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<sup>1</sup> date when the request for an advisory opinion or application was filed with the court Registry.

[4] Permanent Court of International Justice

<i>Present:</i>	Mm. Anzilotti,	<i>President,</i>
	Huber	<i>Former President,</i>
Lord	Finlay,	
Mm.	Loder,	
	Nyholm,	
	De Bustamante,	<i>Judges</i>
	Altamira,	
	Oda,	
	Pessôa,	
	Beichmann,	<i>Deputy-Judge.</i>

On February 4th, 1928, the President of the Mixed Commission for the Exchange of Greek and Turkish Populations sent to the Secretary-General of the League of Nations a letter to the following effect<sup>1</sup>:

"In letters dated February 17th, 1927, the Presidents of the Turkish and Greek delegations communicated to the Mixed Commission the text of an agreement concluded on December 1st, 1926, between Turkey and Greece for the purpose, as expressed in the Preamble, of 'facilitating the application of 'certain provisions of the Treaty of Peace of Lausanne and of 'Declaration IX annexed thereto'. [5]

Under Article 14 of this Agreement, the application of these provisions was entrusted to the Mixed Commission, which, by a decision reached on March 19th, 1927, accepted this duty.

To the Athens Agreement there is annexed a 'Final Protocol' bearing the same date, and containing the following clause:

*Article IV.* - 'Any questions of principle of importance which may arise in the Mixed Commission in connection with the new duties entrusted to it by the Agreement signed this day and which, when that Agreement was concluded, it was not already discharging in virtue of previous instruments defining its powers, shall be submitted to the President of the Greco-Turkish Arbitral Tribunal sitting at Constantinople for arbitration. The arbitrator's awards shall be binding.'

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<sup>1</sup> Translation by the Secretariat of the League of Nations.

As this clause has given rise to differences of interpretation regarding the conditions for appeals to the arbitrator, the Mixed Commission accepted the suggestions put forward in the report submitted by Viscount Ishii to the Council of the League of Nations and adopted by the latter on October 31st, 1924, and decided, at its meetings on December 22nd, 1927, and January 26th, 1928, to apply to the Permanent Court of International Justice at The Hague, through the agency of the League of Nations, for an advisory opinion as to the interpretation of the article in question so far as it concerns the conditions for appeals to the arbitrator.

I have the honour to inform you of the foregoing, and should be greatly obliged if you would place this dispute before the Court by whatever procedure you think proper.

I am sending at the same time the minutes of the meeting of March 19th, 1927, containing the text of the Agreement and its annexes, together with copies of the minutes of the meetings at which the question was debated and the various opinions expressed. The Mixed Commission will have pleasure in furnishing the Court with any information it may require."

On June 5th, 1928, the Council of the League of Nations adopted the following Resolution:

"Referring to the letter addressed to the Secretary-General of the League of Nations on February 4th, 1928, by the President of the Mixed Commission for the Exchange of Greek and Turkish Populations,

The Council of the League of Nations requests the Permanent Court of International Justice to give an advisory opinion upon the question raised in the said [6] letter as to the interpretation of Article IV of the Final Protocol of the Greco-Turkish Agreement of December 1st, 1926, in regard to the conditions of reference to the arbitrator contemplated by that article

The article is as follows:

*'Les questions de principe présentant quelque importance et qui pourraient surgir au sein de la Commission mixte à l'occasion des attributions nouvelles que lui confère L'Accord signé ce jour et qu'elle n'avait pas à la conclusion de ce dernier sur la base des actes antérieurs fixant sa compétence, seront soumises à l'arbitrage du président du Tribunal arbitral gréco-turc, siégeant à Constantinople. Les sentences de l'arbitre seront obligatoires.'*

The Council invites the Hellenic and Turkish Governments and the Mixed Commission to be at the disposal of the Court for the purpose of furnishing it with any necessary documents and explanations.

The Secretary-General is authorized to submit the present request to the Court, together with all the relevant documents, to explain to the Court the action taken by the Council in the matter, to give any assistance required in the examination of the case, and, if desirable, to take measures to be represented before the Court."

In pursuance of this Resolution, the Secretary-General of the League of Nations, on June 7th, 1928, submitted to the Court a Request for an advisory opinion in the following terms:

"The Secretary-General of the League of Nations,  
in pursuance of the Council Resolution of June 5th, 1928, and in virtue of the authorization given by the Council,

has the honour to submit to the Permanent Court of International Justice an application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion to the Council on the question which is referred to the Court by the Resolution of June 5th, 1928.

The Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of this matter, and will, if necessary, arrange to be represented before the Court.

In conformity with Article 73, paragraph 1, of the Rules of Court, the Request was communicated to Members of the League of Nations and to States entitled to appear before the [7] Court. The Registrar further sent to the Governments of the Greek and Turkish Republics, which were regarded by the Court as likely - in accordance with the terms of Article 73, paragraph 2, of the Rules - to be able to furnish information on the question upon which the Court's opinion was asked, a special and direct communication informing them that the Court was prepared to receive from them written statements and, if necessary, to hear oral statements made on their behalf at a public hearing to be held for the purpose. Lastly, the Registrar requested the Secretary-General of the League of Nations to give notice to the Mixed Commission for the Exchange of Greek and Turkish Populations of the Request for an advisory opinion filed with the Court. The Mixed Commission was also to be informed of the fact that the Governments of the Greek and Turkish Republics had been notified that the Court was prepared to receive from them written statements in regard to this Request.

