

[Distributed to the Council
and the Members of the League.]

C. 342. M. 100. 1928. IX.
[C. P. D. 123.]
[C. A. S. 75.]

Geneva, July 5th, 1928.

LEAGUE OF NATIONS

PREPARATORY COMMISSION
FOR THE DISARMAMENT CONFERENCE

COMMITTEE ON ARBITRATION .
AND SECURITY

REPORT OF THE COMMITTEE ON ARBITRATION AND SECURITY
ON THE WORK OF ITS THIRD SESSION

Held at Geneva from June 27th to July 4th, 1928.

The second paragraph of the chapter reads as follows :

“ The German suggestions, however, go even further. The fundamental idea lies in the proposal that States should assume an explicit undertaking in advance to accept the Council's recommendations. ”

There is therefore no question of extending the powers of the Council, but only of admitting that States parties to the agreement to be concluded shall undertake mutually to carry out the recommendations of the Council.

May I be allowed to refer also to another paragraph of the memorandum, which is as follows :

“ From the standpoint of sanctions, equally valuable results might be anticipated. A State that refused to obey a recommendation of the Council would place itself in a very serious position. It would be violating a definite and specific international undertaking and would thereby provide the Council, as already shown, with valuable evidence to be used when the latter came to determine the aggressor, and, if necessary, to set in motion the machinery of sanctions. ”

And, on the other hand, I thought it necessary to raise in the memorandum the question whether the proposed system might not create difficulties as regards the application of the Covenant of the League.

And here is the reply :

“ What would happen if a State actually violated undertakings of the nature contemplated in the German suggestion ? The matter would be brought before the Council in virtue of one of the Articles of the Covenant — Article 11 in the first instance. The Council would be in possession of additional evidence (violation of an international obligation under the convention in question) when deciding what arrangements should be made or what measures should be adopted. The normal working of the machinery of the Covenant, however, would not thereby be affected. ”

The above explanations will, without doubt, convince you that no more in my mind than in that of the German delegate was there any question of extending the powers of the Council as regards the nature of its recommendations.

M. SOKAL (Poland). — I only wish to say that the Polish Government, after careful examination, is generally favourable to the German suggestions. As regards suggestion No. I, the question raised by M. Paul-Boncour regarding the possibility of a bilateral as well as a multilateral treaty seems to be a fair one. I would like now to consider the other question asked in the memorandum as follows :

“ Should such conservatory measures be left entirely to the discretion of the Council or should the powers of the latter be restricted in conformity with the following principles or with one or more of those principles ? ”

The question raised by our Rapporteur is therefore whether the Council should have full discretion or whether its powers should be limited as regards the decision to be taken in such emergencies.

I think we are all agreed that, if we desire an arrangement which shall be wide enough in its scope to obtain the approval of as many States as possible, the powers of the Council must be limited up to a point. I venture to emphasise this point and to add that, if we give these instructions to the Drafting Committee, we must further specify that this limitation of powers must necessarily be very exact, clear and unquestionable. Nothing would be worse than to provide an arrangement which limited the powers of the Council more or less vaguely. We must not forget that, when the Council has to adopt conservatory measures, it will have to do so immediately. It is therefore important that it should not be compelled to discuss the question whether the case in point refers to a country which is or is not a party to the agreement concluded.

I shall now revert to the matter of procedure. Suppose that the agreement is signed by a certain number of States and let us also suppose that the Council's powers are clearly and distinctly defined. We will then imagine a number of States — A, B, C, and D — in conflict. States A and B have signed the agreement, whereas States C and D have not signed it. The position is exceedingly complicated and the Council will have to solve a very difficult question, especially as it may very well happen that States A and B are in opposite camps, with C and D as their respective allies. As regards A and B, the conservatory measures will have at once to be enforced, but these measures would not be binding upon their allies C and D. Would it be possible to enforce these conservatory measures partially ? From which it follows that the Drafting Committee will have to examine very carefully the form to be given to the arrangement.

M. ROLIN JAEQUEMYS (Rapporteur). — There is no doubt, I think, that the question of reciprocity must, as M. Sokal has pointed out, be examined. The obligation to submit to

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I.

ACCOUNT OF THE COMMITTEE'S WORK FROM ITS CREATION UP TO THE END OF ITS THIRD SESSION.

The Committee on Arbitration and Security, which was appointed by the Preparatory Commission for the Disarmament Conference on November 30th, 1927, in pursuance of a resolution of the last Assembly, has the honour to submit herewith the results of the work of the three sessions held at Geneva in 1927 and 1928.

At its first session, in December 1927, the Committee fixed its programme of work, and asked M. Holsti, M. Politis and M. Rutgers to prepare three memoranda dealing respectively with arbitration, in the broader sense of the term; security; and Articles 10, 11 and 16 of the Covenant (including the questions of communications of the League in case of emergency and of financial assistance to States victims of aggression).

These memoranda, submitted by M. Benes, Chairman of the Committee, and by the Rapporteurs, were discussed at the second session, held from February 20th to March 7th, 1928, at Geneva.

Following this discussion, the Committee instructed a Drafting Committee to prepare a certain number of model treaties of conciliation, arbitration, non-aggression and mutual assistance, as well as a series of draft resolutions.

The model treaties submitted by the Drafting Committee were approved on first reading, and the Committee decided to proceed with the second reading, at its third session, during which it would also examine, on the basis of a memorandum to be prepared by M. Rolin-Jaequemyns, certain new suggestions presented by the German delegation with a view to strengthening the means of preventing war. It also referred the plan of financial assistance to States victims of aggression to a joint committee of members of the Financial Committee and members of the Committee on Arbitration and Security for consideration.

The Committee having, at the end of its second session, expressed the hope that the results would be communicated to all the States in time to be discussed at the next Assembly, the Preparatory Commission for the Disarmament Conference endorsed this recommendation in the following terms:

“ The Commission. . . .

“ Expresses its satisfaction with the results achieved and its approbation of the general spirit in which the Committee carried out the work.

“ According to precedent, the report of the Committee on Arbitration and Security on the work of its second session, together with the minutes of that session, will be communicated to all Governments. The Commission seconds the recommendation adopted by the Committee that these documents should be transmitted in sufficient time to allow of their discussion at the next Assembly.”

At its meeting on June 4th, 1928, the Council, acting on the motion of the Roumanian representative, adopted the following resolution:

“ The Council, having taken note of the work already done by the Committee on Arbitration and Security and of the programme for its future work, instructs the Secretary-General to insert on the supplementary Assembly Agenda the question of the work and the proposals of the Committee on Arbitration and Security.”

The Committee held its third session at Geneva from June 27th to July 4th, 1928. It proceeded to the second reading of the texts prepared during the previous session. It added to these three model bilateral conventions for the pacific settlement of disputes, and adopted a model treaty embodying the German suggestions, and a report on the question of financial assistance.

The following list sets forth the texts which have been prepared by the Committee on Arbitration and Security:

- (1) Model Arbitration and Conciliation Conventions, accompanied by an introductory note and two resolutions, one submitting and recommending these model conventions, the other relating to the good offices of the Council.
- (2) Resolution on the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice.
- (3) Model Treaties of non-Aggression and Mutual Assistance, accompanied by an introductory note and two resolutions, one submitting and recommending these model treaties, the other relating to the good offices of the Council.
- (4) Resolution concerning the memorandum on Articles 10, 11 and 16 of the Covenant.
- (5) Resolution concerning communications of the League in case of emergency.
- (6) Resolution and report on financial assistance to States victims of aggression.
- (7) Model Treaty with a View to strengthening the Means of preventing War, accompanied by an introductory note and a resolution.

II.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

(a) INTRODUCTORY NOTE TO THE CONVENTIONS ON CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT.

I. PRINCIPLES FOLLOWED BY THE COMMITTEE ON ARBITRATION AND SECURITY.

The Committee has the honour to submit three model general conventions (A, B, C) and three model bilateral conventions (a, b, c) drawn up on the same plan. The texts of the general and bilateral conventions are similar in principle excepting that certain necessary adjustments have been made in the texts of the bilateral conventions in view of their special character. During the second reading the Committee advisedly decided to use only the word "model" to denote the different Conventions, since this term appeared to be the more appropriate in view of the conditions under which these texts will be submitted to the Assembly.

The first two conventions (Conventions A and B) provide for arbitration and conciliation; the third (Convention C) provides exclusively for conciliation procedure.

In drafting these conventions, the Committee has been guided by a certain number of main principles:

1. It is necessary to take into account the particular situations of the different States and the objections which some of them would feel to the conclusion of extensive arbitration undertakings.

In these circumstances, it would be useless to attempt to bring forward a single and rigid type of arbitration and conciliation convention which would fall short of what some States are prepared to accept and go beyond what others might be able to accept. The three Conventions A, B and C provide sufficient variety to meet the desires and conditions of the different Governments.

The operation of the reservations authorised by these various conventions increases their elasticity — a feature which has been regarded as essential.

It should be noted that the general conventions contemplated do not affect the general or special obligations with regard to arbitration or judicial settlement which States have assumed or may assume between themselves. The general conventions will only be applied subsidiarily, and will only govern disputes not already covered by other conventions.

2. While the freedom of States must be fully respected, and no pressure, even if it is only moral pressure, be exerted on Governments to induce them to contract undertakings which they do not consider themselves able to perform, it is nevertheless essential that the undertakings entered into, however restricted they may be, should be of concrete value.

To that end, provisions already adopted in numerous separate conventions and ensuring the observance of undertakings assumed have been inserted in the Conventions. Hence the absence of an agreement with regard to the submission to arbitration or to the constitution of the tribunal or Conciliation Commission will not prevent the procedure of peaceful settlement from taking its course. Thus all reservations of a vague and indefinite character have been avoided.

3. The Committee has endeavoured to make as few innovations as possible. It has been guided by past experience, taking as a basis the numerous separate arbitration and conciliation conventions already concluded between large and small States in all parts of the world.

Thus, the draft distinction between disputes of a legal and of a non-legal nature constitutes the fundamental principle of Conventions A and B.

4. At the second reading, the Committee made the necessary improvements and additions to the text previously drawn up, and at the same time endeavoured to give all possible consideration to the observations submitted to it by various Governments.

5. The Committee, faithful to the principles by which it has so far been guided, did not feel that it could establish any order of preference as between Conventions A, B and C. Certain members of the Committee thought that it would have been desirable to do so, but, since opinion was divided, the Committee refrained from adopting any definite attitude in this respect. It therefore placed all the conventions on the same footing, leaving States free to accede to one or more of them as they see fit. The difficulties arising from the order of application of the various conventions by States which have acceded to more than one of them will in practice be capable of easy settlement by the parties themselves. Failing this, the application of the final clauses of the conventions providing for an appeal to the Permanent Court of International Justice would furnish a solution.

II. THE CHARACTER OF THE THREE MODELS.

Convention A. — The structure of Convention A is as follows:

1. Disputes of a legal nature are submitted compulsorily to a judicial or arbitral settlement, and optionally to a preliminary procedure of conciliation.

If the parties do not decide to resort to a special tribunal or, having decided to resort thereto, fail to agree on the terms of the special agreement (*compromis*), the dispute is brought, by means of an application, before the Permanent Court of International Justice.

2. Disputes of a non-legal nature are submitted compulsorily to a procedure of conciliation.

The composition of the Conciliation Commission and the selection of its members, its mode of operation and the part it plays, are the same in all three conventions; they will be dealt with in the commentary on Convention C.

In the event of the failure of conciliation, the dispute must be brought before an arbitration-tribunal composed of five members.

3. If the parties fail to agree regarding the selection of members of the tribunal to be appointed jointly or if they fail to choose the members whom they must appoint severally, the draft adopted at the first reading provided that the Acting President of the Council should make the necessary appointments.

The Committee, considering it advisable to separate as far as possible the legal and political considerations and desiring to adopt a method more likely to meet the wishes of States non-members of the League, provided at the second reading for another method of appointment. This procedure is based on the provisions of the Hague Convention of October 18th, 1907, concerning the Peaceful Settlement of International Disputes.

