquiry and decision", a decision by which both Parties were to abide.

There is really nothing unusual or startling in referring this dispute to the Council as arbitrator. Disputes have frequently been referred in the past to the head of a State as arbitrator, and it has never yet been suggested that in dealing with such an arbitration the arbitrator was bound by the constitution of the State of which he was the head. Between 1831 and 1904 Great Britain has been a Party herself to no less than 11 arbitrations which have been referred to the heads of States. It is, as the Court knows, a requirement of most constitutions that the official acts of the head of the State should be countersigned by a minister, but it will be found that in hardly any of those cases was the award so countersigned. A striking instance—and I give it only as one—is the Delagoa Bay Arbitration in 1875. By the Protocol signed at Lisbon on September 25th, 1872, the British and Portuguese Governments agreed that the respective claims of His Majesty's Government and of the Government of His Most Faithful Majesty The King of Portugal "to the territory and islands above mentioned will be submitted to the arbitration and award of the President of the French Republic, who will decide thereon finally and without appeal." It is noteworthy that the reference is to the President in his official capacity and not to any named individual. By the French Law of February 25th, 1875, Article 3, the last paragraph, every act of the President of the Republic must be countersigned.
by a minister. The award of the President was given on July 24th, 1875—five months after that Law was passed, and it is not counter-signed by any minister, and nobody has ever suggested it should have been.

Again, there is nothing to prevent States from choosing existing and constituted bodies as arbitrators. As is said by Rivier in his *International Law*, Volume 2, on page 180, "one chooses as arbitrator a State. One chooses also a Court or a college such as a tribunal or a law faculty." Again, Calvo, in his *Dictionary of International Law*, Volume 1, page 52, says:

"The choice of an arbitrator or arbitrators can also fall upon a civil or ecclesiastical authority, such as a commune, a legislative body, a tribunal, a religious Chapter, etc. or on a Corporation, such as a learned Society, or a Law Faculty, etc. In these cases there are as many arbitrators as the Corporation has members. None the less the Corporation is considered in its totality as forming one sole and the same arbitrator."

In latter passages Calvo goes on to explain that the arbitral Body in such a case has to lay down its own procedure and must decide by a majority which will, when it decides, bind the whole Body.

One instance which I can quote out of many is afforded by the arbitration between Great Britain and Peru in 1864 with regard to a claim for indemnity by a British subject, where the arbitrator selected was the Senate of the Hanseatic City of Hamburg.

But in fact the Council of the League of Nations itself has been chosen to act as arbitrator in more than one case. One clear instance is that of the frontier dispute between Hungary and Czechoslovakia, which is mentioned on pages 6 and 7 of the British Memorial\(^1\), and which is recorded at length in the *Official Journal*, fourth year, No. 3, pages 209 and 282-290; No. 6, pages 556, 599, 601 and 632. Another good instance occurred in the Treaty of Versailles itself, which was contemporaneous with the actual Covenant of the League of Nations. By Article 393 of that Treaty the Governing Body of the International Labour Office is to be composed of certain persons of whom eight are to be nominated by the States of chief industrial importance, and the Treaty goes on to provide that any questions as to which are the States or chief industrial importance will be decided by the Council of the League. India claimed to be one of those States, and Poland and Switzerland put forward a similar claim. The question came before the Council of the League at the Twenty-first Session in September 1922. The details are recorded in the *Official Journal*, third year, No. II, Part II, page 1160, when the question was raised as to the capacity in which

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\(^1\) Pages 205-206 of this volume.
the Council would act under this paragraph. Dr. van Hamel, the Director of the Legal Section of the Secretariat, was asked for his opinion, and he advised the Council that it would act in this affair as arbitrator, and therefore that India could not be both judge and party to the case. This view was accepted by the Council and it appears from the subsequent proceedings in the *Official Journal*, pages 1184, 1199, and 1206, that India's case was laid before the Council by her representative, Lord Chelmsford; that the Polish case was presented by that country filing a written memorandum, and that when the Council came to a decision neither India nor Poland nor Switzerland was allowed to be present.

Similarly in the dispute I have just referred to between Czechoslovakia and Hungary, it appears from the record that neither of the Parties was allowed to be present when the Council arrived at its decision. In each case the decision was arrived at by the Council, after it had heard or read the representations of the Parties, at a private session to which the Parties were not admitted, and then, after the decision had been reached, the Parties were summoned to attend a public meeting at which the decision was announced.

In order to save repetition later on when I come to the second part of the second question, I would ask the Court very respectfully to take a note of those two precedents as affording very valuable guidance when it comes to considering the last part of the second question submitted to the Court in the present case.