By means of an Order made on June 12th, 1928, the President of the Court fixed July 10th, 1928, as the date by which the written statements of the Greek and Turkish Governments were to be filed with the Registry of the Court. On that date, the two Governments had in fact deposited their written statements with the Registry.

The Mixed Commission for the Exchange of Greek and Turkish Populations informed the Registrar that it would be represented before the Court by its President, if the Court saw fit to hear its views; the Court, however, did not consider it necessary to summon the Commission's representative.

The Court, in the course of public sittings held on August 6th and 7th, 1928, heard oral arguments by M. D. Drossos, Head of Department at the Greek Ministry for Foreign Affairs, on behalf of the Government of the Greek Republic, and by Djemal Husni Bey, President of the Turkish delegation to the Mixed Commission for the Exchange of Greek and Turkish Populations, on behalf of the Government of the Turkish Republic.

On this occasion the Court sat as normally composed. The Court, in view of the fact that neither of the interested Governments had a judge of its nationality upon the bench and [8] that the question constituted an existing dispute between two States, under the terms of Article 71 of the Rules, had in fact informed the Parties to this dispute, that is to say, the Governments of Angora and Athens, of their right, under Article 31 of the Statute, each to appoint a judge of their nationality to sit in the case; the two Governments, however, informed the Court that they waived this right.

In addition to the statements of the said Governments, the Court has had before it documents communicated by the Secretary-General of the League of Nations (see list of documents in the annex).

\* \* \*

## I.

The Court considers that it should in the first place outline the circumstances in which the Council was led to submit to it the Request for an advisory opinion in question.

In accordance with the provisions of the Treaty of Peace of Lausanne of July 24th, 1923, a mixed arbitral tribunal was constituted between Greece and Turkey sitting at Constantinople. The powers of this tribunal are defined more particularly in Article 65, and also in Articles 66, 70, 75, 77, 78, 81 and 89 of the Treaty of Lausanne. They include amongst other things power to deal with all disputes relating to the identity or the restitution of property, rights and interests

which, under the terms of the Treaty, are to be restored to those concerned, as also with claims designed to obtain an addition to the proceeds of liquidation in cases where the property, rights and interests in question have been liquidated.

Furthermore, the Convention for the Exchange of Greek and Turkish Populations, signed at Lausanne on January 30th, 1923, established the Mixed Commission for the Exchange of Greek and Turkish Populations, of which the duties and powers should at this point be described.

According to Article 12 of this Convention, the Mixed Commission's duties were to be to supervise and facilitate the [9] emigration provided for in the Convention and to carry out the liquidation of certain categories of movable and immovable property. Paragraphs 3 to 5 of Article 12 define as follows the powers vested in the Commission from the outset:

"In a general way the Mixed Commission shall have full power to take the measures necessitated by the execution of the present Convention and to decide all questions to which this Convention may give rise.

The decisions of the Mixed Commission shall be taken by a majority.

All disputes relating to property, rights and interests which are to be liquidated shall be settled definitely by the Commission."

Under the Declaration (No. IX) relating to Moslem properties in Greece, signed at Lausanne on July 24th, 1923, the Mixed Commission subsequently received certain further powers.

Finally, the Greek Republic and the Turkish Republic concluded at Athens on December 1st, 1926, an Agreement the object of which, as defined in the Preamble, is to settle difficulties which had arisen in regard to the application of certain clauses of the Peace Treaty of Lausanne of July 24th, 1923, and of the Declaration (No. IX) relating to Moslem properties in Greece, which was annexed to that Peace Treaty. The Agreement provided for the bestowal of further new powers upon the Mixed Commission for the Exchange of Greek and Turkish Populations. These powers are defined more especially in Articles 6, 7, 12 and 13 of the Agreement of Athens ; Article 14 of the Agreement lays down in a general way in paragraph 1 that:

"La Commission mixte d'échange des populations grecques et turques sera chargée de l'application du présent Accord."

[*Translation by the Registry.*]

"The Mixed Commission for the Exchange of Greek and Turkish Populations shall be entrusted with the application of the present Agreement."

The provisions of this Agreement were supplemented by a Final Protocol which was signed at Athens the same day [10] and which forms an integral part of the Agreement itself. Article IV of the Final Protocol, which article expressly refers to the new powers of the Mixed Commission, is reproduced in the Resolution of the Council of the League of Nations set out above.

The Agreement of Athens and the Final Protocol were ratified and came into force on March 6th, 1927.

By a decision taken at its meeting of March 27th, 1927, the Mixed Commission accepted the new mission entrusted to it, under the terms both of the Agreement of Athens itself and of the Final Protocol annexed thereto.