Convention B. — Convention B is conceived on the same lines as the Arbitration and Conciliation Conventions concluded at Locarno.

1. Disputes of a legal nature are brought before the Permanent Court of International Justice unless the parties agree to have recourse to an arbitral tribunal. The rules are the same as in Convention A.

2. Disputes of a non-legal nature are submitted simply to a procedure of conciliation. If this fails, they may be brought before the Council of the League of Nations, under Article 15 or Article 17 of the Covenant.

Convention C. — The Committee has considered that there are very few States which, finding it impossible to accept the general or restricted obligations to submit to arbitration and judicial settlement contained in Conventions A and B, would refuse to accept Convention C, which simply provides for conciliation procedure.

The composition, mode of operation and duties of the Conciliation Commission laid down by the Convention are, in general, reproduced from the provisions in the Locarno Treaties of Arbitration and Conciliation. The only change is that greater latitude has been granted to the parties; in particular, it is stipulated that the Conciliation Commission may be permanent or specially constituted.

The procedure adopted for the appointment of members of Conciliation Commissions in the case of disagreement between the parties is the same as that laid down in Convention A for the appointment of members of the Arbitral Tribunal. It is also based upon the Hague Conventions.

As regards the mode of operation of the Conciliation Commission, it seemed desirable on a second reading to introduce two new clauses, one providing for the presence of all the members whenever the Commission is called upon to pronounce on questions of substance, the other providing that no mention shall be made in the minutes as to whether the Commission's decisions were taken by a majority or not.

III. GENERAL PROVISIONS COMMON TO THE THREE MODELS.

The general provisions which, except for the adaptations required by the three model conventions, are common to all, call for the following explanations:

1. It is stipulated that the parties shall, during the procedure, abstain from any measures which may aggravate the dispute. The Permanent Court of International Justice and the arbitral tribunal may prescribe provisional measures. The Conciliation Commission has only the power to "recommend" such measures.

2. The case of third Powers, parties or not to the Convention, which have an interest in the dispute is specially provided for and settled. After careful study, the Committee, on the second reading, amended the text originally adopted. It provides that a third Power, party to the Convention, shall be invited to take part in the judicial or arbitral procedure, but shall be free to decline the invitation. In certain circumstances, it shall have the right to intervene and whenever it does so shall be bound by the decision given.

3. In spite of the importance of the largest possible number of accessions being given without reservations of any kind, the Committee, which has sought to achieve something practical and to take account of the difficulties peculiar to each State, has made a wide allowance for reservations.

Nevertheless, it has tried to regulate and classify them in order to avoid uncertainty and abuse. Four kinds of reservations have been laid down. The last, which is the widest, refers to "disputes concerning particular clearly defined subject-matters, such as territory status" (see Convention A, Article 36, No. 2 (d)). Thus, any State, when acceding to the Convention, may exclude any question whatever. All that it need do is to make special mention of this question. In this way it has been found possible to get rid of the dangerous and vague reservation of vital interests; if a State considers that certain questions affect its vital interests, it will exclude them by a reservation mentioning these questions.

On the second reading, the Committee desired to indicate by a textual amendment that the reservations enumerated in the provisions of these model conventions were limitative in their character.

Furthermore, the reservations stipulated by the acceding States only apply to arbitration unless it is expressly stated that they shall also apply to conciliation. The Committee is strongly of opinion that reservations, which are in all cases undesirable, should be of a wholly exceptional nature in the case of conciliation.

Finally, the operation of possible reservations has not been left to the discretion of the parties: it is subject to control by the Permanent Court of International Justice.

4. The Drafting Committee, during the second reading, contemplated the insertion of the following paragraphs in Article 36 of Convention A and in Article 29 of Convention B relating to reservations:

“ When acceding to the present Convention, a State may make its acceptance conditional upon the disputes referred to in Article 4 being submitted to an Arbitral Tribunal, unless the parties agree to have recourse to the Permanent Court of International Justice. In this case, the Arbitral Tribunal shall be established in conformity with the provisions of Articles 26 *et seq.* of the present Convention.

“ On the other hand, a State may, when acceding to the present Convention, lay down as a condition that, as regards the disputes referred to in Article 4, no change shall be made in the order of the jurisdictions therein mentioned.”

These provisions are based on the idea that the system of conventions for the peaceful settlement of disputes worked out by the Committee on Arbitration and Security should be as elastic as possible, so as to give the fullest consideration to the preferences of the different Governments.

Now, it is laid down in Conventions A and B that disputes of a legal nature shall be brought either before the Permanent Court of International Justice or before an arbitral tribunal, but, if the parties disagree, the jurisdiction of the Permanent Court of International Justice is obligatory. Certain States, although desirous of having recourse to arbitration whenever possible, may prefer an arbitral tribunal consisting of judges of their own choice. It would be regrettable should the stipulations on this point in Conventions A and B prevent certain States from acceding. In order to give Governments a wider choice, the two paragraphs mentioned above were accordingly proposed.

According to the first paragraph, a State may specify, when acceding to the Convention, that it is willing to have recourse only to an arbitral tribunal, whereas, according to the second paragraph, another State may indicate that it desires, in the absence of agreement to the contrary, to have recourse only to the Permanent Court of International Justice.

Objections were made to these provisions.

It was pointed out that, as between acceding States which made use of the right contained in the first paragraph and those which exercised the right laid down in the second paragraph, there would no longer be any obligation to have recourse to arbitration.

The Committee considered another procedure. This consisted in framing a new model convention, which would have been a reproduction of Convention B, except that the jurisdiction provided for the judgment of disputes of a legal nature was, in the absence of a contrary agreement between the parties, an arbitral tribunal. It was objected that this procedure would encumber the system of model conventions with a further convention. As the Committee could not arrive at a final opinion, the question was left open.

5. Disputes relating to the interpretation or application of the Convention will be submitted to the Permanent Court of International Justice. The object of this provision is to prevent conflicts of interpretation constituting a reason or pretext for any of the parties to bring about the failure of the forms of procedure laid down.

6. In anticipation of accession to the different Conventions by States not members of the League of Nations, the Committee, during the second reading, supplemented the text previously adopted by adding a mention of Article 17 of the League Covenant to every mention made of Article 15.

7. During its third session, the Committee considered that there was no advantage in presenting the model collective Conventions A, B and C as the results of negotiations between Government plenipotentiaries. For this reason, the Committee decided to omit the clauses containing the list of Heads of States parties to the Conventions, as well as the names of plenipotentiaries, and therefore omitted also the provisions establishing a distinction between the procedure of signature and that of accession. The Convention will be submitted to States for their accession only.

8. *Duration.* — It is stipulated that the Conventions shall have a fixed uniform duration of five years. On the expiration of that period, they shall be renewed for the same period in the case of Powers which have not denounced them in due time.

IV. FACILITIES PROVIDED FOR THE CONCLUSION OF CONVENTIONS ON ARBITRATION AND JUDICIAL SETTLEMENT.

In order better to give effect to the last Assembly's wish for an increased use of forms of pacific procedure and for a larger number of conventions on arbitration and judicial settlement, the Committee has thought fit to frame a draft resolution defining the conditions on which the Council will be able to lend its good offices to States desiring to conclude such treaties.

V. METHOD OF FACILITATING ACCESSIONS TO THE OPTIONAL CLAUSE OF ARTICLE 36 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

The Committee, realising the obstacles which prevent States from committing themselves, has thought that the only method of reducing them at present possible is to draw attention to the possibilities offered by the terms of the Clause in Article 36 to States which do not see their way to accede to it without qualification to do so, subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope. Accordingly, the Committee has framed a draft resolution enabling the Council to request those States which have not yet acceded to the clause of Article 36 to consider with due regard to their own interests whether they can do so on the conditions above indicated.

(b) MODEL CONVENTIONS

GENERAL CONVENTION FOR THE PACIFIC SETTLEMENT OF ALL
INTERNATIONAL DISPUTES

(Convention A.)

The Heads of States and competent authorities of the States parties to the present Convention:
Being seriously desirous of developing mutual confidence and of consolidating international
peace by assuring, through resort to pacific procedure, the settlement of disputes arising between
their respective countries;

Noting that respect for rights established by treaty or resulting from international law is
obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own
consent;

Considering that the faithful observance, under the auspices of the League of Nations, of
forms of peaceful procedure allows of the settlement of all international disputes; and

Highly appreciating the recommendation of the Assembly of the League of Nations contained
in its resolution of..... that all States should conclude a general Convention for the
Pacific Settlement of all International Disputes;

Have decided to achieve their common aim by agreeing on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties
and which it has not been possible to settle by diplomacy shall be submitted, under the conditions
laid down in the present Convention, to settlement by judicial means or arbitration, preceded,
according to circumstances, as a compulsory or optional measure, by recourse to the procedure
of conciliation.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions
in force between the parties to the dispute shall be settled in conformity with the provisions of
those conventions.

2. The present Convention shall not affect any agreements in force by which conciliation
procedure is established between the High Contracting Parties or they are bound by obligations
to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If,
however, these agreements provide only for a procedure of conciliation, after such procedure
has been followed without result, the provisions of the present Convention concerning settlement
by judicial means or arbitration shall be applied.

Article 3.

1. 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 its judicial or administrative authorities, the party in
question may object to the matter in dispute being submitted for settlement by the different
methods laid down in the present Convention until a decision with final effect has been pronounced,
within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present
Convention must notify the other party of its intention within a period of one year from the date
of the aforesaid decision.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall,
subject to any reservations which may be made under Article 36, be submitted for decision to
the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter
provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed, and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or any other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing and, after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

CHAPTER III. — CONCILIATION.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to

fill the vacancies on a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work 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 22.

1. During the proceedings of the Commission, each of the Commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

CHAPTER IV. — SETTLEMENT BY ARBITRATION.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission mentioned in the previous articles, the question shall be brought before an Arbitral Tribunal which, unless the parties agree otherwise, shall be constituted in the manner indicated below.

Article 26.

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned.

Article 27.

If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an arbitral tribunal, the necessary appointments shall be made by the method described in Article 14.

Article 28.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 29.

The parties shall draw up a special agreement determining the subject of the dispute, and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 30.

Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 31.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute shall be brought before the Tribunal by an application by one or other party.

Article 32.

If nothing is laid down in the special agreement, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as the dispute cannot be settled by the application of the rules of law alone, the Tribunal may exercise the functions of a friendly mediator.

CHAPTER V. — GENERAL PROVISIONS.

Article 33.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 34.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers, whose numbers shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 13 and the following articles of the present Convention.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal in the case of the disputes mentioned in Article 4, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 9, Article 26 above shall apply, and each third party having separate interests shall appoint one additional arbitrator.

Article 35.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is a party to the present Convention or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 36.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as a result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 37.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, or if, after the failure of the conciliation procedure, a resort to arbitration is impossible, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations as the case may be.

Article 38.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 39.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and

the conservatory measures taken in virtue of the agreement contemplated by the first German suggestion could only be enforced against parties bound together by an agreement, that is to say on a reciprocal basis. I think that we are all agreed on that point. It is important not to forget this recommendation when drafting the convention.

Since reference has been made to question (2) relating to the first suggestion, I should like to say that, in my capacity of Rapporteur, I thought it my duty to indicate those questions which, in addition to the German suggestions and in accordance with the various observations received from members of the Committee, could be excluded from the Council's purview. I referred to them under (a), (b) and (c). I felt I was fulfilling my duty as Rapporteur in doing so. I should like to point out, however, that personally I am not necessarily in favour of statements which I make in the memorandum. There are also differences to be established, as you all know, between points (a), (b) and (c). For instance, it is possible to be in agreement with the restrictions under (a) and (b), but not under (c).

Lord CUSHENDUN (British Empire). — Mr. Chairman, most of the speeches that have been made up to the present have been mainly concerned with questions of procedure. I want to address a few observations to the Committee, not on procedure, but on the merits of this particular question. When we were discussing this in March, I pointed out that I, and probably other members of the Committee, were without any instructions from their Governments, but I indicated provisionally what were my own personal views of this matter and I then said that I thought this suggestion No. I was far too vague.

