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GENEVA, February 6th, 1928.

LEAGUE OF NATIONS



PREPARATORY COMMISSION
FOR THE DISARMAMENT CONFERENCE

COMMITTEE ON ARBITRATION AND SECURITY

1. Introduction to the Three Memoranda on Arbitration, Security and the Articles of the Covenant, submitted by the Chairman of the Committee in agreement with the Rapporteurs.
2. Memorandum on Arbitration and Conciliation, submitted by M. Holsti, Rapporteur.
3. Memorandum on Security Questions, submitted by M. Politis, Rapporteur.
4. Memorandum on Articles 10, 11 and 16 of the Covenant, submitted by M. Rutgers, Rapporteur.
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Publications of the League of Nations

IX. DISARMAMENT
1928. IX. 3.

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PRAGUE, February 3rd, 1928.

1.

Introduction to the Three Memoranda on Arbitration, Security and the Articles of the Covenant

Submitted by the Chairman of the Committee in agreement with the rapporteurs.

1. In accordance with the programme drawn up by the Committee on Arbitration and Security at the end of its first session¹, the rapporteurs on the three questions to be studied — namely, M. Holsti for the question of Arbitration Agreements, M. Politis for the question of Security Agreements, and M. Rutgers for the question of the Articles of the Covenant — first prepared individual memoranda with the aid of the documents which the Secretariat had placed at their disposal.

2. The rapporteurs then held a meeting at Prague, from January 26th to February 1st, 1928, to co-ordinate their work with the assistance of the Chairman of the Committee on Arbitration and Security.

The texts drawn up by the rapporteurs were revised with the object of shaping them into "an organic whole", as required by the Committee on Arbitration and Security. At the same time, the Chairman and the rapporteurs endeavoured to avail themselves, as far as possible, of the suggestions given in the Notes sent in by the Governments of Germany, Belgium, Great Britain, Norway and Sweden². The rapporteurs desire to thank these Governments for the valuable ideas which they put forward. They also gave consideration to the suggestions offered by representatives of other Governments during the previous discussions on arbitration and security.

3. The memoranda in their present form are none the less the individual work of the rapporteurs, who assume full responsibility for them, not as delegates of their Governments, but in their personal capacity and they emphasise the fact that they only desire to offer suggestions. Nevertheless, after examining these memoranda at their meeting at Prague, the Chairman and the rapporteurs were unanimous in submitting them to the Committee on Arbitration and Security as a comprehensive study, containing suggestions which might form a useful basis for discussion at the second session of the Committee.

4. The Chairman and the rapporteurs desire to add that, in the course of their studies, they were led to certain conclusions which they think it might be useful to submit as a kind of introduction to the three memoranda.

5. In the first place, both the report on the application of Article 11, which was approved by the Council and by the Assembly of 1927, and the memorandum on the Articles of the Covenant which is now submitted to the Committee, bring out the fact that the Covenant creates a measure of security which needs to be appreciated at its full value. The Articles of the Covenant are capable of being applied in such a way that, in the majority of cases, they can prevent war. The Council has shown during the last few years that it has power to arrest a conflict. The responsible representatives of the States Members of the Council are equipped by the terms of the Covenant with extensive powers for the preservation of international peace. Their common will for peace can be exercised effectively within the framework of the Covenant — all the more effectively because that instrument does not provide any rigid code of procedure for the settlement of international crises.

It is, indeed, beyond question that, in addition to the means which the Council has already had under consideration when dealing with disputes submitted to it, or in the course of the studies of its own procedure which it has made or promoted, there are other measures within its reach for preserving international peace which circumstances might suggest. The memoranda now submitted to the Committee on Arbitration and Security, like those which preceded them, illustrate the present impossibility, we might almost say the inexpediency, of attempting to draw up a complete list of such measures in advance; nevertheless, in the light of the experience gained even in a comparatively short period, it appears evident that international disputes are becoming more and more engaged in a network of preventive measures, and that there is a constant evolution towards improvements in the methods employed by the Council within the ambit of the Covenant; and that, in consequence, a situation has arisen which is fundamentally different from that which existed before the League of Nations was instituted, so that a resort to war, without the responsibility for such a step being manifest to the whole world, becomes more and more difficult to imagine.

6. It may truly be said that, before the existence of the League of Nations, the national points of view were practically the only ones of which public opinion had any cognisance in times of international crisis. The effect of the Council's debates being held in public will be, not only that the opponent's point of view is likely to become better known in the other country, but also — more important still — that the official recommendations given by the Council to the parties will furnish the public in all countries with the means of forming a judgment; this factor could only help to turn governing circles in the different countries concerned towards a pacific settlement.

¹ The programme and the resolution of the Assembly are annexed to the present paper.

² The texts of the observations presented by these five Governments are also annexed.

It is difficult to believe that the Government of any of these countries would refuse to give full publicity to the official recommendations of the Council. Indeed, such a refusal would be taken, not only by foreigners but by the people of the country itself, as very significant evidence of the real intentions of the Government. It would be a matter of vital importance to any Government to avoid incurring such discredit.

7. Moreover, in proportion as the authority of the Council increases in the eyes of public opinion, the effectiveness of its action is correspondingly increased, and in this connection it should be observed that, by attending its sessions at Geneva in person during the last few years, the Foreign Ministers of several countries have greatly enhanced the authority of the Council and the efficacy of its action.

8. It is true that paragraph 7 of Article 15 of the Covenant allows for the possibility of the Council failing to reach a report which is unanimously agreed to by the Members, other than the representatives of the parties to the dispute. But it seems probable, in view of the terms of the Covenant, that, before acknowledging their failure to agree, the Council would seek to avail itself of the safeguards which the Covenant places so abundantly at its disposal. It is not impossible, for instance, that the Council would have already suggested the submission of the dispute to arbitration, or that it would have asked the parties to the dispute to accept such measures as in its view were best fitted to prevent a resort to violence. Before abandoning the attempt to produce a unanimous report, thus creating a *de facto* situation which would authorise the Members of the League, by the terms of the paragraph of the Covenant referred to, to "take such action as they shall consider necessary for the maintenance of right and justice, the Council would have made so many efforts to obtain a settlement that the Members of the League would be in large measure enlightened as to the real incidence of the responsibility in case of a failure of its efforts.

9. Accordingly, although paragraph 7 of Article 15 contains a gap from a legal point of view, nevertheless, from a political standpoint, there is a latent influence for peace in this freedom of action which it thus threatens to restore to the Members of the League in circumstances on which the public opinion of the whole world would be in a position to pass judgment. The Council would certainly be able to take advantage of the situation thus created to make further efforts on behalf of peace.

10. If, in addition, one considers the engagements undertaken by the States in virtue of Article 16 and which form the subject of one of the studies presented to the Committee, one is forced to the conclusion that the Covenant provides the Members of the League of Nations with a measure of security which it is their duty to develop still further by co-operating resolutely and loyally for the establishment of international peace.

11. This duty has, indeed, been observed during the last few years by a great number of States which have concluded special or collective treaties of arbitration and security. This method of special or collective treaties appears at the present moment to be the only practical means which can be recommended to States in search of more effective guarantees of security.

12. Those nations which consider that the general measure of security afforded by the Covenant is inadequate for their needs, and which, more particularly in view of their geographical situation, feel themselves more liable than others to be drawn into a war in case of a failure of all the machinery designed to prevent armed conflicts, must at the present moment regard the conclusion of security pacts with other States in the same geographical area as the only practical or possible form of supplementary guarantee. Even if the other Members of the League of Nations cannot give their effective guarantee to such treaties they can at least accord them their moral support and do everything in their power to facilitate their conclusion, provided always that such treaties are conceived in the spirit of the Covenant of the League and are co-ordinated within its provisions.

13. In the memoranda which now follow, the rapporteurs have endeavoured to avail themselves of the lessons of experience, at the same time taking into account the possibilities of the present moment. They realise that the Committee expects from them neither precise opinions nor a complete set of solutions, but solely indications and suggestions which may serve to direct and help its future work. They have been careful to avoid the use of general and too rigid formulæ. They have sought material for a solution of these problems exclusively within the framework of the Covenant of the League of Nations and in harmony with its spirit, without proposing any alteration of the text; finally, they recognise that, in order to attain the object in view, the work which is contemplated will need to be undertaken with an earnest desire to increase confidence between peoples and to render the organs of the League of Nations better able to discharge their duties and obligations.

14. The rapporteurs have thought it desirable to recapitulate the results of their studies in the form of certain suggestions which will be found at the end of each memorandum under the title "Conclusions".

15. In submitting all these practical measures which they feel may help to increase the guarantees of security arising from the Covenant, the rapporteurs believe that they have carried out the work with which they were entrusted.

In submitting their memoranda, they therefore consider that their duties are ended.

16. The rapporteurs desire to take this opportunity of thanking the Committee on Arbitration and Security for the trust which it has reposed in them, and the Secretariat for the valuable assistance which it has furnished them in discharging their mission.

2.

Memorandum on Arbitration and Conciliation

Submitted by M. HOLSTI, Rapporteur.

I. PRESENT POSITION WITH REGARD TO ARBITRATION AND CONCILIATION.

17. This enquiry, undertaken in conformity with the decision reached by the Committee on Arbitration and Security on December 2nd, 1927, concerns the measures which would make it possible for the League of Nations to promote, generalise and co-ordinate special or collective agreements on arbitration or conciliation. The term "arbitration", of course, includes the decision of disputes by the Permanent Court of International Justice, described in the Covenant as "judicial settlement".

18. The Assembly resolution of September 26th, 1927, in virtue of which the above question is being considered by the Committee on Arbitration and Security, recommended the progressive extension of arbitration by means of special or collective agreements, including agreements between States Members and non-Members of the League of Nations, as a means of extending to all countries the mutual confidence essential to the complete success of the Conference on the Limitation and Reduction of Armaments, and this resolution defines the special task of the Committee on Arbitration and Security, which is to consider the measures capable of giving all States the guarantees of arbitration and security necessary to enable them to fix the level of their armaments at the lowest possible figures, in an international agreement for the reduction and limitation of armaments. The purpose of the enquiry to be undertaken is therefore not scientific or theoretical, but practical; its aim is to initiate measures which will constitute a positive contribution towards the creation of a feeling of greater security between the various States and towards facilitating thereby the ultimate solution of the disarmament problem.

19. Arbitration has, from the outset, formed an essential element in the system established by the Covenant, which lays down the principle that Members of the League are to refer to arbitration or judicial settlement those disputes which they recognise to be suitable for such treatment. The system also defines certain categories of disputes as among those which are generally suitable for such treatment; it emphasises the obligation of States parties to an arbitration procedure to carry out in full good faith any award or decision that may be rendered, and empowers the Council to propose what steps should be taken to give effect to such an award or decision in the event of failure to carry it out. Furthermore, by providing for the creation of the Permanent Court of International Justice, Article 14 of the Covenant enabled immense progress to be made in arbitral procedure, as it led to the setting-up of a permanent judicial tribunal which offers the highest guarantees of competence and acceptability to the various States.

20. The procedure of conciliation is not mentioned in the Covenant, but it has been fully recognised as being not merely consistent with the Covenant, but as a desirable reinforcement of the methods of pacific settlement of disputes expressly provided for in the Covenant. In 1922, the Assembly recommended to the Members of the League the conclusion of conciliation treaties, and drew up a model set of articles which might be taken as a basis for the conclusion of such treaties.

21. In accordance with the Assembly resolution of September 25th, 1926, dealing with arbitration, security and the pacific settlement of international disputes, the Council was invited to offer its assistance, if necessary, for the conclusion of agreements of this kind. Up to the present, the Council has not had occasion to help nor has any State applied to it for assistance. It would be desirable to consider whether this procedure could not be made more effective and its application facilitated.

22. Simultaneously with the measures which have been taken within the framework of the League, there has, since the world war, been a very remarkable increase in the number of treaties for the pacific settlement of disputes which have been concluded between pairs or small groups of States, and the development has been equally remarkable as regards both the methods of procedure and the number of the questions considered suitable for treatment by arbitration or conciliation.

23. The total number of agreements of this kind (arbitration treaties, conciliation treaties, and arbitration and conciliation treaties) which has been registered with the Secretariat of the League is eighty-five¹; these include only a small number of renewals of pre-existing treaties. The number of States which are parties to the optional clause of the Protocol of Signature of the Statute of the Permanent Court of International Justice is at present fourteen. To obtain an accurate idea of the development which methods of pacific settlement have attained, it is, however, necessary to remember that there are in existence a number of arbitration treaties dating from before the world war, which, owing to their date, are not registered with the Secretariat. Moreover, several treaties have been signed but have not yet been ratified.

¹ This figure indicates the number of treaties registered on February 1st, 1928. For details, see the 2nd edition of "Systematic Survey of Arbitration and Security Treaties" (C. 663. M. 216. 1927. V).

24. It should, of course, be pointed out that statistics concerning the number of arbitration treaties in existence are not an accurate measure of the extent to which possible international difficulties containing elements of danger have been brought within the scope of pacific settlement, because the value of an arbitration treaty, from the point of view of general security, necessarily depends upon the importance of the States bound by it and the extent to which the relations between them are liable to endanger the peace of the world.

25. Again, it is perhaps also of interest to note that the absence of special arrangements for the pacific settlement of disputes between particular States is not of importance from the point of view of security if those States are so situated that a dispute between them is hardly capable of producing grave consequences. The smaller States are perhaps always so situated with regard to distant countries. It follows that the degree of security obtained by the development of arbitration and conciliation agreements is not measurable by mere comparison of the number of existing treaties with the number of treaties which would be necessary to cover the relations between all the States of the world.

26. The main development in the provisions of treaties for the pacific settlement of disputes is a greater readiness to accept arbitration or conciliation — if not for all possible disputes at least for all those of a juridical nature — and the tendency to abandon traditional reservations or to restrict their scope. At the same time, methods of procedure have been improved; the procedure of conciliation in particular is, in its present development, largely a post-war creation.

II. CONCERNING THE DEVELOPMENT OF ARBITRATION.

27. There can be little doubt that the progress of arbitration and conciliation has been in no small measure due, not merely to the influence of the Covenant and the positive measures which the organs of the League have been able to take, but also to the active discussion of these subjects which has been pursued within the organs of the League, particularly in the Assembly, even where no positive proposals have been adopted. Probably the mere continuance of such discussions will still exert an influence in the same direction, especially in so far as it makes the experience of particular States more readily available to other States and results in the formation of a general consensus of opinion concerning the desirability of particular methods of procedure. As regards more positive steps which could be taken through the organs of the League, there are three possible suggestions :

(a) A recommendation directing the attention of Governments to one or more types of treaty suitable for adoption between two States or limited groups of States ;

(b) The possible extension of these treaties to other States with the consent of the Contracting Parties ;

(c) The third suggestion is a more ambitious programme, including the negotiation of a general treaty which would be open to signature by all Members of the League or generally by all States.

28. This third suggestion is, in fact, a direct attempt to attain the object indicated in the Assembly resolution ; it would be a striking expression of the League's desire to see methods of peaceful settlement adopted throughout the world. In seeking this solution it will be prudent to take into account the main difficulties which are, under present conditions, felt to stand in the way of a system which aims at the final settlement of all disputes by some pre-established form of procedure.

29. The first difficulty appears to lie in the generally recognised impossibility of treating all disputes as if they stood on the same legal basis. A distinction must be made between the disputes of a juridical nature defined in the Treaties of Locarno as those "with regard to which the parties are in conflict as to their respective rights", and disputes of a non-juridical nature, which may be roughly defined as those due to a divergence of view between the political interests and aspirations of the parties.

30. Recognition of this distinction leads to the conclusion that proposals for the obligatory settlement of all disputes whatsoever by arbitration do in fact involve two different kinds of arbitral settlement.

31. In the case of juridical disputes, the task of the arbitrator or of the Permanent Court is to ascertain and apply the appropriate rule of law. In the case of non-juridical disputes, the arbitrator's task goes beyond such a purely judicial function and becomes political, and even possibly legislative in character. The arbitrators must be authorised to decide *ex-æquo et bono* ; and possibly they may have to be invested with quite special powers not covered even by this formula.

32. Although, therefore, there are a certain number of instances of treaties providing simply for compulsory arbitration in all disputes and empowering the arbitrators or the Permanent Court to decide *ex-æquo et bono* in the absence of an applicable legal rule, it is thought to be unlikely that a general treaty of this kind would under present conditions secure the approval of a large number of Powers.

33. A second difficulty in the way of the compulsory settlement of all disputes by some form of previously prescribed procedure is held to be that the acceptance of arbitration as between any two States is to a large extent a question of mutual confidence. Assuming that States in general are not at present prepared to pledge their resources to ensure the general enforcement of arbitration awards, the execution of these awards depends on the good faith of the parties. Certain Governments therefore find it difficult to accept general obligations involving the settlement by arbitration of disputes with all other States. A State which takes this view hesitates to become a party to an arbitration treaty open to the world at large, because it thereby runs the risk of finding itself bound to settle by arbitration disputes with other States with which it does not in fact consider that disputes can in all cases be satisfactorily arbitrated.

34. Finally, certain Governments have held that, even within the category of juridical disputes, there may arise differences which, owing to the imperfections or uncertainty of international law, or the existence of conflicting schools of thought in international law, or the serious nature of the dispute itself, cannot be effectively settled by a purely legal decision. It is argued that States act prudently in not accepting obligations which may result in their being legally bound to do something that may prove to be materially impossible. This consideration explains the traditional reservations which appear in arbitration treaties.

35. It may therefore be held that under present conditions any general treaty for the compulsory settlement of disputes by arbitration which might be negotiated through the League would, in order to attain the degree of flexibility which the Assembly held to be a necessary condition for universal acceptance, require either to be restricted to disputes of a juridical nature or to contain provisions concerning the rules to be applied by arbitrators when dealing with particular non-judicial disputes.

36. It may be considered that the latter necessity exists even if, as has been suggested, the provisions for the arbitration of non-judicial disputes were to take the form of an optional clause which need not be accepted when accepting the treaty as a whole. It may further be argued that, as with the optional clause of the Protocol of Signature of the Statute of the Permanent Court, there should, even as regards juridical disputes, be a possibility of accepting arbitration for certain categories of disputes only, or of making reservations excluding certain categories of disputes. There would remain the difficulty mentioned above, namely: that the universality of the treaty constitutes an objection from the point of view of States which consider that it is not possible to arbitrate with all other members of the international community. This objection could be met by permitting reservations under which a contracting party would state that the convention did not apply to its relations with some other country or countries. It might perhaps be well to consider at the same time the system of entering into direct undertakings with a greater or lesser number of States. An idea worth mentioning is that of supplementing the tables in the list of treaties published by the Secretariat, by placing opposite the treaties of conciliation and arbitration and the names of the parties a description of the disputes which are in general subject therein to arbitration.

37. In addition to the above reasons for doubting whether a general arbitration treaty would in fact secure general acceptance, there is an increasing tendency to conclude treaties of arbitration as between pairs of States or limited groups of States. The diversity of the provisions of these treaties, both as regards their scope and the procedure and choice of the tribunal, undoubtedly corresponds to the diversity of the circumstances which govern the relations of these groups *inter se*. At the present time, it would seem to be difficult to reduce this varying practice to one common type.

III. CONCERNING THE FORMS OF ARBITRATION.

38. In spite of the difficulties which at present stand in the way of a general treaty of arbitration and conciliation, the system should not be rejected outright. In practice, it is possible to conceive of various types of treaties which might take the form of either general treaties or special treaties.

39. Should the Committee on Arbitration and Security consider it desirable to prepare a model general treaty of arbitration, it would perhaps be well to follow the system of the Locarno Treaties, that is to say, to provide for obligatory arbitration only in the case of juridical disputes, leaving other disputes to be settled by a procedure of conciliation. The Swedish draft, which is founded on this principle, might be adopted as a basis for discussion. It will perhaps be thought necessary to allow a certain latitude in the matter of reservations, withdrawing certain categories of juridical disputes from the effects of the arbitration provisions. Were this not done, the treaty would in fact possess less elasticity than the optional clause of the Permanent Court, which is already an instrument for the acceptance of that Court's jurisdiction in all or some of the categories of juridical disputes specified in the Covenant. It might be desirable to insert a provision making the treaty applicable only to disputes the elements of which arise after the State in question has become a party to it, or to permit reservations on this point. Finally, it appears to be almost universally admitted that any general treaty should be considered as supplementing already existing treaties or special treaties concluded between two or more of the parties to it,

and should not apply to disputes covered by such treaties. It would be necessary to consider whether, and if so how, these treaties, concluded by a certain number of States, could be opened for accession by other States.

40. It would be useful if the Committee on Arbitration and Security were to prepare one or more models of special arbitration treaties. The materials for drawing up such standard treaties exist in abundance in treaty law.

41. The Assembly, at its last ordinary session, recognised the desirability of examining how it would be possible to encourage acceptance of the optional clause of the Protocol of Signature of the Statute of the Permanent Court of International Justice. The discussions on this point did not, however, lead to any practical proposal. It is difficult to see what can be done by the organs of the League in this matter, beyond recognising, as they already do recognise, that the development of the Court's jurisdiction under the optional clause, as between States which feel able to accept this clause, constitutes an important application of the principle of arbitration. The optional clause is not, however, the only instrument under which compulsory jurisdiction can be conferred on the Permanent Court. The Court can obtain such jurisdiction both under arbitration clauses in general treaties of every kind and under special arbitration treaties. A suggestion on these lines is made in the British memorandum. It is also held that a recommendation might be made, to the effect that general treaties of all kinds should, wherever possible, contain an article giving the Permanent Court jurisdiction over disputes as to their interpretation of application, and that special treaties of arbitration should refer juridical disputes to the Permanent Court rather than to other forms of arbitral tribunal. A suggestion to this effect is also contained in the British Government's memorandum. Not merely is the Permanent Court specially qualified to deal with juridical disputes, but every extension of its jurisdiction strengthens its position, and, at the same time, helps to promote uniformity in international law, as it is gradually formulated by successive decisions. In the matter of non-juridical disputes, efforts might be made to determine, in the light of practical experience, how a tribunal acceptable to the parties could be set up.

42. The treatment of the question of conciliation depends to some extent on whether an endeavour is to be made to draft a general arbitration treaty. If so, there can be little doubt that provisions concerning the conciliation of disputes should be inserted therein, as in the Locarno precedents and in the Swedish draft. It may also be said that if an attempt is made to prepare one or more standard arbitration treaties, these drafts, or one of them, should contain provisions for conciliation.

IV. CONCERNING CONCILIATION.

43. Even if the Committee should not consider it necessary to recommend a general arbitration treaty, a general conciliation treaty might still be considered. The difficulties arising from the universality of the treaty are similar, but they are probably less serious than in the case of arbitration. On the other hand, the universal acceptance of conciliation obligations would mean that disputes which were neither settled by diplomacy nor referred to arbitration would, before they came to be dealt with by the Council or the Assembly under the Covenant, have been the subject of full examination with the assistance of neutral conciliators. The following ideas might be taken as the basis of a system of conciliation :

1. Conciliation would be provided for all disputes, except those for which another procedure of pacific settlement is provided in other treaties ;

2. The Conciliation Commission should be permanent. It should consist of five members, three of whom would be neutrals jointly designated by the parties ;

3. The Conciliation Commission would be notified of a dispute by a request from either party. It would be bound to finish its work within six months. It would draw up a report, concerning which the parties would have to give an opinion within a definite period ;

4. While the proceedings are in progress the parties should undertake to refrain from any action which might aggravate the dispute and the Commission of Conciliation might indicate to the parties the provisional measures which it would be desirable to adopt ;

5. The procedure of conciliation should not affect the rights and obligations of the Members of the League to lay certain questions before the Council under the terms of the Covenant. In this case it would be for the Council to decide whether it preferred to await the termination of the conciliation proceedings or to examine the case forthwith.

Lastly, it might also be useful, in accordance with the suggestion put forward in the German Government's memorandum, to consider how the force and authority of the recommendations and proposals resulting from the procedure of conciliation could perhaps be strengthened.