\* \* \*

The differences of interpretation regarding the conditions of reference ("conditions for appeals") to the arbitrator provided for in Article IV of the Final Protocol, mentioned in the letter of February 4th, 1928 (reproduced above), from the President of the Mixed Commission to the Secretary-General of the League of Nations, became apparent more especially at the full meeting held by the Commission on September 15th, 1927. The Greek and Turkish members of the Mixed Commission having taken up different standpoints in regard to the wording of the communications in which the Commission was to state the names of persons allowed to benefit by the Agreement of Athens, the Greek members had, at a previous-meeting, on June 27th, 1927, suggested that the dispute should be settled by arbitration.

The President of the Mixed Commission asked the Commission first of all to decide whether, under the Final Protocol annexed to the Agreement of Athens, the dispute which had arisen constituted a question of principle of some importance arising in connection with the new duties of the Commission; whereupon the Greek members expressed the opinion that the two States which had signed the Agreement and Protocol were alone entitled to appeal to the

arbitrator, to whom, in the case in point, the Greek Government had, moreover, already referred the matter; on the other hand, the Turkish members held that reference to the arbitrator without a decision of the Mixed Commission would be contrary to the [11] agreements in force. The question of the conditions governing the reference to arbitration provided for by Article IV of the Final Protocol subsequently formed the subject of further discussion at meetings held by the Commission on December 12th, 20th and 22nd, 1927. At the last of these meetings, the Mixed Commission decided by a majority to ask the Council of the League of Nations to request the Permanent Court of International Justice for an advisory opinion.

The terms of the questions to be submitted, through the Council of the League of Nations, to the Court for advisory opinion were considered more particularly at the meeting held on December 22nd, 1927. On that occasion the Commission had before it, in the first place, a draft questionnaire prepared by one of the neutral members of the Commission - which was taken as the basis of subsequent discussions - and in the second place a draft questionnaire submitted on behalf of the Turkish members.

The Greek members, for their part, submitted some modifications of the questionnaire which was taken as a basis of discussion, though at the same time they observed that they would prefer to leave the Court free to deal with the problem as it thought best, and accordingly to submit the dispute to it in the simplest terms.

The President of the Mixed Commission stated, in regard to this proposal by the Greek members, that he saw no objection to simplifying the questionnaire, and he submitted to the Commission a formula, the adoption of which, in a slightly amended form, was proposed by the Greek members.

When making this proposal, they said that "the chief question which arose was whether each of the States which had signed the Agreement of Athens was entitled to exercise the right of recourse provided for by that Agreement unilaterally and without any previous decision having been taken by the Mixed Commission, or whether, on the contrary, it rested with the Mixed Commission first of all to satisfy itself whether the conditions for such a recourse, as laid down in Article IV of the Final Protocol, were or were not fulfilled".

In the course of the discussion, the Turkish members of the Commission pointed out on their side that "the chief question which arose was whether the right of recourse to the [12] arbitrator should be subordinated to a decision of the Mixed Commission, or whether the right of

recourse to the arbitrator belonged to each of the two delegations, Turkish and Greek (i.e. to the members of the Mixed Commission) independently of any previous decision by the Mixed Commission".

The subsequent proceedings in the Commission showed that there was a tendency to draw up the question for submission to the Court in general terms and in a simplified form.

The Commission in fact thought that the minutes of its meetings at which the question had been argued would sufficiently indicate the doubts which had arisen within it regarding the application of Article IV of the Final Protocol. And the Commission finally decided accordingly.

\* \* \*

The Mixed Commission having decided by a majority to ask the Council of the League of Nations to request the Permanent Court of International Justice for an advisory opinion, the terms of the request to be addressed with this object to the Secretary-General of the League of Nations were drawn up on February 1st, 1928.

Upon receiving the request of the Mixed Commission, the Council decided at its meeting on March 5th, 1928, to approach, before including the question upon its agenda, the Governments of the Greek and Turkish Republics in order to ascertain whether they were prepared to give their consent to the submission of the question raised by the Mixed Commission to the Court for an advisory opinion.

In reply, the Greek Government, in a letter dated March 8th, 1928, stated that it consented to the proposed procedure; a similar reply was given by a letter dated May 5th, 1928, on behalf of the Government of the Turkish Republic.

The Council's Resolution of June 5th, 1928, asking the Court to give an advisory opinion on the question raised in the letter of the President of the Mixed Commission of February 4th, 1928, was adopted in- the presence of the representatives of the two Governments. [13]

\* \* \*

The representatives of the two Governments regarded as likely to be able to furnish information on the question contemplated by the Resolution of the Council of the League of Nations, have expounded the submissions of their Governments in the course of their written and oral statements. The Court considers it well to recall the tenor of these submissions.

In its written Memorial, the Turkish Government submitted that:

"the right to resort to proceedings before the President of the Greco-Turkish Mixed Arbitral Tribunal provided for in Article IV of the Final Protocol of the said Agreement

(1) may be exercised by the Mixed Commission as such, that is to say that it has power to refer a question to the single arbitrator, whilst leaving the conduct of the proceedings to the interested Parties;

(2) may not be exercised separately or jointly by the two States signatories of the Agreement except after a vote by the Mixed Commission establishing that the conditions laid down by Article IV of the Final Protocol are fulfilled and declaring itself incompetent to deal with the question which has arisen within it, this decision finally settling the question of jurisdiction as between the two arbitral bodies and being binding upon the President of the Greco-Turkish Arbitral Tribunal."

