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¹ date of the request for an advisory opinion or date of the application in contentious cases.

[4] Application Instituting Proceedings

addressed to the Registrar of the Court, in conformity with Article 40 of the Statute, through the intermediary of the Belgian Legation at the Hague, on November 25th, 1926.

Denunciation of the Treaty of November 2nd, 1865, between China and Belgium.

[Translated by the Registry.]

To the President and Judges of the Permanent Court of International Justice

The undersigned, being duly authorized by the Belgian Government,

Having regard to Article 46 of the Treaty concluded at Peking on November 2nd, 1865, between Belgium and China,

Having regard to the declarations of adherence to the Optional Clause of Article 36, paragraph 2, of the Statute of the Court made by Belgium and China;

Having regard to Article 40 of the Statute and Article 35, paragraph 2, of the Rules of Court;

Has the honour to submit the following Application:

According to Article 46 of the aforesaid Treaty of November 2nd, 1865, which came into force upon the exchange of ratifications on October 27th, 1866:

"Should the Government of His Majesty the King of the Belgians in the future consider it advisable to modify certain of the clauses of this Treaty, it shall to this end be at liberty to open negotiations after an interval of ten years from the date of exchange of ratifications, but six months before the expiration of the ten years, it must officially inform the Government of His Majesty the Emperor of China of its intention to introduce modifications and of what such modifications will consist. Failing such official notice, the Treaty will remain in force unchanged for a fresh term of ten years and so on for further periods of ten years."

The Chinese Government claimed to denounce the Treaty at the expiration of the present ten years' period which has just ended, [5] and, on April 16th, 1926, it notified the Belgian

Government that it regarded the Treaty as ceasing to operate as from October 27th, 1926.

The Belgian Government, though it contended, for its own part, that the Chinese Government did not possess the right of unilateral denunciation, nevertheless showed itself disposed, whilst maintaining its standpoint in its entirety, to consider, in agreement with the Chinese Government, whether it would not be possible to arrive at a friendly settlement of the question by means of the conclusion of a *modus vivendi*.

As the negotiations undertaken for this purpose were unsuccessful, the Belgian Government proposed to the Chinese Government that the dispute should be referred to the Permanent Court of International Justice by means of a special agreement.

The Chinese Government rejected this proposal, issued a presidential decree abrogating the Treaty of 1865, and enacted measures contrary to the rights conferred by this Treaty upon Belgium and her nationals.

The Belgian Government, in these circumstances, finds itself obliged to bring the case before the Court by means of an application.

Accordingly, subject to the subsequent presentation to the Court of any Cases, Counter-Cases and, in general, of any other documents or evidence:

May the Court be pleased:

To take note that for all notices and communications relating to the present suit, the applicant Power has selected as its address the Belgian Legation at The Hague;

To give notice of the present Application to the Government of the Chinese Republic, in accordance with Article 40, paragraph 2, of the Statute of the Court;

To give judgment, whether the aforesaid Government is present or absent, and after such times as the Court may see fit to fix, to the effect that the Government of the Chinese Republic is not entitled unilaterally to denounce the Treaty of November 2nd, 1865;

To indicate, pending judgment, any provisional measures to be taken for the preservation of rights which may subsequently be recognized as belonging to Belgium or her nationals.

(Signed) Comte de Lalaing,
Charge d'affaires de Belgique a. i.

The Hague, November 25th, 1926.

[6] ORDER

Made on January 8th, 1927.

The President of the Permanent court of international justice,

Having regard to Articles 41 and 48 of the Court's Statute;

Having regard to Article 57 of the Rules of Court;

Having regard to the Application instituting proceedings dated November 25th, 1926, and filed with the Registry of the Court through the intermediary of the Belgian Charge d'affaires *ad interim* at The Hague on November 26th, 1926;

Having regard to the Case filed by the Belgian Government on January 3rd, 1927;

Having regard to Order No. 433 addressed on November 6th, 1926, by the President of the Republic of China to the Chinese Minister for Foreign Affairs, an English translation of which was filed with the Registry by the Belgian Government on December 14th, 1926;

Having regard to the Treaty of friendship, commerce and navigation concluded at Peking on November 2nd, 1865, between Belgium and China, a copy of which was attached to the said Case filed by the Belgian Government;