V. CONCERNING THE CO-ORDINATION OF TREATIES OF CONCILIATION WITH ARTICLE 15 OF THE COVENANT.

44. At this point attention should be directed to the question of co-ordinating the application of Article 15 of the Covenant with that of a general treaty of conciliation. Unless this question is foreseen in the treaty, there might arise some rivalry of jurisdiction between the Council, acting under Article 15 of the Covenant, and the Commission of Conciliation, acting under the treaty. Under the terms of Article 15, any dispute likely to lead to rupture which is not submitted to arbitration or judicial settlement must be submitted to the Council; the article does not exclude the disputes covered by a treaty of conciliation or which form the subject of conciliation proceedings in progress. This does not necessarily mean that in such circumstances the Council would adhere to Article 15 and would not hold that the parties are bound to comply with the terms of their conciliation treaty. Further, if conciliation proceedings were in progress, the Council might agree with the principle laid down in the reply to Question 2 given in the report of the Special Committee of Jurists appointed by the Council resolution of September 28th, 1923. It may perhaps be useful to give this reply in full :

“ Where, contrary to the terms of Article 15, paragraph 1, a dispute is submitted to the Council on the application of one of the parties, where such a dispute already forms the subject of arbitration or of judicial proceedings, the Council must refuse to consider the application.

“ If the matter in dispute, by an agreement between the parties, has already been submitted to other jurisdiction, before which it is being regularly proceeded with, or is being dealt with in the same manner in another channel, it is in conformity with the general principles of law that it should be possible for a reference back to such jurisdiction to be asked for and ordered. ”

45. Most of the conciliation agreements registered by the Secretariat (43 treaties out of 52) do not mention the application of Article 15. If special provisions on this subject are to be inserted in the draft treaty, two solutions are possible ; the request to the Council under Article 15 must be deferred until the conciliation proceedings provided for in the treaty have been terminated. A precedent for this will be found in the Treaty between Chile and Spain, dated March 26th, 1920 (registered as No. 111). Under this treaty the parties cannot at present have recourse to Article 15, although the Council could probably, under Article 11 of the Covenant, consider the situation existing between these two States. Whether this would be desirable in all cases, and whether it would be quite in keeping with the system set up by the Covenant, is a problem which would require very careful consideration. It is to be noted further that seven other treaties, including the Locarno group, stipulate that disputes shall be laid before the Council at the request of one of the parties, if the parties do not reach an agreement within one month after the termination of the work of the Conciliation Commission ; they do not contain any clause expressly forbidding the submission of requests to the Council before that date.

46. The other solution would be to include provisions expressly recognising the fact that the Council and the Conciliation Commission had parallel jurisdiction, but making an effort to co-ordinate these two jurisdictions. This principle might be followed, the Council being left entirely free to decide whether, in any particular case, it should itself immediately take cognisance of the dispute to the exclusion of all other conciliation procedure.

47. Doubtless under such an arrangement it would be permissible for each party to the dispute to insist that the Council should immediately take cognisance of the matter, thus excluding, retarding or suspending the conciliation procedure, if that party held that the seriousness of the situation or special circumstances justified its action. But this stipulation could not serve as a pretext to enable one of the parties to resist conciliation procedure arbitrarily and to the bitter end, nor could it be interpreted as allowing the arbitral powers of the Council to interfere with this procedure. The Council would have to determine whether it would act on a request for the immediate consideration of the dispute — action which might, for instance, be justifiable when the procedure before the Conciliation Commission was not only likely to be abortive but the source of dangerous delay, or when it might decrease the possibilities of satisfactory settlement. We are considering the question from the point of view of an agreement destined to become universal and to apply to all disputes without distinction ; an agreement, therefore, under which conciliation will, *prima facie*, be compulsory in all disputes likely to be of immediate danger to world peace. It would not be wise to draft an agreement of this kind in such a way as to exclude in all cases the possibility of submitting a question to the Council under Article 15 before the conciliation procedure has been terminated. In certain cases it may be desirable for the Council to consider a question under Article 15, before any request for an enquiry has been addressed to another organ, when the enquiry itself appears destined to be long and its success is by no means certain.

VI.

48. Finally, it should be noted that the subject which has just been examined forms only part of the larger question of the development of security by measures tending to prevent war. Provisions for the arbitration or conciliation of disputes are, therefore, a natural and necessary

part of any form of security agreement, whether the agreement be made between a small or a large number of States. Great as their value in themselves may be, arbitration and conciliation attain their highest importance from the point of view of security when, as in the case of the Locarno Treaties, they form the central element of a security pact.

VII. CONCLUSIONS.

49. With a view to developing pacific procedures for the settlement of disputes, it is suggested :

(1) That means be sought to facilitate and make more effective the procedure already contemplated in an Assembly resolution whereby the Council should lend its good offices with a view to the conclusion of arbitration and conciliation conventions. (§ No. 21.)

(2) That the Governments be recommended to study one or more types of arbitration and conciliation treaties which might be adapted to the situations of the different States (§ No. 27).

(3) That means be sought to obtain, with the consent of the original parties, the accession of new States to treaties already concluded. (§ No. 27.)

(4) That the possibility of general arbitration treaties be studied. (§ No. 27.)

(5) That consideration be given to the distinction between juridical and non-judicial disputes, with a view to the framing of special rules in regard to procedure and decisions, so as to facilitate the acceptance of arbitration for non-judicial disputes. (§§ Nos. 31 and 35.)

(6) That, should the idea of a general arbitration treaty be accepted, means be studied which would enable States to enter into undertakings at their discretion with a greater or lesser number of other States. (§ No. 36.)

At the same time efforts would be made, by the judicious permission of reservations in regard to disputes, to make the Convention sufficiently elastic to admit of its being adapted to the special conditions of the different States. (§ No. 39.)

(7) That special attention be paid to conciliation, and that the framing of a general conciliation treaty be contemplated, even if the idea of a general arbitration treaty should not be accepted. (§ No. 43.)

(8) That measures be taken to co-ordinate the conciliation procedure laid down in the separate treaties and the procedure for mediation by the Council in virtue of the various articles of the Covenant, so that, if action by the Council became necessary, this should ensue without obstacle, and that at the same time it should be impossible for the conciliation procedure to be arbitrarily evaded. (§ No. 44.)

50. *Appendix.*

DIFFERENT TYPES OF TREATIES.

I. *Arbitration and Conciliation.*

All disputes are to be submitted to arbitration.

1. Arbitration	{ A. Juridical disputes ; to the Permanent Court of International Justice, B. Other disputes ; to a Tribunal of the Hague type,	or	} To the Permanent Court of International Justice in all cases, or to a Tribunal of the Hague type in all cases.

Reservations.

II. *Arbitration and Conciliation.*

Certain disputes are to be arbitrated.

1. Arbitration	{ A. Juridical disputes or only certain juridical disputes.	} To the Permanent Court of International Justice or to a Tribunal of the Hague type.		
			2. Conciliation	{ B. Other disputes.

Reservations.

¹ The parties may decide that, should the Council fail to arrive at unanimity, it shall refer the question to an Arbitration Committee. The result is that, when agreement between the parties is not attained, a solution binding upon them is nevertheless ultimately reached.

III. Conciliation.

All disputes { Conciliation } Council of the
 { Commission } League

Reservations.

1. Vital interests.
2. Territorial status.
3. Questions governed by internal legislation.
4. Prior events.

51. The above table, which is based upon an examination of the practice actually followed, is designed to give a comprehensive survey of the characteristics of treaties relating to arbitration and conciliation. The treaties in question may be reduced to three principal types, each admitting of variants.

Of these pacific procedures, only two essential elements have been retained : disputes and the organ of jurisdiction.

Convention Type No. I is represented by thirty treaties registered with the Secretariat. All disputes are to be arbitrated. As a rule, two tribunals are mentioned : the Permanent Court of International Justice for juridical disputes, and a tribunal of the Hague type (that is, an *ad hoc* tribunal composed of members appointed by the parties) for other disputes.

Some treaties adopt the Permanent Court of International Justice or a tribunal of the Hague type for all cases.

Conciliation is generally compulsory for non-juridical disputes and optional juridical disputes. Certain treaties make it compulsory in all cases. If it is abolished in all cases, there is simply an arbitration convention.

Convention Type No. II is represented by the Locarno arbitration and conciliation treaties. Juridical disputes are arbitrated, while others are submitted to conciliation.

If conciliation is abolished, there is simply an arbitration system confined to juridical disputes. This is the system laid down in Article 36 of the Statute of the Permanent Court of International Justice.

There is the possibility of arbitration being confined to certain juridical disputes, the latter, instead of coming under one comprehensive head, being specified in detail : States would accept arbitration for this or that category of juridical disputes. This system was discussed at the Second Hague Conference in 1907.

Convention Type No. III refers only to conciliation. It is represented by a number of treaties, concluded chiefly by Switzerland and the Scandinavian States.

Reservations. Reservations may apply to obligations under any one of the three types of Convention.

In the treaties registered with the Secretariat, nine kinds of reservations are found. Apart, however, from reservations which appear to have fallen into disuse (such as "honour", "interest of third States") and very special reservations (such as questions relating to the war of 1914, constitutional questions), the number of reservations may be reduced to the four fairly wide heads mentioned at the end of the table.

3.

Memorandum on Security Questions

Submitted by M. POLITIS, Rapporteur.

52. In this initial stage of the Committee's work the task of its rapporteur must necessarily be strictly limited.

First, we have to take a general view of the question, to examine the various treaties and agreements concluded by the States Members of the League, both between themselves and with non-member States, on the subject of security, for the purpose of diagnosing the situation as accurately as possible and obtaining some idea of the present position as regards security. Secondly, having gained our idea of the present position, we have to devise "practical measures" by which constructive work can be done at the present juncture on the lines indicated in the last Assembly's resolution.

I. PRESENT POSITION IN REGARD TO SECURITY.

53. According to the view now taken by most countries, security consists in two main guarantees: (1) that they will not be attacked by any other State; (2) that if, nevertheless, they were so attacked, they would receive prompt and effective aid and assistance from other countries.

This is the conception embodied in the Covenant of the League. The two guarantees mentioned are to be found, more particularly, the one in Article 10 and the other in Article 16 of the Covenant.

54. The degree of security thus provided, however, is not generally regarded as adequate, because the guarantees on which it rests are left indefinite in their principle and uncertain in their application. Moreover, to diminish still further the degree of security provided under the Covenant, there is the unanimity rule, which controls the Council in setting the guarantees in motion; for if unanimity is not secured, force may still lawfully be resorted to.

Thus security under the Covenant is subject to too many elements of uncertainty for States which feel themselves threatened to be able to decide, in the present situation, to diminish to any considerable extent the guarantees which they find in their armaments.

55. As a remedy for this, a supplementary general agreement has been suggested to fill up the gaps in the Covenant and enhance the efficacy of its provisions. Two attempts have been made to establish such an agreement. They were, however, unsuccessful, because it was felt that the scope and the uniformity of the guarantees were not suited to the present variety of conditions and the fluctuating nature of international relations.

56. At the same time, the investigations and discussions that took place on these occasions throw a fuller light on the complexity of the problem, and enable everybody to realise the nature of the bonds by which security is linked to disarmament on the one hand, and on the other to arbitration in its widest sense of procedures for pacific settlement. It is now regarded as a twofold axiom that: (1) there can be no disarmament without security, and (2) there can be no security without arbitration.

It is more and more clearly recognised that the relation between disarmament and security is not one of subordination, but of co-ordination; neither is less important than the other, and their progress must be equal and simultaneous.

The same applies to security and arbitration. Arbitration is an essential factor in security, and is parallel to it in the same way as security is parallel to disarmament. Thus every advance in arbitration is an increase in security, and in the possibility of limiting and reducing armaments.

57. Failing a general agreement, which was for the time being impossible, an endeavour was made to find additional guarantees of security in separate agreements, so linked together as to form a coherent whole consonant with the spirit of the Covenant of the League and operating in harmony with the organisation which the Covenant sets in motion.

58. In this direction rapid progress has been made.

There are now in force 85¹ treaties of conciliation or arbitration, or conciliation and arbitration combined, which are registered with the League, and most of which embody the ideas advocated by the League. Among these there is one collective treaty binding four States. These treaties engage 38 countries, 24 of which are in Europe. Moreover, 14 States (12 in Europe) are bound by the optional clause concerning the compulsory jurisdiction of the Permanent Court of International Justice.

There are 12 separate treaties of non-aggression, three agreements embodying unilateral guarantees, and three agreements regarding unilateral respect for the political independence and territorial integrity of certain countries; most of these treaties are collective.

There are 15 treaties of political co-operation not amounting to alliances or guarantees; there are three agreements establishing neutral zones; and there are 15 separate treaties of guarantee

¹ This figure indicates the number of treaties registered on February 1st, 1928. For details, see the 2nd edition of "Systematic Survey of Arbitration and Security Treaties" (document C. 663. M. 216. 1927. V).

in the form of alliances, military agreements, or pacts of friendship and co-operation, and one collective treaty of non-aggression and guarantee among five States.

The great store of information collected by the Secretariat, with a diligence and zeal for which we are greatly indebted, gives some idea of the nature, the scope, and the practical value of the engagements entered into by the various countries concerned in this immense network of treaties.

It would be interesting to see these engagements represented, particularly on a map of Europe, by lines of various shapes and thicknesses joining the capitals of the contracting States. Such a map would present, in regard to arbitration and security treaties, a picture similar to that which Europe offered at the beginning of the development of railway and telegraph systems. It should here be observed that the increase of security in Europe carries with it a like increase in other parts of the world.

59. Most of these agreements, being due to the impulse given by the League in the matter of arbitration and security, follow certain common lines. Some of them, however, make no suggestion as to the co-ordination of their systems of mutual assistance with the procedure under the Covenant, and more particularly with the action of the Council in an emergency. This is not true of the Locarno Agreements and those which follow the same lines.

60. The treaties now in force form a system which is too involved, too complex, and in some respects too uneven, for the supplementary guarantees of security which they add to those provided by the Covenant to be measured with tolerable accuracy.

In order of importance, they fall into eight main classes :

- (1) Regional collective agreements for non-aggression, pacific settlement and mutual assistance ;
- (2) Separate agreements of the same nature ;
- (3) Agreements for non-aggression ;
- (4) Collective agreements for conciliation, arbitration and judicial settlement ;
- (5) Separate agreements of the same nature ;
- (6) Arbitration agreements ;
- (7) Conciliation agreements ;
- (8) Agreements for simple political co-operation.

61. In each of these classes the practical value of the agreement varies with the nature of the contracting parties. Its value is greater if the relations between the parties are such that disputes capable of causing a rupture might be anticipated, than if their relations have long been friendly and are unlikely to be seriously disturbed.

62. The value of any agreement, however comprehensive and however important as regards the nature of the parties, is essentially relative, for the efficacy of the security which it appears to give to the parties will, in actual fact, depend largely on the position, as regards security, of other countries linked with them by ties of "solidarity of a geographical or other nature". The security of the former varies as the security of the latter. Consequently, the security of both can only be guaranteed in practice — failing a general agreement — by a series of regional pacts completing each other and forming a harmonious whole within the framework of the League of Nations, whose system of protection would thus be amplified and reinforced.

Until such a position has been secured, the security of certain States will remain too precarious for them to be able to consent to any appreciable reduction of their armaments.

63. Though the regional and separate agreements at present in force may not give the States which have concluded them all the security they desire, it cannot be denied that they do add certain guarantees to those provided by the Covenant of the League. To realise this it will suffice to compare the situation they have brought about with the situation scarcely six years ago, at the time when by its famous Resolution XIV the Third Assembly made absolutely clear the interdependence of disarmament and security. Each one of the numerous arbitration and security agreements which have been concluded since that time has placed in the path of war an obstacle which, slight, even imperceptible as it may be, is nevertheless of some value for the consolidation of world peace.

64. But to provide a picture of the present situation in regard to security the facts already stated are not sufficient. A psychological factor must also to some extent be taken into account. Security consists in the absence of any danger of aggression ; but there are two ways of judging of this absence of danger. It may be regarded from the objective point of view of the reality or unreality of the danger, or from the subjective point of view of the feeling of the country concerned that it is or is not secure. Now it is not sufficient for third parties to realise that the circumstances of a certain country are such that no real danger threatens it. That country itself must feel the same ; from its point of view, security is life ; it cannot be expected to disarm if it feels exposed to a threat of aggression.

In the last resort, therefore, what is necessary is to implant and develop in every country that confidence without which nothing can be done. Arbitration and security agreements are a step in this direction, and their conclusion should therefore be encouraged and their scope enlarged.

II. PRACTICAL MEASURES FOR INCREASING THE GUARANTEES OF SECURITY.

65. There is only one possible way of endeavouring to increase the guarantees of security, and that way consists in the conclusion of separate agreements or regional pacts of non-aggression, of pacific settlement of disputes and mutual assistance, or of non-aggression only. The more logical and the speedier method — the conclusion of a general treaty binding on all States Members of the League — must, for the time being, be excluded. After the two unsuccessful attempts made in 1923 and 1924, it would be not merely useless from the practical point of view, but dangerous to the prestige of the League, to make a third attempt; for the objections raised to the earlier attempts still exist.

As between separate agreements and regional pacts, the latter appear in every respect preferable. They can be better and more easily brought into line with the Covenant system, and, consequently, they help more to increase the guarantees of security.

It is essential to add that this increase in the guarantees would benefit not merely the contracting parties, but indirectly, in varying degrees, every country in the world.

66. The task of the rapporteur was primarily to consider the problem of security from the point of view of the application of regional pacts. He must, however, stress the point that these pacts are necessarily based on mutual confidence and the sincere desire of all contracting parties to develop mutual co-operation. It is not for the rapporteur to make suggestions regarding the preparatory work in the political field, and for the promotion of a better understanding between the peoples which would have to be undertaken to this end, nevertheless this appears to him to be an essential part of the work of pacification.

67. The best method of encouraging the conclusion of as many regional security pacts as possible would seem to be to bring light into the minds of peoples and Governments by demonstrating the benefits which would accrue to their national interests, and to give them every inducement, by offering them models which they could adopt wholly or in part, and which they could combine and adapt as required to the peculiar circumstances affecting the countries in any given area.

No obligation would thereby necessarily be assumed by the States Members of the League. The sole aim of their co-operation would be to establish model treaties which each of them would then be free to take as a basis in any negotiations with its neighbours.

68. It would seem desirable that these models should be made as flexible as possible, alternative formulæ with one or more variants being proposed for most of their clauses. The question of security is, after all, essentially plastic; its aspects vary in different places, and its guarantees in different circumstances.

It will be natural, however, to give primary consideration to Europe; for it is in Europe that the benefit will first be felt from the suggested system. It is there that the need of greater security is now most keenly felt; and it is European countries that offer the most recent experience in treaty-making, which will have to be taken as a guide.

69. In this respect, the Committee will base its work on that already done by the League. Its results will have to be adjusted to the new needs which came to light during the sittings of the Preparatory Commission. The draft Treaty of Mutual Assistance of 1923, the Protocol of 1924, the Rhine Pact of 1925, and the later agreements based upon them, will furnish the general framework for the model treaties of security.

70. In these model treaties, provision has to be made for the best possible settlement of the various questions whose solution may help to assure the countries in any particular area of the highest degree of security at present conceivable.

Among these questions there are three which are so essential that they should always be dealt with in a regional security pact, if it is to achieve its object. These questions are: (1) the exclusion of recourse to war; (2) the organisation of pacific procedures for the settlement of all disputes; and (3) the establishment of a system of mutual assistance, linked with the functions of the Council of the League.

To each of these questions there are attached certain complementary questions, in particular: to the first, the question of demilitarised zones; to the second, that of the refusal to accept a pacific settlement or to carry out the decision arrived at; to the third, that of the organisation of economic, financial and military assistance.

Four other subsidiary questions deserve study with a view to enhancing the practical value of the models contemplated. They are: (1) the connection between regional pacts and the reduction of the armaments of the contracting countries; (2) the accession of third States and their possible guarantees; (3) the co-ordination of each regional pact with the others and with the Covenant of the League; and (4) the guaranteeing of the territorial integrity of the contracting parties.

On each of these ten questions — which do not, of course, exhaust the subject — the following suggestions are submitted for the Committee's consideration:

71. *Exclusion of resort to war.* — The condemnation of aggressive war, already implied in the Covenant (Article 10), and considered by the Assembly on various occasions in 1923 and 1924, was publicly proclaimed in the Assembly resolution of September 24th, 1927, as tending "to create an atmosphere of general confidence calculated to facilitate the progress of the work undertaken with a view to disarmament".

It will therefore be essential to set down this condemnation at the head of every regional security pact, and to deduce the corollary that the contracting parties "mutually undertake that they will in no case attack or invade each other or resort to war against each other".

This is the formula employed in the Rhine Pact and in various separate agreements based upon it. It might well be suggested as a model to be followed in future regional pacts, for it is very comprehensive and perfectly clear. If it were desired to express the same idea more briefly, use might be made of the formula of the Geneva Protocol (Article 2) : " the signatory States agree in no case to resort to war ".

In any event, however, it will be essential to make it quite plain that the condemnation relates only to aggressive war, by specifying that force may still be resorted to for purposes of legitimate defence, in the application of Article 16 of the Covenant, in execution of a decision of the Assembly or Council of the League, or when action is undertaken, in virtue of Article 15, paragraph 7, of the Covenant, against a State guilty of aggression. The formula employed in this connection by the Rhine Pact (Article 2) and the separate agreements modelled upon it is to be recommended, for it could hardly be further condensed. The formula of the Geneva Protocol would be unsuitable to a regional pact, because it does not mention the hypothesis of Article 15, paragraph 7, which was necessarily excluded from the system of the Protocol. In a regional pact, the clause embodied in Article 15, paragraph 7, might, it is true, as we shall see later, be waived in disputes between the contracting parties. It would, however, necessarily have to be applied in disputes between one of them and a third party, in which it would continue to operate. In such a dispute, if the Council is not unanimous, the contracting party involved in the dispute has the right to take such action against its adversary " as it shall consider necessary for the maintenance of right and justice ". It is important that each of the other contracting parties should be able to reserve the right to make use of the same latitude in accordance with its interests.

72. *Demilitarised zones.* — The establishment of demilitarised zones between the territories of the States parties to a regional security pact, or some of them, might in principle be recommended as a measure calculated to prevent aggression and to facilitate the determination of the aggressor, should this become necessary.

In view, however, of the variety of conditions, no rigid rules should be proposed ; the greatest elasticity is necessary in this matter. Account should be taken of the configuration of the various frontiers, the relative size of the countries concerned, and the lessons to be drawn from the customs of the neighbouring countries. There may be cases in which the establishment of a demilitarised zone is impossible in practice.

There should be the same elasticity in the regulation of any demilitarised zones that the States concerned might desire to establish, particularly in regard to the temporary or permanent supervision which the contracting parties might ask the Council of the League to organise.

Violation of a demilitarised zone should not in all cases be treated as equivalent to a resort to war. Its degree of gravity depends on circumstances. It would be for the Council to judge, and to prescribe the measures to be taken in order to ensure the observance of the engagements given.

III. ORGANISATION OF PACIFIC PROCEDURES.

73. The exclusion of the resort to war as a means of settling disputes necessarily implies an undertaking to settle them by pacific means. That is the rule established by the Rhine Pact and the separate agreements based upon it. It is also the corollary drawn by the Assembly resolution of September 24th, 1927, from the condemnation of wars of aggression. In every regional security pact, therefore, pacific procedures, to be followed in the event of a dispute, must be arranged for.

In this matter various systems are established in practice. There is the system which, by making arbitration compulsory without any restriction, enables a final settlement of the dispute to be reached in every case ; and there is the system which, combining arbitration (limited to certain classes of dispute) with conciliation and mediation by the Council, leaves the dispute unsettled if the Council cannot attain unanimity.

74. In order that the model regional security pacts may be as flexible as possible, it would be better not to lay down that the acceptance of a more or less comprehensive obligation to arbitrate is indispensable. Such a provision might be difficult to carry out if the number of States contemplating the conclusion of a regional pact were fairly large ; the relations of each of them with the others might not in all cases be the same, and consequently a uniform rule would be ill adapted to their diversity. This should not form an obstacle to the conclusion of the pact. It would be sufficient to stipulate that all disputes between the contracting parties should necessarily be settled by some form of pacific procedure — conciliation, arbitration, judicial proceedings, or, if necessary, mediation by the Council — without specifying the respective spheres in which each of these procedures should be applied. The necessary details might be given in special conventions already concluded, or others which each of the contracting States would be free to conclude collectively or separately with all the others or with only some of them. The essential point is that the security pact should be capable of operating, even in the absence of any such convention. All that would be specifically provided would be that any dispute, of whatever nature, which might arise between two or more contracting parties would be dealt with by conciliation or arbitration, in accordance with the previous engagements of the parties or the rules which they might agree upon in each case, and that, in the absence of any previous engagements or special agreement, or failing any award or arrangement as the result of conciliation proceedings, the question would necessarily be laid by one of the parties before the Council of the League.