These submissions were confirmed in the oral statement of the representative of the Turkish Government before the Court.

On the other hand, the submissions of the representative of the Greek Government are, in his oral statement, summarized as follows:

(1) that the Mixed Commission, as such, has no right to refer a matter to the arbitrator, since the two contracting Parties have given it no such right under Article IV of the Final Protocol of the Agreement of Athens which is purposely silent on the subject. At the utmost, the Commission might, perhaps, appear;

(2) that neither has the Mixed Commission the right to settle by a preliminary decision the question, should it arise, of the jurisdiction or lack of jurisdiction of the arbitrator in each particular case - a question which must be exclusively [14] reserved to the arbitrator himself, according to the basic principles of public international law;

(3) that the two Parties have the right jointly to have recourse to the arbitrator without such recourse being made subject to a previous decision of the Mixed Commission to the effect that the conditions laid down by Article IV of the Final Protocol are fulfilled. If the two Parties

do not succeed in agreeing jointly to refer a matter to the arbitrator, either of them may do so unilaterally.

\* \* \*

## II.

Article 72, paragraph 2, of the Rules of Court, lays down that "the request shall contain an exact statement of the question upon which an opinion is required". But the Request transmitted to the Court in pursuance of the Resolution of the Council of the League of Nations of June 5th, 1928, simply refers to the letter addressed by the President of the Mixed Commission for the Exchange of Greek and Turkish Populations on February 4th, 1928, to the Secretary-General of the League of Nations, with a view to obtaining an advisory opinion from the Permanent Court of International Justice upon the interpretation of Article IV of the Final Protocol of the Greco-Turkish Agreement of December 1st, 1926, concerning "the conditions for appeals to the arbitrator" contemplated in this article. The Court, however, considers that, as the letter referred to does not exactly state the question upon which its opinion is sought, it is essential that it should determine what this question is and formulate an exact statement of it, in order more particularly to avoid dealing with points of law upon which it was not the intention of the Council or the Commission to obtain its opinion. In the present case it is possible for the Court to do this, owing to the relatively simple nature of the case; this, however, may not always be so.

In ascertaining the form in which the question which the Mixed Commission intended to put to the Court may best be expressed, the Court observes in the first place that it must regard the word "*recours*" (appeals) contained in the [15] expression "*conditions du recours à l'arbitre*" (conditions for appeals to the arbitrator) as simply meaning "reference" or "submission". For since the arbitrator is not in the position of a superior court placed above the Mixed Commission, there can be no question of an appeal (*recours*) in the strict sense of the word.

In the second place, the Court must observe that the conditions for this reference or submission are clearly defined by the actual terms of Article IV of the Final Protocol, so that in regard to this point no difference of opinion can be presumed to exist. According to this article,

in order that a question may be submitted for arbitration to the President of the Greco-Turkish Mixed Arbitral Tribunal, it is necessary (i) that it should have arisen within the Mixed Commission; (2) that it should have arisen in connection with the new duties which were entrusted by the Agreement of Athens to that Commission and which the latter, when that Agreement was concluded, was not already discharging in virtue of previous instruments defining its powers; (3) that it should be a question of principle, and (4) that it should be of importance. There is no doubt that only when these four conditions are fulfilled can a matter be referred to the President of the Greco-Turkish Mixed Arbitral Tribunal.

After having carefully examined the documents attached to the Request for an opinion, and the written and oral statements submitted to it on behalf of the Greek and Turkish Governments, the Court has arrived at the conclusion that the differences of opinion which have resulted in the request for an opinion relate not to the question what are the conditions to which the submission of a question to the arbitrator is subject, but to the question for whom it is to decide whether these conditions are fulfilled and by whom a question may be referred to him.

In view of this conclusion, and following the precedent afforded by its Advisory Opinion No. 3 regarding one aspect of the competence of the International Labour Organization in which the Court had to alter the terms of the question put in order to be able to reply thereto, the Court considers that it may express the points on which, in substance, its opinion is now required, as follows: [16]

(1) Is it for the Mixed Commission for the Exchange of Greek and Turkish Populations to decide whether the conditions laid down by Article IV of the Final Protocol annexed to the Agreement concluded at Athens on December 1st, 1926, between the Greek and Turkish Governments, for the submission of the questions contemplated by that article to the arbitration of the President of the Greco-Turkish Mixed Arbitral Tribunal at Constantinople, are or are not fulfilled ? or is it for the arbitrator contemplated by that article to decide this ?

(2) The conditions laid down by the said Article IV having been fulfilled, to whom does the right of referring a question to the arbitrator contemplated by the article belong ?

By expressing in this form the question contemplated by the letter addressed on February 4th, 1928, by the President of the Mixed Commission to the Secretary-General of the League of Nations, the Court is in a position to reply to the request for an opinion submitted to it, always keeping within the scope of the question thus formulated. It follows that, in so far as the points

in dispute between the interested Governments fall outside the scope of the question as set out above, the Court cannot deal ,with them.

\* \* \*

In order to reply to the question as above formulated, it will be well first of all to examine the general structure of the Mixed Commission, a body created more particularly in order to ensure the carrying out of the Convention for the Exchange of Greek and Turkish Populations concluded at Lausanne on January 30th, 1923, between Greece and Turkey.