The first question which I want to ask the Committee is whether this suggestion No. I is really required. I suggest that it is almost entirely covered already by the Covenant or by resolutions of the Council. For example, reference has been made to Article 11, but Article 12 of the Covenant uses these words :

“ The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council. ”

Now if it rested there I would agree that there is no provision for what has been called conservatory measures, but at its very last session, less than a month ago, the Council passed a very important resolution which I should like to read :

“ (1) The Council considers that, when a question has been submitted for its examination, it is extremely desirable that the Governments concerned should take whatever steps may be necessary or useful to prevent anything occurring in their respective territories which might prejudice the examination or settlement of the question by the Council.

“ (2) When there is submitted to the Council a request for investigation or the case of a dispute which has been placed on the agenda under paragraph 2 of Article 11 or other Articles of the Covenant, such as Article 13 or 15, the Secretary-General shall immediately communicate with the interested parties, drawing their attention to resolution (1) above, requesting them in the name of the Council to forward their replies to him without delay for communication to the Council and to inform him of the steps which have been taken. ”

Now I submit that those provisions, taken together, practically cover all the ground. It is quite true that there is no provision there for an agreement in advance to obey the recommendations of the Council, but does anyone seriously suppose that any State which would be ready under those circumstances to flout the opinion of the Council and to disregard the whole authority of the League would be deterred under those circumstances by any agreement that had been made in the form of a general protocol in advance to allow the Council to take measures, and does anyone imagine under those circumstances that the Council would take such measures ? I would like to point out that this resolution was adopted by the Council a short time ago when these German suggestions were already in print. They must have been known to the Council and they could have adopted them and incorporated them in this resolution. If the Council with that knowledge before them deliberately framed this resolution without asking for the powers or suggesting the powers which have been given by the first of the German delegation's suggestions, I think we may take it that the Council had very good reason for doing so, and having done so, we may, I think, assume that, if circumstances arose when the Council had to act, they would act upon their own resolution and they would not make any recommendations which a certain number of States might have agreed in advance to accept. Therefore I suggest that really you are not going to carry the matter any further by adopting this particular suggestion.

The second point I wish to make is this : After thinking over it much more fully and consulting with regard to it since we were here in March, I am still more convinced that the terms are far too wide. When we come to the next suggestion, No. II, it will be my duty to say distinctly that my Government is unable to accept it. I shall have to resist suggestion No. II. I am not asking the Committee altogether to resist suggestion No. I, but it will require amendment from our point of view for this reason. I cannot accept

notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 40.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date¹.

Article 41.

Any Member of the League of Nations and any non-member States to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 42.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 43.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 41.

4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 44.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 41.

¹ Date of adoption by the Assembly.

GENERAL CONVENTION FOR JUDICIAL SETTLEMENT,
ARBITRATION AND CONCILIATION.

(Convention B.)

The Heads of States and competent authorities of the States parties to the present Convention:
Being seriously desirous of developing mutual confidence and of consolidating international peace by assuring, through resort to pacific procedure, the settlement of disputes arising between their respective countries;

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes; and

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of that all States should conclude a general Convention for Judicial Settlement, Arbitration and Conciliation;

Have decided to achieve their common aim by agreeing on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted to a procedure of judicial settlement, arbitration or conciliation under the conditions laid down in the present Convention.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. 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 its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 29, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed, and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or any other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

CHAPTER III. — CONCILIATION.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work 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 22.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings 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 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Articles 15 or 17 of the Covenant of the League of Nations, as the case may be. This provision shall not apply in the case provided for in Article 8.

CHAPTER IV.— GENERAL PROVISIONS.

Article 26.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 27.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 13 and the following articles of the present Convention.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice.

Article 28.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is a party to the present Convention or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 29.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as a result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 30.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations, as the case may be.

Article 31.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 32.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 33.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date¹.

Article 34.

Any Member of the League of Nations and any non-member State to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 35.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 36.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 34.

4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 37.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 34.

¹ Date of adoption by the Assembly.

GENERAL CONCILIATION CONVENTION.

(Convention C.)

The Heads of States and competent authorities of the States parties to the present Convention:
Being sincerely desirous of developing mutual confidence and consolidating international peace by endeavouring to bring about, by the pacific procedure of conciliation, the settlement of all disputes which may arise between their respective countries and which may be capable of being the object of an amicable arrangement;

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of ... that all States should conclude a general Conciliation Convention;
Have decided to achieve their common aim by agreeing on the following provisions:

Article 1.

Disputes of every kind which may arise between two or more of the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by recourse to the procedure of conciliation.

Article 2.

The disputes referred to in the preceding article shall be submitted to a permanent or special conciliation commission constituted by the parties to the dispute.

Article 3.

Disputes for the settlement of which a procedure by judicial settlement, arbitration or conciliation is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of such conventions.

Article 4.

If a dispute which one of the parties has laid before the Commission is brought by the other party, in conformity with the conventions in force between the parties, before the Permanent Court of International Justice or an arbitral tribunal, the Commission shall defer consideration of the dispute until the Court or the arbitral tribunal has pronounced upon its competence.

Article 5.

1. 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 its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

Article 6.

On a request to that effect being sent by one of the contracting parties to another contracting party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 7.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 8.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 9.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 10.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject in dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall without delay be notified by it of the fact.

Article 11.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own Commissioner for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party of the fact; the latter shall in such case be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 12.

1. In the absence of any agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 13.

The work of the permanent Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 14.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 15.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 16.

The parties undertake to facilitate the work 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 17.

1. During the proceedings of the Commission, each of the Commissioners shall receive, emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 18.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the day on which the Commission shall have been given cognisance of the dispute.

Article 19.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 20.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Conciliation Commission, when given cognisance of the dispute, may recommend to the parties the adoption of such provisional measures as it may consider desirable.

2. The parties to the dispute undertake to abstain from all measures likely to react prejudicially upon the arrangements proposed by the Conciliation Commission, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 21.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of conciliation procedure:

A special Commission shall invariably be constituted. The composition of such Commission shall differ according as the parties have all separate interests or two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners, nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event the parties shall, unless they agree otherwise, act in accordance with Article 8 and the following articles of the present Convention.

Article 22.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Convention or not, has an interest in the dispute.

2. The parties may agree to invite such third Power to intervene.

Article 23.

1. In acceding to the present Convention, any State may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

Article 24.

Whenever, as a result of these reservations, the conciliation procedure is impossible, or when in spite of this procedure the parties have been unable to agree, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations, as the case may be.

Article 25.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 26.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 27.

The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date¹.

Article 28.

Any Member of the League of Nations and any non-member State to which the Council of the League of Nations shall communicate a copy of the present Convention for this purpose may accede to the said Convention.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in the preceding paragraph.

Article 29.

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the accession of not less than two contracting parties.

2. Accessions received after the entry into force of the Convention, in accordance with the previous paragraph, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 30.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of High Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States mentioned in Article 28.

4. Notwithstanding denunciation by one of the High Contracting Parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 31.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

DONE at in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 28.

¹ Date of adoption by the Assembly.

suggestion No. II, but as it stands No. II is not required, because, if suggestion No. I were carried, it would give to the Council and to the agreeing States the powers to put in force suggestion No. II, and therefore if we are going to accept suggestion No. I at all, before I could give any assent to it, it would be necessary to amend it in such a way as to exclude the power of acting on suggestion No. II, which is that dealing with the *status quo ante*. Then the question comes, by what method are the powers to be conferred upon the Council to be restricted, and there has been some discussion upon that point. Now there are two ways, quite distinct in principle, in which you can make such a limitation. You may do as the Rapporteur suggests: confer general powers upon the Council subject to certain specific reservations. But you may approach it in quite a different way and say that you will confer specific powers upon the Council and only such powers as you specify. I strongly favour the latter of those two principles. I do not believe that you will find it possible to construct, or that any Drafting Committee could construct satisfactorily, a clause, thinking out beforehand the possible reservations that you ought to make. I think you ought to be clear in your minds first of all as to exactly what powers, and what powers only, you are prepared to confer upon the Council, subject of course to the States asking for them to be put into operation, and, so far as my Government is concerned, I am quite ready to accept this clause if it is amended in that way and subject to the satisfactory specification of the powers which the Council might adopt.

Now, M. von Simson quoted me a little time ago as having acquiesced in Convention A, although I was not very enamoured of it. That is quite true, and my reason for doing so was that, although I did not believe that that Convention was really going to be of any great service, I was very reluctant to set myself against proposals which commanded the assent of a good many of my colleagues. I was very anxious then, as I am now, to acquiesce in any proposals which the Committee might think useful. Now it is said, I understand, that in this case there is to be no protocol open for general signature. I am very glad that that is so, but it may be said: "What does it matter to you? What does it matter what goes into suggestion No. I: you need not sign it." Well that is quite true; nevertheless I say, representing my Government, that we have interest in all these matters. My Government is a permanent Member of the Council and it is very important to every Member of the Council, whether permanent or temporary, in fact to every Member of the League, that in times of crisis the Council should not have responsibility for carrying out procedure which is not likely to be effective. I do not believe for a moment that those wide powers sought to be conferred by suggestion No. I could be satisfactorily exercised by the Council, and I repeat that it evidently does not think so itself, or else it would have incorporated it into its recent resolution, and if you invent machinery of this sort with a desire to stop every conceivable gap and hole in the procedure of the League of Nations and to have something that is so completely logical that no one could ever find the smallest crack in it — if you do that, I am very greatly afraid that, if a crisis were ever to occur, the impotence of the Council to carry this out would very quickly become apparent, and that if it did it could not fail to bring discredit upon the League as a whole, because the public in all parts of the world desires that, when the League does act, it shall act effectively and promptly. Therefore I think it is incumbent upon us to protect the Council so far as we can and to protect the machinery of the League against clogging it with imaginary crises and duties which it might be called upon to perform under those circumstances, duties which I feel quite certain could not be effectively performed. Those are the views I hold with regard to this first suggestion, but I repeat that I am quite willing to accept it if it can be amended in the way I have indicated.

M. UNDÉN (Sweden). — I would make one short observation on the first German suggestion. The honourable representative of Belgium asked whether it would or would not be desirable to limit the powers of the Council, and M. Sokal has just given his opinion in favour of this limitation.

Personally, I see no need to limit the action of the Council in this matter. I do not see much fear of the Council taking rash decisions if it is given the right to take measures of a conservatory nature. Many treaties grant this right to some arbitral jurisdiction. The Locarno Treaties confer the same power upon the Council. Moreover, to limit the Council's competence in this matter might cause the parties to plead incompetence and the Council would find itself confronted by a preliminary question necessitating recourse to a committee of jurists or to the Hague Court for an advisory opinion just at a time when rapid action was required.

I think that the Locarno Treaties might well serve as models. The Arbitration Treaty between Poland and Germany says that it will rest with the Council of the League of Nations to take the necessary measures.

The Swedish delegation has ventured to indicate its point of view briefly in written declarations which it has submitted to the Committee.

M. VON SIMSON (Germany). — Lord Cushendun will allow me to say that his speech has rather disappointed me. He began by saying that, if it was decided to rule out a protocol, he would no longer be compelled to oppose our suggestions to the same degree that he would if we insisted on a protocol. Having gained this point, however, in accordance with his wish, he has adopted towards our suggestions an attitude which I can only describe as wholly negative. He has adopted the same point of view that he held at the last session and, as it seems to me, even more stubbornly.

BILATERAL CONVENTION FOR THE PACIFIC SETTLEMENT OF ALL INTERNATIONAL DISPUTES.

(Convention a.)

(The Heads of States.) (Governments are left free to draw up the preamble as they may think fit.)

.....
Have decided to realise their common aim by means of a Convention, and have appointed as their plenipotentiaries:

.....
who, having deposited their full powers found in good and due form, have agreed on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by judicial means or arbitration, preceded, according to circumstances, as a compulsory or optional measure, by recourse to the procedure of conciliation.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties shall be settled in conformity with the provisions of those conventions.
2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. 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 its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.
2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall (subject to any reservations which may be made under Article¹), be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrator selected, the procedure to be followed and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrator. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply automatically.