Having regard to the Report of the Commission on Extraterritoriality in China constituted in pursuance to Resolution V adopted at the Conference of Washington on the Limitation of Armaments, December 10th, 1921, of which Report a copy was likewise attached to the Case filed by the Belgian Government;

Whereas the Chinese Government has declared the aforementioned Treaty to have ceased to be effective, whilst the Belgian Government, on the other hand, maintains that it is still in force, and as, consequently, the situation secured by the Treaty to Chinese nationals resident in Belgium has undergone no modification, whilst the corresponding situation of Belgian nationals in China has been altered in virtue of the abovementioned Presidential Order;

Whereas the object of the measures of interim protection contemplated by the Statute of the Court is to preserve the respective rights of the Parties, pending the decision of the Court; and as, in the present case, the rights in question are those reserved to [7] Belgium and to Belgian nationals in China, by the Treaty of November 2nd, 1865, in addition to those resulting from non-treaty law;

Whereas, on the other hand, Belgium and China have signed and ratified the Protocol of

signature of December 16th, 1920, relating to the adoption of the Statute of the Court;

as these two Powers have recognized as compulsory the Court's jurisdiction, in accordance with Article 36, paragraph 2, of the Court's Statute; and as sub-paragraph (*d*) of this paragraph covers legal disputes concerning the nature or extent of the reparation to be made for the breach of an international obligation;

as, however, in the event of an infraction — a contingency rendered possible by the situation resulting from the publication of the aforesaid Chinese Presidential Order — of certain of the rights, which Belgium or her nationals would possess in China, if the Treaty of November 2nd, 1865, were recognized as still operative, such infraction could not be made good simply by the payment of an indemnity or by compensation or restitution in some other material form;

Whereas, this being so, the object of the measures of interim protection to be indicated in the present case must be to prevent any rights of this nature from being prejudiced;

Indicates provisionally, pending the final decision of the Court in the case submitted by the Application of November 25th, 1926 — by which decision the Court will either declare itself to have no jurisdiction or give judgment on the merits — and subject to any modification which it may subsequently be considered desirable to make in the present Order, that the protection which the abovementioned Presidential Order of November 6th, 1926, grants, in accordance with the rules of international law and usage, to the Belgian Legation and consulates and to Belgian nationals, property and ships in China should include the following:

I. — *As regards nationals:*

(1) a right on the part of any Belgian who may have lost his passport or have committed some offence against the law, to be conducted in safety to the nearest Belgian consulate (cf. Treaty of November 2nd, 1865, Article 10);

(2) effective protection of Belgian missionaries who have peace fully proceeded to the interior of the country; and, in general, [8] protection of Belgians against any insult or violence (cf. Treaty of November 2nd, 1865, Articles 15 and 17);

(3) a right on the part of any Belgian who may commit a crime against a Chinese or any other offence against the law, not to be arrested except through a consul, nor to be subjected, as regards the execution of any penalty involving personal violence or duress, to any except the regular action of Belgian law (cf. Treaty of November 2nd, 1865, Article 19);

II. — *As regards property and shipping:*

protection against any sequestration or seizure not in accordance with the generally accepted principles of international law and against any destruction other than accidental (cf. Treaty of November 2nd, 1865, Article 14);

III. — *As regards judicial safeguards:*

a right on the part of physical and moral persons of Belgian nationality to have any legal proceedings to which they may be parties before Chinese authorities heard by the modern courts, in conformity with the modern codes of Law (the courts and codes mentioned by the Chinese delegate in his statement of November 25th, 1921, before the Commission for the Pacific and Far East of the Washington Conference and referred to in the abovementioned Report of the Commission on Extra-territoriality in China), with right of appeal, in accordance with the regular legal procedure and with the assistance of advocates and interpreters chosen by them and duly approved by the said courts.

Done at The Hague, this eighth day of January, nineteen hundred and twenty-seven, in four copies, one of which shall be deposited in the archives of the Court and the others transmitted to the Government of China, the Government of Belgium and the Council of the League of Nations respectively.

(*Signed*) Max Huber,
President.

(*Signed*) Å. Hammarskjöld,
Registrar.