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 Requested by: Government of Belgium
 Party(ies): Belgium vs. China
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¹ date of the request for an advisory opinion or date of the application in contentious cases.

[9] Order

Made on February 15th, 1927

The President of the Permanent Court of International Justice,

Having regard to Article 48 of the Statute of the Court;

Having regard to the Application instituting proceedings dated November 25th, 1926, filed with the Registry of the Court on November 26th, 1926, on behalf of the Belgian Government bringing before the Court a suit in regard to the denunciation by the Chinese Government of the Treaty concluded on November 2nd, 1865, between Belgium and China;

Having regard to the Order indicating measures of protection made on January 8th, 1927

Whereas, by a communication dated February 3rd, 1927, the Agents of the Belgian Government before the Court in this suit have informed the Court that, the Chinese Minister for Foreign Affairs having declared the Chinese Government to be willing to apply to Belgium as a provisional régime a certain specified treatment, the Belgian Minister at Peking has accepted this proposal on behalf of the Belgian Government;

Whereas the agreement which is said to have been concluded will comprise the following treatment:

(1) Adequate protection will be granted to Belgian subjects, including missions, and to their property and vessels, in accordance with the rules of international law;

(2) The customs tariff at present applied to other countries will also be applied to merchandise imported into China from Belgium or exported from China to Belgium;

(3) Civil and criminal suits in which Belgian nationals are implicated will be heard by the modern courts only, with the right of appeal, Belgian subjects being authorized to obtain the assistance of advocates and interpreters of Belgian or other nationality, duly approved by the courts;

Whereas the aforesaid Agents have, on behalf of the Belgian Government, formally requested the President of the Court to revoke the abovementioned Order of January 8th, 1927;

Whereas they have indicated that a decision by the President revoking the abovementioned Order would be in accordance with the wish of the Chinese Government;

[10] Considering that there is no question in this case of an agreement regarding the settlement; of the dispute under the terms of Article 61, paragraph I, of the Revised Rules of Court, since the Chinese Government has addressed no communication to the Court either in regard to the abovementioned treatment or conveying a desire for the revocation of the Order in question;

Considering that the present suit has been brought by unilateral application and that, as the time allowed for the filing of the Counter-Case has not expired, the Respondent has not had an opportunity of indicating whether he accepts the Court's jurisdiction in this case;

that, in these circumstances, there is nothing to prevent the Applicant, subject to the decision of the Court, from modifying his original submissions;

Considering that it is Belgium which, by proposing in its Application instituting proceedings the indication of measures of protection and by developing that proposal in its Case, has caused the Court to consider whether circumstances required the indication of such measures in this case;

that, as set out in the grounds for the Order of January 8th, 1927, the aim of that Order is exclusively to safeguard certain rights which Belgium might be entitled to assert on the basis of the Treaty of November 2nd, 1865, if that Treaty were held by the Court not to have ceased to be effective;

Considering that the agreement which, according to the terms of the communication received from the Agents of the Belgian Government, has been concluded between Belgium and China, would provisionally take the place of the régime provided for in the Treaty of 1865, in particular as regards the rights accruing to Belgium under that Treaty, which rights it is the aim of the Order of January 8th, 1927, to preserve until the Court shall have given its final judgment;

that, consequently, the aforesaid Treaty would provisionally cease to be operative as regards these rights, which could not, therefore, no matter what the tenor of the Court's final judgment may be, serve as a basis for any claim enforceable at law and put forward on the ground of some violation of these rights during the period for which the new regime agreed

upon between the Parties might be applicable;

[11] that, furthermore, a unilateral declaration by the Belgian Government to the same effect, which should be regarded as a modification of that Government's original submissions, would suffice, were it accepted by the Court, to produce the same result;

Considering that, under these conditions, the new fact brought to the knowledge of the Court by the abovementioned communication from the Agents of the Belgian Government has removed the circumstances which, according to the terms of the Order of January 8th, required the indication of measures of protection;

Considering that in the present case there are no other circumstances independent of the legal situation created by the Parties, resulting either from agreements concluded between them or from unilateral declarations in regard to matters concerning which they may use their discretion, which would point to the indication of measures of protection in the interests of the procedure alone;

Considering that measures of protection, indicated by the Court as being for purely legal reasons rendered necessary by circumstances, cannot be dependent, as regards their applicability, upon the position of negotiations that may be in progress between the Parties;

that, consequently, the Order of January 8th, 1927, indicating measures of protection can, if revoked, only be so finally and in its entirety,

Declares that the Order indicating measures of protection made by him on January 8th, 1927, shall cease to be operative.

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

(Signed) Max Huber,
President.

(Signed) Paul Ruegger,
Deputy-Registrar.