¹ This provision is only required if the parties make reservations.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

If, in a judicial sentence or arbitral award, it is stated that a judgment or a measure enjoined by a court of law or any other authority of one of the parties is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the Arbitral Tribunal mentioned in Article 5, as the case may be.

CHAPTER III. — CONCILIATION.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request being sent by one of the Contracting Parties to the other party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the parties have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work 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 22.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

CHAPTER IV. — SETTLEMENT BY ARBITRATION.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission mentioned in the previous articles, the question shall be brought before an Arbitral Tribunal which, unless the parties agree otherwise, shall be constituted in the manner indicated below.

Article 26.

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties.

Article 27.

If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an arbitral tribunal, the necessary appointments shall be made by the method described in Article 14.

Article 28.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 29.

The parties shall draw up a special agreement determining the subject of the dispute, and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 30.

Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 31.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted the dispute shall be brought before the Tribunal by an application by one or other party.

Article 32.

If nothing is laid down in the special agreement, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as the dispute cannot be settled by the application of the rules of law alone, the Tribunal may exercise the functions of a friendly mediator.

CHAPTER V. — GENERAL PROVISIONS.

Article 33.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The parties shall be bound to accept such measures.

2. If the dispute is brought before the Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 34.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. Request shall be made to it by either party, or by both parties jointly.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened.

Article 1.

Article 35.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes (.²) shall be submitted to the Permanent Court of International Justice.

Article 36.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 37.

1. The present Convention shall be ratified and the exchange of ratifications shall take place at

It shall be registered at the Secretariat of the League of Nations.

2. The Convention shall be concluded for a period of five years dating from the exchange of ratifications.

3. If it has not been denounced at least six months before the expiration of this period, it shall remain in force for further successive periods of five years.

4. Notwithstanding denunciation by one of the High Contracting Parties, all forms of proceeding pending at the expiration of the period of the Convention shall be duly completed.

IN FAITH WHEREOF, the above-mentioned plenipotentiaries have signed the present Convention.

DONE at on in a single copy

.....

¹ States desiring to introduce reservations might insert here two articles based on Articles 36 and 37 of General Convention A printed below.

Article 36.

1. In acceding to the present Convention, any country may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which, by international law, are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 37.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, or if, after the failure of the conciliation procedure, a resort to arbitration is impossible, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations as the case may be.

² If the Convention contains reservations, it would be convenient to add: "and the scope of reservations".

³ Replaces Articles 40-44 of General Convention A.



BILATERAL CONVENTION FOR JUDICIAL SETTLEMENT,
ARBITRATION AND CONCILIATION

(Convention C.)

The Heads of States (Governments are left free to draw up the Preamble as they may think fit)

.....
Have decided to achieve their common aim by means of a Convention, and have appointed as their plenipotentiaries:

.....
who, having deposited their full powers found in good and due form, have agreed on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted to a procedure of judicial settlement, arbitration or conciliation under the conditions laid down in the present Convention.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute. If, however, these agreements provide only for a procedure of conciliation, after such procedure has been followed without result, the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. 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 its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

CHAPTER II. — JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall (subject to any reservations which may be made under Article)¹, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrator selected, the procedure to be followed and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply automatically.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

¹ This provision is only required if the parties make reservations.

Article 7.

If, in a judicial sentence or award, it is stated that a judgment or a measure enjoined by a court of law or any other authority of one of the parties is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

CHAPTER III. — CONCILIATION.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the Contracting Parties to the other party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 12.

Unless the parties agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 14.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 11, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the parties have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 21.

The parties undertake to facilitate the work 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 22.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 23.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 24.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 25.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Article 15¹ of the Covenant of the League of Nations. This provision shall not apply in the case provided in Article 8.

CHAPTER IV. — GENERAL PROVISIONS.

Article 26.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before the Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 27.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly.

4. The judgment pronounced shall have binding force on the third Power which has intervened.

Article 28.

Article 30.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes (. . . .³) shall be submitted to the Permanent Court of International Justice.

Article 31.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 32.

1. The present Convention shall be ratified and the exchange of ratifications shall take place at

It shall be registered at the Secretariat of the League of Nations.

2. The Convention shall be concluded for a period of five years dating from the exchange of ratifications.

3. If it has not been denounced at least six months before the expiration of this period, it shall remain in force for further successive periods of five years.

4. Notwithstanding denunciation by one of the High Contracting Parties, all forms of proceeding pending at the expiration of the period of the Convention shall be duly completed.

DONE at on in a single copy

IN FAITH WHEREOF, the above-mentioned plenipotentiaries have signed the present Convention.

¹ Should the Convention be concluded between a State Member of the League of Nations and a non-member State the reference to Article 15 should be replaced by a reference to Article 17.

² States desiring to introduce reservations might be guided by Articles 29 and 30 of General Convention B given below:

Article 29.

1. In acceding to the present Convention, any country may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

- (a) Disputes arising out of facts prior to the accession;
- (b) Disputes concerning questions which, by international law, are solely within the domestic jurisdiction of States;
- (c) Disputes concerning questions which affect the principles of the Constitution of the State;
- (d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. Disputes which, as a result of these reservations, are excluded from judicial settlement without being formally excluded from the conciliation procedure shall remain subject to that procedure.

Article 30.

Whenever, as a result of these reservations, none of the procedures established by the present Convention can be put into effect, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations as the case may be.

³ If the Convention contains reservations, it would be convenient to add: "and the scope of reservations".

BILATERAL CONCILIATION CONVENTION.

(Convention c.)

The Heads of States (Governments are left free to draw up the Preamble as they may think fit).

.....
Have decided to achieve their common aim by means of a Convention, and have appointed as their plenipotentiaries:

.....
who, having deposited their full powers found in good and due form, have agreed on the following provisions:

Article 1.

Disputes of every kind which may arise between the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by recourse to the procedure of conciliation.

Article 2.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 3.

Disputes for the settlement of which a procedure by judicial settlement, arbitration or conciliation is laid down in other conventions in force between the parties shall be settled in conformity with the provisions of such conventions.

Article 4.

If a dispute which one of the parties has laid before the Commission is brought by the other party, in conformity with the conventions in force between the parties, before the Permanent Court of International Justice or an Arbitral Tribunal, the Commission shall defer consideration of the dispute until the Court or the Arbitral Tribunal has pronounced upon its competence.

Article 5.

1. 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 its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

Article 6.

On a request to that effect being sent by one of the parties to the other party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 7.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

I must not let it be thought that I am of Lord Cushendun's opinion, for there is a very wide difference of view between us.

The honourable representative of the British Empire said that the terms of the first German suggestion were too wide and indefinite and that that constituted a danger. I ventured to remind the Committee at the last session that exactly the same text appears in the Treaty of Locarno. It is an undertaking which several Governments have given in the Locarno Treaty and I do not see anything indefinite about that.

Lord Cushendun said that our suggestion was unnecessary because it seemed to him already covered by the stipulations in the League Covenant. I cannot agree. I think there is a fundamental difference between our suggestions and the present situation. We are discussing a previous undertaking by States to execute what the Council shall have decided. Article 12 of the Covenant only refers to a dispute likely to lead to a rupture, whereas our first suggestion speaks of all disputes whether likely to lead to a rupture or not.

Greatly to my regret, the British representative said that he was absolutely opposed to suggestion No. II, and he expressed the opinion that this second suggestion was superfluous because the case which it sought to meet was already covered by suggestion No. I. That is an error. Suggestion No. I deals with a case in which the Council makes a recommendation for the purpose of preventing any aggravation or extension of a dispute, whereas in the second German suggestion the decisive point is that there is already something to restore. It is a question of re-establishing the military *status quo*. That is a question which would not be covered by the first suggestion.

Lord Cushendun next referred to a recent decision of the Council and declared that this decision covered a large part of our suggestions and that the Council could therefore have chosen the formulæ we have proposed had it so wished.

I cannot accept this argument, for the Council was not, and is not yet, in a position to take decisions on the lines of our suggestions; it must first be given the opportunity to do so through an international convention. Up to the present, the Council has confined itself to stating that it would be exceedingly desirable for States to take the necessary measures not to aggravate the situation. Our suggestion, however, aims at establishing an international obligation. If our proposal is adopted, the Council will be able to declare that such a measure is necessary and will be able to enforce it.

In this connection, Lord Cushendun pointed out that we must avoid placing the Council in a delicate position which might possibly impair its authority by compelling it to make recommendations which might not be followed. I do not follow this objection. We are proposing that States should undertake to submit to the Council's recommendations. My country, like Lord Cushendun's, is a permanent Member of the Council. I am sure, however, that, far from being compromised, the Council's authority can only be reinforced if our suggestion is adopted, because a certain number of States will have decided in advance to carry out the orders of the Council. Obviously the latter's authority will in that case be greater, for at present it has to be content with recommendations.

That is all I desire to say for the moment. I hope that our subsequent discussions will enable us to overcome some of the objections which have been raised, for, if the Committee should declare that only the first of our suggestions should be retained and that its scope should be restricted, nothing would remain of them to necessitate further discussion.

With regard to suggestion No. I, I may add that I am entirely in agreement with M. Undén.

M. RUTGERS (Netherlands). — I have only one remark to make, and that is on the question whether the powers of the Council shall be limited in all questions left by international law to the exclusive jurisdiction of a State, the latter retaining its liberty of action.

I think it would be difficult for us to give an affirmative answer to this question. The dangers referred to by the Swedish representative and, if I remember rightly, by the representative of Poland, might arise. Very delicate legal questions would have to be settled before the Council could act. It might even happen that, in order to decide whether the question was or was not one of those which international law leaves to the exclusive jurisdiction of States, it would be necessary to take a decision upon the substance of the dispute.

I therefore think that we must avoid unduly limiting the Council's powers.

M. PAUL-BONCOUR (France). — I support the observations of the Netherlands representative and also that made just now by the representative of Sweden. I think that this mention of questions left by international law to the exclusive jurisdiction of States is an almost exact reproduction of paragraph 8 of Article 15 of the Covenant. Within the scope of Article 15 it is, alas, in place, for it constitutes the principal gap in that Article through which war may well find a way. Nevertheless, when paragraph 8 of Article 15 declares that the Council shall report and shall make no recommendation as to settlement, that does not mean that we are not to take all possible measures in order that the settlement may not be found in war. Since we are concerned with measures to prevent a conflict from arising or extending, I do not think that the very important exception contained in Article 15 should be reproduced in the circumstances with which we are dealing.

Article 8.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 9.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 6, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the parties have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed, It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 10.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.

2. The application, after giving a summary account of the subject in dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the parties, the other party shall without delay be notified by it of the fact.

Article 11.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately notify the other party of the fact; the latter shall, in such case, be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 12.

1. In the absence of any agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 13.

The work of the Permanent Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 14.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 15.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 16.

The parties undertake to facilitate the work 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 17.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 18.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings 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 19.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 20.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Conciliation Commission, when given cognisance of the dispute, may recommend to the parties the adoption of such provisional measures as it may consider desirable.

2. The parties to the dispute undertake to abstain from all measures likely to react prejudicially upon the arrangements proposed by the Conciliation Commission, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 21.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power has an interest in the dispute.

2. The parties may agree to invite such third Power to intervene.

Article 1.

Article 22.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes (. . . .²) shall be submitted to the Permanent Court of International Justice.

Article 23.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 24.

1. The present Convention shall be ratified and the exchange of ratifications shall take place at

It shall be registered at the Secretariat of the League of Nations.

2. The Convention shall be concluded for a period of five years dating from the exchange of ratifications.

3. If it has not been denounced at least six months before the expiration of this period, it shall remain in force for further successive periods of five years.

¹ States desiring to introduce reservations might insert here two articles based on Articles 23 and 24 of General Convention C, printed below:

Article 23.

1. In acceding to the present Convention, any country may make its acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the Constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. If one of the parties to the dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

Article 24.