Under Article 11 of this Convention, the Mixed Commission consists of four members appointed by each of the two contracting States and of three members chosen by the Council of the League of Nations from among nationals of Powers which did not take part in the war of 1914-1918. In this connection the Court considers that it should be noted that the members of the Commission, including those appointed by the contracting States, take part in the work of the [17] Commission in an individual capacity : there are eleven votes to be reckoned with in the Mixed Commission. In the extracts from the minutes of full meetings of the Commission concerning recourse to arbitration, which have been submitted to the Court in the course of the proceedings, the expressions "Greek delegation" and "Turkish delegation" are to be found on every page ; and sometimes there are to be found expressions such as "on behalf of the delegation" and "the delegation acting on behalf of its Government". All these expressions proceed from a conception of the legal status of the members of the Mixed Commission which finds no support in Article 11 of the Convention concerning the exchange of populations, the article which defines the organization of the Commission. Failing such support, and having regard to Article 12, paragraph 4, of the said Convention, according to which "the decisions of the Mixed Commission shall be taken by a majority", it would seem that all members, neutral members and Greek and Turkish members alike, are independent and must vote individually within the Commission. In the minutes are also to be found traces of a conception closely harmonizing with this interpretation of the terms of the article. For instance, it is found that in a particular question, two Turkish members have voted on opposite sides. However that may be, it was necessary to elucidate this point at the outset, since it has perhaps in some measure helped to give rise to the question now submitted to the Court.

Turning now to the duties of the Mixed Commission which are of especial importance for the solution of the question, the Court makes the following observations:

1° Article 12 of the Convention, an article already quoted above, lays down the general rule governing the duties of the Commission : these comprise mainly the supervision and facilitation of the emigration and the carrying out of the liquidation of the movable and immovable property contemplated by Articles 9 and 10 (paragraph 1). It follows that the main functions of the Mixed Commission are essentially administrative. In addition however to these functions, the Commission has, first, power to settle the details of the [18] rules to be followed in regard to emigration and liquidation (paragraph 2) and, secondly, power finally to settle all disputes relating to property, rights and interests to be liquidated (paragraph 5) ; similarly, it has in a general way full power to take the measures necessitated by the execution of the Convention and to decide all questions to which it may give rise (paragraph 3).

The first part of these subsidiary duties, namely, the general measures which the Mixed Commission is authorized to order, is in the nature of a regulating or legislative function in the "material" sense of the word; whereas the second part of these duties undoubtedly constitutes a jurisdictional or judicial function.

All the duties indicated above are entrusted to the Mixed Commission as the sole authority for dealing with the exchange of populations, and special stress should be laid on the fact that these duties have been entrusted to it with the object amongst others of facilitating this exchange. It follows that any interpretation or measure capable of impeding the work of the Commission in this domain must be regarded as contrary to the spirit of the clauses providing for the creation of this body. The Court has already adopted this standpoint in its Advisory Opinion No 10.

2° The declaration relating to Moslem properties in Greece signed on July 24th, 1923, by the Greek delegates at the Lausanne Conference (Declaration No. IX) also confers on the Mixed Commission power to decide certain claims in regard to the property rights of Moslem persons who are not covered by the provisions of the Convention concerning the exchange of populations signed at Lausanne on January 30th, 1923, and who had left Greece before October

18th, 1912, or had always resided outside Greece. The claims in question were to be examined at once by the Commission and settled within one year's time at the most from the coming into force of the said Treaty. The main importance of this Declaration of July 24th, 1923, from the point of view of the duties of the Commission with which this opinion deals, is that it indicates how anxious the two [19] Governments concerned were to facilitate the settlement of matters and to accelerate the work of the Commission.

3° The Agreement of Athens of December 1st, 1926, concluded to regulate the disposal of certain categories of immovable property, entrusted to the Mixed Commission new duties in this respect : for it conferred on the Commission certain jurisdictional powers (Article 6, paragraph 3 ; Article 12, paragraph 3; Article 13, paragraphs 1 and 3), as well as general powers in regard to the application of the Agreement (Article 14, paragraph 1). The questions contemplated by Article IV of the Final Protocol annexed to the Agreement relate to these new duties of the Commission. In regard to this, attention should again be paid to the spirit of the Convention the aim of which, according to the Preamble, is to overcome difficulties in regard to the application of certain clauses of the Peace Treaty of Lausanne and of Declaration No. IX annexed thereto, and to facilitate the application of these clauses. The terms of Article I of the Final Protocol should also be noted; for that article, which provides for the coming into force of some articles of the Agreement immediately after its signature and before ratification, accentuates the urgency attaching to the carrying out of the provisions of. the Agreement of Athens.

\* \* \*

In the Court's opinion,. the foregoing considerations clearly indicate the spirit underlying the various international instruments relating to the exchange of Greek and Turkish populations and defining the role allotted to the Mixed Commission in the carrying out of the terms of these instruments. The Court considers that due importance must be attached to this spirit in order to arrive at a correct interpretation of Article IV of the Final Protocol annexed to the Agreement of Athens.