To return to the discussion at Lausanne in January 1923. The considerations which I have ventured to submit I hope show that Lord Curzon in the passage to which I have referred was not departing in any way from the proposal which he had formulated a little earlier in the day, namely, that the question should be referred to arbitration by the Council; still less was he suggesting that Turkey would have to be a Party to a decision on the merits. What he was doing was to say that, having suggested that the Council should decide the point and their decision should be binding, Turkey would have to acquiesce equally with Great Britain in the method of examination which the Council would determine to adopt. And that this was the view of Turkey herself at the time is made quite clear by noticing what Ismet Pasha said after those observations. Ismet Pasha's reply is to be found on page 351. After again pressing for a plebiscite, he says that he could not concur in the proposal to submit the solution of the Mosul question to arbitration. So that it is quite clear that he perfectly well understood at that date that the proposal which he was rejecting was the proposal to submit the question to arbitration by the Council, and that he so understood it after Lord Curzon had made

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the speech which the Turkish Government now suggests in some way misled them.

To continue the history of the negotiations, it is impossible, I venture to submit, to contend that Turkey ultimately accepted the Treaty of Lausanne, which contained language differing from that in the draft presented to the Turkish Delegation on January 31st, 1923, and embodying Lord Curzon's proposal in reliance upon or on the faith of any representation whatever that the decision of the Council in the Mosul dispute on the merits required the consent of Turkey in order to be valid. Just let us follow the subsequent history to make that good. As explained in the British Memorial on page 10, negotiations took place between Great Britain and Turkey for the postponement of the reference to the Council of the League which Lord Curzon had suggested, and in the result it was agreed that a period of one year should be allowed for an agreement to be reached between the Parties themselves. Lord Curzon, in consenting to this course, stated expressly that he did so under the condition that if the two Governments failed to reach a direct understanding the intervention of the League would be resorted to in the manner originally proposed, and this condition was accepted by Ismet Pasha on February 4th, 1923. The record will be found on pages 36 and 37 of the British Memorial.

The manner originally proposed is that set out on page 32, namely, a reference to independent enquiry and decision by the League, and an agreement to abide by the result. I may call attention in passing to the fact that the insertion in the article of the provision for a delay of one year during which the Parties should endeavour to reach an agreement made it even more necessary for some machinery to be set up which would ensure a definite decision if at the end of that period the Parties had failed to come to an agreement.

At this period, February 1923, the Conference broke down for reasons not now material. Negotiations were resumed on March 8th, 1923, by a note of the Turkish Foreign Minister transmitting to the Allied Powers the modifications proposed by Turkey in the draft Treaty. The letter is set out on page 38 of the British Memorial.

In regard to Article 3 the modification proposed embodied the previous agreement of February between Lord Curzon and Ismet Pasha for a suspension of 12 months during which Great Britain and Turkey should endeavour to reach an agreement, failing which there was to be a reference to the League; and it will be noticed that the Turkish Note says expressly that territorial questions (and Article 3 is in the section on territorial questions) are regulated in accordance with the proposals of the Allied Powers. But then
it is said in the Turkish speech at Geneva last September that there
was a change of language between the original draft of January
and the ultimate form of the Treaty. That is quite true, but it
really does not assist the question which we are discussing. The
reason for the change was because Great Britain, at the instance
of Turkey, had agreed to insert a clause providing for a delay
during which the Parties should try to agree between themselves,
and once that was provided it became necessary to alter the original
wording of the article, which had said: "the frontier is fixed with
Iraq by a line to be determined in accordance with the decision
which shall be given on this subject by the Council of the League of
Nations." You had to alter that because you were going to say
now that the frontier with Iraq was to be discussed, and if possible
agreed, between the Parties, and that it was only after failure to
agree within a specified period that the matter was to be referred
to the League of Nations. But it is to be noticed that although
the language was changed in order to provide for that contingency,
the new language agreed to by the Turkish Government, after full
discussion, expressly retained the expression which had appeared
in the original draft, namely, that the matter was to be decided
by the League of Nations. The word "decision" appears in the
original draft, and appears equally in the final text to which I have
already called attention. The Treaty was signed in July 1923,
and thereafter the negotiations which had been stipulated for
took place between Great Britain and Turkey, and ultimately
failed to reach an agreement in May and June of 1924; and it is
important that the Court should look at the language used at that
time, before this question had arisen, in order to see whether it is
true to suggest that at that time, or for that matter at any other
time, Turkey was relying upon a statement of Lord Curzon's as
leaving her under the impression that what was provided by the
article of the Treaty was not arbitration but only recommendation.