Whenever, as a result of these reservations, the conciliation procedure is impossible, or when, in spite of this procedure, the parties have been unable to agree, the dispute remains subject to be dealt with in accordance with the provisions of Article 15 or Article 17 of the Covenant of the League of Nations, as the case may be.

² If the Convention contains reservations, it would be convenient to add " and the scope of reservations ".

4. Notwithstanding denunciation by one of the High Contracting Parties, all forms of proceeding pending at the expiration of the period of the Convention shall be duly completed.

DONE at on in a single copy
.....

IN FAITH WHEREOF, the above-mentioned plenipotentiaries have signed the present Convention.

(c) RESOLUTION ON THE SUBMISSION AND RECOMMENDATION OF THE MODEL CONVENTIONS ON CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the next Assembly:

The Assembly,

Having noted the model general conventions drawn up by the Committee on Arbitration and Security on the subjects of conciliation, arbitration and judicial settlement;

Appreciating the value of these model general conventions; and

Being convinced that their adoption by the greatest possible number of States would serve to increase the guarantees of security:

Recommends all States, whether Members of the League or not, to accede thereto;

Draws the attention of Governments which may not feel able to assume general obligations to the fact that they could accept the rules established by the aforesaid model conventions by means of special agreements or a simple exchange of notes with any States they may desire; and

Requests the Council, with a view to this eventuality, to give the Secretariat of the League of Nations instructions to keep a list of the special obligations undertaken within the scope of the general conventions, so as to enable Members of the League of Nations and States non-members of the League to obtain information thereon as soon as possible.

(d) RESOLUTION REGARDING THE GOOD OFFICES OF THE COUNCIL.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the next Assembly:

“ The Assembly:

“ In view of the resolution adopted by the Assembly on September 26th, 1926, requesting the Council to offer its good offices to States Members of the League for the conclusion of suitable agreements likely to establish confidence and security;

“ Recognising that the development of procedures for the pacific settlement of any disputes which may arise between States is an essential factor in the prevention of wars;

“ Expresses its appreciation of the progress achieved in concluding treaties of this kind, and its desire to see the application of the principle of the pacific settlement of all disputes extended as far as possible, and

“ Invites the Council,

“ To inform all States Members of the League that, should States feel the need of reinforcing the general security conferred by the Covenant and of concluding for this purpose a treaty to ensure the pacific settlement of any disputes which may arise between them, and should negotiations in connection therewith meet with difficulties, the Council would, if requested — after it has examined the political situation and taken account of the general interests of peace — be prepared to place at the disposal of the States concerned its good offices, which, being voluntarily accepted by them, would be calculated to bring the negotiations to a happy issue.”

(e) RESOLUTION CONCERNING THE OPTIONAL CLAUSE OF ARTICLE 36 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the next Assembly:

“ The Assembly:

“ Referring to the resolution of October 2nd, 1924, in which the Assembly, considering that the terms of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice are sufficiently wide to permit States to adhere to the special Protocol

opened for signature in virtue of that article, with the reservations which they regard as indispensable, and convinced that it is in the interest of the progress of international justice that the greatest possible number of States should, to the widest possible extent, accept as compulsory the jurisdiction of the Court, recommends States to accede to the said Protocol at the earliest possible date;

“ Noting that this recommendation has not so far produced all the effect that is to be desired;

“ Being of opinion that, in order to facilitate effectively the acceptance of the clause in question, it is expedient to diminish the obstacles which prevent States from committing themselves;

“ Being convinced that the efforts now being made through progressive codification to diminish the uncertainties and supply the deficiencies of international law will greatly facilitate the acceptance of the optional clause of Article 36 of the Statute of the Court, and that meanwhile attention should once more be drawn to the possibility offered by the terms of that clause to States which do not see their way to accede to it without qualification to do so subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope;

“ Noting in this latter connection that the reservations conceivable may relate, either generally to certain aspects of any kind of dispute, or specifically to certain classes or lists of disputes, and that these different kinds of reservation can be legitimately combined;

“ Recommends that States which have not yet acceded to the optional clause of Article 36 of the Statute of the Permanent Court of International Justice should, failing accession pure and simple, consider, with due regard to their interests, whether they can accede on the conditions above indicated;

“ Requests the Council to communicate the text of this resolution to those States as soon as possible, desiring them to notify it of their intentions in the matter; and

“ Asks the Council to inform them at the next session of the Assembly of the replies it has by then received.”

III.

NON-AGGRESSION AND MUTUAL ASSISTANCE

(a) INTRODUCTORY NOTE AS TO THE MODEL COLLECTIVE TREATIES OF MUTUAL ASSISTANCE AND OF COLLECTIVE AND BILATERAL TREATIES OF NON-AGGRESSION.

The Committee thought it advisable to prepare three model treaties which are of unequal scope as regards the degree of security they might afford to States seeking fresh guarantees.

I. MODEL TREATY OF MUTUAL ASSISTANCE.

The draft having the widest scope is clearly that which combines the three elements: non-aggression, peaceful settlement of disputes and mutual assistance.

This draft differs from the Rhine Pact of Locarno in several respects:

- (a) It contains no clause guaranteeing the maintenance of the territorial *status quo*.
- (b) It provides for no guarantee by third States.
- (c) It provides for the case of States non-members of the League of Nations being parties to the treaty.
- (d) It contains, with regard to the peaceful settlement of disputes, a certain number of clauses which, in the Locarno Agreements, do not figure in the Rhine Pact, but in annexed Conventions.

These differences are due, in the model treaty recommended, to the following reasons:

(a) The individual and collective guarantee of the maintenance of the territorial *status quo* would clearly constitute a very important factor of security in the model treaty proposed; but the fact that certain Powers, when negotiating such a treaty, would not feel able to accept such a clause should not, in the Committee's opinion, prevent the negotiations from being successful. For the clause in question is not essential, and it is understood that, being concluded under the auspices of the League of Nations and within the scope of its Covenant, the treaty assumes the full maintenance of the fundamental principle of Article 10 and all other provisions of the Covenant in relation between the contracting parties.

It is therefore quite possible to be content with the three essential factors of the treaty: non-aggression, the peaceful settlement of disputes and mutual assistance. By their close combination, they signify that the contracting parties, renouncing the use of force to back up their claims, will be guided by a respect for legality in their relations with each other, and that whichever of them breaks its engagements will expose itself, apart from the possible application of the collective sanctions provided for in Article 16 of the Covenant, to the particular sanctions organised by the system of mutual assistance provided for in the treaty.

(b) Similarly, while the guarantee of third States can greatly add to the effectiveness of a treaty of mutual assistance, clearly its absence must not constitute an obstacle to the conclusion of the treaty. The Committee has therefore not thought it advisable to include a clause of this nature in the model treaty it recommends. In the event of the contracting parties being able to rely on the guarantee of third States, the details of this guarantee might either figure in the treaty itself, according to the precedent of the Rhine Pact of Locarno, or be dealt with in separate conventions.

(c) The Committee thought it expedient to provide for the case of States non-members of the League of Nations being parties to the treaty. It considers that it has made this possible by inserting the provision of Article 28 under which any non-legal conflict between the parties would, in the event of the failure of conciliation proceedings, be governed by the provisions of Article 17 of the Covenant if one of the parties to the dispute is not a member of the League of Nations.

The Turkish delegation proposed that the Committee should go a step further and omit the exceptions provided for in Article 1, which lays down the obligation of non-aggression, and should stipulate:

- (1) That aggression by one of the contracting parties against another contracting party would involve the annulment of the treaty.
- (2) That aggression by one of the contracting parties against a third Power would involve release from the obligation of neutrality which should be provided for in a new article of the treaty.

Moreover, the Turkish delegation proposed that it should be stipulated in Article 3 with reference to a violation of Article 1 that, if one of the contracting parties not a member of the League of Nations so requests, the question should not be brought before the Council, but submitted to an international commission of enquiry.

The Committee was of opinion that the problems raised by the Turkish delegation's proposals were too complex for it to be possible to examine them at the present session. Unless the Assembly itself desires to examine them, they might be considered at a subsequent meeting of the Committee on Arbitration and Security.

The Turkish delegation agreed to the proposed adjournment.

(d) The Committee thought it advisable to insert in the model treaty it recommends a certain number of clauses relating to the peaceful settlement of disputes. This does not mean that the parties will not be free to apply among themselves the clauses of wider scope which may have been stipulated in the arbitration conventions they have previously concluded or which they may subsequently conclude; but the Committee desired to indicate that a certain minimum of explicit rules is necessary owing to the interdependence of the elements of non-aggression, of the peaceful settlement of disputes and of mutual assistance.

Since it is assuming obligations in regard to mutual assistance, each of the contracting parties must know that the other parties are accepting sufficiently extensive obligations in regard to the peaceful settlement of disputes.

The draft treaty recommended consists of a preamble and a series of articles. In the Committee's view, these texts are not unalterable. The contracting parties may make any modification they consider useful, provided they respect the interdependence and equilibrium of the three essential factors to which we have referred.

The Committee itself indicates below a certain number of possible departures from the text which it has drawn up.

Preamble: The preamble might be limited to a single paragraph, omitting those which have been borrowed from some of the Locarno Conventions. The Committee thinks, however, that it would be well to retain these additional paragraphs. They would serve to create that confidence between the contracting parties by which their relations should be governed. They would mark the respect for legality by which the contracting parties would agree to be guided in their relations, and the absence of all chicanery and moral or political pressure.

Article 1. The formula by which "each of the High Contracting Parties undertakes not to . . . resort to war against another Contracting Party" must, in the opinion of the Committee, be understood to mean that the parties, which undertake by the Treaty of Mutual Assistance to settle all their disputes by forms of pacific procedure, in every case exclude recourse to force in any form whatever, apart from the exceptions formally reserved in the text.

Article 3. It might be possible and desirable in certain cases to add stipulations regarding flagrant aggression. Parties could insert in their Treaty of Mutual Assistance a clause similar to that in paragraph 3, Article 4, of the Rhine Pact of Locarno. This clause reads as follows:

"In case of a flagrant violation of Article 2 of the present Treaty or of a flagrant breach of Articles 42 or 43 of the Treaty of Versailles by one of the High Contracting Parties, each of the other Contracting Parties hereby undertakes immediately to come to the help of the Party against whom such a violation or breach has been directed as soon as the said Power has been able to satisfy itself 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 in accordance with the first paragraph of this Article, will issue its findings, and the High Contracting Parties undertake 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."

The parties might further stipulate that, should the Council prescribe an armistice, they undertake to carry out its conditions. Such a formula would have the twofold advantage of not anticipating any measures that the Council might take in the case of hostilities which had started, and of facilitating the designation of the aggressor, if the Council decided to prescribe an armistice. But this is a difficult point, and the Committee thought it best to make no mention of it in the model treaty.

Subjects which might be dealt with in Special Clauses.

(a) *Reservations.* — The Committee did not think that it should draft a special article providing for the possibility of excluding certain classes of disputes from the procedure for the peaceful settlement of disputes. If the contracting parties agreed to insert in their treaty certain reservations, they might be guided by the provisions regarding reservations contained in the General Convention for Judicial Settlement, Arbitration and Conciliation (Convention B). It would be clearly understood, of course, that the undertaking regarding non-aggression contained in Article 1 would in no case be affected by the insertion of provisions of this kind. Even in respect of disputes reserved in this way, the obligation not to resort to force would remain unaffected.

(b) *Preventive and provisional measures.* — The clause inserted in the general provisions with regard to the provisional measures which might be indicated by an international court, or recommended by a Conciliation Commission, could be supplemented by the relevant provisions of the model treaty to strengthen the means of preventing war.

(c) *Re-establishment of peace after an aggression.* — The Committee had to consider, in pursuance of the proposal made by some of its members, whether the model Treaty of Mutual Assistance should not include stipulations concerning the action to be taken by the Council in connection with the cessation of mutual assistance, the re-establishment of normal relations and the reparations to be claimed from the aggressor.

After consideration, the Committee decided that it would not be expedient to insert such detailed provisions. It would always be open to the parties, should they so desire, to extend their particular treaty by the inclusion of clauses of this kind.