It would then be understood that, if all other pacific procedures failed, the parties should submit their dispute to the Council. It would remain for them to indicate in the regional pact the details of these procedures and, in particular, the time-limit after which, failing any resort to arbitration or conciliation, the question would have to be laid before the Council.

On the other hand, it may be worth considering whether it would not be expedient to ensure that this undertaking to settle all disputes by pacific means should be made as effective as possible in practice.

75. The question which arises is this: If there were no provision for resort to the Council except under Article 15 of the Covenant, there would be a risk of the dispute being left unsettled if the Council were not unanimous. This is the position under the Locarno system. In practice, however, the risk is not serious, owing to the guarantee by third Powers. In future regional pacts, in which there would not necessarily be any such guarantee, the case would be different; the undertaking not to resort to war might become precarious if a serious dispute were left long unsettled. It might, therefore, be wise to take steps to obviate this contingency.

At first sight, it might be thought reasonable to recommend that the contracting States should stipulate that, in the event of a resort to the Council, they undertake to hold the latter's decision as final and binding in their mutual relations, even if the decision were only reached by a simple majority or a specified majority.

A precedent for this system is to be found in the Convention of October 20th, 1921, regarding the neutralisation of the Aaland Islands, which, after maintaining the principle of unanimity in the case of the Council's being called upon to pronounce as to the violation of its provisions, adds (Article 7): "if unanimity cannot be obtained, each of the High Contracting Parties shall be entitled to take any measures which the Council, by a two-thirds majority, recommends".

This solution seems, however, open to a serious objection. Majority decisions of the Council, even if accepted by the parties as binding, would still, under the Covenant, have no legal effect on the other States Members of the League. Consequently, a war undertaken in contempt of such a decision would be lawful in their eyes under Article 15, paragraph 7, and would not be covered by the provisions of Article 16.

Another solution should therefore be found which, while ensuring that a final decision should be reached in every dispute, would not form an obstacle to the application of Article 16.

Without expressly recommending their adoption, one of the following suggestions might serve as a basis:

(1) It might be agreed that the Council should take a decision by a bare majority or a specified majority, but in the capacity of arbitrator. This decision, being equivalent to an arbitral award, would be covered by Article 13, and hence by Article 16, of the Covenant.

A precedent for this would be provided to some extent by the Treaty of Lausanne in the Mosul affair.

(2) It might be provided that when, in the absence of any organised system of arbitration between the parties, their dispute came before the Council, the latter should first proceed to act, in virtue of Article 15, the parties undertaking to accept its unanimous decision as final and binding upon them. Should the Council fail to reach unanimity, it would refer the dispute to a body of arbitrators, having first determined by a bare majority or a specified majority the constitution, procedure and powers of such body. In every case, therefore, in virtue either of Article 15 or of Article 13 of the Covenant, there would be a final decision, any violation of which accompanied by resort to war would undoubtedly come under the provisions of Article 16.

76. *Refusal to follow pacific procedures or to execute a decision reached.* — This contingency must be provided for, in order to ensure that the undertaking referred to in the preceding paragraph shall be effective. It must be assumed, in this case, that the recalcitrant State continues nevertheless to maintain a pacific attitude, since if it resorts to force it will at the same time be violating its obligation in regard to non-aggression, thus creating the hypothesis which will be examined in due course.

Passive resistance should involve a sanction proportionate to its degree of gravity. As in the Geneva Protocol (Article 4, paragraph 6), followed by the Rhineland Pact (Article 5), so here it would be expedient, in conformity with the spirit of the Covenant, to adhere to the rule laid down at the end of Article 13: the question will be brought before the Council by the other party to the dispute. The Council will begin by exercising all its moral influence to persuade the recalcitrant State to respect its undertaking. Should it prove unsuccessful, it will propose what steps should be taken. The high contracting parties would be bound to conform to such proposals.

77. *Domestic jurisdiction.* — It is important to consider what provision should be made in the model security treaties for the rule laid down in Article 15, paragraph 8. In the absence of any stipulation, it is certain that if the assertion of domestic jurisdiction were submitted either to the Council or to international judges, and were recognised to be well founded, the dispute would remain unsolved. This would mean a gap — at first sight serious. It would not really constitute a direct menace to peace, since resort to force would still be prohibited: a State which was unsuccessful in obtaining a material settlement of its claim through its adversary's domestic jurisdiction having been recognised would nevertheless be obliged to maintain a pacific attitude. It would have to content itself with the general resources provided by the other articles of the Covenant of the League, in the hope of arriving in time at a settlement. If its growing

impatience drove it to acts of violence, it would have to expect legitimate defence on the part of its adversary and armed intervention on that of the other contracting States.

It is certainly not in the interests of peace to strain the patience of States who consider themselves victimised by the pressing of their rivals' rights; it is therefore desirable that, in the relations between countries bound by a regional security pact, it should always be possible in case of dispute to obtain a decision on the substance of the question. But it has to be admitted that in the present state of international law and international morality the complete renunciation of the rule laid down in Article 15, paragraph 8, would be attended by more drawbacks than advantages. Prudence, therefore, recommends that it be maintained. In order to give it greater elasticity in application, however, reference might be made, as in the Geneva Protocol (Article 5), to the rule prescribed in Article 11 of the Covenant. It would thus be understood that when, on examination, a dispute is recognised as coming within the domestic jurisdiction of one of the parties, those concerned should be fully entitled if necessary to demand that action be taken by the Council or the Assembly.

If, however, some of the States contemplating the conclusion of a regional security pact should desire in their relations with one or other of their co-contractors to renounce wholly or in part, with or without conditions, the protection afforded them by the rule of domestic jurisdiction, it should be legitimate for them to do so in special arbitration or conciliation conventions, if they undertake not to plead the said rule in specific contingencies either before the judge or before the Council.

78. *Establishment of a system of mutual assistance.* — The undertaking to refrain from aggression and to adopt pacific procedures in every case requires, in the interests of security, that the contracting parties shall be bound to offer one another guarantees against the violation of the undertakings entered into. The possible extent of this obligation in the event of refusal to follow pacific procedures or to execute a decision has already been explained in paragraph 75.

The question now calling for consideration is that of assistance in the case of a resort to force. By assistance should be understood immediate and unstinted help offered by the contracting parties to any one of their number who may be the victim of unprovoked aggression, so as to enable that State to vanquish the aggressor and to safeguard its political independence and territorial integrity.

Two main questions call for examination : (a) the determination of unprovoked aggression ; (b) the nature and extent of the assistance due to the victim of such aggression.

79. *Determination of unprovoked aggression.* — The studies pursued for the past six years by the League of Nations have demonstrated the extreme complexity of the question, which must be viewed in two aspects : unprovoked aggression must first be defined ; it must then be established.

Considered from a general standpoint, the definition of unprovoked aggression presents real difficulties, as indicated in the memorandum on Article 10 of the Covenant submitted to the Committee on Arbitration and Security.

For the purposes of a regional security pact, however, it would appear to be relatively simple. It is sufficient to say that the term "aggressor" shall be applicable to any contracting State that resorts to force in violation of the undertakings entered into by it in the regional pact ; for example, if it offers armed resistance to a final decision.

To establish unprovoked aggression is, however, very difficult, since once hostilities have begun it is not always easy to say with certainty which of the belligerents first resorted to force.

Two systems have been recommended : the first — unanimous decision by the Council, exclusive of the representatives of the belligerent parties — was proposed in 1925 and adopted at Locarno ; the second — the automatic designation of the aggressor on the basis of presumptive evidence remaining valid until discounted by unanimous decision of the Council — formed the basis of the Geneva Protocol (Article 10).

Both are open to grave objections, which are so familiar that there is no need to recall them here.

As a way out of the difficulty, serious consideration should be given to an idea which was mentioned subsidiarily in the Geneva Protocol (Article 10) and was brought up again by the French delegation in the memorandum submitted by it in 1926 to the Preparatory Disarmament Commission.

The solution suggested was to empower the Council, should it not reach unanimity as regards the determination of the aggressor, to order the belligerents to observe an armistice, the conditions of which it was to fix by a two-thirds majority, and to agree that any belligerent refusing to consent to such armistice or violating it should definitively be regarded as the aggressor.

This system might in principle be incorporated in a regional security pact, but the question as to whether the Council could decide in all cases by a majority vote calls for the closest consideration, as it is essential that that decision should be in perfect agreement with the spirit and mechanism of the Covenant.

80. *Flagrant aggression.* — It has to be considered whether this rule should not, like the Rhineland Pact, admit of exception in the case of a flagrant violation of the mutual undertaking in no circumstances to resort to war. Under the Locarno system, the guarantee becomes binding and operative directly aggression has been established by the Council, when the latter is applied to by one of the contracting parties. It is, on the other hand, optional in the case of flagrant violation of undertakings entered into before intervention by the Council, in the sense that the guarantors reserve the right themselves to judge of the genuineness of the provocation and the urgency of intervention on their part.

This system, which is quite appropriate to a situation such as the Rhineland Pact had in view, might be adopted in pacts relating to areas where the situation is analogous.

81. *Organisation of economic, financial and military assistance.* — In addition to the adaptation to regional pacts of the rules at present contemplated for financial assistance and the measures that might be taken in virtue of Article 16, the regional agreements might, so far as concerns military assistance, enable the final paragraph of the resolution adopted by the 1927 Assembly to be put into effect.

This paragraph refers to “ an invitation from the Council to the several States to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council’s decisions or recommendations in the event of a conflict breaking out in a given region, each State indicating that, in a particular case, either all its forces, or a certain part of its military naval or air forces could forthwith intervene in the conflict to support the Council’s decisions or recommendations ”.

As the British Government has observed, “ it seems probable that States may well hesitate to indicate precisely what measures they would be prepared to take in hypothetical contingencies ; nor, for fear of increasing tension, or of creating it where none exists, are they likely to be willing, except in mutual agreement, to describe the contingencies in which they would be ready immediately to bring part or whole of their forces to the support of the Council’s decision or recommendations. The most effective way of establishing such mutual agreement, and of placing it on record, is by the negotiation of a formal treaty ”. In this connection the British Government recalled that “ His Majesty’s Government in Great Britain have adopted this method in the Treaty of Locarno, by which they have engaged to bring the whole of the forces of the country to the support of the League’s judgment in certain definite contingencies ”.

82. *Aggression by third States.* — The question of aggression has hitherto been considered simply when one of the contracting parties is the victim of another contracting party. It would perhaps be expedient, in order to increase the value of regional pacts from the point of view of security, to provide for the case of aggression against a contracting party by a third State, whether a Member of the League or not. This extension of the mutual guarantee might perhaps give rise to such objections as may be deduced from the observations made in the German and British Governments memoranda. But it might be proposed as a useful variant to States which are prepared to accept it and could make provision for it, with a view to such a contingency, on the basis of Articles 15 and 16 of the Covenant, in the case of a third party, Member of the League, and Article 17 in that of a non-Member third party.

In any case, failing an extension of the mutual guarantee, in the event of aggression by a third State, it should be clearly specified in the regional pact that the contracting parties are bound towards any one of their number who may be attacked by a third State in no circumstances to assist the aggressor.

83. *Re-establishment of peace after aggression.* — It would be expedient, in regional pacts, to include a reservation as to the Council’s right of examination in regard to the cessation of active mutual assistance and the re-establishment of normal relations, and also to the reparation due by the aggressor.

84. *Connection between regional pacts and disarmament.* — The idea of such a connection has formed the basis of the League’s work on security. It is to be found in the Draft Treaty of Mutual Assistance of 1923 (Article 2) and in the Geneva Protocol (Articles 7, 8 and 21, paras. 5-8). It might be well to consider whether it should not be taken up again in the model security treaties, which are designed for the very purpose of facilitating and preparing for a general agreement on the reduction and limitation of armaments.

Provision might be made in them for three series of stipulations :

(a) A contracting party which was the victim of unprovoked aggression would be entitled to the promised assistance only on condition that it had conformed to the general plan framed by the League of Nations for the reduction of armaments.

(b) On the lines of Article 7 of the Geneva Protocol, in the event of conflict between two or more contracting parties, any increase in armaments or effectives that might modify the position laid down in the plan of reduction and also measures of mobilisation and, generally speaking, any act calculated to aggravate or extend the dispute, might be prohibited.

(c) It might be added that any violation of the above-mentioned undertakings could be brought by any one of the contracting parties before the Council, which would have to examine it and, if necessary, to order the enquiries and investigations to be held, and, should an offence be established, to take appropriate measures for the removal of the cause and the safeguarding of peace.

85. *Accession of third States.* — It is in keeping with the spirit of the League of Nations that regional treaties, considered in relation to the Covenant as supplementary agreements, should be open to accession by third parties. The Draft Treaty of 1923 (Article 7, paragraph 4) and the Geneva Protocol (Article 13, paragraph 3) both contained this principle. But whereas the second admitted free accession by any State Member of the League, the first restricted it to the contracting parties to the Treaty of Assistance and made it conditional on the consent of the States signatories to the special agreement.

As regards possible regional security pacts, the question arises whether : (1) they should in principle be left open, (2) accession should be open to all third States without distinction, to third States Members of the League of Nations, or only to adjacent third States Members or non-Members of the League, and (3) accession should be free or subject to certain conditions.

As regards the first point there would appear to be no possible doubt: the object in view will be more successfully achieved by open than by limited pacts.

With reference to the second point, the same reason seems to militate in favour of the admission of all third States Members or non-Members of the League.

As regards the third point, accessions without the consent of the contracting parties could hardly be admitted since reciprocity in the matter of undertakings necessarily presupposes in the States affected a certain degree of confidence which may possibly not exist as between a third Party desirous of acceding and all the contracting parties.

At most it might be admitted that, in order to preclude arbitrary refusal of the necessary consent, the Council should exercise a certain moral control in the matter. It might be possible to provide that the application for accession should only reach the contracting parties through the Council, which, taking all the circumstances into account, could, if it thought fit, attach its recommendation when forwarding the application to the States.

86. *Guarantee by third States.* — It is conceivable that third States, while unwilling to accept reciprocity in the matter of undertakings, might wish for various reasons to strengthen the efficacy of a regional pact by offering the contracting parties their guarantee, in accordance with the Locarno precedent. Their offer might be made before or after the conclusion of the regional pact. In either case its acceptance must depend upon the consent of all the parties concerned. In view, however, of the undoubted utility of third party guarantees in consolidating peace, it would be well to facilitate their acceptance by providing some procedure which would ensure that such guarantees did in fact consolidate peace.

It would accordingly seem expedient to provide that the third guarantor would have to accept in its entirety the system of assistance agreed upon between the contracting parties.

87. *Guaranteeing of the territorial integrity of the contracting parties.* — It may perhaps be questioned whether in regional security pacts the reciprocal undertaking in regard to non-aggression should be accompanied, as in the Rhineland Pact, by an individual and collective guarantee to maintain the territorial *status quo* represented by the existing frontiers between the contracting States.

This is desirable but not essential. There might be cases when to require a guarantee in regard to territorial integrity would constitute an obstacle to the conclusion of the regional pact, for any State belonging to the area in question might mistakenly see in this guarantee a crystallisation of the existing frontiers which it was not prepared to accept.

It would appear expedient, therefore, not to make this guarantee an essential condition of the regional pact.

In order to create between the contracting parties the confidence which should colour their relations, it would be sufficient to incorporate in the regional pact the ideas to be found in the Preamble to the Arbitration Treaty between Germany and Poland signed in 1925 at Locarno, namely that sincere observance of pacific procedures permits of resolving any conflicts that might arise, that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals, and that the rights of a State cannot be modified save with its consent. This would emphasise the spirit of legality which the parties would promise to observe in their reciprocal relations, avoiding all moral or political subterfuge or pressure.

88. *Co-ordination or regional pacts inter se and with the Covenant of the League of Nations.* — The need for this double co-ordination is manifest. If regional pacts, following on one another in the various parts of the world and more particularly of Europe, are to constitute the elements of a general system of security and hence promote the consolidation of peace, it is essential that they should be linked up with one another and bear a coherent and unbroken relationship to a comprehensive scheme in effective harmony with the Covenant, which represents the common law of Members of the League.

(a) In order to ensure this double co-ordination, it is expedient that regional pacts should provide for intervention by a regulating body whose jurisdiction would be recognised and accepted by all the States concerting in this conventional movement. Only the Council could perform such a function.

As regards the manner in which it might exercise its powers of co-ordination, Article 7 of the Treaty of Mutual Assistance of 1923 supplies a model which might be followed with advantage.

Before registration, regional pacts would be examined by the Council from the point of view of their conformity with the Covenant and their connection with other regional pacts already concluded. The Council could, if necessary, suggest changes in the text of pacts submitted to it.

The Council's powers should also apply to the duration of regional pacts; Article 8 of the Rhineland Pact furnishes a useful precedent. It might be provided that such pacts should remain in force until, on the application of one of the high contracting parties, duly notified to the other signatory Powers three months in advance, the Council by a majority of at least two thirds should declare that the League of Nations offers the high contracting parties adequate guarantees, the pacts in question then ceasing to have effect on the expiry of one year from that date.

(b) It is natural, in the second place, that the parties should themselves co-ordinate the regional agreements with any special agreements they may have concluded previously. They could, if necessary, avail themselves of the good offices of the Council to facilitate such coordination.

(c) Lastly, another point calls for attention. The development of regional security pacts, in addition to its many advantages, is attended by one serious drawback which requires to be remedied. This is the regrettable possibility that the contracting States, now enjoying greater security *vis-à-vis* third States, may be less inclined to conclude arbitration treaties with those States.

There is one way of remedying this situation and at the same time of strengthening the force of regional pacts in relation to general peace.

This is, first, that the contracting parties should undertake to conclude pacts of non-aggression with third parties upon their borders. The Protocol annexed to the Franco-Roumanian Treaty of Friendship of June 10th, 1926, furnishes a precedent.

Such an undertaking would lighten the obligation in regard to mutual assistance assumed under the regional pact.

Secondly, the contracting parties should undertake to offer to conclude treaties of conciliation and arbitration with such third parties, their neighbours, and to give their favourable consideration to any proposals of this nature coming from those third parties.

This would involve a duty similar to, but more emphatic than, that laid down in Article 48 of the Hague Convention of October 18th, 1907, for the pacific settlement of international disputes.

This undertaking would signify that each of the contracting parties agreed to accept the good offices of the others with a view to concluding treaties of conciliation and arbitration with its neighbours.

It would further have the immense advantage that public opinion would be made the judge of the peaceful intentions of the contracting parties towards third parties on their borders.

89. *Conclusion of regional pacts.* — In determining the practical means whereby the League of Nations might promote regional pacts of security, attention might be paid to the provisions of Article 6, paragraph 2, of the Draft Treaty of Mutual Assistance of 1923, which lays down that "such agreements may, if the High Contracting Parties interested so desire, be negotiated and concluded under the auspices of the League of Nations".

But it would be possible to go even further, and the next Assembly might proclaim that if, in any specific area, two or more States desired to conclude a security pact with the other States belonging to that same area, they might apply to the Council requesting its good offices for this purpose.

If such a resolution were passed and the Council informed all the States Members of the League that it would be prepared to accept this duty, there is good reason to hope that the appeal would be answered in more than one part of Europe.

90. As regards agreements between States Members and non-Members of the League, whether security pacts or simply pacts of non-aggression, the Council might, if circumstances permitted, accept the duties already referred to, or even advise or suggest to the applicant party that it should employ the good offices of a third Power. The conclusion of agreements of this nature is desirable as a means of creating confidence alike between Members and non-Members of the League and between non-Members and the League itself.

IV. CONCLUSIONS.

91. It is impossible at present to contemplate the conclusion of a general agreement — adding to the obligations assumed under the Covenant — with a view to giving the nations greater security.

92. States which require wider guarantees of security should seek them in the form of separate or collective agreements for non-aggression, arbitration and mutual assistance, or simply for non-aggression.

93. Regional pacts comprising non-aggression, arbitration and mutual assistance represent the completest type of security agreement, and the one which can most easily be brought into harmony with the system of the Covenant. Such pacts should always include the following provisions :

(a) A prohibition to resort to force ;

(b) The organisation of pacific procedures for the settlement of all disputes ;

(c) The establishment of a system of mutual assistance, to operate in conjunction with the duties of the League Council.

94. The establishment of demilitarised zones, wherever practicable, may play an important part, from a general standpoint, in consolidating and enforcing the provisions of a regional pact.

95. With a view to the pacific settlement of all disputes that may arise between them, the States contracting a regional pact might consider provisions which would bind them more closely than those of the Covenant, in the matter of arbitral procedure, so as to make good the legal deficiencies in paragraphs 7 and 8 of Article 15 of the Covenant.

96. Similarly, the parties might facilitate the designation of the aggressor by the Council, should one or more of them resort to war in violation of the undertakings entered into under the regional pact, by empowering the Council, for example, to order the belligerents to observe an armistice, the conditions of which it would determine as might be necessary.

97. The provisions of the Locarno Rhineland Pact concerning flagrant aggression might be adopted in regional pacts wherever the situation was analogous.

98. In the absence of a mutual guarantee covering the case of aggression by a third party, the regional pacts should at all events contain a clause requiring the parties in no circumstances to lend assistance to the third party guilty of aggression.

99. Apart from the adaptation to regional pacts of the rules now proposed for financial assistance and any measures which might be taken under Article 16 of the Covenant, it would be possible to insert special clauses in these pacts, embodying the suggestion made in regard to offers of military assistance in the final paragraph of the last Assembly's resolution.

100. The progress of disarmament must keep pace with that of security so that the conclusion of security pacts should facilitate and prepare for a general agreement for the reduction and limitation of armaments. The regional pacts might contain suitable clauses postulating the connection between security and disarmament.

101. The adhesion of third-party States to regional pacts is desirable. It must depend upon the consent of the contracting parties. Application for accession by a third State might be submitted through the Council, which would decide whether or not to support it.

102. It is desirable but not essential to have the guarantee of a third State; this would be possible, if it were accepted by all the parties and if the third guaranteeing State itself agreed to accept in its entirety the system of assistance agreed upon between the parties.

103. In order that greater confidence may be created between the States contracting a regional pact it is desirable that they should append to their reciprocal undertaking to refrain from aggression an individual and collective guarantee to maintain their territorial integrity. Such a guarantee, however, is not essential. It would be sufficient if the parties agreed to submit all their disputes to pacific procedure, and to recognise that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals, and that the rights of a State cannot be modified save with its consent.

104. It is essential that security pacts should form part of a coherent and comprehensive scheme, and should be brought into harmony with the Covenant. The Council of the League might act in this matter as a regulating organ.

105. The feeling of security enjoyed by the parties as the result of the conclusion of a regional pact should not make them less disposed to conclude treaties of non-aggression or arbitration with third parties upon their borders. Such treaties are eminently desirable, in that they would enhance the value of regional pacts as instruments of peace and would at the same time lighten the undertaking assumed in regard to mutual assistance.

106. With a view to promoting the conclusion of regional pacts it might be expedient to consider a resolution by the next Assembly inviting the Council to study the possibility of lending its good offices to States which may desire to conclude security pacts with other States.

107. Should States desire to conclude agreements with non-member States, the Council might deem it preferable to suggest that they should request the good offices of a third Power.

4.

Memorandum on Articles 10, 11, and 16 of the Covenant

Submitted by M. RUTGERS, Rapporteur.

I. PREFACE.

108. The programme adopted by the Committee on Arbitration and Security at its first session comprised, as a second group of questions to be studied, the "systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various Articles of the Covenant".

This group of questions relates to the fifth sub-paragraph of paragraph 3 of Resolution V, adopted by the Assembly at its last ordinary session on the proposal of the Third Committee.

109. It is contemplated in this programme that— without limiting the Committee's future field of action— a study should immediately be begun of Articles 10, 11 and 16 of the Covenant and of the scheme of financial assistance to be given to States threatened with aggression :

Article 10. Study of the criteria by which aggression may be presumed.

Article 11. Study of this article, taking into account the work already done or at present in hand.