If the Court will be good enough to look at pages 40-42 of the
British Memorial there will be found the account of the negotia­
tions at Constantinople between H.E. Fethy Bey, representing
the Turkish Government, and Sir Percy Cox, representing the
British Government. On page 40 we find the speech by H.E. Fethy
Bey, discussing whether the time had arrived to refer the
dispute to the League of Nations under Article 3, and he speaks
of the arrangement in question in these terms: "In agreeing to
submit the dispute to the arbitration of the League of Nations,
Turkey has never engaged itself to discuss unlimited claims for
territory." The point was that we were claiming that the frontier
should be north of Mosul and Turkey was saying that that was
outside the matter in dispute, and that the only question was
whether Mosul itself was inside or outside of the Iraq boundary.

1 Pages 166-167 of this volume.
The point, however, is that the description used of the arrangement in Article 3 by His Excellency is this:—It is an arrangement to submit the dispute to the arbitration of the League of Nations. How can it be said that when that language was used by the Turkish Representative at Constantinople in June 1924 Turkey did not perfectly well understand that the purpose for which she had accepted the submission to the League of Nations was for arbitration and nothing else?

Sir Percy Cox, speaking for the British Government, used exactly the same language and he actually refers to the speech of Lord Curzon at Lausanne, because he says: "nevertheless, just as Lord Curzon feared at Lausanne when he recommended that this question should be referred at once to the arbitration of the League of Nations, the difficulties have proved insurmountable", and then he says that we ought to agree to refer the question at once to an independent and entirely impartial arbitration. (See British Memorial, p. 41.)

We observe that Fethi Bey replied to that speech, and there is no suggestion by him that that does not accurately state what his understanding was of the arrangement which had been arrived at. So that in Constantinople, in June 1924, which, be it observed, is long after the language of Lord Curzon and long after Turkey had signed the Treaty of Lausanne, as she now asserts but does not prove, in reliance upon Lord Curzon's statement, Turkey herself is describing the arrangement, to which she had subscribed her signature, as an arrangement to submit the dispute to the arbitration of the League; and that is the very question which we are now discussing. How can it then be said that Turkey did not understand that the reference to the League was a reference to an arbitral award, or that she had been led to take some different view as to the meaning of the Treaty by any language of Lord Curzon’s?

It follows from the authorities which I have cited that the essential difference between an arbitral award and a mediation or recommendation is that in the former case a decision is asked for which at its promulgation binds the Parties to the dispute. In the other two cases there is no decision, but only a tender of good offices in the endeavour to bring the Parties to an agreement, and the proffering of suggestions, which can be accepted or rejected by the Parties as they please.

It follows from the language of the Treaty itself that what is asked for from the Council is a decision binding on the Parties. The wording of the Resolution of September 30th, 1924, points, in my submission, irresistibly to the same conclusion, and the history of the negotiations shows that such a binding decision was intended and desired by both Turkey and Great Britain; and it necessarily follows that, whether you look at the Treaty itself or

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at the submission contained in the agreement of September 1924, or whether you have regard to the history of the negotiations, the result at which you arrive is in every case the same, namely, that the function of the Council under this article is to pronounce a decision binding upon the Parties, which the Parties have pledged themselves to accept, or, in other words, to render an arbitral award.

[Sitting on October 27th, 1925.]

May it please the Court. Yesterday I concluded the observations which I desired to address to the Court on the first question. I propose this afternoon to deal with the second question which, although it is in two parts, can, I think, be discussed somewhat more shortly than the one we were considering yesterday.

Assuming that the argument on the first question has established the proposition that what the Council gives is an arbitral award, it is submitted that the answer to the first part of the second question—namely the enquiry as to whether the decision must be unanimous or may be taken by a majority—is that the Council may decide by a majority and that unanimity is not required.

So far as regards English law, this rule was settled as long ago as 1798 in the case of Grindley v. Barker, which is quoted in the British Memorial at p. 57, where the judgment of Chief Justice Eyre is set out. The origin of the distinction indicated by the learned Chief Justice is that given by Lord Selborne in the Privy Council case from Ontario and Quebec which is quoted on the same page of the British Memorial at the bottom of the page, where Lord Selborne points out that one reason for the distinction is that in the public interest it is necessary that the thing should be decided.