(d) *Establishment of demilitarised zones.* — The establishment of demilitarised zones, as long experience has shown—in particular the naval demilitarisation of the Great Lakes of North America or of the frontier between Norway and Sweden—tends to give nations a feeling of greater security. However, this is not always the case. Here, again, all depends on circumstances. If the contracting parties or certain of them wished to establish such zones along their frontiers, they could do so by separate conventions.

(e) *Accession of third States.* — The Committee decided not to insert a clause stipulating that collective treaties of mutual assistance should remain open for the accession of third States. Such accessions are only conceivable with the consent of the contracting parties.

(f) *Co-ordination of Treaties of Mutual Assistance with the Covenant of the League of Nations and any separate agreements which the contracting parties may have concluded previously.* — The Committee considers that the provisions of the draft harmonise with those of the League Covenant. The parties will have to see that no clauses are introduced the application of which would conflict with the operation of the Covenant. Otherwise they will risk weakening the general guarantee given to Members of the League by Article 16 of the Covenant.

In any case, the parties will do well to retain in their treaty the clause by which they reserve their rights and obligations as Members of the League of Nations.

The parties will also have to co-ordinate with the Treaty of Mutual Assistance any separate agreements which they may have concluded previously.

(g) *Duration of Treaties of Mutual Assistance.* — The Committee did not feel called upon to decide between the various systems which could be adopted with regard to the duration of the treaty. It had in mind three main systems: the first, on the lines of the Rhine Pact of Locarno, without indication as to duration, but expiring as a result of a decision by the Council; the second, providing for a duration of ten or twenty years with the possibility of denunciation at the end of these periods after one year's notice, or, failing denunciation, renewal of the treaty by tacit consent for a similar period; the third system would be a combination of the other two; it would provide for a short trial period after which the parties could free themselves from their contract subject to one year's notice. If not denounced, the treaty would remain in force indefinitely, but it might be brought to an end by a decision of the Council.

The Committee has felt that none of these systems could be definitely selected without going very deeply into the question—a course which it has been impossible to follow.

(h) *Aggression by a third State.* — The Committee has not felt called upon to refer to the mutual assistance to be afforded by contracting parties in the case of aggression by third States. The discussion showed that some States held that such a guarantee is necessary in view of certain definite contingencies, particularly where certain other States refuse to conclude with them a collective treaty, including non-aggression, the pacific settlement of disputes and mutual assistance. On the other hand, it may be held that it is not for the League of Nations, whose object it is to promote sincere co-operation between all its Members with a view to maintaining and consolidating peace, to recommend in a treaty of its own framing provisions which might lead to the formation of rival groups of nations. In this connection, it has been pointed out in the course of discussion that treaties of mutual assistance will be the more valuable and will more certainly merit the support of the League of Nations if they are, in accordance with the precedent of the Rhine Pact of Locarno, concluded between States which only a short time ago belonged to rival groups, or States whose differences might endanger the peace of the world.

It is equally clear that the contracting parties could not in any case afford any assistance to a third State which ventured to attack one of them in violation of the Covenant of the League of Nations. The insertion of a special clause to this effect is useless, since it cannot be presumed that a Power which agrees to become party to a treaty of security would be disloyal to any of its co-signatories. It would even be dangerous to insert such a clause, for it might well weaken the force of Articles 16 and 17 of the Covenant; the undertaking not to afford assistance to a third aggressor State would not, for States Members of the League of Nations, be an adequate commitment. The Covenant provides, not for negative, but for positive action against any State resorting to war in violation of the engagements subscribed to in Articles 12, 13 and 15.

(i) *Linking-up of Treaties of Mutual Assistance with disarmament.* — As pointed out above in the paragraph which deals with the duration of treaties of mutual assistance, the latter are calculated to facilitate the successful issue of a general Conference on the Reduction and Limitation of Armaments. The Committee on Security, not unmindful of the fact that it owes its origin to a 1927 Assembly resolution on the question of disarmament, feels bound to lay special stress on this consideration, which has influenced all its deliberations. But it would be premature, at the present juncture, to attempt to define the connection which should exist between treaties of mutual assistance and the limitation and reduction of armaments.

(j) *Recommendation with a view to the conclusion of collective Treaties of Mutual Assistance.* — Conceived as they are in the spirit of the League and therefore meriting the League's full support, the conclusion of collective Treaties of Mutual Assistance should, in the opinion of the Committee, be facilitated if necessary. The Committee therefore proposes to recommend a draft resolution defining the conditions under which the Council of the League might, in this connection, lend its

good offices. In these cases, the Council's task would obviously be a very delicate one, but we may be sure that it would, as ever, act with the greatest prudence and that, if it took action in such a matter, it would be likely to prove successful.

The conclusion of a collective Treaty of Mutual Assistance, as conceived by the Committee, naturally presupposes political preparation and endeavours to bring about a better understanding between the countries destined to conclude reciprocal agreements.

II. MODELS OF COLLECTIVE AND BILATERAL TREATIES OF NON-AGGRESSION.

States anxious to obtain better guarantees of security but unwilling for some reason or another to bind themselves by a treaty of mutual assistance will find various model treaties under which they can enter into obligations with other States as regards non-aggression and the pacific settlement of disputes only. The provisions of these treaties on these two latter points are the same as those embodied in the draft collective treaty of mutual assistance.

(b) MODEL TREATIES.

COLLECTIVE TREATY OF MUTUAL ASSISTANCE.

(Treaty D.)

(List of Heads of States.)

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes;

Desirous of establishing on a firm basis relations of frank co-operation between their respective countries and of securing additional guarantees for peace within the framework of the Covenant of the League of Nations:

Have resolved to conclude a Treaty for these purposes and have appointed as their plenipotentiaries:

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I. — NON-AGGRESSION AND MUTUAL ASSISTANCE.

Article 1.

Each of the High Contracting Parties undertakes, in regard to each of the other Parties not to attack or invade the territory of another Contracting Party, and in no case to resort to war against another Contracting Party.

This stipulation shall not, however, apply in the case of:

- (1) The exercise of the right of legitimate defence — that is to say, resistance to a violation of the undertaking contained in the first paragraph;
- (2) Action in pursuance of Article 16 of the Covenant of the League of Nations;
- (3) Action as the result of a decision taken by the Assembly or by the Council of the League of Nations or in pursuance of Article 15, paragraph 7, of the Covenant of the League of Nations, provided that in this last event the action is directed against a State which was the first to attack.

Article 2.

Each of the High Contracting Parties undertakes, in regard to each of the others, to submit to a procedure of pacific settlement, in the manner provided for in the present Treaty, all questions whatsoever on which they may differ and which it has not been possible to settle by the normal methods of diplomacy.

Article 3.

Should any one of the High Contracting Parties consider that a violation of Article 1 of the present Treaty has taken place or is taking place, it shall immediately bring the question before the Council of the League of Nations.

As soon as the Council of the League of Nations has ascertained that such a violation has taken place, it shall at once advise the Powers which have signed the present Treaty, and each of these Powers undertakes in such a case to give assistance forthwith to the Power against which the act complained of has been directed.

Article 4.

1. Should one of the High Contracting Parties refuse to accept the methods of pacific settlement provided for in the present Treaty or to execute an arbitral award or judicial decision and be guilty of a violation of Article 1 of the present Treaty, the provisions of Article 3 shall apply.

2. Should one of the High Contracting Parties, without being guilty of a violation of Article 1 of the present Treaty, refuse to accept the methods of pacific settlement or to execute an arbitral award or judicial decision, the other party shall inform the Council of the League of Nations, which shall propose the methods to be adopted; the High Contracting Parties shall accept these proposals.

M. POLITIS (Greece). — I should like to supplement what has just been said regarding paragraph 8 of Article 15 by adding that it has on several occasions been admitted that this clause does not restrict the competence of the Council in virtue of other articles, and chiefly Article 11 of the Covenant. This point was discussed at great length and in a particular connection four years ago.

The CHAIRMAN. — When it examines this question, the Drafting Committee will take account of the observations made in this Committee.

M. ROLIN JAEQUEMYS (Rapporteur). — That means, I suppose, that the Drafting Committee will understand that this Committee does not intend to retain this restriction (a).

The CHAIRMAN. — Hitherto it has been understood that, when no objection has been made to the principle of any suggestion, the Drafting Committee has taken account of the suggestion.

M. SOKAL (Poland). — I should like to be quite sure of understanding the Chairman. Is the Drafting Committee to receive instructions with regard to question 2, to the effect that conservatory measures are to be left to the Council's discretion?

I do not know whether the Committee on Arbitration and Security has already expressed its opinion on this question, which is of the utmost importance. In any case, if you think that we ought to give such exact instructions, I propose that we vote on the point.

The CHAIRMAN. — M. Sokal's question brings us back to the matter of procedure and compels us, in connection with each problem, to ask what exact instructions are to be given to the Drafting Committee. Up to the present our procedure has been otherwise. A memorandum has been submitted to us, and we have opened a general discussion in which various delegations have stated what they did not want, but not what they did want. In this way we have proceeded to eliminate everything that the various Governments were unable to accept in final treaties. I was under the impression that we should maintain this procedure, which is the simplest and the speediest.

If, in regard to this important question, you think it necessary to take a vote, there is no objection to doing so; but it will appreciably prolong our discussion, since the greater part of the work which has hitherto been entrusted to the Drafting Committee will be performed at plenary meetings.

I would remind you that the first reading will not take place until the Drafting Committee submits to us the drafts of the collective treaties, and these no doubt will be referred back to the Drafting Committee, so that we shall have an opportunity of examining them on several occasions.

M. SOKAL (Poland). — It is understood, then, that, following this procedure, we give no exact instructions to the Drafting Committee and shall have an opportunity of examining the texts again.

The CHAIRMAN. — The plenary Committee gives general instructions upon which the Drafting Committee acts in framing a draft submitted to it. When this draft is examined, each delegate will be able to submit his observations.

9. German Delegation's Suggestions. Discussion on Suggestion No. II.

Suggestion No. II. — In case of threat of war, the States might undertake in advance to accept and to execute the recommendations of the Council to the effect of maintaining or re-establishing the military *status quo* normally existing in time of peace.

Questions submitted by the Rapporteur with reference to Suggestion No. II.

1. Should the Council have power, in virtue of an agreement to be concluded between States, to order measures, when there is a danger of conflict between the said States, with a view to maintaining or restoring between them the *status quo ante* in the matter of preparations for war?

2. Should the above rule relating to principle be supplemented in accordance with the following provisions reproduced from Article III (d) and (e), of the report on Article 11 of the Council, approved by the Council on December 6th, 1927? :

(d) The Council "may indicate to the parties any movements of troops, mobilisation operations and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended."

(e) "In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute."

3. Should the Council be given explicitly a right of supervision in regard to the execution of measures prescribed with a view to restoring the *status quo ante*, and should it be granted entire freedom to adopt for this purpose measures clearly defined and of immediate application?

CHAPTER II. — PACIFIC SETTLEMENT OF DISPUTES.

Article 5.

1. The following provisions shall apply to the settlement of disputes between the parties, subject to any wider undertakings which may result from other agreements between them.
2. The said provisions do not apply to disputes arising out of facts prior to the present Treaty and belonging to the past.

Article 6.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.
2. Nevertheless, if these conventions only provide for a procedure of conciliation, after this procedure has been employed without result, the provisions of the present Treaty concerning judicial or arbitral settlement shall be applied in so far as the disputes are of a legal nature.

Section I. — Judicial or Arbitral Settlement.

Article 7.

All disputes with regard to which the parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 8.

If the parties agree to submit their dispute to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrator selected, the procedure to be followed and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 9.

If the parties fail to agree concerning the special agreement referred to in the preceding article or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 10.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 11.

1. Before any resort is made to arbitral procedure or to proceedings before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted to the conciliation procedure laid down in the present Treaty.
2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal as the case may be.

Section II. — Conciliation.

Article 12.