Article 16. Study of Article 16 under conditions similar to those applied to the study of Article 11;

Study of the scheme of financial assistance to be given to States threatened with aggression ;

Study of the above-mentioned scheme and particularly of the preliminary points raised by the Financial Committee.

(a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter ;

(b) Right of participation by States (the question of States not Members of the League).

110. It was agreed during the debates at the last ordinary session of the Assembly that the object of this study of the articles of the Covenant was to explore the possibilities which that instrument offers, without in any way enlarging or abridging the obligations incumbent upon Members of the League, and without making any attempt to interpret the Covenant.

II. ARTICLE 10 OF THE COVENANT : STUDY OF THE CRITERIA BY WHICH AGGRESSION MAY BE PRESUMED.

Preliminary Observations.

111. Article 10 of the Covenant is worded as follows :

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled."

The Committee on Arbitration and Security is called upon to study Article 10, as also Articles 11 and 16, from the point of view of "systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various articles of the Covenant". The rapporteur has been asked to examine Article 10 from the point of view of the criteria by the aid of which aggression may be presumed.

112. The rapporteur has made a careful examination of the discussions on the scope of Article 10 which followed the Canadian Government's proposal to suppress the article, as well as of the opinion bearing on the interpretation of the article which was expressed by the Committee of Jurists appointed under the Council's resolution of September 28th, 1923, and of the observations on that opinion made by a number of Members of the League.

For the rapporteur's present task, however, it does not seem necessary to consider the various points so raised. The discussions showed the extreme difficulty of obtaining unanimous agreement in advance as to what might be the full scope of the obligations under Article 10.

113. The rapporteur does not, moreover, feel called upon to offer a precise definition of the criteria by which aggression may be presumed, but considers that it would be more practical to enumerate some of the facts which, according to circumstances, may serve as evidence that aggression has taken place. Moreover, the question of acts which are evidence of aggression has already been the subject of the most exhaustive and careful study by the League of Nations and by many of its Members. These studies have led to different conclusions, and we are

constrained to believe that any attempt to lay down rigid or absolute criteria in advance for determining an aggressor would be unlikely in existing circumstances to lead to any practical result.

114. In the present connection, however, we have a valuable precedent in the report of the Committee of the Council on Article 11. That report is based on the idea that it is neither possible nor desirable to draw up a complete or exclusive statement of the measures to be taken under Article 11, or to lay down in advance any hard-and-fast rules as to their application ; but that it is of practical use, in the light of past experience and the studies and discussions on the subject, to keep in view a certain number of measures which might be employed in the future.

The rapporteur proposes to follow the same method. He is not blind to the difficulties which must be encountered. So far, it has fortunately never been necessary for the Council to determine which of two enemy States was the aggressor, and there is nothing to be drawn from actual experience in the matter. This omission, however, is to some extent balanced by the fact that certain treaties contain stipulations which constitute a practical contribution to the study of the problem.

115. In approaching this enquiry, it must be recognised that the results which it will obtain cannot be regarded as complete or as applicable to every case. A particular act may be deemed to raise, or not to raise, a presumption of aggression having regard to the circumstances under which it was committed.

Criteria for determining Aggression.

116. Some useful material in regard to criteria for determining aggression is to be found in certain treaties and in the proceedings of the Assembly and the Council of the League of Nations.

117. First among these sources of information are the results of the investigations carried out by the Permanent Advisory Commission and the Special Committee of the Temporary Mixed Commission when drawing up the Treaty of Mutual Assistance. The reports of these bodies show that certain acts would in many cases constitute acts of aggression ; for instance :

- (1) The invasion of the territory of one State by the troops of another State ;
- (2) An attack on a considerable scale launched by one State on the frontiers of another State ;
- (3) A surprise attack by aircraft carried out by one State over the territory of another State, with the aid of poisonous gases.

The reports in question add that other cases may arise in which the problem would be simplified owing to some act committed by one of the parties to the dispute affording unmistakable proof that the party in question was the real aggressor.

There are also certain factors which may serve as a basis in determining the aggressor :

- (a) Actual industrial and economic mobilisation carried out by a State either in its own territory or by persons or societies on foreign territory.
- (b) Secret military mobilisation by the formation and employment of irregular troops or by a declaration of a state of danger of war which would serve as a pretext for commencing hostilities.
- (c) Air, chemical or naval attack carried out by one party against another.
- (d) The presence of the armed forces of one party in the territory of another.
- (e) Refusal of either of the parties to withdraw its armed forces behind a line or lines indicated by the Council.
- (f) A definitely aggressive policy by one of the parties towards the other, and the consequent refusal of that party to submit the subject in dispute to the recommendation of the Council or to the decision of the Permanent Court of International Justice and to accept the recommendation or decision when given.

118. The list of factors furnished by the Special Committee of the Temporary Mixed Commission might be supplemented by including the violation of certain undertakings ; for instance, refusal to submit a dispute for pacific settlement by the methods agreed upon, or failure to observe restrictions of a military nature which have been accepted.

119. As regards military restrictions, mention must be made, *inter alia*, of the following treaties, the relevant passages of which are given in the Appendix.

- (a) The " Rush-Bagot Agreement " between Great Britain and the United States, concerning naval force on the Great Lakes, signed April 28th-29th, 1817.
- (b) The Convention between Great Britain and China, giving effect to Article III of the Convention of July 24th, 1886, relative to Burma and Tibet, signed March 1st, 1894.
- (c) The Convention between Norway and Sweden, concerning the establishment of a neutral zone, the dismantling of fortifications, etc., signed October 26th, 1905.
- (d) The Treaty of Versailles.
- (e) The Convention relating to the non-fortification and neutralisation of the Aaland Islands, signed on October 20th, 1920.

(f) The Treaty of Lausanne between the British Empire, France, Italy, Japan, Greece, Roumania, the Kingdom of the Serbs, Croats and Slovenes and Turkey, signed July 24th, 1923.

(g) The Treaty between Germany and Belgium, France, Great Britain and Italy, signed at Locarno on October 16th, 1925.

120. The treaties provide for the total or partial demilitarisation of certain zones. It is clear that a violation of these zones would in many circumstances — in the absence of any express stipulation — raise a presumption of aggression.

The value of these demilitarised zones as aids in determining the aggressor has already been recognised in the draft Treaty of Mutual Assistance, which states in Article 9 :

“ In order to facilitate the application of the present Treaty, any High Contracting Party may negotiate, through the agency of the Council, with one or more neighbouring countries for the establishment of demilitarised zones. ”

Paragraph 1 of Article 9 of the Protocol of Geneva contains the following provision :

“ The existence of demilitarised zones being calculated to prevent aggression and to facilitate a definite finding of the nature provided for in Article 10 below, the establishment of such zones between States mutually consenting thereto is recommended as a means of avoiding violations of the present Protocol. ”

121. Special importance was given to the demilitarised zone in the Rhine Pact. This Treaty declares that resistance offered to a violation of the Rhineland Demilitarised Zone shall be deemed to be the exercise of a legitimate right of defence, in derogation from the mutual undertaking to refrain from aggression, when such violation constitutes an unprovoked act of aggression and when, by reason of the assembly of armed forces in the demilitarised zone, immediate action is necessary. This Treaty further provides that, in case of a flagrant violation of the Demilitarised Rhineland Zone, the guarantor powers shall immediately come to the help of the party against whom such a violation or breach has been directed as soon as they have been able to satisfy themselves that this violation constitutes an unprovoked act of aggression, and that, by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarised zone, immediate action is necessary. Nevertheless, the Council of the League of Nations, which will be seized of the question if one of the contracting parties considers that the zone has been violated, will issue its findings. The contracting parties undertake in such a case to act in accordance with the recommendations of the Council, provided that they are concurred in by all the members other than the representatives of the parties which have engaged in hostilities.

122. In the event of hostilities having broken out, the Protocol of Geneva laid down explicitly that a State might be presumed to be an aggressor in the following circumstances, unless a decision of the Council, which must be taken unanimously, should declare otherwise :

(1) If it has refused to accept the procedure for a pacific settlement or to comply with the decision rendered in pursuance of that procedure.

(2) If it has violated the provisional measures enjoined by the Council to prevent preparations for war being carried on during the proceedings for pacific settlement ;

(3) Disregard of a decision recognising that the dispute lies solely within the domestic jurisdiction of the other party, if the State in question has failed or refused previously to submit the question to the Council or to the Assembly.

The Protocol further declared that a belligerent which refused to accept, or violated, an armistice enjoined by the Council was to be deemed an aggressor.

When the Council had called upon the signatory States to apply against the aggressor the sanctions provided by the Protocol, any signatory State thus called upon was thereupon entitled to exercise the rights of a belligerent.

123. The Report of the Committee of the Council on Article 11 of the Covenant points out that the action which the Council has to take in case of a conflict, in virtue of Article 11 and other articles of the Covenant, will provide it with valuable material which will assist it in determining the aggressor, in case war should break out in spite of all the efforts made to prevent hostilities, or to suspend them after they have begun. It is clear that the nature and extent of the co-operation which the parties to the dispute are willing to afford to the Council cannot fail to exercise considerable influence upon the decision of that body.

124. *Appendix to Chapter II.*

Treaties involving certain undertakings in regard to military restrictions :

(a) In 1817, Great Britain and the United States came to an agreement for the demilitarisation of the big lakes forming the frontier between the United States and Canada. This agreement was known as the “ Rush-Bagot Agreement ”.

(b) Great Britain concluded with China a Convention designed to ensure the maintenance of peace on the Chinese frontiers of her Asiatic possessions. This Convention was ratified in London on August 23rd, 1894. The high contracting parties undertake not to construct or maintain fortifications within a ten-mile zone along the frontier.

(c) On the dissolution of the Union of Norway and Sweden, a Convention was signed at Stockholm in October 1905, establishing a neutral zone between the two countries. This Convention can only be denounced by joint agreement.

(d) Under Article 42 of the Treaty of Versailles, Germany is forbidden to maintain or construct any fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometers to the east of the Rhine. Article 43 provides that "in the area defined above [i.e., in Article 42] the maintenance and the assembly of armed forces, either permanently or temporarily, and military manœuvres of any kind, as well as the upkeep of all permanent works for mobilisation, are in the same way forbidden".

(e) On October 20th, 1921, a Convention relating to the non-fortification and neutralisation of the Aaland Islands was signed. Under this Convention, Finland undertakes not to fortify that part of the Finnish Archipelago which is called "the Aaland Islands". Article 7 of the Convention provides as follows :

" I. In order to render effective the guarantee provided in the Preamble of the present Convention, the High Contracting Parties shall apply, individually or jointly, to the Council of the League of Nations, asking that body to decide upon the measures to be taken either to assure the observance of the provisions of this Convention or to put a stop to any violation thereof.

" The High Contracting Parties undertake to assist in the measures which the Council of the League of Nations may decide upon for this purpose.

" When, for the purposes of this undertaking, the Council is called upon to make a decision under the above conditions, it will invite the Powers which are parties to the present Convention, whether Members of the League or not, to sit on the Council. The vote of the representative of the Power accused of having violated the provisions of this Convention shall not be necessary to constitute the unanimity required for the Council's decision.

" If unanimity cannot be obtained, each of the High Contracting Parties shall be entitled to take any measures which the Council by a two-thirds majority recommends, the vote of the representative of the Power accused of having violated the provisions of this Convention not being counted.

" II. If the neutrality of the zone should be imperilled by a sudden attack either against the Aaland Islands or across them against the Finnish mainland, Finland shall take the necessary measures in the zone to check and repulse the aggressor until such time as the High Contracting Parties shall, in conformity with the provisions of this Convention, be in a position to intervene to enforce respect for the neutrality of the islands.

" Finland shall refer the matter immediately to the Council."

(f) The Treaty signed at Lausanne on July 24th, 1923, between the British Empire, France, Italy, Japan, Greece, Roumania, the Kingdom of the Serbs, Croats and Slovenes and Turkey includes a Convention relating to the regime of the Straits.

The preamble declares that the signatory Powers are desirous of ensuring in the Straits freedom of transit and navigation between the Mediterranean Sea and the Black Sea for all nations, and that they consider that the maintenance of that freedom is necessary to the general peace and the commerce of the world.

Further, Article 18 contains the following provisions :

" The High Contracting Parties, desiring to secure that the demilitarisation of the Straits and of the contiguous zones shall not constitute an unjustifiable danger to the military security of Turkey, and that no act of war should imperil the freedom of the Straits or the safety of the demilitarised zones, agree as follows :

" Should the freedom of navigation of the Straits or the security of the demilitarised zones be imperilled by a violation of the provisions relating to freedom of passage, or by a surprise attack or some act of war or threat of war, the High Contracting Parties, and in any case France, Great Britain, Italy and Japan, acting in conjunction, will meet such violation, attack, or other act of war or threat of war, by all the means that the Council of the League of Nations may decide for this purpose.

" So soon as the circumstance which may have necessitated the action provided for in the preceding paragraph shall have ended, the regime of the Straits as laid down by the terms of the present Convention shall again be strictly applied.

" The present provision, which forms an integral part of those relating to the demilitarisation and to the freedom of the Straits, does not prejudice the rights and obligations of the High Contracting Parties under the Covenant of the League of Nations."

The Treaty of Lausanne also includes another Convention respecting the Thracian frontier. This Convention declares that the said Powers, being desirous of ensuring the maintenance of peace on the frontiers of Thrace, and considering it necessary for this purpose that certain special reciprocal measures should be taken on both sides of this frontier, have agreed (in Article 1) that from the Ægean Sea to the Black Sea the territories extending on both sides of the frontiers separating Turkey from Bulgaria and from Greece shall be demilitarised to a depth of about 30 kilometers.

According to Article 4, in the event of one of the bordering Powers whose territory forms the subject of the present Convention having any complaint to make respecting the observance of the preceding provisions, this complaint shall be brought by that Power before the Council of the League of Nations.

(g) The Treaty signed at Locarno on October 16th, 1925, between Germany, Belgium, France, Great Britain and Italy, provides in Article 2 that :

“ Germany and Belgium, and also Germany and France, mutually undertake that they will in no case attack or invade each other or resort to war against each other.

“ This stipulation shall not, however, apply in the case of the exercise of the right of legitimate defence, that is to say, resistance to a violation of the undertaking contained in the previous paragraph, or to a flagrant breach of Articles 42 or 43 of the said Treaty of Versailles, if such breach constitutes an unprovoked act of aggression, and, by reason of the assembly of armed forces in the demilitarised zone, immediate action is necessary. ”

III. ARTICLE 11 OF THE COVENANT : STUDY OF THIS ARTICLE WITH REFERENCE TO WORK ALREADY DONE AND IN PROGRESS.

Introduction.

125. Article 11 covers all cases of armed conflict. In this respect, its scope is wider than that of Articles 10, 16 and 17 of the Covenant. It may be said that these latter articles deal with only certain of the armed conflicts covered by Article 11.

126. Under Article 11, the League of Nations has the most extensive competence. The Council can intervene in any conflict, whether the parties are Members of the League or not. It is equally competent whether there is resort to war or a threat of war, and it can take action in time to prevent hostilities or to terminate them if they have already been begun. Its authority is exercised in any war — not only in a war contrary to Articles 12, 13 and 15, but also in a war which is not contrary to those articles. If the procedure contemplated in Article 15 has failed, Article 11 remains applicable, and offers a possibility of renewing efforts to prevent war. Even if there is no threat of war, but merely circumstances affecting international relations which threaten to disturb international peace or the good understanding between nations, the case may be brought to the Council's attention.

127. The resources at the League's command are also very extensive. The extremely general terms of Article 11 — “ any action that may be deemed wise and effectual to safeguard the peace of nations ” — allow of all suitable measures being taken. Within the limits of its powers, and without prejudice to the rights of the Members of the League, on whom Article 11 imposes no special obligation, the Council, in consciousness of its responsibilities under the Covenant, may choose at its discretion whatever measures it thinks expedient. Moreover, proceedings under Article 11 do not in any way exclude proceedings under other provisions of the Covenant.

128. The difference between Articles 10 and 12-16 on the one hand and Article 11 on the other hand may be expressed as follows :

Article 10 protects the territorial integrity and political independence of every Member of the League against all external aggression.

Articles 12-16 prescribe the procedure to be followed in the event of disputes, and the rights and obligations thence derived by Members.

Article 11 is the essential expression of the principles of the League, and is designed to protect the interests of all. It does not impose upon Members of the League any obligations which can be rigidly specified ; the Council's action under this article is political rather than judicial.

It is in Article 11 that the moral factors and the solidarity of the Members of the League are most clearly brought out.

129. The systematic preparation of the Council's action under Article 11 has two aspects — a technical and a political aspect.

The technical aspect relates to communications of importance to the League at times of emergency. It is studied in a special chapter of this memorandum.

The political aspect has already been dealt with in the Report submitted by the Committee of the Council on point 1 (b) of the French proposal to the Preparatory Commission for the Disarmament Conference (document A. 14. 1927. V, pages 76 *et seq.*) (Report approved by the Assembly and the Council). The report may be said to have laid the foundations for the systematic preparation of the Council's action under Article 11. In this study, an attempt will be made to ascertain whether it can be completed.

130. It is important to make it clear at the outset that the systematic preparation of the Council's action under Article 11 can never be a code of procedure.

As was very well pointed out in the report of the Committee of the Council, it is not possible to enumerate all the measures that might be taken ; a few of them must be indicated by way of example, without underestimating or questioning the value of those which are not expressly mentioned. The infinite variety of events that may occur in international political life cannot be confined in advance in watertight compartments.

The Council will to a great extent be guided by precedent, and its experience will grow with the progress of its political work.

How Article 11 comes into Operation.

131. Any action by the Council in virtue of Article 11 presupposes that the question at issue has been officially laid before the Council.

Legally speaking, the Council cannot receive notice of a question except from a Member of the League.

It is not necessary, however, that this Member should be one of the parties to the dispute. Any Member of the League, even if not immediately affected, has the right to bring a dispute before the Council in virtue of Article 11.

132. No special form is prescribed for this purpose. Reference may be made to the dispute between Panama and Costa Rica, when the Council, meeting at Paris, had before it certain reports showing that there was tension between the two countries, and proceeded to discuss the matter.

133. Nevertheless, if, in accordance with paragraph 1 of Article 11, the Secretary-General is to be able to summon a meeting of the Council forthwith, one of the Members of the League must have requested him to do so.

134. In certain cases, Governments may think it more expedient to refer to paragraph 2 of Article 11 than to paragraph 1 of that article. If the question is thought to be sufficiently urgent, the Council can be convened without delay in accordance with the rules of procedure it has itself established. In this eventuality, a request for a meeting of the Council must be addressed to the Secretary-General.

135. It is certainly desirable that a State asking for the application of Article 11 should make reference to that article. The Council, however, in consciousness of its responsibility, will, if necessary, act in virtue of that article, even if no specific reference is made to it.

136. The Council must not interfere in disputes without a serious reason, or as long as there is still some hope of an amicable settlement.

137. In the event of war or a threat of war, the Council can always act under Article 11, paragraph 1, even if another article is invoked or if proceedings have already been entered upon in virtue of another article. This question is considered in the memorandum on arbitration and conciliation.

138. Even if a dispute is submitted to a special tribunal, it is possible in certain cases that such tension may develop between the two States as to amount to a threat of war. The Council can then intervene under Article 11. This is explicitly recognised in the Locarno agreements, where it is stated that nothing in the agreements is to be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

An observation to the same effect has been made in the memorandum on arbitration and conciliation.

139. Experience shows that in certain cases it may be expedient to resort to all possible means of direct conciliation, and to the good offices of third Powers, before bringing a dispute before the Council. Article 11 is sufficiently elastic to allow of this.

M. de Brouckère, delegate of Belgium, in calling the attention of the Third Committee of the last Assembly to this point, raised the question whether the Council ought not at all events to keep in touch with developments in the dispute. This suggestion is worthy of special attention. Nevertheless, if efforts of conciliation are to be successful, it may be essential that the question should be discussed by a very small number of Powers. It would seem that the parties concerned must be left full latitude to decide whether the Council should be kept informed of the developments of the case so long as the question has not actually been submitted to the Council. There have been cases in which Members of the League have thought it desirable to make such communications to the Council. Great Britain did so in the Chinese question (Declaration by the British Government concerning British policy in China, February 8th, 1927); the Albanian and Serb-Croat-Slovene Governments did so in the dispute which arose out of the arrest of the dragoman of the Serb-Croat-Slovene Legation at Tirana. It must also be remembered that the Governments Members of the Council are kept abreast of political developments by their diplomatic agents.

Application of Article 11.

(a) Cases covered by Article 11, Paragraph 2, of the Covenant, and Similar Cases.

140. Even if the threat of war is not an imminent threat, it may be useful, when the situation is liable to grow worse, to call the attention of the parties to the undertakings into which they have entered in virtue of the Covenant, and to urge them to refrain from any act which might increase the tension. The Council has acted in this way on several occasions — in connection with the Aaland Islands question between Sweden and Finland, the dispute between Costa Rica and Panama, the frontier disputes between Albania and her neighbours, the Mosul question between Turkey and Iraq, the incursion of armed bands from Bulgaria into neighbouring States, and the Italo-Greek incident at Corfu.

141. The Council may also send a commission to the spot, with the consent of the party to whose territories it is to proceed, to enquire into the situation on the frontier areas of the parties to the dispute; this was done in the dispute between Turkey and Iraq.

142. The Council may also endeavour to hasten the settlement of the question actually at issue ; an example of this is the frontier dispute between Albania and her neighbours.

143. If a rupture has taken place, the Council may take steps to mitigate its effects. In the first Polish-Lithuanian dispute, it recommended the parties to re-establish consular relations and free communication, and when these efforts proved unsuccessful it requested them to entrust their interests to friendly Powers.

144. In other cases it may be useful to recommend to the parties measures which, from the military point of view, will furnish pledges of their peaceful intentions towards each other ; such measures are the withdrawal of troops from the frontier, reduction of effectives, demobilisation, etc.

(b) *Cases covered by Article 11, Paragraph 1.*

145. The Committee of the Council points out in its report that the Council may indicate to the parties from what movements of troops, mobilisation operations and other measures of the same kind it recommends them to refrain.

146. *A fortiori*, in the hypothesis put forward in paragraph 1 of Article 11, the Council may recommend to the parties the demobilisation and other measures indicated in the preceding paragraph.

147. Experience shows that it is very often the impression of being exposed to a military threat that nullifies efforts to prevent war. We must here refer to the observations made by Sir Austen Chamberlain at the thirty-third session of the Council to the effect that all the military preparations of a State to deal its adversary a crushing blow immediately on the outbreak of war may already have been made in normal times, and may constitute a very serious threat to the opponent at a time of crisis.

148. Another important point which should be mentioned is that of the localisation of the conflict. All the Council's efforts to prevent hostilities may prove to be vain if other countries besides the parties to the dispute take military action against either of those parties. Even what are called precautionary measures or demonstrations are liable to do irreparable harm. The Council can take the same measures against third States as against the parties.

This point seems to call for the Council's special attention in cases where military alliances or conventions might operate, particularly if these agreements allow of military action being taken automatically or spontaneously. This point is examined in detail in the memorandum on security.

149. In order to terminate hostilities that have already been engaged, the Council may recommend the parties to conclude an armistice. This was done in the first Polish-Lithuanian dispute.

150. In order to keep abreast of developments during the intervals between sessions, the Council may confer powers according to the case, either on the acting President or on the rapporteur on the question at issue, or on both jointly. It may also appoint a committee of certain of its members. An instance of this is to be found in the first Polish-Lithuanian dispute. Mention may also be made of M. Briand's intervention in the Greco-Bulgarian dispute.

(c) *Special Cases.*

151. Article 11 is still applicable when the procedure under Article 15 has been exhausted. The following situations can be imagined as arising in regard to Article 15 :

(a) The Council is not able to recommend a solution unanimously.

(b) The Council is unanimous in recommending a solution, but this solution is rejected by one or both of the parties.

(c) The Council recognises that the dispute concerns a question which, under international law, is within the domestic jurisdiction of one of the parties.

152. In these hypotheses the Council may always obtain information as to what the parties propose to do after the expiry of the time-limits provided for in Article 12. It may recommend the parties to extend these time-limits. It may propose measures to prevent the situation from becoming more acute.