The rule then laid down, that a majority of arbitrators decides and that their judgment is the judgment of the whole arbitral body, holds good also in international arbitrations. Perhaps the most striking precedent is the Halifax Fisheries Arbitration, which took place under the Treaty of Washington between Great Britain and the United States of 1871. Under Article 18 of that Treaty, American fishermen were to have, in common with British subjects, the right for a certain period to take fish other than river fish on the coasts and in the territorial waters of certain provinces of Canada, and the liberty of landing for fishing purposes. By Article 19, British fishermen had a similar right on certain coasts of the United States, and by Article 22 of that Treaty a provision was made for assessing the difference in value between the liberty given to the American fishermen by Article 18 and the liberty given to British fishermen by Article 19. The British Government contended that the privileges accorded to the United States were of greater

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value than those accorded by the United States, and accordingly three Commissioners were to be appointed to decide the amount of any compensation which in their opinion ought to be paid by the United States to the British Government. The Treaty contained no express provision giving power to a majority of those three Commissioners to decide the question referred to them. At the end of the arbitration the Commissioner appointed by the United States dissented from the view of the other two and declined to sign the award, and filed a dissenting opinion. Thereupon on September 27th, 1878, the United States Government raised the question whether the award given by only two out of three Commissioners was a valid award or not. The point on which the American Government particularly relied was that the Treaty of Washington in other clauses had established three other arbitration boards and as to each of these three boards the Treaty gave express power to the majority to come to a decision. No such stipulation occurred in the case of the fisheries arbitration which was under dispute. It is interesting to notice that a precisely similar argument is raised by the Turkish Government in the speech made in September last in connection with the present case. I propose to deal with it in due course.

The reply of Lord Salisbury, who was then Foreign Minister of the British Government, is printed on pp. 46 to 49 of the Memorial. He argued that in an international arbitration, the majority of the arbitrators binds the minority unless the contrary is expressed. He quotes (the authorities are set out on p. 47 of the Memorial) Halleck, Bluntschli and Calvo, and adds that he knows of no authorities in respect of international arbitrations who could be quoted as laying down a different rule. I should like to add that to-day, fifty years later, I make the same assertion: I know of no authority who could be quoted as laying down a different rule. In the result the United States did not press its objection to the validity of the award and paid the sum which was awarded by the majority of the Commissioners.

The same point had arisen in another arbitration, the Sainte-Croix River arbitration, at an earlier period—in the year 1796. The details of that arbitration will be found set out on pp. 17 and 18 of the British Memorial. In that case the American Secretary of State came to the conclusion, after the point had been raised by the American Attorney-General of the day, that a majority decision would be effective. His main consideration was (as will be seen in the first paragraph of his dispatch on p. 18) that the great object in view in these arbitrations is to terminate the difference between the two nations and that an insistence on unanimity
would in most cases at any rate entirely defeat this purpose and therefore render the whole arbitration abortive and valueless.

There are two other precedents which we have quoted in the British Memorial on pp. 50 to 58, and to those I respectfully invite the attention of the Court without taking up time this afternoon by re-reading or restating what I have already set out in the Memorial, to which the Court perhaps will be good enough to refer. I should like, however, to point out that the last of those precedents—the case of the boundary between the Irish Free State and Ulster, which begins on p. 55 of the Memorial—is a particularly striking instance in which the principle is laid down, first of all because it was, as here, a question of frontier which was involved. The Commission in the case which was being considered by the Privy Council was a Commission appointed to determine the boundary between the Irish Free State and Northern Ireland. Secondly it is interesting because I suppose it is not presumptuous to say that the British Privy Council is, apart from this great Tribunal, the nearest approach to an international Court which is known in modern times. It habitually has to deal with questions arising from self-governing nations all over the Empire, and the particular Court which was asked to determine the question there involved was a Court which was deliberately selected as being as international in character as could be found. It consisted of five judges. One of them, Lord Blanesburgh, was an English judge; one, Lord Dunedin, was a Scotch judge; one, Sir Lawrence Jenkins, an Indian judge; one, Mr. Justice Duff, a Privy-Councillor and a Canadian judge, and one, Sir Adrian Knox, an Australian judge; so you had represented in the judiciary four separate nations who form part of the League of Nations. The decision of the Privy Council was unanimous and was, as the Court will observe, that the decision of the Commission in that case, where there was no express provision to that effect, could nevertheless be given by a majority and need not be unanimous.

So far as writers on international law are concerned, the quotations on page 19 of the British Memorial, taken from Lord Salisbury's despatch, have already been referred to.