All disputes the settlement of which cannot, under the terms of the present Treaty, be attained by means of a judicial or arbitral award, shall be submitted to a procedure of conciliation.

Article 13.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 14.

On a request being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 15.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1) The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 16.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 17.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 14, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If within a period of three months these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 18.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 19.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 20.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations or at some other place selected by the President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 21.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 22.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 23.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 24.

The parties undertake to facilitate the work 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 25.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 26.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings 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 27.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 28.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Articles 15 or 17 of the Covenant of the League of Nations, as the case may be. This present provision shall not apply in the case provided for in Article 11.

CHAPTER III. — GENERAL PROVISIONS.

Article 29.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down, within the shortest possible time, the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 30.

Should a dispute arise between more than two States parties to the present Treaty, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners, nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event the parties shall, unless they agree otherwise, be guided by Article 16 and the following articles of the present Treaty.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the tribunal, each party shall have the right to submit the dispute to the Permanent Court of International Justice directly by means of an application.

Article 31.

1. The present Treaty shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Treaty or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is a party to the present Treaty or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 32.

Disputes relating to the interpretation or application of the present Treaty, including those concerning the classification of disputes, shall be submitted to the Permanent Court of International Justice.

Article 33.

The present Treaty, which is intended to ensure the maintenance of peace and is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take at any time, and notwithstanding any procedure of conciliation or arbitration, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 34.

1. The present Treaty, done in a single copy, shall be deposited in the archives of the League of Nations. The Secretary-General shall be requested to transmit certified true copies to each of the High Contracting Parties.

2. The present Treaty shall be ratified and the ratification shall be deposited at Geneva in the archives of the League of Nations as soon as possible.

3. It shall come into force as soon as all the ratifications have been deposited.

4. It shall be registered at the League of Nations by the Secretary-General, who shall be requested to notify the fact to all States Members and non-members of the League.

Article 35 (Duration of Treaty).

The present Treaty shall be concluded for a period of years as from its entry into force. Notwithstanding that the Treaty ceases to be in force, all proceedings which at that moment have been commenced shall be pursued until they reach their normal conclusion.

(As regards the duration of the Treaty, the Committee did not consider it its duty to decide between the various possible systems. It recommends three principal systems:

(The first, on the model of the Locarno-Rhine Pact, not specifying any period, but providing for expiry in virtue of a decision taken by the Council;

(The second, providing for a limited period of ten or twenty years, with the possibility of denunciation on the expiry of that period, subject to one year's notice, or, failing denunciation, the renewal of the Treaty by tacit agreement for the same period;

(The third system would be a mixed system providing for a short trial period, on the expiry of which the parties might withdraw, subject to one year's notice; failing denunciation, the Treaty would be for an indefinite period, with the possibility of termination in virtue of a decision taken by the Council.)

IN FAITH WHEREOF, the above-mentioned Plenipotentiaries have signed the present Treaty.

DONE at on

COLLECTIVE TREATY OF NON-AGGRESSION.

(Treaty E.)

(List of Heads of States.)

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes;

Desirous of establishing on a firm basis relations of frank co-operation between their respective countries and of securing additional guarantees for peace within the framework of the Covenant of the League of Nations:

Have resolved to conclude a Treaty for these purposes and have appointed as their plenipotentiaries:

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I. — NON-AGGRESSION

Article 1.

Each of the High Contracting Parties undertakes, in regard to each of the other Parties, not to attack or invade the territory of another Contracting Party, and in no case to resort to war against another Contracting Party.

This stipulation shall not, however, apply in the case of:

- (1) The exercise of the right of legitimate defence — that is to say, resistance to a violation of the undertaking contained in the first paragraph;
- (2) Action in pursuance of Article 16 of the Covenant of the League of Nations;
- (3) Action as the result of a decision taken by the Assembly or by the Council of the League of Nations or in pursuance of Article 15, paragraph 7, of the Covenant of the League of Nations, provided that in this last event the action is directed against a State which was the first to attack.

Article 2.

Each of the High Contracting Parties undertakes, in regard to each of the others, to submit to a procedure of pacific settlement, in the manner provided for in the present Treaty, all questions whatsoever on which they may differ and which it has not been possible to settle by the normal methods of diplomacy.

Article 3.

Should any one of the High Contracting Parties consider that a violation of Article 1 of the present Treaty has taken place or is taking place, it shall immediately bring the question before the Council of the League of Nations.

CHAPTER II. — PACIFIC SETTLEMENT OF DISPUTES.

Article 4.

1. The following provisions shall apply to the settlement of disputes between the parties, subject to any wider undertakings which may result from other agreements between them.

2. The said provisions do not apply to disputes arising out of facts prior to the present Treaty and belonging to the past.

Article 5.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. Nevertheless, if these conventions only provide for a procedure of conciliation, after this procedure has been employed without result, the provisions of the present Treaty concerning judicial or arbitral settlement shall be applied in so far as the disputes are of a legal nature.

Section I. — Judicial or Arbitral Settlement.

Article 6.

All disputes with regard to which the parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 7.

If the parties agree to submit their dispute to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrator selected, the procedure to be followed and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 8.

If the parties fail to agree concerning the special agreement referred to in the preceding article or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 9.

If, in a judicial sentence or arbitral award, it is stated that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 10.

1. Before any resort is made to arbitral procedure or to proceedings before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted to the conciliation procedure laid down in the present Treaty.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal as the case may be.

Section II. — Conciliation.

Article 11.

All disputes the settlement of which cannot, under the terms of the present Treaty, be attained by means of a judicial or arbitral award shall be submitted to a procedure of conciliation.

Article 12.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 13.

On a request being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 14.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1). The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2). The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3.) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 15.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 16.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 13, or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission, or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If within a period of three months these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 17.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 18.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 19.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations or at some other place selected by the President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 20.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 21.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 22.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 23.

The parties undertake to facilitate the work 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 24.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 25.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 26.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 27.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Articles 15 or 17 of the Covenant of the League of Nations as the case may be. This present provision shall not apply in the case provided for in Article 10.

CHAPTER III. — GENERAL PROVISIONS.

Article 28.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the arbitral tribunal, shall lay down, within the shortest possible time, the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 29.

Should a dispute arise between more than two States parties to the present Treaty, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions:

(a) In the case of conciliation procedure, a special Commission shall invariably be constituted. The composition of such Commission shall differ according as the parties have all separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one commissioner and shall jointly appoint commissioners, nationals of third Powers, whose number shall always exceed by one the number of commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 15 and the following articles of the present Treaty.

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply.

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the tribunal, each party shall have the right to submit the dispute to the Permanent Court of International Justice directly by means of an application.

Article 30.

1. The present Treaty shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Treaty or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. The request shall be made to it by either party, or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene either if it is a party to the present Treaty or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 31.

Disputes relating to the interpretation or application of the present Treaty, including those concerning the classification of disputes, shall be submitted to the Permanent Court of International Justice.

Article 32.

The present Treaty, which is intended to ensure the maintenance of peace and is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take at any time, and notwithstanding any procedure of conciliation or arbitration, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 33.

1. The present Treaty, done in a single copy, shall be deposited in the archives of the League of Nations. The Secretary-General shall be requested to transmit certified true copies to each of the High Contracting Parties.

2. The present Treaty shall be ratified and the ratification shall be deposited at Geneva in the archives of the League of Nations as soon as possible.

3. It shall come into force as soon as all the ratifications have been deposited.

4. It shall be registered at the League of Nations by the Secretary-General, who shall be requested to notify the fact to all States Members and non-members of the League.

Article 34 (Duration of Treaty).

The present Treaty shall be concluded for a period of years as from its entry into force.

Notwithstanding that the Treaty ceases to be in force, all proceedings which at that moment have been commenced shall be pursued until they reach their normal conclusion.

(As regards the duration of the Treaty, the Committee did not consider it its duty to decide between the various possible systems. It recommends three principal systems:

(The first, on the model of the Locarno-Rhine Pact, not specifying any period, but providing for expiry in virtue of a decision taken by the Council;

(The second, providing for a limited period of ten or twenty years, with the possibility of denunciation on the expiry of that period, subject to one year's notice, or, failing denunciation, the renewal of the Treaty by tacit agreement for the same period;

(The third system would be a mixed system providing for a short trial period, on the expiry of which the parties might withdraw, subject to one year's notice; failing denunciation, the Treaty would be for an indefinite period, with the possibility of termination in virtue of a decision taken by the Council.)

Article 35.

As from the present Treaty may be acceded to in the name of any Member of the League of Nations or of any non-Member State adjacent to or in the neighbourhood of the signatory or acceding States.

The instruments of accession shall be forwarded to the Secretary-General of the League of Nations, who shall notify receipt thereof to all the Members of the League of Nations, and to the High Contracting Parties non-members of the League.

IN FAITH WHEREOF, the above-mentioned Plenipotentiaries have signed the present Treaty.

DONE at on

BILATERAL TREATY OF NON-AGGRESSION.

(Treaty F.)

(List of Heads of States.)

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes;

Desirous of establishing on a firm basis relations of frank co-operation between their respective countries, and of securing additional guarantees of peace within the framework of the Covenant of the League of Nations:

Have resolved to conclude a Treaty for these purposes and have appointed as their plenipotentiaries;

who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I. — NON-AGGRESSION.

Article 1.

The High Contracting Parties 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:

- (1) The exercise of the right of legitimate defence, that is to say, resistance to a violation of the undertaking contained in the previous paragraph;
- (2) Action in pursuance of Article 16 of the Covenant of the League of Nations;
- (3) Action as the result of a decision taken by the Assembly or by the Council of the League of Nations, or in pursuance of Article 15, paragraph 7, of the Covenant of the League of Nations, provided that in this last event the action is directed against a State which was the first to attack.

Article 2.

The High Contracting Parties undertake to settle by peaceful means and in the manner laid down in the present Treaty all questions of every kind which may arise between them and which it may not be possible to settle by the normal methods of diplomacy.

Article 3.

If one of the High Contracting Parties considers that a violation of Article 1 of the present Treaty has been or is being committed, it shall bring the question at once before the Council of the League of Nations.

CHAPTER II. — PACIFIC SETTLEMENT OF DISPUTES.

Article 4.

1. The following provisions shall apply to the settlement of disputes between the parties subject to any wider undertakings which may result from other agreements between them.

2. The said provisions do not apply to disputes arising out of facts prior to the present Treaty and belonging to the past.

Article 5.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. Nevertheless, if these conventions only provide for a procedure of conciliation, after this procedure has been employed without result, the provisions of the present Treaty concerning judicial or arbitral settlement shall be applied in so far as the disputes are of a legal nature.

Lord CUSHENDUN (British Empire). — Mr. Chairman, as I said just now when we were discussing suggestion No. I, I find it necessary to oppose suggestion No. II altogether. M. von Simson expressed disappointment with the attitude which I had taken up. He said that in March I appeared to be entirely opposed to the German suggestions and that I appeared now to be even more opposed to them. I can assure him that that is not the case. In March, I was expressing merely a personal opinion and I then said that, so far as I was able to judge offhand, all the five suggestions might have very grave objections brought against them. I have now considered them more fully in consultation with others, and out of these five suggestions there are two that I should be perfectly prepared to accept subject to a certain amount of amendment. I am sure that M. von Simson would not be so unreasonable as to expect that the exact text, *ipsissima verba*, which he puts on paper must be accepted. It is surely reasonable, if we want to have a convention which is acceptable, that we may make amendments here and there. Subject to amendments, which I shall be quite ready at the proper time to detail, I would be prepared to accept two out of the five suggestions. But this suggestion No. II is not one of them. I said in March that I had no military knowledge at all myself, but that I could not help thinking that, if they were examined from a military point of view, the possibility of re-establishing the *status quo* normally prevalent in time of peace would be found an impracticable proposal. Well, I have submitted that question and others to a very competent committee and I may say that that committee came to the conclusion that this suggestion No. II, as I stated just now, might be carried out under suggestion No. I. I am not at all convinced by M. von Simson's explanation that he does not agree with that view. Well, as the very competent committee to which I submitted it took that view, it only shows, at any rate, that there must be a good deal of ambiguity. The view I expressed may be quite wrong and M. von Simson may be right, but at all events it is an open question. But what I am concerned with now is not whether suggestion No. II is included under suggestion No. I, but whether it contains a practicable proposal. Now all the military and naval opinion which I have been able to consult is emphatically of opinion that such a thing could not be done, and what I would like to ask M. von Simson and my other colleagues is: Is there anyone here who can tell us that he has consulted competent military opinion on this point? I have not heard any military opinion quoted to the effect that such a suggestion could be carried out. It is quite clear that a suggestion of that sort, if it comes entirely or mainly from a body of civilians, has very little value because it is a military question. Would it be possible to re-establish — and that shows that a dispute has broken out or is on the point of breaking out — the normal state of affairs existing in peace? Well, I said in March, and I repeat now most emphatically that the main objection that I see to that proposal is that it would very likely operate in favour of the aggressor and not in favour of the victim of aggression. I do not wish to take up the time of the Committee by repeating arguments I raised before, but my own opinion, which on that point I admit is of comparatively little value, is supported now by competent opinions that that is what the effect would be if you gave the Council power to do it and if the Council were to do it. I do not suppose they would. I think they would have too much sense, but, if they did, one can easily imagine that the effect in a great number of cases would be the very opposite to that which I am quite certain M. von Simson desires and we all desire, namely, to make difficulties, if possible, for the aggressor and to provide facilities for the victim of aggression.