153. If there is a unanimous recommendation, the Council may endeavour to induce the party or parties who have rejected its solution to accept any suggestions it may make.

It may be recalled that in the hypothesis covered by Article 15, paragraph 8, the Geneva Protocol provided that, even if the question were held by the Permanent Court or by the Council to be a matter solely within the domestic jurisdiction of one State, this decision should not prevent consideration of the situation by the Council or by the Assembly under Article 11 of the Covenant.

(d) *Measures of Conservancy.*

154. It is difficult to enumerate all the steps that the Council might take as measures of conservancy under Article 11, but valuable suggestions on this point are to be found in the Locarno agreements.

These agreements provide that, if a question covered by the agreements is laid before the Council, the latter shall ensure that suitable provisional measures are taken ; and that the

parties undertake to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Council, and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

155. It might be suggested that, in the case of a dispute between Powers which are not signatories of the Locarno arbitration treaties, the Council should recommend the parties to enter into similar undertakings.

Final Observations.

156. The Committee of the Council points out in its report that if, notwithstanding all the measures recommended by the Council in virtue of Article 11, war is resorted to, it is probable that the Council's action will have made it possible to determine which State is the aggressor

157. It is not necessarily the State to whose conduct the crisis was originally due which is to be regarded as the aggressor ; in certain eventualities it might possibly be the other party which ought to be regarded as the aggressor, if it has deliberately refused to conform to the Council's recommendations. The prospect of this possibility will strongly influence the parties to the dispute to accept the measures proposed by the Council.

158. There is another factor of very great importance which will set up a further obstacle to prevent nations from being swept into war. As was stated in the Introduction, " it may truly be said that before the existence of the League of Nations the national points of view were the only ones of which public opinion had any cognisance in times of international crisis. The effect of the Council's debates being held in public will be not only that the opponent's point of view is likely to become better known in the other country, but also — more important still — that the official recommendations given by the Council to the parties will furnish the public in all countries with the means of forming a judgment ; this factor cannot fail to turn governing circles in the different countries concerned towards a pacific settlement.

" It is difficult to believe that the Government of any of these countries would refuse to give full publicity to the official recommendations of the Council. Indeed, such a refusal would be taken, not only by foreigners but by the people of the country itself, as very significant evidence of the real intentions of the Government. It would be a matter of vital importance to any Government to avoid incurring such discredit. "

IV. ARTICLE 16 OF THE COVENANT : STUDY OF THIS ARTICLE ON THE SAME LINES AS ARTICLE 11.

Introduction.

159. The programme of work approved by the Committee on Arbitration and Security at its first session includes the study of Article 16 on lines similar to those adopted in studying Article 11.

The study of Article 11 followed M. de Brouckère's report to the Committee of the Council on Question 1 (b) of the French delegation's proposal to the Preparatory Commission for the Disarmament Conference. M. de Brouckère's report dealt with the two articles (11 and 16).

The French proposal referred to some of the questions contained in the questionnaire which had been submitted by the Council to the Preparatory Commission for the Disarmament Conference, namely :

• " Question V (a). On what principles will it be possible to draw up a scale of armaments permissible to the various countries, taking into account particularly :

" 1.

" 8. The degree of security which in the event of aggression a State could receive under the provisions of the Covenant, or of separate engagements contracted towards that State ?

" (b) Can the reduction of armaments be promoted by examining possible means for insuring that the mutual assistance, economic and military, contemplated in Article 16 of the Covenant shall be brought quickly into operation as soon as the act of aggression has been committed ? "

The French proposal relating to these questions included the following passage :

" With reference to Question V (a), 8, and V (b), the Commission considers that, in order that a State should be able to calculate to what extent it can consent to the reduction or limitation of its armaments, it is essential to determine what method and what machinery are best calculated to give help to that State when attacked.

" The Commission therefore proposes to suggest to the Council :

" 1. That *methods* or *regulations* should be investigated which would :

" (a)

" (b) Enable the Council to take such decisions as may be necessary to enforce the obligations of the Covenant as expeditiously as possible. "

160. M. de Brouckère's able report on Question 1 (*b*) was discussed at the fifth session of the Committee of the Council. The latter decided, on Lord Cecil's proposal, to undertake immediately the study of five concrete proposals made in the report, and of the part of the report dealing with the measures to be taken in virtue of Article 11. The discussion of the part of the report dealing with the general principles of Article 16, and the legal force of the 1921 resolutions was postponed.

The Council, in its resolutions of December 8th, 1926, noted that the Committee of the Council proposed to submit a report on Article 16 at a later date, and, in accordance with the Committee's suggestions, it requested the Secretary-General to collect all the documents which related to the preliminary work carried out by the League in regard to this article. In pursuance of this decision, the Secretary-General obtained all the resolutions adopted by the different organs of the League with regard to Article 16, and added a memorandum summarising the measures taken by the League in this connection (document A.14.1927.V).

The study of Article 11 led to the preparation of the report approved by the Committee of the Council on March 15th, 1927, with regard to the methods and regulations which would enable the Council to take such decisions as might be necessary to enforce the obligations of the Covenant as expeditiously as possible. This report (to which Chapter III of the present memorandum referred) was approved by the Assembly at its last ordinary session.

In the present chapter we propose to continue the study of the application of Article 16.

The Resolutions of 1921.

161. The Assembly of 1921 adopted a series of amendments to Article 16. It held over the further study of the application of Article 16 for a subsequent Assembly. The latter was to take as a basis the text of Article 16 as it would stand after the ratification and entry into force of the amendments of 1921. The Assembly of 1921, being anxious to provide as far as possible a method by which Article 16 could be applied until the amendments should come into force, adopted a series of nineteen resolutions, the aim of which is indicated in the first resolution :

“ 1. The resolutions and the proposals for amendments to Article 16 which have been adopted by the Assembly shall, so long as the amendments have not been put into force in the form recommended by the Covenant, constitute rules for guidance which the Assembly recommends, as a provisional measure, to the Council and to the Members of the League in connection with the application of Article 16. ”

The Assembly thus desired to lay down provisional rules to be acted upon until the amendments adopted were put into force. Provisionally, and pending their ratification, these amendments and the resolutions relating thereto were to serve as guiding principles. It should be noted that more than one of the nineteen resolutions was based, not on the text of Article 16, which was in force in 1921, but on the text resulting from the 1921 amendments. M. de Brouckère's report gives a series of examples which we need not enumerate here.

The 1921 amendments have not come into force. They lack the ratification required of several Members of the Council.

Thus the state of affairs to which the first resolution quoted above refers has lasted much longer than was anticipated by the Assembly in 1921.

162. This situation is far from satisfactory. The old text is still in force, notwithstanding the numerous ratifications obtained by the 1921 amendments. The fate of these amendments depends upon the decision of a few Members only. It is desirable that this uncertainty should be put an end to by the ratification of these amendments in the near future or their final abandonment. It is worth recalling here the amendment adopted by the Assembly on October 3rd, 1921, adding to Article 26 of the Covenant a paragraph to be worded as follows : “ If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect ”. This amendment, however, has not yet obtained the necessary number of ratifications.

163. In so far as the 1921 resolutions are not compatible with Article 16 as it stands, they cannot be given force of law. Those which are in conformity with the Covenant retain their value. On the one hand, it must be recognised, as is done in M. de Brouckère's report, that neither the amendments which have not come into force nor the resolutions can impose on a Member any new obligation or release him from obligations which he has already contracted. But it cannot be denied that both the amendments and the resolutions constitute suggestions of the greatest interest. In so far as the resolutions are in agreement with the Covenant, they can be regarded as indicating the view taken by the Council and the Assembly of the scope of Article 16, and as announcing the way in which they intend to apply this article if the need should arise.

Interpretation of Article 16.

164. The study of Article 16 has given rise to more than one controversy on the exact scope of the terms of the article. In order to remedy this, is it necessary to endeavour once again to give a more or less official interpretation ? Is it necessary, for example, to define what is meant by the expression “ resort to war ” in the first line of the article ? It must be recognised that it would be extremely desirable to arrive at a generally accepted interpretation

which would put an end to many controversies. It is worth recalling here the words of the fourth resolution of 1921 :

“ 4. It is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfilment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their treaty obligations. ”

This doctrine is generally accepted to-day, and even if it were not the Council could not invoke a text or apply a sanction to oblige a Member to obey a decision of the Council in virtue of Article 16 which that Member did not consider to be well founded. It is the Members themselves who must decide on the performance of their obligations under Article 16. It must therefore be realised that when they are called upon to take this extremely grave decision they will be guided by their own conception of their obligations under Article 16.

165. We may go even further than this. If ever the question of the application of Article 16 arose, the decision of the different countries would not depend on interpretations, however authoritative, or on the deductions of lawyers ; the great question would be whether the principle of Article 16 was or was not a living reality. To carry out the grave obligations contained in Article 16, States would have to be inspired by the spirit of responsibility and solidarity which is at the root of Article 16 and of the whole League of Nations.

166. While it appears wise to leave it to the lessons of experience to provide material for defining in future the provisions of Article 16, it must also be recognised that there would be a certain danger in fixing in an immutable form, the measures which might be taken in application of these texts.

Indeed, an interpretation providing hard and fast criteria for deciding whether there is resort to war or not might force the Council and the Members to declare that the conditions of Article 16 were present at a time when there was still room for doubt as to whether there had really been resort to war, and for hope that the mediation of the Council might stop the hostilities which had begun, and prevent the irrevocable operation of Article 16. We may recall the observations made in the chapter on Article 10 concerning the criteria to be taken as a basis in determining the aggressor.

Application of the Article.

167. We now come to the measures which can be taken to prepare the application of Article 16. A distinction must here be made between preparing the application of Articles 11 and 16. The action exercised under Article 11 aims at safeguarding the peace of nations ; it is conciliatory and pacifying in its object.

Article 16 is applied at a more advanced stage of the dispute. As M. de Brouckère's report justly says, it lays down terrible measures for the extreme case in which the pacific endeavours of the League finally fail before the criminal determination of a State resolved on war. Thus, to prepare the application of Article 11 is to prepare a pacific action, and to prepare the application of Article 16 is to prepare to take measures of extreme gravity. To prepare the Council's action under Article 11 is to prepare an action which it is hoped will be exerted in time and will be successful, while to prepare the execution of Article 16 is to prepare for action which it is hoped will never be required.

168. Preparation of the application of Article 16 may be conceived in two different forms. The preparation might consist in special measures to be applied to given situations. Every eventuality would have to be considered. One might even go as far as to draw up plans of campaign for cases of aggression. On the other hand, preparation might also be general and might aim at creating a situation which would inspire confidence in the effectiveness of the League's organs and in the readiness of Members to perform their duty if the application of Article 16 became necessary. It is above all in the latter sense that preparations must be made for the application of the article. Unlike the special preparation, the general preparation does not involve the danger of arousing conflicts by imagining their existence.

169. The preparation of the military sanctions provided for in Article 16 does not seem likely to promote mutual confidence between the States Members of the League of Nations, if at the same time pacific procedure suitable for the settlement of all international disputes is not organised, and if there is not also a general agreement on the reduction and limitation of armaments.

170. In making preparations for the application of Article 11, that of Article 16 is also to a great extent prepared. This is easily understood if it is realised that the application of the measures provided for by Article 16 does not take place at the beginning of a dispute but only when it is proved that a serious crisis is no longer capable of a peaceful solution. The question of the application of Article 16 will therefore not come before the Council and the Members without the Council having first to deal with the conflict in virtue of Article 11 and similar articles. The application of the procedure of Article 11 will be for the Council the best preparation for the performance of its duties under Article 16. This procedure will enlighten it as to the attitude of the two parties, and supply it with valuable information which will enable it to give the Members of the League the guidance and the recommendations to which they are entitled.

171. It is not the Council which has the last word on the measures to be taken in execution of Article 16. It is for the Members, bearing constantly in mind their duty, to enforce respect

for the Covenant, to decide upon what measures they can take. To deal effectively with the aggressor, co-operation is essential. It is clear that, for this co-operation to succeed, it is most desirable that States should have the guidance, in regard to the general situation, of a weighty and authoritative opinion. As to military action against the aggressor, Article 16 itself instructs the Council to make recommendations to the Members. The provisional injunctions of 1921 added that if necessary it would be for the Council to recommend to the Members a plan for joint action co-ordinating the economic, commercial and financial measures to be taken. This is a valuable suggestion going beyond the provisional framework of the 1921 resolutions. The part assigned to the Council is in perfect harmony with the central position given to it by the Covenant.

172. For the recommendations it will have to make, the Council will need very full information on various points. In one of its resolutions of December 8th, 1926, the Council requested the Secretary-General to collect systematically precise information regarding the economic and financial relations of the various States with a view to a possible application of Article 16 of the Covenant, and to carry out this work in accordance with a plan to be submitted to the Council by the Secretary-General after consulting the technical organs of the League, including, if necessary, the Joint Commission. Correspondence has since passed between the Secretary-General and the Economic and Financial Committees of the League with regard to the plan to be drawn up.

In a letter dated October 13th, 1927 (see Appendix I), the Financial Committee informed the Secretary-General that it could not but feel that such a new form of enquiry might cause a misunderstanding of the purpose of the present work of collecting and publishing trade statistics and other economic information, which was undertaken in the general interests of scientific knowledge and practical economic purposes. The Committee thought it of great importance that this work should be continued and developed on its present lines and said that it would greatly regret any action which might restrict it or render it more difficult.

173. At the same time the Committee recognised that, apart from the duties falling upon the several States, the League might have a very important part to play in securing due co-ordination between the measures taken in the different countries, and that it was therefore desirable that, when the occasion arose, the League should have at its disposal both the information and expert advice and assistance which might be required in the circumstances peculiar to any particular crisis. In the Committee's opinion, these requirements could only be met by securing, as soon as the occasion arose, the expert assistance and information which the Member States were alone in a position to give.

174. In these circumstances, the Committee recommended that, apart from the development and extension of the League's work of collecting economic information on the present lines and for its present purpose, no new form of enquiry should be instituted. It recommended, however, that Member States should be asked, in addition to carrying out their specific obligations under Article 16, to undertake to place at the disposal of the League, when the need arose, the economic and financial information in their possession which was relevant to the particular crisis, and the advice and assistance of competent experts in order to help the League to secure due co-ordination between the measures taken by the different Member States.

175. The Economic Committee's opinion, which will be found in its letter to the Secretary-General of December 21st, 1927 (see Appendix II), is to the same effect. According to the authoritative opinion of these two Committees, the League of Nations should confine itself for the moment to collecting and publishing commercial statistics and other economic particulars which have already been compiled. If it should become necessary to apply Article 16, the Council would obtain the opinion of the economic and financial experts of the countries specially concerned in the sanctions, and would thus obtain the knowledge necessary for drawing up its recommendations.

176. We might now go into the details of the measures to be taken in the case provided for in Article 16. We may quote the first sentence of the tenth resolution of 1921 :

“ It is not possible to decide beforehand, and in detail, the various measures of an economic, commercial and financial nature to be taken in each case where economic pressure is to be applied. ”

Indeed, the variety of cases which might arise is such that it is impossible to settle in advance what measures will be possible and expedient. When the time comes, the Council will act with a full knowledge of the facts acquired by the action it will have taken in virtue of the Covenant during the development of the conflict.

There is therefore no question of drawing up a code of procedure for the application of Article 16.

It is possible, however, to formulate in a general manner a series of indications and recommendations capable of guiding the Council and the Members of the League without restricting the freedom of the League's organs to judge at any time the best line of action to take, and without diminishing or increasing the rights and duties of the Members under the Covenant. Indications of this kind will be found summarised in the conclusions at the end of this memorandum.

177. *Appendix 1 to Chapter IV.*

REPLY OF THE FINANCIAL COMMITTEE ON THE SYSTEMATIC COLLECTION OF INFORMATION.

The Committee considered very carefully the following resolution of the Council :

“ The Council requests the Secretary-General :

“ (a) To collect systematically precise information regarding the economic and financial relations of the various States, with a view to a possible application of Article 16 of the Covenant. This work will be carried out in accordance with a plan to be submitted to the Council by the Secretary-General after consulting the technical organisations of the League, including, if necessary, the Joint Commission. ”

The Committee fully realises that it is essential that the provisions of Article 16 as to the severance of economic and financial relations should be enforced by Member States effectively and without delay, as soon as the necessity arises, and appreciates the importance of the part which the League's central organisation may play in securing this result.

The Committee cannot but feel, however, that such a new form of enquiry might cause a misunderstanding of the purposes of the present work of collecting and publishing trade statistics and other economic information which is undertaken in the general interests of scientific knowledge and practical economic purposes. The Committee thinks it of great importance that this work should be continued and developed on its present lines, and would greatly regret any action which might restrict it or render it more difficult.

At the same time the Committee recognises that, apart from the duties falling upon the several States, the League may have a very important part to play in securing due co-ordination between the measures taken in the different countries, and that it is therefore desirable that, when the occasion arises, the League should have at its disposal both the information and expert advice and assistance which may be required in the circumstances peculiar to any particular crisis. These requirements can, in the Committee's opinion, only be met by securing, as soon as the occasion arises, the expert assistance and information which the Member States are alone in a position to give.

In these circumstances, the Committee recommends that, apart from the development and extension of the League's work of collecting economic information on the present lines and for its present purpose, no new form of enquiry should be instituted. It recommends, however, that Member States should be asked, in addition to carrying out their specific obligations under Article 16, to undertake to place at the disposal of the League, when the need arises, the economic and financial information in their possession, which is relevant to the particular crisis, and the advice and assistance of competent experts in order to help the League to secure due co-ordination between the measures taken by the different Member States.

178. *Appendix 2 to Chapter IV.*

REPLY OF THE ECONOMIC COMMITTEE ON THE SYSTEMATIC COLLECTION OF INFORMATION.

In response to the request for an opinion as to the most expedient means whereby it may be possible

“ to collect systematically precise information regarding the economic and financial relations of the various States, with a view to a possible application of Article 16 of the Covenant ” ; the work to “ be carried out in accordance with a plan to be submitted to the Council by the Secretary-General after consulting the technical organisations of the League, including, if necessary, the Joint Commission ”,

the Economic Committee studied the question with the object of permitting as effective and speedy an application as possible of the provisions of Article 16 of the Covenant, relating to the severance of economic and financial relations.

In so doing it decided that it was necessary to differentiate between information of an international character which would be at the Council's permanent disposal and the information of a national character to which the Council should be able to call for in the event of the contingency mentioned in Article 16 arising, or for the purposes of preparatory studies or the institution of measures designed to meet such a contingency.

As regards the question of information of an international character, the Economic Committee is of opinion that it would not be expedient to contemplate collecting any information other than that which it already possesses.

With the information at its disposal, the Council will be able to estimate the resources for which any State is dependent on foreign help and those which it possesses within its own territory. It would be useless to attempt to rectify or supplement these data by a study of the plans of each country for remedying its dependence on foreign help or increasing its own

resources in the contingency mentioned in Article 16 of the Covenant. As regards these national plans, which may in some cases be of assistance in interpreting international statistics, the Committee possesses no powers of investigation.

The Committee decided accordingly that the general international information, so far as the Committee has access to it, could not be considered of supreme value from the point of view of the contingencies contemplated by Article 16 or the studies connected therewith.

For this purpose, the most valuable source of information is the national material, dealing, on the one hand, with the resources and requirements of each country and the means whereby it proposes to increase the first and supply the second, and, on the other, with the assistance which it hopes to obtain from abroad. The Economic Committee is of opinion therefore that every Government should be able at any moment to supply information of this nature, which might be used in the circumstances mentioned in Article 16 and for the purposes of the joint studies that the League organisations might decide to undertake in view of those circumstances.

The Committee desires to emphasise the fact that the national information should not only be available in writing but should, if necessary, be analysed, explained and substantiated by experts appointed in advance by each Government.

The Committee is convinced that the international statistical work in which it is engaged and the national information which it recommends should be collected, would enable the Secretariat of the League to comply with the obligations imposed on the League by the Covenant.

V. COMMUNICATIONS OF THE LEAGUE IN TIME OF EMERGENCY.

179. In the study of Article 11, in Chapter III, it has already been pointed out that the systematic preparation of the Council's action under this article has a political as well as a technical side. The latter includes the question of communications affecting the League in time of emergency.

180. The question of League communications in time of emergency is important not only for the application of Article 11, but also for that of other articles of the Covenant, in particular Articles 4, 10, 15, 16 and 17. The effectiveness of the action taken by the Council under these articles depends to a large extent on the rapidity with which the Council can assemble. The sooner the Council can meet the more rapid will be its intervention for the maintenance or restoration of peace. This is an important factor affecting security.

181. The last Assembly again stated categorically on this point that it is incumbent upon the Members of the League to facilitate the meeting of the Council in time of emergency by every available means in their power.

182. The rapid assembling of the Council, however, is not the only important point. Generally speaking, every effort should be made to ensure that the following steps are taken as rapidly as possible :

1. Appeal to the League from a Member of the League ;
2. Communication between the Secretary-General and the Members of the Council ;
3. Communication between the Secretary-General and the President of the Council ;
4. Communication between the President of the Council and the Secretary-General, and the States concerned ;
5. The assembling of the members of the Council at Geneva or in any other place ;
6. The conveyance to the spot of the special missions despatched by the Council.

183. With the exception of the meeting of the Council and the despatch to the spot of instructions or missions, all these points are dependent on telegraphic or telephonic communications, by wire or wireless.

184. The importance of rapid communications was clearly shown during the frontier incident between Bulgaria and Greece. The Commission of Enquiry into this incident stated in its report that " the saving of a few minutes may prevent a catastrophe. In the present circumstances, which were exceedingly favourable — in that the President of the Council received a telephone message one hour after Bulgaria's appeal had been received by the Secretary-General — a military operation which might have had the most dangerous results was only just prevented ".

185. The question of communications was also raised by M. Paul-Boncour at the first session of the Preparatory Commission. He said that under certain circumstances rapidity of action was one of the essential conditions for the prevention of war. M. de Brouckère expressed a similar opinion when he said that whatever action was to be taken must be taken more rapidly than an army could be mobilised, an operation which was always carried out with the utmost speed.

186. The first enquiries undertaken, at the request of the Council, by the Advisory Committee on Communications and Transit have already resulted in the framing of definite proposals which have been approved by the Administrations concerned and which will enable the best use to be made of existing means of communication by rail as well as by water, by telegraph and telephone, etc.

187. The Council, however, desired to go a step further. On the Council's instructions, the Advisory Committee on Communications and Transit is already studying the possibility of establishing for the requirements of the League of Nations, particularly at times of emergency, independent means of communication which would be entirely at its disposal and therefore infinitely less likely to be affected by the disturbances which a crisis is bound to produce in the normal working of communications under the control of Governments.

188. The Transit Committee is therefore considering the possibility of securing for the League of Nations independent means of communication by air as well as the establishment of a radio-telegraphic station belonging to the League, which will enable it to communicate independently with the greatest possible number of its Members.

189. The Committee on Arbitration and Security is bound to concern itself with these questions. Any measures to increase the safety and speed of the communications necessary for the working of the League organs at times of emergency will strengthen general security. In particular, the Committee must, in cases of serious emergency, attach great importance to the possibility of safeguarding the independence of the League's means of communication.

190. The adoption of the measures contemplated will show in a practical and tangible manner that the Members of the League are determined that the League shall be an effective instrument for action, and will, in the eyes of all, be a striking demonstration of solidarity.

VI. STUDY OF THE SCHEME OF FINANCIAL ASSISTANCE TO BE GIVEN TO STATES THREATENED WITH AGGRESSION.

Introduction.

191. The resolution adopted by the Committee on Arbitration and Security at its first session defines the study which it desires to carry out as follows :

“ Study of the scheme of financial assistance to be given to States threatened with aggression, and particularly of the preliminary points raised by the Financial Committee :

“ (a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter ;

“ (b) Right of participation by States (the question of States not Members of the League). ”

192. With regard to the scheme of financial assistance to be studied, the Assembly, at its eighth ordinary session, adopted the following resolution :

“ The Assembly,

“ Having taken note of the plan submitted to the Council by the Financial Committee with regard to the Finnish Government's proposal for ensuring financial aid to any State victim of aggression ;

“ Being convinced of the need for a system of financial aid for contributing to the organisation of security, which is an indispensable preliminary to general disarmament :

“ Requests the Council to continue and complete it with a view to its final adoption either by a Disarmament Conference or by a special Conference to be convened for the purpose.