To these I may perhaps add three or four examples. First of all Hall in his International Law, Sixth Edition, page 354, dealing with arbitration between two States, says this:

"The arbitrating person or Body forms a true tribunal authorized to render a decision obligatory upon the Parties with reference to the issues placed before it. It settles its own procedure when none has been prescribed by the preliminary Treaty, and when composed of several persons it determines by a majority of voices."

Rivier, in his work Principes du Droit international, Volume 2, page 183, section 170, upon arbitral procedure and awards says:

1 Page 254 of this volume.
2 Pages 222-223 of this volume.
“In the absence of a will to the contrary the arbitral decision is taken, if there are several arbitrators, by the majority of the voices.”

Pradier-Fodéré, in his *Cours de Droit diplomatique*, Volume 2, at page 475, says:

“Parties can choose such a number of arbitrators as they consider suitable, but it is necessary that they choose an uneven number in order to avoid the difficulties and delays of nominating a third arbitrator.”

Obviously that means it is necessary to have an uneven number so that you may sure of getting a majority.

Then Fiore in his *Droit international public*, Second Volume, page 640, section 1212, paragraph 21 of that section, says:

“Every decision, whether final or interlocutory, must be taken by the majority of all the named arbitrators, even in the case where some of the arbitrators refuse to take part in it.”

Again, on page 642, section 1214, he says:

“One must admit that the arbitral award must be pronounced by the majority of the voices after a discussion between all the arbitrators.”

Those authorities could be added to, and so far as my researches and those of my friends have led us to discover, the opinion which I have ventured to submit, and for which I have cited these authorities, is not controverted by any writer on international law.

If, then, the authorities establish, as I submit they must, the right of an International Tribunal to decide by a majority, and if the Council under the Treaty of Lausanne is performing arbitral functions, the only other question which arises is whether there is anything in the Covenant which makes it impossible for the Council to act by a majority. The chief relevant provision of the Covenant is Article 5, paragraph 1, which says:

“Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly, or of the Council, shall require the agreement of all the Members of the League represented at the meeting.”

My submission is that quite clearly what are there being dealt with in the Covenant are the functions conferred on the Council by the Covenant. In the present case the Council is not acting under any power conferred by the Covenant, but under an express submission contained in the Treaty of Lausanne and in the Resolution of September 30th, 1924.

I would remind the Court that the wording of Article 5 of the Covenant has never been regarded by the States which are Members
of the League as precluding the Council from acting by a majority in matters which they choose to refer to it on those terms; that is to say, it does not regulate the proceedings of the Council, except when the Council is performing the functions which the Covenant imposes upon it.

I could give already, in the few years that have elapsed, quite a number of instances of what I am referring to. Perhaps the most recent and in some ways the most striking instance is that contained in the Treaty of Locarno which was initialled only a few days ago. By Article 8 of that Treaty it is provided that:

"The present Treaty shall be registered at the League of Nations in accordance with the Covenant of the League. It shall remain in force until the Council, acting on a request of one or other of the High Contracting Parties, notified to the other signatory Powers three months in advance, and voting at least by a two-thirds majority, decides that the League of Nations ensures sufficient protection to the High Contracting Parties. The Treaty shall cease to have effect on the expiration of a period of one year from such decision."

So that there the High Contracting Parties, all of whom except one are already Members of the League of Nations (and we venture to hope that the remaining one may shortly become also a Member of that Body) in the vital provision as to the period for which the Treaty is to remain operative, expressly provide that the Council of the League is to have power to decide the period of the Treaty, voting by a two-thirds majority. Is it to be said that that is inoperative and that there is anything in the Covenant which renders it impossible for the Council to accept such a duty?

That is the most recent, but there are numerous other instances. Perhaps a good one is that to be found in the Minorities Treaties, a class of which the first is the Polish Treaty of 1919. That is a significant instance, because the Polish Treaty was framed at Paris during the Peace Conference. It was signed on the same day as the Treaty of Versailles, and it was the work of the very same men who framed the Covenant of the League of Nations. I call attention to Article 12 of that Treaty which provides that the stipulations in the foregoing articles, so far as they affect Minorities, shall be placed under the guarantee of the League of Nations, but they shall not be modified without the assent of a majority of the Council of the League of Nations.

Can it be suggested that there is anything in the Covenant which is inconsistent or incompatible with that power, deliberately conferred upon the Council, to act by a majority? The Court will observe that if once I show that there is nothing in the Covenant inconsistent with the Council acting by a majority when it is acting otherwise than under its powers under the Covenant, and if I show that where an arbitration is provided for the rule of international
law is that a majority does decide unless otherwise expressly stipulated. I then establish the proposition that, since there is no express stipulation to the contrary here, the Council of the League must have been given power to decide this question by a majority.