For the purposes of this interpretation, it may be well once more to give *in extenso* the terms of that article:

"Les questions de principe présentant quelque importance et qui pourraient surgir au sein de la Commission [20] mixte à l'occasion des attributions nouvelles que lui confère l'Accord signé ce jour et qu'elle n'avait pas à la conclusion de ce dernier sur la base des actes antérieurs fixant sa compétence, seront soumises à l'arbitrage du président du Tribunal arbitral gréco-turc, siégeant à Constantinople. Les sentences de l'arbitre seront obligatoires."

[*Translation by the Registry.*]

"Any questions of principle of importance which may arise in the Mixed Commission in connection with the new duties entrusted to it by the Agreement signed this day and which, when that Agreement was concluded, it was not already discharging in virtue of previous instruments defining its powers, shall be submitted for arbitration to the President of the Greco-Turkish Arbitral Tribunal sitting at Constantinople. The arbitrator's awards shall be binding."

In the eyes of the Court the meaning of this text is clear although, no doubt, a more satisfactory formula might have been found. It should, in particular, be noted that the article contains no express provision designed to settle the question by whom or when the questions with which the instrument deals may be referred to the President of the Greco-Turkish Mixed Arbitral Tribunal. But from the very silence of the article on this point, it is possible and natural to deduce that the power to refer a matter to the arbitrator rests with the Mixed Commission when that body finds itself confronted with questions of the nature indicated.

For, according to its very terms, Article IV of the Final Protocol expressly contemplates questions which may arise within the Mixed Commission; there can, therefore, be no doubt that only questions arising in the course of the deliberations of the Commission are contemplated. But, that being so, it is clear - having regard amongst other things to the principle that, as a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction - that questions affecting the extent of the jurisdiction of the Mixed Commission must be settled by the Commission itself without action by any other body being necessary.

Article IV of the Final Protocol lays down that in the case of questions of principle of some importance arising in connection [21] with the new duties which were entrusted to the Commission by the Agreement of Athens, and which, when that Agreement was concluded, it

was not already discharging in virtue of previous instruments defining its powers, such questions shall be submitted to the President of the Greco-Turkish Mixed Arbitral Tribunal for decision, and are not, therefore, to be settled by the Commission itself. Thus, Article IV of the Final Protocol provides for the special reference of questions of principle of some importance to a tribunal other than the Mixed Commission and one which is regarded as better qualified than the latter to decide upon the merits of such questions of principle.' That is the whole import of Article IV, and its scope is precisely this and no more.

According to the interpretation given above of Article IV of the Final Protocol, the right of reference can, however, only belong to the Mixed Commission; for it is a matter of determining the extent of its own competence. It follows logically that the Mixed Commission itself must also decide whether the various conditions required to make such reference possible are fulfilled; and it is simply necessary to add that, whatever the legal nature of these conditions may be, their appreciation and the decision whether they are duly fulfilled, both of which are left to the absolute discretion of the Commission, undoubtedly fall within the category of questions naturally arising in the course of the Commission's deliberations.

In this connection it should be observed that the question whether a given matter is one of principle, and especially whether it is of some importance, is essentially a question of appreciation, and that it must therefore, in the nature of things, be left to the decision of the Mixed Commission itself, which, being acquainted with the many and various matters coming before it, is alone in a position to say whether a given question does or does not fulfil the conditions mentioned in Article IV. This being so, if the Commission, after having freely considered the matter, comes to the conclusion that the question at issue is not of the nature contemplated by Article IV of the Final Protocol, it [22] must itself decide that question; only if the Commission considers that the requisite conditions for the reference of the question to the arbitrator are present is it the duty of that body to refer it to him. This would only not hold good if the article contained a provision imposing this duty, for instance, on the States which signed the Final Protocol, on the individual members of the Commission, or on a group of such members, or a provision authorizing them to refer a matter to the arbitrator. But no such provision is to be found in the article.

The decision as to the presence of the conditions required for the reference of a given question to the arbitrator must be taken by the Mixed Commission, which must apply the general rule governing the performance of its duties; if consequently there exists between the members of the Commission a difference of opinion as to whether these conditions have or have not been fulfilled, the Commission is to decide this point and the question whether it will refer the matter to the President of the Greco-Turkish Mixed Arbitral Tribunal, by a majority vote. As regards the arbitrator, once he is satisfied that a question submitted to him has been referred to him by a decision of the Mixed Commission, he must decide this question and he may not revert to a consideration of the question of the presence of the conditions required by Article IV of the Final Protocol. This appears from the actual terms of the article, which provides for two clearly differentiated jurisdictions, one to decide whether the conditions required for the reference to the arbitrator of a question of principle of some importance are or are not fulfilled, the other to give judgment on this question of principle on its merits, once it has been established that the required conditions are fulfilled. Accordingly, the Court considers that a negative conflict of jurisdiction cannot arise between the Mixed Commission and the arbitrator.