“ The Assembly suggests to the Council that it would be advisable to submit the plan referred to, and the documents relating to Article 16 prepared by the Legal Section of the Secretariat, the observations submitted by the several Governments and the Minutes of the discussions in the Third Committee on this subject, to the committee which it proposes should be appointed in pursuance of its resolution relative to arbitration, security and disarmament. ”

193. The Council, at its forty-seventh session, referred the Assembly resolution through the Preparatory Commission for the Disarmament Conference to our Committee by the following resolution :

“ The Council,

“ Notes the Assembly's resolution of September 26th, 1927, concerning financial aid to States victims of aggression ;

“ Forwards this resolution to the Preparatory Commission for communication to the committee which it is to appoint to study questions relating to arbitration and security ;

“ Authorises that committee to consult the Financial Committee whenever it thinks fit and, if necessary, to request the latter to make technical studies of the question ;

“ Requests the Financial Committee to co-operate with the Committee on Arbitration and Security and the Preparatory Commission for the Disarmament Conference for the purposes mentioned above. ”

194. The scheme proposed by the Financial Committee is in its general outline as follows :

The State which is the victim of aggression would be assisted by the League to obtain a loan on the money market in the ordinary way.

The assistance would take the form of a guarantee for the loan. This guarantee would be given by the States participating in the scheme, perhaps in the same proportions as their contributions to the League. The Convention establishing the scheme would fix a maximum limit for the guarantee. If this maximum were fixed at fifty million pounds, and if all the

Members of the League participated, each State would be called upon to guarantee the interest on and amortisation of a sum equal to about fifty times its annual contribution to the League. The signatories of the Convention would deposit general bonds of guarantee with the Secretary-General or the Trustees (who would be appointed by the Council). When a State which was a party to the Convention was attacked and asked for financial assistance under the terms of the Convention, the Council of the League would, on the advice of the Financial Committee, decide how and to what extent the request should be complied with, and would fix the amount of the loan.

For this purpose the signatories would exchange the general bonds for "specific bonds of guarantee" to the amount required, but not exceeding the total of their guarantees.

The "specific bonds of guarantee" would be drawn up in a form generally corresponding to that of the bonds deposited with the trustees for the Austrian Reconstruction Loan, and the procedure of their operation would be the same.

Should the attacked State default, the "specific bonds" would be presented to their signatories.

The Committee further proposes to strengthen the scheme by establishing a supplementary guarantee whereby a small number of signatories holding a very strong financial position would guarantee the signatories of the specific bonds for the entire amount. If necessary, they would temporarily furnish the funds required for the payments to be made.

Each Government signing the supplementary guarantee would undertake to facilitate the public issue, in its country, of loans floated under the Convention.

195. A detailed technical examination of the Financial Committee's scheme cannot be expected in this memorandum. Such an examination would be valueless without the assistance of the Financial Committee, which has already done work of very considerable practical importance in this matter. The Council has made provision for this co-operation; the Security Committee will have to arrange to inaugurate it, either through a sub-committee or by any other method which seems suitable.

196. It should be remembered that the British representative on the Council stated that his Government approved the scheme outlined by the Financial Committee but could only accept it on two conditions, namely, that the scheme should form part of an adequate measure of general disarmament and that the principal States should also accept a satisfactory allotment of the obligations contained in the guarantee.

197. For the moment it seems sufficient to explain the two main points mentioned in the Committee's programme.

Study of the Criteria by which Aggression may be presumed and the Procedure of the Council in this Matter.

198. Under the Financial Committee's scheme, action on the part of each guarantor State is necessary before the scheme of assistance can operate for the benefit of a country which is the victim of aggression; the general bonds of guarantee must be exchanged for specific bonds of guarantee. This is an important point. The Financial Committee proposes to make it a matter for the Council to decide whether the financial assistance in contemplation shall be given to an attacked State. Notwithstanding the deposit of the general bonds of guarantee, however, the Council will not have full and free disposal of the guarantee, but will require the concurrence of the States. The question then arises whether it will be possible in practice to introduce, side by side with the system of Article 16, under which each Member of the League is left to decide whether the Covenant has been broken, a different system for financial assistance. There arises at the same time the question whether the criteria of aggression should be studied separately in regard to the application of Article 16 and that of the scheme of financial assistance.

199. It is hardly to be supposed that, having arrived at a decision as to whether aggression within the meaning of Article 16 has taken place and who is the aggressor, any State will co-operate in giving financial assistance to a country which it cannot recognise as having been attacked. No State will lend financial assistance, even if enjoined to do so by the Council, to a State which it regards as the aggressor and against which it is applying economic or military sanctions. Still less can it be imagined that any State will voluntarily give military assistance to one of the belligerents and financial assistance to the other, simply because the criteria of aggression are different. It would seem necessary to establish a relation between the system of financial assistance and the application of Article 16. Whether the financial assistance contemplated in the Financial Committee's scheme constitutes the fulfilment of an obligation under Article 16 is a question that has already been discussed. As financial assistance under the Financial Committee's scheme will be governed by a special convention, the question of the relation in law between this assistance and the obligations embodied in Article 16 can be left open. The essential point, however, is that there must be a relation and concordance between the application of Article 16 by any Member and the provision of financial assistance by the same Member in the same conflict.

200. The position would be different if a system of financial assistance were adopted whereby from the outset the Council would have full and free disposal of the funds required to guarantee a loan for an attacked State. In that case, the decision as to the according of a guarantee could be left in the Council's hands. On the other hand, we may conclude from the Financial Committee's report that such a system would encounter technical difficulties; and statements

which have been made both in the Council and in the Third Committee of the Eighth Assembly suggest that it is doubtful whether all States can be expected to agree to such a scheme.

201. The conclusion is that financial assistance should be so regulated as to ensure definite concordance between decisions taken under Article 16 and decisions regarding financial assistance. This object might be attained by mentioning, in the Convention on financial assistance, the cases in which Article 16 applies.

202. One reservation must, however, be made. Organised financial assistance presupposes the participation of a large number of States and supervision by the Council. Thus, although no State can be obliged to co-operate in assisting financially another State which in its opinion has not been attacked, it must always be remembered that a number of States may be prepared to lend their financial aid to a State which in their opinion has been attacked, and that nevertheless the concerted plan will not come into force, either because a number of other States do not admit that the *casus fœderis* has arisen, or because the Council itself has not taken the necessary decisions for setting in motion the plan for financial assistance.

With regard to the procedure to be followed by the Council, the remark which was made on the subject of criteria for the designation of the aggressor again applies. On this point also, financial assistance must be made to harmonise with the application of sanctions under Article 16.

203. Here, however, it should be pointed out that the Council may avail itself of the plan for financial assistance before Article 16 comes into play. By the time this article has to be applied, the efforts of the Council to maintain peace have failed. It is the preceding period, before the Covenant has been infringed, which is of far greater interest to the League. It is on this period — the fact cannot be stated too often — that the League should concentrate its efforts with a view to avoiding the dreaded event of the entry into operation of Article 16. In this period, too, the plan of financial assistance might already be brought into play and exercise a beneficial influence. Among the means of pressure which the Council might employ when taking action under the various articles of the Covenant, and particularly Article 11, for the prevention of war, not the least effective is the possibility of guaranteeing a loan to a party in case of attack.

204. The holding out of such a possibility, and if circumstances so required the making of actual promises, would be an affirmation of the solidarity on the part of the Members of the League with any State which might be attacked, and it would show beforehand that they were determined to maintain the principles of the Covenant by action if necessary. If a definite plan were prepared, the Council ought to be able to utilise it in this manner when taking action under Article 11.

Right of Countries to participate. (Question of States non-Members of the League.)

205. There is no reason why any Member of the League of Nations should be prevented from participating in the plan, provided it accedes to the Convention within a definite period.

206. The question of the participation of States non-Members of the League does not seem to be of any practical interest. It is hardly likely that a non-Member State would desire to enter into such close co-operation with the League. A country for which the protection offered by the League holds no particular attraction — possibly because it feels that it will never require such protection — will not desire to participate in the organisation of financial assistance. We do not, however, think that non-Member States should be generally excluded. The Convention might be open to States non-Members who would be admitted by special decision of the parties on a unanimous or a majority vote. It does not seem necessary to go into the details of this question at present.

VII. CONCLUSIONS.

207. It does not seem advisable to draw up a rigid and complete code of procedure for the League in times of emergency, and the present memorandum and its conclusions propose neither to extend nor to curtail the rights and duties of the Members of the League.

It is both feasible and desirable, however, to give some indication of the possibilities offered by the different articles of the Covenant and the way in which they may be applied, without expressing any opinion as to the particular methods which the infinite variety of possible cases may in practice require.

208. To ensure the effectiveness of the League's action in any eventuality under the articles of the Covenant and, in particular, under Articles 4, 10, 11 and 16, it is vitally important that the technical studies and preparations for improving the communications of the League's organs should be actively pushed forward.

209. The task of the League of Nations is to maintain peace; to fulfil this task it must, above all, *prevent* war. The application of repressive measures, which cannot but have serious consequences, will only take place in extreme cases in which the preventive measures have unfortunately failed in their object.

210. With regard to the application of Article 11, the Report of the Committee of the Council, approved by the Assembly at its eighth ordinary session, is a valuable guide, to which the present memorandum adds a few new indications.

211. A hard-and-fast definition of the expressions " aggression " (Article 10), and " resort to war " (Article 16) would not be free from danger, since it might oblige the Council and the Members of the League to pronounce on a breach of the Covenant and apply sanctions at a time when it would still be preferable to refrain for the moment from measures of coercion. There would also be the risk that criteria might be taken which, in unforeseen circumstances, might lead to a State which was not in reality responsible for hostilities being described as an aggressor.

212. The preparation of the military sanctions provided for in Article 16 does not seem likely to promote mutual confidence between the States Members of the League of Nations unless at the same time various forms of pacific procedure suitable for the settlement of all international disputes are organised, and unless there is also a general agreement on the reduction and limitation of armaments.

213. In order to facilitate the application of Article 16 in case of need, it is necessary to make a full and conscientious use of the other articles of the Covenant and especially of Article 11. This article enables the Council to keep in touch with developments in a conflict and so to construct a basis for the decisions which it may be called upon to take under Article 16.

214. It would be desirable to put an end to the uncertainty consequent upon the fact that several amendments to Article 16, the majority dating from 1921, have not yet secured the necessary number of ratifications, either by securing their ratification in the near future or finally abandoning them.

215. It would be well that, in the event of resort to war, the Council should declare whether a breach of the Covenant has or has not taken place, and should state which of the two parties to the dispute has broken the Covenant.

216. In determining the aggressor the Council will find, among other factors helping it to form a judgment, a valuable indication in the extent to which and the manner in which the parties to the dispute have promoted the action previously taken by the Council in application of the articles of the Covenant, and especially of Article 11, to maintain peace.

217. Apart from the recommendations provided for in paragraph 2 of Article 16 concerning participation in military sanctions, it would be desirable for the Council in some cases to make recommendations to the Members regarding the application of the measures of economic pressure mentioned in the first paragraph of Article 16. In this eventuality, the Council could consult economic and financial experts in the countries specially concerned.

218. The study of the question of the financial assistance to be given to a State victim of an aggression should be pursued both from the technical and the political points of view. In carrying out this study, the possibility of providing assistance, even before Article 16 is applied, should be examined.

5.

Annexes.

I. RESOLUTION ADOPTED BY THE ASSEMBLY ON SEPTEMBER 26TH, 1927 (MORNING). (*Adopted on the proposal of the third Committee.*)

Resolution No. V.

The Assembly,

Noting the progress achieved in the technical sphere by the Preparatory Disarmament Commission and by the Committee of the Council towards enabling the Council to be rapidly convened and to take decisions in case of emergency ;

Being anxious to bring about the political conditions calculated to assure the success of the work of disarmament ;

Being convinced that the principal condition of this success is that every State should be sure of not having to provide unaided for its security by means of its own armaments and should be able to rely also on the organised collective action of the League of Nations ;

Affirming that such action should aim chiefly at forestalling or arresting any resort to war and if need be at effectively protecting any State victim of an aggression ;

Being convinced that the burdens which may thereby be imposed on the different States will be the more readily accepted by them in proportion as

(a) They are shared in practice by a greater number of States ;

(b) The individual obligations of States have been more clearly defined and limited :

1. Recommends the progressive extension of arbitration by means of special or collective agreements, including agreements between States Members and non-Members of the League of Nations, so as to extend to all countries the mutual confidence essential to the complete success of the Conference on the Limitation and Reduction of Armaments ;

2. Recalls its resolution of September 24th, 1926, which reads as follows :

“Being desirous that the investigations, in regard to which the Assembly itself took the initiative in its resolution of September 25th, 1925, should be brought to a successful conclusion as soon as possible, it requests the Council to call upon the Preparatory Commission to take steps to hasten the completion of the technical work and thus be able to draw up, at the beginning of next year, the programme for a Conference on the Limitation and Reduction of Armaments corresponding to existing conditions in regard to regional and general security, and it asks the Council to convene this Conference before the eighth ordinary session of the Assembly, unless material difficulties render this impossible.”

Accordingly requests the Council to urge the Preparatory Commission to hasten the completion of its technical work and to convene the Conference on the Limitation and Reduction of Armaments immediately this work has been completed ;

3. Requests the Council to give the Preparatory Commission, whose task will not be confined to the preparation of an initial Conference on the limitation and reduction of armaments, and whose work must continue until the final goal has been achieved, the necessary instructions for the creation without delay of a Committee consisting of representatives of all the States which have seats on the Commission and are Members of the League of Nations, other States represented on the Commission being invited to sit on it if they so desire.

This Committee would be placed at the Commission's disposal and its duty would be to consider, on the lines indicated by the Commission, the measures capable of giving all States the guarantees of arbitration and security necessary to enable them to fix the level of their armaments at the lowest possible figures in an international disarmament agreement.

The Assembly considers that these measures should be sought :

In action by the League of Nations with a view to promoting, generalising, and co-ordinating special or collective agreements on arbitration and security ;

In the systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various articles of the Covenant ;

In agreements which the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States ;

And, further, in an invitation from the Council to the several States to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council's decisions or recommendations in the event of a conflict breaking out in a given region, each State indicating that, in a particular case, either all its forces, or a certain part of its military, naval or air forces, could forthwith intervene in the conflict to support the Council's decisions or recommendations.

II. PROPOSALS BY THE BUREAU.

*Adopted by the Committee on Arbitration and Security at its Meeting of
December 2nd, 1927.*

I. PROPOSAL REGARDING THE PROGRAMME OF WORK.

First Group of Questions. — Arbitration and security agreements. — Study of measures enabling the League of Nations to promote, generalise, and co-ordinate special or collective agreements on arbitration and security (Resolution No. V, No. 3, paragraph 4).

A. *Treaties of Arbitration.*

1. *Measures for their Promotion.*

Resolution of the 1926 Assembly.

Recommendations by States Members, and offer of the Council's good offices.

2. *Suitable Means of Co-ordination and Generalisation.*

Two methods may be indicated :

1. An analytical study of existing treaties for the purpose of extracting the substance common to all of them on which a model convention might be based ;

2. A study of the draft optional convention for the obligatory arbitration of disputes, submitted to the Third Committee by Dr. Nansen on behalf of the Norwegian delegation, taking into account the following recommendations of the First Committee of the Assembly :

(a) Means should be sought for encouraging and promoting the acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion of special treaties for judicial settlement, arbitration and conciliation.

(b) In any investigation into the methods of pacific settlement of disputes between States, special attention should be paid to the procedure of conciliation, which is of the utmost importance.

(c) Very special attention should also be given to the question of the relations between the Council's and the Assembly's mediatory action and the procedures of arbitration and conciliation.

(d) In studying a general convention for compulsory arbitration, enquiry should be made as to how the convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to their particular circumstances.

B. *Security Agreements.*

1. *Measures for their Promotion.*

Resolution of the 1926 Assembly :

Recommendations to States Members and offer of the Council's good offices.

2. *Suitable Means of Co-ordination and Generalisation :*

Study of existing security treaties from the point of view of their use by the Council for the application of Articles 10, 11, 16 and 17 of the Covenant.

Study of agreements which the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States (Resolution No. V, No. 3, paragraph 6).

Study of the procedure to be followed by the Council to give effect to the last paragraph of the Assembly resolution, which proposes that the Council should invite States to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council's decisions or recommendations in the event of a conflict breaking out in a given region, each State indicating that, in a particular case, either all its forces or a certain part of its military, naval or air forces could forthwith intervene in the conflict to support the Council's decision or recommendations (Resolution No. V, No. 3, paragraph 7).

Second Group of Questions. — Systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various articles of the Covenant (Resolution No. V, No. 3, paragraph 5).

Though there is no desire to limit the future sphere of action of the Committee in this matter, the programme may forthwith be extended to the following articles :

Article 10. Study of the criteria by which aggression may be presumed.

Article 11. Study of this article, taking into account the work already done and at present being examined.

Article 16. Study of Article 16 under conditions similar to those applied to the study of Article 11.

Study of the scheme of financial assistance to be given to States threatened with aggression, and particularly of the preliminary points raised by the Financial Committee :

(a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter.

(b) Right of participation by States (the question of States not Members of the League).

II. PROPOSAL REGARDING PROCEDURE.

The Bureau contemplates a procedure consisting of two stages.

First Stage. — Period between the first session of the Committee (present session) and the second session (date to be fixed).

The Secretariat, acting on the instructions of the Bureau and the rapporteurs mentioned below, would prepare the necessary documentation, regard being had to the indications given at the meetings.

During this period, certain rapporteurs would prepare memoranda on questions in the programme described above, which would serve as a basis for the discussion to be held during the second session.

The Bureau considers that three rapporteurs might be appointed :

One for Question I (A) — Arbitration agreements ;

One for Question I (B) — Security agreements ;

One for Question II — Articles of the Covenant.

The memoranda prepared by the first two rapporteurs would be co-ordinated by the authors in conjunction with the Chairman of the Committee and would thus constitute a general memorandum on point I.

The two memoranda thus obtained on points I and II respectively would also be co-ordinated by the three rapporteurs in co-operation with the Chairman of the Committee, so as to submit to the Committee the final memoranda in the form of an organic whole. This could serve as a basis for the work of the Committee.

Second Stage of the Procedure. — On the basis of the above-mentioned memoranda, the Committee would examine the question with a view to preparing a report for submission to the Preparatory Commission. The Committee would then have to decide whether this investigation should be conducted entirely in plenary session or whether the Committee's task ought to be facilitated by the creation of sub-committees (and if so, what number). In either case the final decision as to the terms of the report to be submitted to the Preparatory Commission would, of course, be taken by the Committee at a plenary meeting. It is, indeed, only at that moment that questions relating to the constitution of these sub-committees could be usefully discussed.

III. PROPOSALS AND OBSERVATIONS BY VARIOUS GOVERNMENTS REGARDING THE WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY.

1. PROPOSALS BY THE SWEDISH GOVERNMENT.

Stockholm, December 30th, 1927.

At the meeting held on December 2nd, 1927, by the Committee appointed to consider the question of arbitration and security, it was decided that Governments should be entitled to forward to the Bureau of the Committee before January 1st, 1928, any proposals they might wish to make with reference to questions on the Committee's programme of work.

The resolution adopted by the Assembly with respect to the work of the new Committee contains the following statement :

“ This Committee would be . . . disarmament agreement.

“ The Assembly considers . . . sought.

“ In action by the League of Nations with a view to promoting, generalising, and co-ordinating special or collective agreements on arbitration and security”

The instructions given by the Assembly to the Committee, with regard to the investigation of the problem of arbitration, thus contemplate an extension of arbitration procedure based on the principles already established by special agreements. The Swedish Government is of opinion that the simplest way of effecting this purpose would be to draw up a draft collective agreement, based so far as possible on the principles already adopted for the four Locarno agreements on arbitration and conciliation. These agreements were concluded between Germany on the one hand and Belgium, France, Poland and Czechoslovakia on the other. Their contents may be summarised as follows :

Disputes with regard to which the parties are in conflict as to their respective *rights* are submitted for decision to the Permanent Court of International Justice or an arbitral tribunal. Other disputes must, at the request of either of the parties, be submitted, with a view to amicable settlement to a Permanent Conciliation Commission and, if agreement is not reached before that body, to the Council of the League, for settlement in accordance with Article 15 of the Covenant. If the parties agree thereto, disputes of a legal nature may also be submitted to the Permanent Conciliation Commission before any resort is made to procedure before the Permanent Court of International Justice or to arbitral procedure.

Similar provisions have, in recent years been adopted for the settlement of international disputes in a large number of special agreements. The Swedish Government is therefore convinced that it would be desirable to give this type of agreement a more general form, as contemplated in the instructions received from the Assembly.

The advantages to be derived from a more general application of the provisions contained in the Locarno agreements consist, firstly, in the fact that these provisions afford appropriate methods for the settlement of the various classes of international disputes. The principle of compulsory recourse to judicial or arbitral procedure for the settlement of international disputes of a legal character has already enlisted the support of an important section of the public in most countries which are Members of the League. The increasing number of signatures secured for the optional clause of the Statute of the Permanent Court of International Justice is a further evidence of this fact. The effect of applying conciliation procedure before special commissions would be, that disputes would not as a rule be submitted to the Council of the League of Nations until they had been carefully and impartially investigated by a Conciliation Commission. When examining the matter afresh, the Council would thus be in a better position to devise the most appropriate solution and to put forward unanimous proposals for a settlement.

The extension of arbitral procedure would, moreover, be of great value from yet another point of view. Under Article 16 of the Covenant of the League of Nations, sanctions are to be applied to a State which resorts to war in disregard of the obligation devolving upon it to respect an arbitral award. The provisions of the Covenant governing these sanctions also cover awards given in virtue of special arbitration agreements. This being so, it may be asserted that an extension of the principle of arbitration would automatically entail an extension of the system of sanctions. When a dispute is investigated by the Council there is always some risk that that body may fail to reach unanimity and that the States Members of the League may consequently reserve “ the right to take such action as they shall consider necessary for the maintenance of right and justice ” (Article 15, paragraph 7). The reference of a dispute to a tribunal, on the other hand, secures the final settlement of the legal points at issue.

Guided by the above considerations, the Swedish Government has prepared a draft Collective Conciliation and Arbitration Agreement, based on the principles which were adopted

in the Locarno Agreements and which were rightly endorsed by large sections of the public in States Members of the League of Nations.

The Swedish Government moreover reserves the right to submit, if necessary, through its representative on the Committee any further proposals which might, in its opinion, help to effect the purpose contemplated in the instructions given by the Assembly. It takes this opportunity of calling attention to the argument advanced in the discussions at the last Assembly on the subject of measures calculated to strengthen and develop arbitral procedure.

Eliel LÖFGREN.

DRAFT CONVENTION ON THE SETTLEMENT OF INTERNATIONAL DISPUTES.

Article 1.

All disputes of every kind between the Contracting Parties with regard to which the Parties are in conflict as to their respective rights, and which it may not be possible to settle amicably by the normal methods of diplomacy shall be submitted for decision either to an arbitral tribunal or to the Permanent Court of International Justice, as laid down hereinafter. It is agreed that the disputes referred to above include in particular those mentioned in Article 13 of the Covenant of the League of Nations.

Disputes for the settlement of which a special procedure is laid down in other Conventions in force between two or more of the Contracting States shall be settled in conformity with the provisions of those Conventions.

Article 2.

The disputes referred to in Article 1 shall be submitted by means of a special agreement either to the Permanent Court of International Justice under the conditions and according to the procedure laid down by its statute, or to an arbitral tribunal under the conditions and according to the procedure laid down by the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

If the Parties cannot agree to the terms of the special agreement after a month's notice, either of them may bring the dispute before the Permanent Court of International Justice by means of an application.

Article 3.

All questions on which the signatory States shall differ without being able to reach an amicable solution by means of the normal methods of diplomacy, the settlement of which cannot be attained by means of judicial decision as provided for in Article 1 of the present Convention, and for the settlement of which no procedure has been laid down by a treaty in force between the Parties, shall be submitted to a Conciliation Commission, whose duty it shall be to propose to the Parties an acceptable solution, and in any case to present a report.

Article 4.