There are other cases which could be quoted of Treaties conferring similar powers on the Council. One which is perhaps worth while calling attention to is the well-known Geneva Protocol of 1924. It is, of course, the fact that that Protocol has not been ratified, but it is also the fact that it was drawn up at the Assembly of the League by people well acquainted with the working of the League and with the provisions of the Covenant, and it was drawn up with the help and assistance and advice of the Secretariat of the League. We find that in Article 7 of that Protocol there are a number of vital duties imposed upon the Council, and after imposing all these duties and pointing out the tremendous obligations which the decisions of the Council put upon the Members of the League of Nations, the article winds up by saying: "For the purposes of the present article decisions of the Council may be taken by a two-thirds majority."

Other instances are the organic statutes of the Greek Refugee Settlement—Article 17 set out on page 1506 of the Official Journal, Fourth Year, No. 11; Article 15 of the Protocol relating to the financial reconstruction of Hungary, set out at page 425 of the Official Journal, Fifth Year, No. 2.

I might just refer, in concluding this part of my argument, to the Delagoa Bay arbitration to which I called attention yesterday, where it was accepted that where the head of a State acts as arbitrator the limitations imposed upon his method of operation by the constitution of his State do not apply.

The net result therefore is: I have shown that Parties can confer on the Council power to take a decision by a majority. Where they do confer that power there is nothing in the Covenant to prevent that power being effective. Since the Treaty of Lausanne makes the Council an arbitrator, and since an arbitral tribunal has the inherent right and duty to decide by a majority, unless there is an express stipulation to the contrary, it follows that Article 5 does not operate to render a unanimous decision by the Council necessary in this case.

The only other article of the Covenant which need be considered in this connection is Article 15, but reasons have already been explained yesterday why that article is not applicable to the submission contained in Article 3 of the Treaty of Lausanne.

The Court will remember that under that article there is no obligation on the Parties to a dispute to accept even a unanimous recommendation. Attention was also called yesterday to the fact that in September 1924 at the meeting of the Council the Representative of Turkey originally stated that he regarded Article 15 as the one applicable. No doubt that explained why M. Branting, the
Rapporteur, felt it was necessary to have an agreement between the Parties when he found that there was apparently so wide a discrepancy between the views of the British Representative, who regarded the decision as binding in all events, and the Turkish Representative, who was apparently suggesting that it never became binding in any event.

I need not again remind the Court that the Turkish Representative thereafter expressly abandoned that position and accepted the interpretation of the British Representative and agreed to the binding character of the decision by the Council. It follows that Article 15 was, for the reasons I submitted yesterday, never applicable and that any question as to its being applicable has been expressly abandoned by the Turkish Government more than twelve months ago.

In answer to these contentions the Turkish Representative in his speech at Geneva on September 19th, 1925, called attention, as appears from page 4 of the Minutes of the meeting, to three other articles of the Treaty of Lausanne—Articles 44, 48 and 107—and he suggested that the express provisions contained in those articles indicate that Article 3 had a different meaning. In my submission this contention is not well founded, and a careful examination of the three articles in question will show the mistake.

Article 44 is one of a group of articles commencing at Article 37 devoted to the protection of Minorities. It follows almost exactly the provisions of the other Minorities Treaties, to one of which—the Polish one—I called attention a few minutes ago. Article 44 provides that Turkey agrees that the provisions for the protection of minorities constitute obligations of international concern and are placed under the guarantee of the League of Nations. It goes on to stipulate that those provisions are not to be modified without the assent of the majority of the Council of the League. The article continues: “The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.”

First of all, the article is of course valuable in the connection which I was just now discussing, namely, as showing that there was nothing inherent in the Covenant which prevents the Council from acting by a majority. Secondly, it will be noticed that Article 44 is not conferring any arbitral function upon the Council; the Council in Article 44 is not asked to act as an arbitrator or to act on evidence or judicially. The Council is constituted the guarantor of the Minorities and is asked to allow modifications of the provisions for their protection when the majority of the Council think it can safely be done. There is then the provision that the four Allied Powers (if I may use that phrase once again) will undertake an

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obligation on their part to accept a modification to which the majority of the Council assents.

Obviously, since the Council was not acting as an arbitral body, it was necessary in Article 44 to stipulate expressly that it should act by a majority if that is desired; because in the absence of some such stipulation it might well be said that there is nothing to alter the rule in the Covenant that it acts unanimously or not at all. And, since Turkey was the only Party which is bound by the earlier part of the article, it was necessary in the later part to provide expressly that the four Powers should give their assent to a modification assented to in the manner provided by the article.