According to the terms of Article IV of the Final Protocol, the questions of principle contemplated shall be submitted to the President of the Greco-Turkish Mixed Arbitral Tribunal "for arbitration". The Court attributes no special importance to the use of the word "arbitration" in the article, but [23] it considers it not a very happy way of expressing the idea underlying the article. For in any event there can be no question of an arbitration except in the broadest sense of the expression, as the characteristics of arbitration properly so called are certainly not present in this case. In the first place, there are no Parties to bring their dispute before the tribunal, seeing that, as has been explained above, the Commission is composed of individual members and not of two delegations representing the contracting States between which the three neutral members must arbitrate ; the reference to the arbitrator of questions of principle of importance which arise within the Commission is not confined to the case where there is a difference of opinion amongst the members of the Commission; for though it is true that as a general rule the reference of a question to the arbitrator will doubtless result from such difference of opinion, it is also true that such reference may be decided upon, even if all members of the Commission are

agreed as to the solution which, in their opinion, should be given to the question of principle which has arisen.

The Greek Government has sought to show that Article IV of the Final Protocol constitutes an arbitration clause and that such a clause inserted in an international convention always implies an arbitral tribunal to which, unless expressly provided otherwise, only States themselves may refer a matter and before which they alone may appear as Parties. The conclusion would be correct if the premiss were so; but the Court cannot accept the Greek Government's view in this respect. Not only have the terms used in Article IV nothing in common with those of arbitration clauses properly so called, but also all that has been stated above in regard to the conditions in which questions of the kind under consideration may arise, and in regard to the fact that the duty of applying the treaty provisions is reserved to the Mixed Commission, is foreign to the nature of an arbitration between States concerning disputes which may arise between them regarding the manner in which each of them applies a treaty provision. Except for the word "arbitration" to which, for the reasons already given, no decisive importance is to be attached, there [24] is nothing in the text of Article IV which justifies its consideration as an arbitration clause.

The Court has already indicated the spirit underlying all the international instruments concerning the exchange of Greek and Turkish populations, including the Final Protocol of the Agreement of Athens of December 1st, 1926; it now observes that Article IV of this Protocol is undoubtedly itself framed in the same spirit. It follows, in the opinion of the Court, that the restriction placed by that article on the general powers of the Mixed Commission cannot constitute an impediment to the fulfilment by the latter of the important duties assigned to it, but must be construed in such a way as to accelerate and facilitate the progress made by that body with its work. Speed must be regarded as an essential factor in the work of the Mixed Commission, both in the interest of the populations with which its work is concerned and in that of the Greek and Turkish Governments.

Now, as the Mixed Commission is mainly an administrative body, its members are not necessarily in the first place jurists; although, as indicated above, it exercises a somewhat wide measure of jurisdictional powers, it is not necessarily the most suitable body for the settlement of legal questions of principle of some importance. This is undoubtedly why the Final Protocol

deprives the Commission of power to decide such questions and confers such power upon the President of the Greco-Turkish Mixed Arbitral Tribunal. It is possible that the Final Protocol was also inspired by the following consideration : the Greco-Turkish Mixed Arbitral Tribunal being the tribunal generally possessing jurisdiction in matters of liquidation, it would be possible, by giving the President of that Tribunal power to decide questions of principle of importance which may arise within the Mixed Commission, to secure a measure of consistency as between the decisions of the Mixed Commission, which, as has been seen, is also competent to some extent in matters of liquidation, and those of the Greco-Turkish Mixed Arbitral Tribunal. [25]

On the basis of the foregoing considerations, the Court feels obliged to observe that it is wrong to seek to attribute either to one of the members or to a group of Greek or Turkish members of the Mixed Commission, or again to one of the States signatories of the Final Protocol, the right to refer a question to the arbitrator, with a view to obtaining from him a decision, at all events as to whether a given question is to be regarded as a question of principle of some importance. Such a contention in fact is incompatible not only with the terms of Article IV of the Final Protocol, but also with the spirit which, as has been already pointed out, underlies all the relevant international instruments.

Even leaving aside considerations based on the spirit of these international instruments, the same result is arrived at, for an individual member or a group among the Greek or Turkish members within the Commission has no power to take action outside the Commission, and the same applies as regards the neutral members. This would still hold good even if all the Greek or all the Turkish members of the Commission could be regarded as constituting governmental delegations within it, a conception which has however already been rejected by the Court; for to accord to individual members of an organization constituted as a corporate body any right to take action of any kind outside the sphere of proceedings within that organization, would be clearly contrary to an accepted principle of law. In the absence of an express provision, therefore, it is impossible to accept such an abnormal state of things.

In this connection, another observation of some importance should be made: the situation of the States signatory to the Final Protocol is altogether singular as regards matters concerning

the exchange of Greek and Turkish populations; this singularity obviously arises from the special nature of the Convention of Lausanne concerning the exchange of populations, as well as of Declaration No. IX of Lausanne and the Agreement of Athens. For, according to the provisions of these instruments, it does not rest with the contracting States themselves to apply and carry out, each for its own part and in the exercise of its sovereign rights, the clauses governing [26] the matter in question; the application and carrying out of these clauses are entrusted as a whole to the Mixed Commission which acts in the interests of the two contracting States. In so doing it is incumbent upon it to endeavour to ensure that the application and carrying out shall be as speedy and regular as possible. It is only within the Mixed Commission that a difference of opinion can arise, between the members of that body, as to the interpretation of the provisions of the Convention and Agreement which it is its duty to apply and carry out, a difference of opinion which, according to the rules governing the work of the Commission, must be settled by a majority of votes, neither of the contracting States having the right to intervene as such in the work of the Commission. But. the application of Article IV of the Final Protocol of the Agreement of Athens is simply tantamount to the application by the Mixed Commission itself of a provision governing its work.