In the case of a dispute the occasion of which, according to the Municipal Law of one of the Parties, falls within the competence of the National Courts of such Party, the matter in dispute shall not be submitted to the procedure laid down in the present Convention until a judgment with final effect has been pronounced, within a reasonable time, by the competent national judicial authority.

Article 5.

The Conciliation Commission, to which the disputes referred to in Article 3 must be submitted, shall be either permanent, or specially set up for the settlement of the dispute which has arisen between the Parties.

On a request to that effect being sent by one of the signatory States to another signatory State, a Permanent Conciliation Commission shall be constituted. Unless the Parties agree otherwise, this Commission shall be appointed for three years and shall be constituted in accordance with the provisions of the present Convention.

If, at the time when a dispute arises, no permanent conciliation commission appointed by the Parties to the dispute is in existence a special Commission, constituted in accordance with the provisions of the present Convention, shall be set up to investigate the said dispute.

Article 6.

Failing an agreement to the contrary, the Conciliation Commission referred to in Article 5 shall be composed of five members and shall be constituted in accordance with the following provisions.

The Parties shall each nominate a commissioner chosen from among their respective nationals, and shall appoint, by common agreement, the other three commissioners from among

the nationals of third Powers. These three commissioners must be of different nationalities, and the Parties shall, by common agreement, appoint the President of the Commission from among them.

If the members of the Commission have not been appointed within two months from the date at which one of the Parties has sent the other a request for the constitution of a Conciliation Commission, the President of the Swiss Confederation shall, in the absence of any agreement to the contrary, be requested to make the necessary appointments.

(The present Draft Convention leaves open the question of the procedure to be followed for the constitution of a Conciliation Commission between Switzerland and another State, as the solution of this question should be made subject to any proposals Switzerland might desire to make on the subject.)

Article 7.

Disputes shall be brought before the Conciliation Commission by means of a request addressed to the President by the two Parties acting in agreement or, in the absence of such agreement, by one or other of the Parties.

The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable settlement.

If the request emanates from one only of the Parties, notification thereof shall be made without delay to the other Party.

Article 8.

Within fifteen days from the date when the Parties shall have brought a dispute before the Permanent Conciliation Commission set up by them, either Party may, for the examination of the particular dispute, replace its Commissioner by a person possessing special competence in the matter.

The Party making use of this right shall immediately inform the other Party; the latter shall in that case be entitled to take similar action within fifteen days from the date when the notification reaches it.

Article 9.

The task of the Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise and to endeavour to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

At the close of its labours the Commission shall draw up a report stating as the case may be, either that the Parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement.

The labours of the Commission must, unless the Parties otherwise agree, be terminated within six months from the day on which the Commission shall have been notified of the dispute.

Article 10.

In the absence of any special provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 11.

The Conciliation Commission shall meet, in the absence of agreement to the contrary between the Parties, at the place selected by its President.

Article 12.

The labours of the Permanent Conciliation Commission are not public except when a decision to that effect has been taken by the Commission with the consent of the Parties.

Article 13.

The Parties shall be represented before the Conciliation Commission by agents, whose duty it shall be to act as intermediaries between them and the Commission. They may, moreover, be assisted by counsel and experts appointed by them for that purpose, and request that all persons whose evidence appears to them useful should be heard.

The Commission on its side shall be entitled to request all explanations from the agents, counsel and experts of the two Parties, as well as from all persons it may think useful to summon with the consent of their Governments.

Article 14.

Unless otherwise provided in the present Convention, the decisions of the Conciliation Commission shall be taken by a majority.

Article 15.

The Parties to the dispute shall be required to facilitate the labours of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts, and to visit the localities in question.

Article 16.

During the labours of the Conciliation Commission, each Commissioner shall receive a salary, the amount of which shall be fixed by agreement between the Parties, each of which shall contribute an equal share.

Article 17.

If the two Parties have not reached an agreement within a month from the termination of the labours of the Conciliation Commission, the question shall, at the request of either Party, be brought before the Council of the League of Nations, which shall deal with it in accordance with Article 15 of the Covenant of the League.

Article 18.

If the Parties have agreed that a dispute which, under Article 1, or under a special agreement between them, should be submitted to judicial settlement, shall first be submitted to Conciliation procedure, but have not concluded any agreement laying down the composition of the Conciliation Commission or settling the procedure itself, the dispute shall be brought before a Permanent Conciliation Commission, or, failing this, before a Commission appointed for the purpose in accordance with Article 6 ; as regards procedure, the provisions of Articles 7 to 16 shall be applied.

Article 19.

In any case, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the latter has not been notified thereof, the Arbitral Tribunal or the Permanent Court of International Justice acting in accordance with Article 41 of its Statute, shall lay down within the shortest possible time, the provisional measures to be adopted. It shall similarly be the duty of the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken.

The Parties to the dispute shall be required to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Conciliation Commission or by the Council of the League of Nations, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 20.

The present Convention shall be applicable as between the States Signatories who are Parties to a dispute whether or no other Powers are also interested in the dispute.

2. PROPOSALS BY THE NORWEGIAN GOVERNMENT.

Oslo, December 30th, 1927.

The Norwegian Government realises the objections which may be raised, and some of which were actually raised during the last session of the Assembly of the League of Nations, against the draft general arbitration Convention submitted to the Assembly by the Norwegian delegation. The Norwegian Government is, however, of the opinion that these objections will lose a great deal of their force if the proposed Convention is based on the model of the Locarno Treaties, which is at present accepted by a considerable number of States. There is also reason to believe that States whose arbitration policy has hitherto been marked by a certain reserve would subsequently accede to a general Convention drawn up on this basis.

The Norwegian Government therefore recommends that the Locarno Treaties should be taken as a model in drawing up a general Convention of conciliation and arbitration, with the modifications rendered essential by the necessity of each contracting party constituting a special conciliation commission with each of the other contracting parties.

The Norwegian Government proposes at the same time that the general Convention to be concluded should be of wider scope than the Locarno Treaties as regards the submission of disputes to a decision binding on the parties. The Norwegian Government considers that the provisions of the Locarno Treaties concerning the submission of disputes to the Council

of the League of Nations (Article 18) should be supplemented by a clause under which the contracting parties would undertake to accept as binding the conclusions of the Council's report if this report was accepted unanimously, the votes of the representatives of the parties not being counted in reckoning this unanimity. A decision taken by the Council under Article 15, paragraph 8 of the Covenant should also be binding.

The Norwegian Government also proposes the insertion in the Convention of an optional arbitration clause under which the contracting parties may declare, either on signing or ratifying the Convention, or at a later date, that they bind themselves, in their relations with any other contracting party accepting the same obligation, to submit to an arbitral tribunal instead of to the Council of the League of Nations any non-judicial question which has been referred to a permanent conciliation commission and has not proved capable of settlement by this method. In the absence of an agreement to the contrary, the arbitration tribunal in question should be constituted in conformity with the provisions of Heading IV, Chapter II of the Hague Convention of October 18th, 1907 for the Pacific Settlement of International Disputes.

The Norwegian Government considers that the obligations of the parties under the general convention should not replace their obligations under special conventions of conciliation and arbitration in force between them, but should only supplement the latter. It would therefore propose that the terms of the Convention should only apply to disputes falling entirely outside the scope of the special agreements which have been or may be concluded between the parties with regard to the settlement of disputes by conciliation or arbitration, and to those whose submission to a final and binding decision, in virtue of these agreements, cannot be called for when they have been referred to a conciliation commission. In the latter case, the dispute would be referred under the general Convention either to an international tribunal or to the Council of the League of Nations.

Ivar LYKKE.

3. OBSERVATIONS OF THE BELGIAN GOVERNMENT.

Brussels, January 11th, 1928.

After a first examination of the documents of the Committee on Arbitration and Security, it did not seem to me that the Belgian delegate need submit any "recommendations, suggestions or guiding principles" to the rapporteurs on behalf of the Belgian Government.

At most I might have referred, if need were, to the Report of M. de Brouckère, the previous Belgian delegate on the Preparatory Disarmament Commission, submitted after the meeting of September 1926, and to his speech on September 13th, 1927, to the Third Committee of the Assembly, concerning the necessity of "developing the powers which the League of Nations derives from the existence of the Covenant". But these documents are well-known to all those who are interested in the aims of the Committee.

Meanwhile I have just received the text of the Swedish Government's proposals. I see that they consist of a "Draft Collective Conciliation and Arbitration Agreement based on the principles which were adopted in the Locarno Agreements", and I have no hesitation in saying in this connection that such suggestions receive the Belgian Governments' wholehearted approval. I am therefore glad to learn that a formal proposal to this effect is now under consideration by the rapporteurs.

ROLLIN JACQUEMYS.

4. OBSERVATIONS OF HIS MAJESTY'S GOVERNMENT IN GREAT BRITAIN ON THE PROGRAMME OF WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY OF THE PREPARATORY COMMISSION FOR THE DISARMAMENT CONFERENCE.

Question.

"1. *First Group of Questions.* Arbitration and security agreements.

"Study of measures enabling the League of Nations to promote, generalise and co-ordinate special or collective agreements on arbitration, and security (Resolution No. V, No. 3, paragraph 4).

A. *Treaties of Arbitration.*

"1. *Measures for their Promotion:*

"Resolution of the 1926 Assembly.

"Recommendations by States Members and offer of the Council's good offices.

“ 2. *Suitable means of co-ordination and generalisation.*

Two methods may be indicated :

“ (1) An analytical study of existing treaties for the purpose of extracting the substance common to all of them on which a model convention might be based.

“ (2) A study of the draft optional convention for the obligatory arbitration of disputes, submitted to the Third Committee by Dr. Nansen on behalf of the Norwegian delegation, taking into account the following recommendations of the First Committee of the Assembly :

“ (a) Means should be sought for encouraging and promoting the acceptance of the optional clause of Article 36 of the Statute of the Permanent Court of International Justice, and the conclusion of special treaties for judicial settlement, arbitration and conciliation.

“ (b) In any investigation into the methods of pacific settlement of disputes between States, special attention should be paid to the procedure of conciliation, which is of the utmost importance.

“ (c) Very special attention should also be given to the question of the relations between the Council's and the Assembly's mediatory action and the procedures of arbitration and conciliation.

“ (d) In studying a general convention for compulsory arbitration, enquiry should be made as to how the convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to their particular circumstances. ”

Answer.

I. *Justiciable Disputes.*

Meaning of Phrase “ Treaties of Arbitration ”.

1. In considering the question of what measures may be feasible for promoting treaties of arbitration, a distinction must be drawn between the classes of disputes which it is proposed to solve by means of arbitration. It is usual in this connection to distinguish between justiciable and non-justiciable disputes, *i.e.*, between those in which — to use the phraseology of the Treaty of Locarno — the parties are in conflict as to their respective rights and those in which the dispute arises because there is a divergence of view as to the political interests and aspirations of the parties. It is convenient to restrict the meaning of the phrase “ treaties of arbitration ” to international arrangements dealing with justiciable disputes and providing for the submission of such disputes to a tribunal entitled to give a decision binding on both parties.

Arbitration Treaties in General have no Sanction but Public Opinion.

2. The object of all arbitration treaties being to facilitate the satisfactory solution of disputes so as to restore relations of cordiality between the States concerned, it is well to bear in mind that it is not the rendering of a decision that is important but the acceptance and execution of the terms of that decision by the parties. Arbitration treaties have no sanction behind them but the force of public opinion in the world at large.

An arbitration award which a party to the dispute resolutely refused to execute would not merely fail to settle the dispute ; it would prejudice the movement in favour of arbitration.

3. The times hardly seem to be ripe for any general system of sanctions for the enforcement of arbitration treaties. No effective sanctions have been suggested except an agreement by other States, not parties to the dispute, to use force against either of the parties to the dispute which failed to submit the dispute to arbitration or failed to accept and comply with the award. It is improbable that any nation which is strong enough to use force effectively would at present undertake any such general obligation. It would involve a burden which no State would shoulder unless it felt that its interests were vitally affected by any disturbance of the peace resulting from the particular dispute in question remaining unsettled. Even in the Locarno Treaty, where the parties incurred obligations of a far-reaching character because they felt that interests of great importance were affected, the sanction for enforcing the article containing the agreement to arbitrate was limited to an undertaking by the five Powers concerned to comply with such proposals as the Council of the League might make when the failure on the part of the parties to the dispute to honour the obligation as to arbitration was brought before that body.

Need for Reservations.

4. The considerations advanced in paragraph 2 show that one of the controlling elements in formulating any model arbitration treaty or in considering what measures can be taken for promoting the conclusion of arbitration treaties is the extent to which public opinion in any particular country can be counted on to accept and to carry out loyally a decision which is unfavourable to its own contentions. Arbitration treaties impliedly, if not explicitly, impose upon the parties the obligation loyally to accept the decision of the tribunal. An arbitration treaty which goes beyond what the public opinion of a country can be counted

on to support when the interests of that country are in question and when a decision unfavourable to those interests is pronounced is a treaty which is useless. It is merely calculated to deceive the public. In a moment of grave importance it may fail to achieve a solution of a dispute even if the dispute is arbitrated in accordance with its terms. It would embitter relations between the two countries instead of improving them, and would cause a set-back to the movement now so steadily advancing in favour of the pacific settlement of justiciable disputes by means of arbitration.

5. It is because it is so generally felt that there are some questions — justiciable in their nature — which no country could safely submit to arbitration that it has been usual to make reservations limiting the extent of the obligation to arbitrate. These limitations may vary in form, but their existence indicates the consciousness on the part of Governments that there is a point beyond which they cannot count on their peoples giving effect to the obligations of the treaty. That there are limits beyond which a State cannot go in accepting binding obligations to arbitrate justiciable questions in all cases is recognised in Article 13 of the Covenant of the League of Nations. By that provision the members of the League accept *in principle* but not definitively the obligation to arbitrate justiciable disputes. The framers of the Covenant realised that it was not feasible to embody in the Covenant a definite and comprehensive obligation to arbitrate all justiciable disputes.

6. Mere omission of the limitations on the obligation to arbitrate justiciable disputes which now figure in arbitration treaties would not promote the progress of arbitration. What is necessary is to overcome the difficulties which have caused the insertion of these limitations, and for this time is necessary. As nations get to understand each other better, as the respect for international law gets stronger, and as a sense of security increases, it will become more easy for States — even for those whose interests are world-wide — to accept comprehensive engagements to arbitrate justiciable disputes. Some States are already in that fortunate position. Others less fortunate must approach thereto by degrees.

Lines of Progress.

7. There are two lines along which progress is possible towards a universal acceptance of the unrestricted obligation to arbitrate justiciable disputes, even by the States which cannot at present accept such an obligation.

8. The first is by the inclusion in particular treaties of an undertaking to arbitrate disputes which may arise with regard to the interpretation or application of the treaty concerned. Many multilateral conventions to which Great Britain is a party have been concluded in recent years which contain a provision such as the following :

“ Disputes between the parties relating to the interpretation or application of this convention shall, if they cannot be settled by direct negotiation, be referred for decision to the Permanent Court of International Justice. In case either or both of the parties to such a dispute should not be parties to the protocol of signature of the Permanent Court of International Justice, the dispute shall be referred, at the choice of the parties, either to the Permanent Court of International Justice or to arbitration. ”¹

9. The time is ripe for an investigation as to whether this type of stipulation might not more generally be included in international agreements, including those of a non-technical character. If it is possible to do so, the field within which all justiciable disputes will be arbitrated will steadily expand.

10. The second and more important method is by widening the scope of agreements dealing with justiciable disputes generally and pledging the parties in advance to submit such disputes to arbitration. It is in treaties of this kind that the reservations referred to in paragraph 5 above are now generally inserted.

11. In 1903 an arbitration treaty was concluded between France and Great Britain which provided as follows :

“ Article 1. Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two Contracting States, and do not concern the interests of third Parties ”.²

¹ International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, signed at Geneva, September 12th, 1923, Article 15 (*Treaty Series*, No. 1, 1926, Cmd. 2575).

² *Treaty Series*, No. 18 of 1903.

This treaty was the forerunner of a large number of similar treaties concluded between other Powers. Great Britain is at present a party to eleven treaties containing stipulations on these lines.

12. It may well be that this formula as to vital interests, honour, independence and the interests of third States, first adopted a quarter of a century ago, requires re-examination. Whatever changes may be recommended, however, it is clear that some limitations on the scope of a treaty of this kind are essential. Disputes legal in their nature may arise between two States with regard to matters falling exclusively within the domestic jurisdiction of one of them. No State can agree to the submission to an international tribunal of matters falling exclusively within the range of its national sovereignty. Similarly, there are some political questions even of a justiciable nature as to which a country feels that for the reasons indicated in paragraph 4 the stage has not yet been reached when it can agree unreservedly in advance to submit them to an arbitration tribunal.

13. Cases sometimes arise in which the parties are willing to arbitrate, but where it is felt that a mere decision on the point of law will not solve the dispute. In two such cases between Great Britain and the United States the parties agreed that the tribunal should have power to frame rules or recommendations for the future regulation of the matter out of which the dispute arose. This was done in the Behring Sea Arbitration Treaty (February 29th, 1892 ; 84 State Papers, p. 48) and in the North Atlantic Fisheries Arbitration Agreement (January 27th, 1909 ; 102 State Papers, p. 145). This procedure might be followed with advantage in other cases as it reduces to a minimum the risk of future disputes.

The Optional Clause in the Statute of the Permanent Court.

14. Article 36 of the Statute of the Permanent Court of International Justice embodied an arrangement by which any State which accepted the Statute establishing the Court might accept as compulsory the jurisdiction of the Court in cases relating to :

- “ (a) The interpretation of a Treaty.
- “ (b) Any question of International Law.
- “ (c) The existence of any fact which, if established, would constitute a breach of an international obligation.
- “ (d) The nature or extent of the reparation to be made for the breach of an international obligation.”

Power was given by the terms of the article to accept this obligation in respect of all or any of these four classes of cases and, therefore, a State was enabled to exclude from its acceptance any particular category of disputes.

15. The cause of the somewhat small measure of acceptance that Article 36 has hitherto met with is to be found in the fact that the considerations which deter States from accepting binding obligations to arbitrate all justiciable disputes operate in varying degrees as regards other foreign States. In contracting an international obligation towards another State a country must take into account the nature of its relations with that State. Obligations which it may be willing to accept towards one State it may not be willing to accept towards another. Reservations and exceptions which it may think necessary as regards one State may not be considered necessary as regards another. The method of signing a general undertaking, even when coupled with the power to make exceptions as to the categories of disputes to be arbitrated, lacks the flexibility which enables the measure of the obligation to be varied in the case of the particular States towards which the obligation is being accepted. More progress is likely to be achieved through bilateral agreements than through general treaties open to signature by any State which so wishes. When a bilateral treaty is to be open to other Powers by way of accession, it should provide that the invitation to accede should emanate from all the parties which have already become bound by the treaty.

Choice of Tribunal.

16. The progress of arbitration and the development of international law will be encouraged by the choice, whenever possible, of the Permanent Court of International Justice at The Hague as the tribunal to which justiciable disputes are referred for decision. The judgments of competent international tribunals are already playing an important part in formulating the rules of international law. If there is a tendency to concentrate the more important disputes in the hands of the court which has been established at The Hague, it will render the resulting rules more uniform and will also enhance the prestige of the Court.

II. *Non-justiciable Disputes.*

17. Non-justiciable disputes are less suitable for submission to a tribunal invested with the power of giving a binding decision. A procedure of conciliation is in such cases all that is at present possible.

18. Under the provisions of the Covenant of the League, Members of the League are bound to bring all such disputes, if not solved by other means, before the Council of the League, and though the terms of Article 15 of the Covenant do not render the recommendations of the Council obligatory on the parties to the dispute, they go as far as the States with world-wide interests felt able in 1919 to go, in subjecting all Members of the League to the obligation of refraining from making war against a party to the dispute which complied with the recommendations of the Council.

19. In 1925, when this question was once more considered by the Powers which participated in the Locarno Conference — most of them Powers whose interests are world-wide — it was found that the provisions of the Covenant on this question went as far as it was possible for them to go. Accordingly, Article 3 of the Treaty of Locarno provided that questions which were not submitted to judicial decisions should be submitted to a conciliation commission, and that, if the recommendations of the commission were not accepted, the question should be handled by the Council of the League under Article 15 of the Covenant.

20. In 1922 the Assembly of the League adopted a resolution urging upon all Members of the League the advantage of conciliation as a method of solving disputes and inviting them to conclude agreements for setting up conciliation commissions. With this resolution His Britannic Majesty's Government in Great Britain are profoundly in sympathy. The essence of conciliation is that it does not attempt to impose a settlement, but that it frames for the consideration of the parties to the dispute recommendations and terms calculated to compose the conflict of view. It thus brings to bear upon the question at issue the efforts of impartial and qualified statesmen free from the bias which is inevitable among those who are nationals of one of the countries which are parties to the dispute. It has also this further advantage that recommendations made by impartial bodies after profound study of the facts of the dispute are bound to merit the support of public opinion in other countries and will thereby possess the greatest weight with the States between which the dispute has arisen.

21. The fundamental distinction between justiciable and non-justiciable disputes is one that must be borne in mind in framing any model conciliation agreement. Justiciable disputes should be referred to bodies of men who are accustomed to give binding decisions, and who are in consequence accustomed to base their decisions on rules of law which are obligatory for the parties. Non-justiciable disputes cannot be solved by the application of any such rules of law. Such disputes should not, therefore, be submitted to bodies of judges accustomed to apply rules of law. Treaties which provide that where the parties do not accept the recommendations of a conciliation commission the dispute should be referred to the Permanent Court of International Justice at The Hague should be discouraged.

22. Dr. Nansen has submitted a form of agreement open to general signature for reference of non-justiciable disputes to a small body or committee invested with the power of giving a decision binding on the parties. The utility of studying the draft of any such agreement depends on whether there are any States which feel themselves able to accept and sign such a general agreement. If there are, the draft of such an agreement should be worked out. It would serve as a useful model for future agreements as to this mode of dealing with non-justiciable disputes — whether such agreement were bilateral or multilateral in form — nor would the utility of the draft be destroyed by the fact that there might at present be many States which felt unable to sign it.

B. Security Agreements.

Question.

1. Measures for their promotion :

Resolution of the 1926 Assembly.

Recommendations to States Members and offer of the Council's good offices.

Answer.

The resolution of the Seventh Assembly on arbitration, security and the pacific settlement of international disputes runs as follows :

“ The Assembly,

“ Having examined the reports of the Council on Arbitration, Security and the Pacific Settlement of International Disputes :

“ Records the fact that the resolution adopted by the Assembly at its sixth ordinary session, to the effect that the most urgent need of the present time is the re-establishment of mutual confidence between nations, has had definite results. It sees clear proof of this in the ever-increasing number of arbitration conventions and treaties of security conceived in the spirit of the Covenant of the League of Nations and in harmony with the principles of the Geneva Protocol (Arbitration, Security and Disarmament). It emphasises in particular the importance of the Treaties of Locarno, the coming into force of which has been rendered possible by the admission of Germany into the League of Nations and the principal object of which is to ensure peace in one of the most sensitive regions of Europe ;

“ Sees in the last-mentioned treaties a definite step forward in the establishment of mutual confidence between nations ;

“ Considers that agreements of this kind need not necessarily be restricted to a limited area, but may be applied to different parts of the world ;

“ Asserts its conviction that the general ideas embodied in the clauses of the Treaties of Locarno, whereby provision is made for conciliation and arbitration and for security by the mutual guaranteeing of States against any unprovoked aggression, may well be accepted amongst the fundamental rules which should govern the foreign policy of every civilised nation ;

“ Expresses the hope that these principles will be recognised by all States and will be put into practice as soon as possible by all States in whose interest it is to contract such treaties ;

“ And requests the Council to recommend the State Members of the League of Nations to put into practice the above-mentioned principles and to offer, if necessary, its good offices for the conclusion of suitable agreements likely to establish confidence and security — the indispensable conditions of the maintenance of international peace — and, as a result, to facilitate the reduction and limitation of the armaments of all States. ”

The declaration made by the British representative at the sixth meeting of the thirty-third session of the Council — the declaration of the views of His Majesty's Government on the draft Protocol for the Pacific Settlement of International Disputes — contained the following passage :

“ What expedient remains ? How is security and, above all, the feeling of security, to be attained ? In answering this question it is necessary to keep in mind the characteristics of the ‘extreme cases’, to which reference has already been made. The brooding fears that keep huge armaments in being have little relation to the ordinary misunderstandings inseparable from international (as from social) life — misunderstandings with which the League is so admirably fitted to deal. They spring from deep-lying causes of hostility, which, for historic or other reasons, divide great and powerful States. These fears may be groundless ; but if they exist they cannot be effectually laid by even the most perfect method of dealing with particular disputes by the machinery of enquiry and arbitration. For what is feared in such cases is not injustice, but war — war deliberately undertaken for purposes of conquest and revenge. And if so, can there be a better way of allaying fears like these than by adopting some scheme which should prove to all the world that such a war would fail ?