It follows, therefore, that the article, while indeed is valuable as showing that there is nothing to prevent the Council acting by a majority when proper so to do, throws no light on the question of whether or not in Article 3 it was intended that it should act by a majority or not, since Article 44 contains a function which is not arbitral and which therefore could not be exercised by the Council acting by a majority without express provision for that purpose.

Article 48 is the next article referred to by the Turkish Representative. That article contains no stipulation as to acting by a majority. It is one of a group of clauses relating to the Ottoman Public Debt. It begins by stipulating that the States other than Turkey between whom that debt is distributed, shall assign to the Council of the Debt adequate security for the payment of their share, and it provides that if such security is not assigned or is alleged not to be adequate, any of the signatory Powers of the Treaty shall be entitled to appeal to the Council of the League. It stipulates that decisions of the Council of the League of Nations shall be final.

It is natural enough that in a clause giving a right of appeal in terms there should be an express statement that there is no further appeal, and that the decision of the Council as an appellate Tribunal is final. There is nothing in the article, however, to indicate whether or not the decision is to be unanimous, and, although it does not arise for decision to-day, there is the strongest practical reason for supposing that it was not intended that the decision need be unanimous, since no provision is made for deciding the dispute if unanimity cannot be obtained. In fact, the absence of any express provision for a majority decision, and the plain necessity for implying one, under Article 48, is in my submission a strong ground for inferring that the Signatory Powers thought it unnecessary expressly to stipulate for a majority decision when the Council was acting in an arbitral or judicial capacity, and therefore that in Article 3 as in Article 48 such an intention must be presumed according to the ordinary rules of international law.

Article 107 is the other article referred to. That occurs in a group of sections relating to communications and it deals with the passage of travellers and goods in transit on the Oriental railways.
SPEECH BY SIR DOUGLAS HOGG

It stipulates that a Commissioner selected by the Council shall see that the article is carried out, and that it shall be the duty of the Commissioner to submit for the decision of the Council any question relating to the execution of the provisions of the article which he is unable to settle. It goes on to provide: "The Greek and Turkish Governments undertake to carry out any decision given by the majority vote of the said Council." Since it is for the Commissioner to submit questions to the Council under the article, it was plainly necessary to include in the article an express provision that the Greek and Turkish Governments would undertake to carry out a decision reached, as otherwise there was nothing to render the decision binding upon either of them. It is noticeable that there is no express statement that the Council can act by a majority. It is expressly stipulated that the two Governments undertake to carry out the decision given by a majority vote, which shows that that is the way in which the Parties expected that the Council would act in arriving at a decision under this article; in other words, the Parties thought it so clear that, when the Council was acting in a judicial or appellate capacity, it could act by a majority that they never thought it necessary expressly so to state either in 48 or in 107. But, when it became necessary to state, as it was in 107, that the Governments undertook to carry out the decision they describe the decision as being a majority decision, showing that the Parties quite plainly contemplated that that was the way in which the Council was going to decide. In fact, therefore, the three articles to which the Turkish Government refers, so far from supporting his argument in favour of the necessity for unanimity, afford—each of them, in my submission, affords—strong evidence in support of the contention which the British Government has submitted in answer to this part of the question, and all three of them should be of material assistance to the Court to enable it to say that the arbitral award which the Council has to make is, in accordance with the ordinary rule of international law, an award to be reached by the majority of the votes of its members.

I come now to the second part of the second question: "May the representatives of the interested Parties take part in the vote?" I think this can be quite briefly disposed of. Whatever doubts may exist as to any other part of the case, as to this point, there can, I submit, be hardly any doubt at all. If, as I have submitted, the Council in acting under Article 3 of the Treaty of Lausanne is taking an arbitral decision, it follows that the Parties themselves cannot take part in it. A state, like an individual, cannot be a judge in its own cause. This was clearly pointed out in the decision which I have already cited from the official record in the case of the dispute as to the eight principal industrial States, reported in the Official Journal, Third Year, No. 2, at page 1160. The view that was there taken and expressed by Dr. van Hamel, that India could not be both a judge of, and a Party to, the case, was, as the Court
will see from referring to the record, unanimously accepted by the Council, and it is, in my submission, plainly correct.