If, on the contrary, the right to refer a question to the arbitrator were to be attributed either to an individual member or to a group amongst the Greek or Turkish members of the Commission, or lastly to one of the States signatory to the Final Protocol, it would follow that either of these States, either directly or through members of the Mixed Commission of its nationality, could cause to be submitted to the procedure contemplated in Article IV of the Final Protocol questions, selected according to its wishes, such as, not being questions of principle and not being of any importance, should necessarily fall within the immediate jurisdiction of the Mixed Commission. But the result of this would undoubtedly be, contrary to the spirit of all the relevant instruments and of the Final Protocol itself, to impede the progress of the work of the Commission and to cause delays in the carrying out of the task entrusted to it. [27]

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FOR THESE REASONS,

The Court, unanimously,

is of opinion

that to the question submitted to it as formulated at the beginning of this advisory opinion, the following answer should be given:

(1) It is for the Mixed Commission for the Exchange of Greek and Turkish Populations alone to decide whether the conditions enumerated in Article IV of the Final Protocol annexed to the Agreement concluded at Athens on December 1st, 1926, between the Greek and Turkish Governments, for the submission of the questions contemplated by that article to the President of the Greco-Turkish Mixed Arbitral Tribunal sitting at Constantinople, for arbitration, are or are not fulfilled.

(2) The conditions contemplated by the said Article IV having been fulfilled, the right to refer a question to the arbitrator contemplated by that article belongs to the Mixed Commission alone.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-eighth day of August, nineteen hundred and twenty-eight, in two copies, one of which is to be deposited in the archives of the Court, and the other to be forwarded to the Council of the League of Nations.

*(Signed)* D. Anzilotti,  
President.

*(Signed)* Å. Hammarskjöld,  
Registrar.

[28] Annex.

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I. - DOCUMENTS FORWARDED BY THE SECRETARIAT OF THE LEAGUE OF NATIONS:

Letter from the President of the Mixed Commission to the Secretary-General of the League of Nations (February 4th, 1928).

Extracts from minutes of the Mixed Commission:

I. - 116th Plenary Meeting (March 19th, 1927).

*Annexes:*

1. - Letter from the President of the Turkish delegation to the President of the Mixed Commission (February 17th, 1927).
2. - Letter from the President of the Greek delegation to the President of the Mixed Commission (February 17th, 1927).
3. - Greco-Turkish Agreement of December 1st, 1926.
4. - List of house property belonging to Greek *ressortissants* established in Smyrna, Mersine and Pendik.
5. - Valuation of property.
6. - Final Protocol (December 1st, 1926).
7. - Declaration (December 1st, 1926).
8. - Extract from letter exchanged between M. Argyropoulos and Saradjoglou Chukri Bey (December 1st, 1926).
9. - Protocol No. I (June 21st, 1925).
10. - ,, ,, II ( ,, ,, ,, ).
11. - Resolution in regard to persons established, to be taken by the Mixed Commission (June 21st, 1925).

12. - Resolution to be taken by the Mixed Commission concerning Article 16 of the Convention for the exchange of Greek and Turkish populations (June 21st, 1925).

13. - Minutes of signature (June 21st, 1925).

14. - Agreement concerning Turkish property in Greece and Greek property in Turkey (June 21st, 1925).

15. - Letter from the President of the Turkish delegation to the President of the Mixed Commission (March 17th, 1927).

15 *bis*. - Letter from the President of the Greek delegation to the President of the Mixed Commission (March 17th, 1927).

16. - Resolution by the Plenary Meeting (March 19th, 1927).

17. - Rules concerning the working of valuation committees.

18. - Financial rules for valuation committees.

II. - 137th Plenary Meeting (September 15th, 1927).

III. - 140th „ „ (December 1st and 3rd, 1927).

IV. - 141st „ „ ( „, 12th, 1927).

V. - 142nd „ „ ( „, 20th, „).

VI. - 143rd „ „ ( „, 22nd, „).

VII. - 149th „ „ (January 26th, „).

VIII. - 150th „ „ (February 1st, „).

Note by the Secretary-General of the League of Nations setting forth the Council's action in the matter (June 5th, 1928). [29]

Extracts from the *League of Nations Official Journal* (April, 1928).

Note by the Secretary-General of the League of Nations (May 15th, 1928).

Letter from the Turkish Minister in Berne to the Secretary-General of the League of Nations (May 5th, 1928).

Report by M. Adatci to the Council of the League of Nations (June 1st, 1928).

Letter from the Secretary-General of the League of Nations to the Registrar (June 8th, 1928).

Extract from minutes of the Second (Public) Meeting of, the Fiftieth Session of the Council (June 5th, 1928).

II. - DOCUMENTS SUBMITTED BY THE TURKISH GOVERNMENT:

Letter of guarantee from the President of the International Financial Commission in Greece to the Turkish Minister in Athens (February 16th, 1927).

Extract from minutes of the 140th Plenary Meeting of the Mixed Commission, held at Constantinople on December 1st and 3rd, 1927.