“ Since the general provisions of the Covenant cannot be stiffened with advantage, and since the ‘extreme cases’ with which the League may have to deal will probably affect certain nations or groups of nations more nearly than others, His Majesty's Government conclude that the best way of dealing with the situation is with the co-operation of the League, to supplement the Covenant by making special arrangements in order to meet special needs. That these arrangements should be purely defensive in character, that they should be framed in the spirit of the Covenant, working in close harmony with the League and under its guidance, is manifest. And, in the opinion of His Majesty's Government, these objects can best be attained by knitting together the nations most immediately concerned, and whose differences might lead to a renewal of strife, by means of treaties framed with the sole object of maintaining, as between themselves, an unbroken peace. Within its limits no quicker remedy for our present ills can easily be found or any surer safeguard against future calamities. ”

His Majesty's Government were not slow to put into practice the expedient which they recommended. They were among those which created the example set by the Treaty of Locarno, so strongly welcomed by the Seventh Assembly. It might not be amiss here to recall the outstanding features of this arrangement — the features which distinguish it from, and render it a more effective guarantee of security than, other agreements concluded before or since. They may be briefly summarised as follows :

The Treaty of Locarno is no mere alliance between a group of friendly States with a community of interests. Such alliances, unilateral in character and directed generally against some other State or group of States, have not always in the past best served the cause of peace. Even when originally inspired by defensive motives they have sometimes become instruments of offence.

The Treaty of Locarno is a bond between nations which were recently at war with one another. It is directed solely to prevent a recurrence of that calamity and to preserve the peace within a group of States whose interests have often conflicted and whose territories have frequently been the theatre of war.

The Treaty of Locarno is in complete harmony with the spirit of the Covenant and a valuable aid in facilitating the execution of its provisions. It is a mutual engagement between certain of the signatories in no circumstances again to resort to war among themselves, and a reciprocal guarantee by all of them for the maintenance of that engagement. Under its terms all disputes are referred in the last resort to the Council, by whose decisions the parties undertake to abide. Even in the event of a deliberate act of aggression — the one case in which the signatories are bound to come to the immediate aid of the injured party — the Council is seized of the matter and the parties undertake to act in accordance with its recommendations.

The Treaty of Locarno is designed to avert a specific danger in a specific area, and imposes on all the parties concerned an equal obligation to preserve its integrity and to execute the decisions of the Council. It is in this way far more efficacious than could be any more general system of guarantees under which the obligation would be spread over a much larger number of States each of which would be inclined, quite naturally, to regard its individual obligation as being *pro tanto* reduced.

As already stated, His Majesty's Government in Great Britain were among those which set the example of Locarno. In the regions where their particular interests are most directly affected and which have so often been the scene of war, they have given their formal guarantee, backed by the undertaking to bring the whole force of Great Britain to the support of the League's judgment in the event of an act of aggression being committed in defiance of the treaty and of the Covenant. For reasons which are already well known, His Majesty's Government are unable themselves to contract further obligations of this character and extend the tremendous responsibilities involved in regions where their interests are less directly concerned.

Notwithstanding the hope expressed in the above-quoted Assembly resolution that the principles embodied in the Treaties of Locarno "will be put into practice as soon as possible by all States in whose interest it is to contract such treaties", no further treaties on the Locarno model have yet been registered with the League of Nations. His Majesty's Government look forward to the gradual growth of this system, convinced as they are that the easiest way of attaining a universal sense of security is for each State to provide itself with the necessary guarantees in that quarter where its main interests, and consequently its principal danger, lie. If the system is gradually extended until it includes every State which feels that its security is not already amply safeguarded, there will eventually be woven a network of guarantees against a rupture of the peace in any part of the world. In the opinion of His Majesty's Government, such local guarantees, directed to a specific danger and based on well-defined obligations, are infinitely more satisfactory than any comprehensive or universal scheme, which must necessarily be drawn in vaguer and more general terms, and of which consequently the *modus operandi* and the probable efficacy must remain to some extent a matter of speculation.

In accordance with the Assembly resolution quoted above, the Council place its good offices at the disposal of all States desirous of "concluding suitable agreements likely to establish confidence and security". So far as His Majesty's Government in Great Britain are aware, no State has as yet taken advantage of this offer. It seems to them that, if States, which, owing to any doubt or suspicion, hesitate to open negotiations were mutually to agree to place themselves in the hands of the Council and to conduct their conversations under its auspices, the conclusions of further agreements on the lines recommended would be greatly facilitated.

Question.

2. Suitable means of co-ordination and generalisation :

"Study of existing security treaties from the point of view of their use by the Council for the application of Articles 10, 11, 16 and 17 of the Covenant.

"Study of agreements with the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States" (Resolution No. V, No 3, paragraph 6).

"Study of the procedure to be followed by the Council to give effect to the last paragraph of the Assembly resolution, which proposes that the Council should invite States to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council's decisions or recommendations in the event of a conflict breaking out in a given region, each State indicating that, in a particular case, either all its forces or a certain part of its military, naval or air forces, could forthwith intervene in the conflict to support the Council's decision or recommendations" (Resolution No. V, No. 3, paragraph 7).

Answer.

Though the general use of the word "security", in the connection in which it is now employed, is of recent adoption, the idea is no new one. During the century preceding the late war the underlying motive of many treaties was the desire for a sense of security — the desire, that is, of a State to minimise the risk of finding itself in armed conflict with others over a particular question and to assure itself that in the event of such a conflict it will not be left to bear the brunt unaided.

Such treaties can only be described as "security" agreements, in the present-day sense of the word, if they are directed solely to the preservation of peace and involve no prejudice to the rights or interests of third parties — if, in short, they are imbued with the spirit of the Covenant.

Since the establishment of the League of Nations, a number of such agreements have been concluded. The following are among those to which Great Britain is a party :

The Convention relating to the non-fortification and neutralisation of the Aaland Islands of October 20th, 1921. — The object of this agreement is "that these islands may never become a cause of danger from the military point of view", and the "High Contracting Parties undertake

to assist in the measures which the Council of the League of Nations may decide upon for this purpose" (the rendering effective of the guarantee of neutrality) if a case should arise in which its intervention is sought.

The Convention relating to the regime of the Straits of July 24th, 1923. — With the object of securing "that the demilitarisation of the Straits and of the contiguous zones shall not constitute an unjustifiable danger to the military security of Turkey, and that no act of war should imperil the freedom of the Straits or the safety of the demilitarised zones", the high contracting parties undertake, in the event of certain contingencies arising, to meet such situation "by all the means that the Council of the League of Nations may decide for this purpose".

The Treaty between the British Empire, France, Japan and the United States of America relating to their insular possessions and insular dominions in the Pacific Ocean, of December 13th, 1921, by which the high contracting parties undertake to respect each other's rights in a specified area, to meet in joint conference for the consideration and adjustment of any controversy involving those rights, and to communicate with each other as to the measures to be taken in the event of the said rights being threatened by the aggressive action of any other Power.

The Treaty of Locarno, of which the salient features have been recalled in an earlier passage of this memorandum.

Provision for meeting a specific danger in a particular area is a common factor of these treaties, which may accordingly be classed as "security" agreements. To a greater or less extent, varying with the terms in which they are drawn, they are calculated to be of use to the Council in the application of Articles 10, 11, 16 and 17 of the Covenant. They are a confirmation and, in some cases, a reinforcement of the general undertaking to respect and preserve the territorial integrity and existing political independence of all members of the League (Article 10); in virtue of their explicit recognition that certain individual Members of the League are particularly concerned in particular areas, they are a confirmation and a reinforcement of the general recognition that any war or threat of war is a matter of concern to the whole League (Article 11); for the same reason they are an additional guarantee that the sanctions prescribed in the Covenant (Articles 16 and 17) will be readily forthcoming when the need arises. This is especially so in those cases where the contracting parties formally undertake to apply those measures which the Council may decide upon.

In the opinion of His Majesty's Government in Great Britain, the measure of security afforded by agreements of this nature is proportionate to (a) the extent to which they are devised to meet a specific danger, and (b) the character, and clarity of definition, of the measures to be taken in the event of that danger arising. History has shown that this class of treaty has as a rule proved ineffective when there has been room for doubt or hesitation under either of those heads. His Majesty's Government in Great Britain are of opinion that the Treaty of Locarno, with its clear definition of both (a) and (b), is the ideal type of "security" agreement. As already stated, they look forward to its adoption by all States which have anything to fear.

The considerations referred to in the preceding paragraph apply also, in the view of His Majesty's Government, to agreements which States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States. Such agreements may undoubtedly be a contribution to security in proportion as they relieve the anxiety of the States which conclude them, whilst constituting no menace or cause of suspicion to others. They will also be of use to the Council in the degree in which they may facilitate its task in calling upon States to come to the support of the judgment of the League.

As regards the procedure to be followed by the Council in inviting States "to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council's decisions or recommendations in the event of a conflict breaking out in a given region," it seems probable that States may well hesitate to indicate precisely what measures they would be prepared to take in hypothetical contingencies; nor, for fear of increasing tension, or of creating it where none exists, are they likely to be willing, except in mutual agreement, to describe the contingencies in which they would be ready immediately to bring part or whole of their forces to the support of the Council's decision or recommendations. The most effective way of establishing such mutual agreement, and of placing it on record, is by the negotiation of a formal treaty. His Majesty's Government in Great Britain have adopted this method in the Treaty of Locarno, by which they have engaged to bring the whole of the forces of the country to the support of the League's judgment in certain definite contingencies.

Question.

"*Second group of questions.* — Systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various articles of the Covenant (Resolution No. V, No. 3, paragraph 5).

"Though there is no desire to limit the future sphere of action of the Committee in this matter, the programme may forthwith be extended to the following articles:

"*Article 10.* — Study of the criteria by which aggression may be presumed.

“ Article 11. — Study of this article, taking into account the work already done and at present being examined.

“ Article 16. — Study of Article 16 under conditions similar to those applied to the study of Article 11.

“ Study of the scheme of financial assistance to be given to States threatened with aggression, and particularly of the preliminary points raised by the Financial Committee.

“ (a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter.

“ (b) Right of participation by States (the question of States not Members of the League). ”

Answer.

Under Article 10 the Members of the League :

“ undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled. ”

It is well known that this article from the outset presented some difficulty to certain Members of the League who feared that, if interpreted in a literal sense, it would involve them in the obligation to place their forces automatically at the disposal of the Council for use in any part of the world where an act of aggression in violation of the Covenant had occurred.

It is unnecessary to describe the progress of the study made by the appropriate organs of the League as a result of proposals, first for the elimination, and subsequently for the amendment, of the article. It is sufficient to recall the following interpretative resolution which eventually was submitted to the Fourth Assembly, and which, though not formally adopted owing to one adverse vote, is nevertheless regarded by many Members of the League as the generally accepted interpretation :

“ It is in conformity with the spirit of Article 10, that, in the event of the Council considering it to be its duty to recommend the application of military measures in consequence of an aggression, or danger or threat of aggression, the Council shall be bound to take account, more particularly, of the geographical situation and of the special conditions of each State.

“ It is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces.

“ The recommendation made by the Council shall be regarded as being of the highest importance, and shall be taken into consideration by all the Members of the League with the desire to execute their engagements in good faith. ”

This interpretation is in harmony with the view of His Majesty's Government in Great Britain, who regard the article, while of great sanctity, as the enunciation of a general principle, the details for the execution of which are contained in other articles of the Covenant.

With the view of facilitating the fulfilment by Members of the League of the obligation involved in the acceptance of this principle, various attempts have been made to define an aggressor. It is unnecessary here to do more than recall the fact that His Majesty's Government have been unable to support them for reasons which they explained fully at the time :

Article 11. — “ Any threat or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

“ It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends. ”

This article has also been the subject of considerable study. Recently a report by the Committee of the Council was approved by the Eighth Assembly, which recommended its adoption by the Council :

“ as a valuable guide which, without restricting the Council's liberty to decide at any moment the best methods to be adopted in the event of any threat to peace, summarises the results of experience, of the procedure already followed, and of the studies so far carried out with a view to the best possible organisation of its activities in case of emergency. ”

His Majesty's Government in Great Britain are in full agreement with the terms of the Committee's report, which they regard as a most useful indication to the various steps which

may be taken by the Council, and as calculated to expedite its rapidity of action in an emergency.

Article 16. — “ 1. Should any Member of the League resort to war in disregard of its Covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

“ 2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

“ 3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

“ 4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon. ”

Without entering into the history of the study of this article, His Majesty's Government in Great Britain desire to recall, in the first place, the various protocols of amendment open for signature and ratification, all of which have been ratified on behalf of the British Empire but are not yet in force, and, secondly, the resolutions adopted by the Second (1921) Assembly, of which, as constituting provisional rules for the guidance of the Council, His Majesty's Government expressed their general approval subject only to certain observations (see letter to the Secretary-General of July 19th, 1922). Their attitude in this matter remains the same to-day. A further opinion regarding the interpretation placed by His Majesty's Government on Article 16 is contained in the collective note addressed to the German representatives by the representatives of Belgium, France, the British Empire and Italy at the time of the signature of the Treaty of Locarno.

General Remarks applicable to any further Study of the above-mentioned Articles of the Covenant.

His Majesty's Government in Great Britain have felt constrained on more than one occasion to express themselves as opposed to the application of hard-and-fast rules to the interpretation of articles of the Covenant. Their attitude in that respect is due to no desire to belittle or to diminish the obligations of the Covenant; on the contrary, it is due solely to their conviction that the great strength of the Covenant lies in the measure of discretion which it allows to the Council and the Assembly in dealing with future contingencies which may have no parallel in history, and which therefore cannot, all of them, be foreseen in advance. The elaboration and multiplication of rules must tend, not only to turn the Council into an automaton but to weaken its power of initiative in any contingency not wholly provided for in such rules.

A similar consideration applies also, in the view of His Majesty's Government, to any endeavours to define an aggressor. The views of His Majesty's Government on that point were once again clearly stated in the following passage in a speech made by Sir Austen Chamberlain in the House of Commons on November 24th last :

“ They made such an attempt in the Protocol; they made an attempt to define the aggressor. If you lay down, far in advance, before circumstances that you cannot foresee, rigid definitions by which the aggressor is to be determined, are you quite sure that in thus making these strict rules in circumstances which are unknown to you, you may not find, when the occasion arises, that by some unhappy turn in your definition you have declared to be the aggressor that party which, to the knowledge of all men at the time, is the aggressed and not the offender ?

“ There was an observation made by that eminent jurist and statesman and very true friend of the League and part author of the Covenant, Signor Scialoja, at the last Assembly, which is worth thinking about. He went, indeed, further than I would go, for he seemed to suggest, in one passage, that the aggressor could not be discovered. ‘But’, he added, ‘for after all, is not one thing certain, that if only he has a little diplomatic skill, the aggressor (“*se fera agresser*”), he makes himself to be aggressed.’ I do not believe it will be impossible. I hope it will not be very difficult for the League at a given moment to say who is the aggressor in a particular quarrel and particular circumstances then known; but I think that if you lay down tests by which you must be bound, you will find that the aggressor will carefully conform to your particular test, and will escape

the liability which ought to follow upon his actions just because of the precision of your definition. I, therefore, remain opposed to this attempt to define the aggressor, because I believe that it will be a trap for the innocent and a sign-post for the guilty."

His Majesty's Government in Great Britain have already indicated their attitude towards the scheme of financial assistance for States victims of aggression. The British delegate informed the Council on September 8th last that his Government welcomed the scheme outlined by the Financial Committee "as providing a practical means of mobilising the financial resources of States Members of the League against a State guilty of aggression, and as affording an impressive demonstration of the solidarity of League opinion against such a State". Such a scheme might, moreover, be expected to act as a powerful deterrent to any act of wanton aggression.

The British delegate proceeded to indicate that his Government must attach two conditions to their acceptance of the scheme, viz., it must form part of a satisfactory measure of general disarmament, and there must be an acceptance by the other principal States of a satisfactory allocation of the guarantee.

A similar statement was made by the British delegate in the Third Committee of the Assembly.

His Majesty's Government in Great Britain maintain their attitude as thus defined, and will be guided by these considerations in the further and more detailed examination of the scheme which will have to be undertaken with the assistance of the Financial Committee.

As regards the "study of the criteria by which aggression may be presumed and the procedure of the Council in this matter", this problem is examined elsewhere in the course of this memorandum. If any definite criterion can be established whereby aggression may be presumed, it will evidently apply to all cases in which Members of the League can be called upon to take action of any kind, financial, economic or other, in support of the Covenant of the League.

In regard to the "right of participation by States", His Majesty's Government in Great Britain endorse the principle laid down by the Financial Committee that no State should benefit by the scheme unless it has become a party to the Convention within a period to be fixed, and thus undertaken its obligations.

The question of the participation of States non-Members must be examined in the light of various considerations. It may perhaps be assumed that Members of the League are less likely to be involved in hostilities, either as aggressors or as victims of aggression, than non-Members, and that to admit the latter to participation in the scheme might be to expose the other participants to a greater risk of being called upon to give their specific guarantee. This might therefore be an argument against the admission of some of the less important non-Member States whose degree of stability and whose conduct of foreign policy may not be such as to inspire confidence. On the other hand, a general rule excluding participation by States non-Members would deprive the League of the co-operation of certain States whose financial strength and general stability would greatly enhance the efficacy of the scheme.

5. OBSERVATIONS OF THE GERMAN GOVERNMENT ON THE PROGRAMME OF THE WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY.

At the moment when the Rapporteurs of the Committee on Arbitration and Security are beginning their discussions, the German Government desires to submit a few general observations on the programme of work. Its sole object in doing so is to give its views on the form which the preliminary work undertaken by the rapporteurs could best assume, without in any way desiring at the present time to put forward definite proposals for the solution of the individual problems involved.

In principle, the German Government holds the view, which was frequently expressed in the first discussions of the Committee on Arbitration and Security, that the whole of this work should not aim at building up a theoretical system, but at framing those practical measures which are both necessary and attainable under present political conditions. A system constructed on purely theoretical considerations, logically perfect though it might be, would not only fail to solve the problem of security but might under certain circumstances even complicate it to a dangerous extent. In examining the individual measures suggested, the decisive criterion must be whether they can be carried out in practice. These measures should, however, not only be so framed that they can easily be executed, but their effectiveness should also be obvious so that they can exercise an immediate moral influence on public opinion.

The crux of the security problem is the avoidance of armed conflicts. It will only be possible to prevent war if a method can be found of dealing with all disputes that have led to wars in the past, which will provide a fair prospect of a peaceful solution. In the opinion of the German Government, this idea must constitute the starting point of the entire work of the Committee on Arbitration and Security and the main subject of its discussions. Until this central problem is solved, all other measures merely represent an artificial system without

a foundation, and one which is therefore not calculated to give practical effect to the idea of a genuine and durable international legal regime.

As regards a number of disputes between States, namely, justiciable disputes, the problem can be regarded, in principle at least, as adequately solved. The optional clause in the Statute of the Permanent Court of International Justice provides a satisfactory means of settling all disputes of this nature peacefully. It will be the task of the Committee on Arbitration and Security to ascertain in which manner a larger number of States can be induced to accept this method immediately.

On the other hand, no corresponding general procedure in regard to disputes which are not of a justiciable character but are exclusively political has so far been arrived at. From the point of view of the problem of security, however, the amicable settlement of such disputes is of the utmost importance. This, accordingly, is the point at which the preliminary work should begin and which should be most thoroughly discussed.

The German Government is convinced that there are practical possibilities here of which full advantage has not yet been taken. The aim of the Committee must be to endeavour to find for all conceivable disputes without exception a procedure which is calculated to lead to equitable and peaceful solutions. Under present conditions, there is as yet no possibility of all disputes of an exclusively political character being submitted for compulsory and final decision to an arbitration authority. Steps can, however, be taken towards the realisation of this idea by introducing other forms of procedure, which, while respecting the legitimate requirements of national life and its development, would practically ensure the settlement of the disputes. Much could be done by developing the conciliation procedure, either before the Council of the League of Nations or before special organs invested with adequate authority. This is the direction indicated by the development of arbitration procedure since the foundation of the League, and certain fundamental principles have already been evolved which can be advantageously carried further.

Such a scheme for the peaceful settlement of disputes could be embodied both in bilateral and in multilateral treaties. The effectiveness of the bilateral treaties would be enhanced if the procedure laid down therein could be successfully brought into organic relationship with the procedure before the organs of the League. Naturally, this would prove easier in a multilateral treaty. At the same time, such a treaty could be so framed that the extent of the obligations assumed could be adapted, to a certain extent, either to the special political relations in definite parts of the world or to the nature of the political relations between the individual States parties to the treaty.

The objection that the value of any system for the pacific settlement of international disputes must always remain dependent on special measures guaranteeing the observance of the agreements concluded under this system is unfounded. If the bodies which are called upon to pronounce the final decision are invested with sufficient authority, and if the limits of their competence are defined with the requisite exactness, it is hardly likely that a State would dare to disregard such a decision. The same applies also to the effect of other types of procedure which do not aim at attaining a formally binding decision regarding the dispute.

In the event of States nevertheless rejecting the means of settling their dispute by peaceful conciliation, the League of Nations has at its disposal the provisions of its Covenant regarding the prevention of war and the application of sanctions against a breach of the peace. A system of the type mentioned above would for the first time provide a firm basis for the application of these provisions.

The duty of preventing a conflict between the States concerned from finally leading to recourse to arms is above all one for the Council, and it will be for the Committee to propose measures which will allow that body to intervene promptly and effectively to prevent threatened hostilities.

A careful investigation of the possibilities offered by Article 11 of the Covenant cannot fail to lead to a series of practical proposals. These can be supplemented by special voluntary undertakings going beyond the scope of the Covenant, undertakings which, even if not acceptable to all the Members of the League, can no doubt form the subject of an agreement between a large number of them. As an example may be quoted the provisions, agreed upon at Locarno, of Articles 4 and 5 of the Rhine Pact and those of Article 19 of the Arbitration Treaty, regarding certain recommendations and proposals to be made by the Council of the League.

It should, of course, be borne in mind that the effectiveness of all measures of security of this and other kinds will be enormously strengthened when the general disarmament which constitutes one of the most important factors of security at last comes to be carried out.

The more the system of measures to prevent war is developed, the smaller becomes the need for measures to be applied in the case of an actual breach of the peace. Common action on the part of all the Members of the League in the event of a breach of the peace is, at the present moment, not possible, since general disarmament is not yet a reality. It is proposed to seek a substitute for this in regional agreements, taking into account the requirements as regards security of a particular area. It is one of the Committee's tasks to examine this proposal. It must be realised, however, that the League is not in a position to exert pressure on individual members or groups of members with a view to the conclusion of such agreements. In any case, only such solutions should, of course, be sought as settle the relations between individual States belonging to a particular group without thereby bringing those States into opposition with States which do not belong to that group. An increase in the security of particular States at the expense of the security of other States constitutes no progress in the direction of peace.

- A system of treaties was set up at Locarno which confined itself to the political relations of the States taking part, without the interests of other States being affected. On the other hand, the constitution of alliances between groups of States within the League which aimed at the protection of the States parties to them against other Members of the League might easily lead to a split in the League, and, particularly in times of crisis, might render any joint action impossible.

In conclusion, the German Government desires to repeat that, in its opinion, it is important, in dealing with the problem of security, to concentrate on the crux of the question : the pacific settlement of all kinds of international disputes. If, instead of doing this, an attempt were made to take the outbreak of war and the provision of military sanctions as the point of departure, it would be like trying to build a house from the roof downwards. War cannot be prevented by preparing for a war against war, but only by removing its causes. In the German Government's opinion, however, this is only possible if a settlement is reached which will guarantee permanent peace and provide for the removal of all international conditions endangering the peace of the world.