If however the Court should hold, contrary to our submission, that the reference to the Council is governed by the Covenant, the same result follows so far as this question is concerned. The only article of the Covenant which relates to the consideration of a dispute between a Member of the League and a non-Member is Article 17. The purpose of that article is to apply to such disputes the machinery of Article 15, and it is subject to the same limitations. If I am right in the submission that the dispute is not one to which Article 15 applies, Article 17 is equally inapplicable. In fact, as the history of the proceedings shows, no steps have ever been taken to apply Article 17 or to render it applicable. Its provisions have not in fact been followed and there has been no such invitation or acceptance as is there stipulated.

If, however, it were assumed that it was applicable, and if it were assumed, contrary to the fact, that its provisions do govern the proceedings of the Council in the present case, the Court will observe that the article provides for an invitation to the non-Member States to accept the obligations of membership in the League for the purposes of the dispute, and it goes on to provide that if such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as the Council may deem necessary.

The only article in that group (12 to 16) which relates to the consideration of a dispute by the Council is of course Article 15. I am not again going to repeat the reasons why the provisions of that article cannot, in my submission, govern this case, but for the present purpose it is sufficient to point out that, even if they did govern it, that article expressly excludes the votes of the Parties. The Court will remember that that is provided in terms in Article 15.

I have almost reached the conclusion of my argument. I submit that the answers which the Court should render to the questions submitted for its opinion are: to the first, that the function of the Council is to deliver an arbitral award; to the second, that in determining its award, the Council may act by a majority and that the representatives of the interested Parties cannot take part in the vote.

I have tried to assist the Court to arrive at a just conclusion by submitting to it such considerations as I hope may be of some help in its deliberations. If in doing so I have tried the patience of the Court, my excuse must be my consciousness of the great importance of the problem which they have to solve, not only to the Parties to the dispute but to the maintenance of peace and good relations amongst the nations of the world and the upholding of good faith in international dealings.

I have tried in my argument to deal with the contentions raised by the Turkish Government. There remains only one point con-
tained in their telegram of October 8th which I have not dealt with because it seemed to me irrelevant to the consideration of the matter before the Court, but which I think cannot properly pass altogether unnoticed. It will be seen in that telegram that the Turkish Government suggests that Mr. Amery, the British Representative, had repudiated the arbitral character of the decision and that therefore there is nothing left about which to arbitrate. That is not a matter about which the Court is asked to express any decision. It would at the most concern only the Council when it came to consider its conduct. But it is based in fact on a complete misconception of Mr. Amery's speech.

Great Britain has consistently maintained the same point of view. Lord Curzon, in his speech making the original proposal, which is set out at the top of page 32 in the British Memorial, asked for independent enquiry and decision and agreed to abide by the result. Sir Percy Cox at Constantinople in the discussions there (set out on p. 41 of the British Memorial), expressly treated the reference to the Council as a reference to arbitration. Lord Parmoor, at Geneva in September 1924, again repeated that he regarded the function of the Council as that of an arbitrator, undertook to abide by its decision and was a Party to the agreement embodied in the Resolution of September 30th, 1924, in which Turkey and Great Britain both solemnly accepted that situation. Mr. Amery at Geneva in his opening speech last September took up exactly the same attitude. It was only when after repeated invitations the Turkish Government refused to recognize the promise which it had given, and declared its intention not to honour its pledged word, that Mr. Amery pointed out, on September 19th, that a submission, like any other contract, is bilateral, and that it is impossible for one Party to be bound where the other has declared that it is free.

The British Government still hopes that the Turkish Government will not persist in its attitude. We hope that the decision of this great Court, whose character and authority even Turkey admits, will help that country and that Government to see her position in its true light and to recognize the obligation which she has undertaken. If that be so, no criticism will be heard from Great Britain towards a country for whom she has always held the most friendly feelings. She will have nothing but admiration for the courage of a nation which is not afraid to confess that it has made a mistake. It is only if Turkey should persist in repudiating her promise and should maintain the attitude that she is not bound by the undertaking so solemnly given or by the Treaty so laboriously constructed, that Great Britain asserts her own release from a bond which the other Party will then have destroyed, and claims for

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1 See Part II, No. 1, p. 17.
2 Page 140 of this volume.
3 " 173 " " " 
herself the liberty of action which the other Party has already assumed.

These considerations are hardly relevant to the question before the Court, but it is important that in a matter of this gravity there should be no misunderstanding. In the interests of international friendship, in the interests of the observance of treaty obligations and the maintenance of standards of honour and good faith in international relationships, we hope that this situation will disappear before the consideration of this question is resumed by the Council of the League.

I have the honour to thank the Court most sincerely for the attention with which they have listened to my argument.