My conclusion is that it would have the opposite effect and I am strongly opposed to this particular suggestion. I hope very much that the Committee will reject it. It is all very well to say: "If it is not to be a protocol, you and your Government need not sign it." That is quite true, but I shall ask the Committee to believe that I am anxious, if we devise a convention at all, that it shall be a convention which the greatest number of States can sign. I do not see any object in devising a convention as to which, when it is examined by the various Governments, they all of one accord say: "This was a gesture, or it may have been a suggestion, but it is so impracticable that no one can accept it." That is not doing business. It is because I am anxious that any convention we agree upon should be a practicable contribution to the maintenance of peace and to make it more difficult for a dispute to drift into war that I hope very much that the Committee will reject the suggestion. I venture to appeal to M. von Simson himself, unless he can quote military opinion and unless he can show that the fears which I entertain with regard to the aggressor being assisted are really groundless, to withdraw this particular suggestion and, if he does not feel able to do that, then all I can say is that I hope very much that the Committee will take the same view that I do and will not refer it at all to the Drafting Committee, but will instruct the Drafting Committee to leave it on one side.

M. SOKAL (Poland). — As regards the second German suggestion concerning measures with a view to maintaining or re-establishing between the States the *status quo ante* with regard to preparations for war, I am in a position to state that, as in the case of the first suggestion, the Polish delegation is in sympathy with this suggestion. It recognises its great utility, and considers that it would be expedient to supplement it by the recommendations in the report on Article 11 of the Covenant, which was approved by the Council on December 6th last.

Section I. — Judicial or Arbitral Settlement.

Article 6.

All disputes with regard to which the parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Article 7.

If the parties agree to submit their dispute to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, the procedure to be followed, and, if necessary, the rules in regard to the substance of the dispute to be applied by the arbitrators. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, shall apply automatically.

Article 8.

If the parties fail to agree concerning the special agreement referred to in the preceding article or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 9.

If, in a judicial sentence or arbitral award, it is stated that a judgment or a measure enjoined by a court of law or other authority of one of the parties to the dispute is wholly or in part contrary to international law, and if the constitutional law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction.

Article 10.

1. Before any resort is made to arbitral procedure or to proceedings before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted to the conciliation procedure laid down in the present Treaty.

2. In the case of the attempt at conciliation failing, and after the expiration of the period of one month from the termination of the proceedings of the Conciliation Commission, the dispute shall be submitted to the Permanent Court of International Justice, or to the arbitral tribunal as the case may be.

Section II. — Conciliation.

Article 11.

All disputes the settlement of which cannot, under the terms of the present Treaty, be attained by means of a judicial or arbitral award shall be submitted to a procedure of conciliation.

Article 12.

The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties.

Article 13.

On a request being sent by one of the contracting parties to another party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 14.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

(1). The Commission shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The parties shall appoint the President of the Commission from among them.

(2). The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3). Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 15.

If, when a dispute arises, no permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special commission, appointed in the manner laid down in the

preceding articles, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.

Article 16.

1. If the appointment of the commissioners to be designated jointly is not made within the period of six months provided for in Article 13 or within a period of three months from the date on which one of the parties requested the other party to constitute a special commission or to fill the vacancies of a permanent Conciliation Commission, a third Power, chosen by agreement between the parties, shall be requested to make the necessary appointment.

2. If no agreement is reached on this point, each party shall designate a different Power, and the appointment shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, these two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 17.

1. Disputes shall be brought before the Conciliation Commission by means of an application 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.

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

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 18.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a permanent Conciliation Commission, either party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. 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 on which the notification reaches it.

Article 19.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations or at some other place selected by the President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 20.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 21.

1. Failing any 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 of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents whose duty 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 may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission for its part shall be entitled to request oral explanations from the agents, counsel and experts of the two parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 22.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 23.

The parties undertake to facilitate the work 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 24.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.

Article 25.

1. The task of the Conciliation Commission shall be to elucidate the 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.

2. At the close of its proceedings, the Commission shall draw up a procès-verbal 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. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been notified of the dispute.

Article 26.

The Commission's procès-verbal shall be communicated without delay to the parties. The parties shall decide whether it shall be published.

Article 27.

If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission, the dispute remains subject to be dealt with in accordance with Articles 15 or 17 of the Covenant of the League of Nations as the case may be. This present provision shall not apply in the case provided for in Article 10.

CHAPTER III. — GENERAL PROVISIONS.

Article 28.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down, within the shortest possible time, the provisional measures to be adopted. It shall in like manner be for 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 bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or 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 29.

1. The present Treaty shall be applicable as between the High Contracting Parties, even though a third Power, whether a party to the Treaty or not, has an interest in the dispute.

2. In conciliation procedure, the parties may agree to invite such third Power to intervene.

3. In judicial or arbitral procedure, any third Power having an interest on legal grounds in the dispute shall be requested to take part in the procedure. Request shall be made to it by either party or by both parties jointly. Such third Power, even if not invited, shall be entitled to intervene, either if it is a party to the present Treaty, or if the question concerns the interpretation of a treaty in which it has participated with the parties to the dispute.

4. The judgment or award pronounced shall have binding force on the third Power which has intervened, and the latter shall also be bound by the interpretation of the treaty in which it has participated with the parties to the dispute.

Article 30.

Disputes relating to the interpretation or application of the present Treaty, including those concerning the classification of disputes, shall be submitted to the Permanent Court of International Justice.

Article 31.

The present Treaty, which is intended to ensure the maintenance of peace and is in conformity with the Covenant of League of the Nations, shall not be interpreted as restricting the duty of the League to take at any time, and notwithstanding any procedure of conciliation and arbitration, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 32.

The present Treaty shall be ratified and the exchange of ratifications shall take place at

It shall be registered at the Secretariat of the League of Nations.

Article 33 (Duration of Treaty).

The present Treaty shall be concluded for a period of years dating from the exchange of ratifications.

Notwithstanding that the Treaty ceases to be in force, all proceedings which at that moment have been commenced shall be pursued until they reach their normal conclusion.

(As regard the duration of the Treaty, the Committee did not consider it its duty to decide between the various possible systems. It recommends three principal systems:

(The first, on the model of the Locarno-Rhine Pact, not specifying any period, but providing for expiry in virtue of a decision taken by the Council;

(The second, providing for a limited period of ten or twenty years, with the possibility of denunciation on the expiry of that period, subject to one year's notice or failing denunciation the renewal of the Treaty by tacit agreement for the same period;

(The third system would be a mixed system, providing for a short trial period, on the expiry of which the parties might withdraw, subject to one year's notice; failing denunciation, the Treaty would be for an indefinite period, with the possibility of termination in virtue of a decision taken by the Council).

DONE at on

c) RESOLUTION ON THE SUBMISSION AND RECOMMENDATION
OF MODEL TREATIES OF NON-AGGRESSION AND MUTUAL ASSISTANCE.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for the approval of the Assembly:

“ The Assembly;

“ Having noted the model treaties of non-aggression and mutual assistance prepared by the Committee on Arbitration and Security;

“ Appreciating the value of these model treaties;

“ And convinced that their adoption by the States concerned would contribute towards strengthening the guarantees of security;

“ Recommends them for consideration by States Members or non-members of the League of Nations; and

“ Hopes that they may serve as a basis for States desiring to conclude treaties of this sort. ”

d) RESOLUTION CONCERNING THE GOOD OFFICES OF THE COUNCIL.

The Committee on Arbitration and Security recommends that the following draft resolution be submitted for approval to the next Assembly:

“ In view of the resolution adopted by the Assembly on September 26th, 1926, requesting the Council to offer its good offices to States Members of the League for the conclusion of suitable agreements likely to establish confidence and security,

“ The Assembly,

“ Convinced that the conclusion between States in the same geographical area of security pacts providing for conciliation, arbitration and mutual guarantees against aggression by any one of them constitutes one of the most practical means that can now be recommended to States anxious to secure more effective guarantees of security;

“ Being of opinion that the good offices of the Council if freely accepted by all the parties concerned might facilitate the conclusion of such security pacts;

“ Invites the Council:

“ To inform all the States Members of the League of Nations that should States feel the need of reinforcing the general security conferred by the Covenant and of concluding a security pact for this purpose, and should the negotiations relating thereto meet with difficulties, the Council would, if requested — after it has examined the political situation and taken account of the general interests of peace — be prepared to place at the disposal of the States concerned its good offices which, being voluntarily accepted, would be calculated to bring the negotiations to a happy issue. ”

IV.

ARTICLES OF THE COVENANT.

(a) RESOLUTION CONCERNING M. RUTGERS'
MEMORANDUM ON ARTICLES 10, 11 AND 16 OF THE COVENANT

(Document C.A.S. 10).

The Committee on Arbitration and Security,

Having taken note of the memorandum on Articles 10, 11 and 16 of the Covenant,

Appreciates the great importance of the work accomplished in regard to the application of these provisions;

Considers that the data regarding the criteria of aggression collected in this memorandum constitute a useful summary of the Assembly's and the Council's work in regard to this matter and of the provisions of certain treaties;

Draws particular attention to the fact that the action which the Council, under Article 11 and the other articles of the Covenant, is called upon to take in case of conflict will provide it with valuable indications to enable it to form an opinion and to make it easier to decide who is the aggressor if war breaks out in spite of all endeavours to prevent it;

Considers that the examination of Article 11 of the Covenant, which lays down that the League "shall take any action that may be deemed wise and effectual to safeguard the peace of nations", forms a useful corollary to the enquiry undertaken by the Committee of the Council and approved by the Council on December 6th, 1927, on the recommendation of the Assembly, and at the same time clearly demonstrates — without in any way detracting from the force of the other articles of the Covenant — that the League must in the first place endeavour to prevent war, and that in all cases of armed conflict or threat of armed conflict of any kind the League should take action to prevent hostilities or to bring hostilities to a standstill if they have already begun;

Notes the suggestions contained in the memorandum with regard to Article 16;

Recommends these studies to the Assembly as a valuable contribution in that they do not propose any rigid and detailed procedure to be followed in times of crisis, and do not add to or subtract from the rights and duties of the Members of the League, but constitute highly instructive indications of the possibilities inherent in the various articles of the Covenant and the manner in which those articles can be applied without prejudice to the methods of application which an infinite variety of circumstances may demand in practice.

(b) RESOLUTION CONCERNING COMMUNICATIONS OF THE LEAGUE
IN CASE OF EMERGENCY.

The Committee on Arbitration and Security,

Considering that, in case of emergency, rapidity and security in the matter of communications between the Secretary-General, the Members of the Council, the States concerned or the special missions of the Council are of particular importance with a view to ensuring efficacious action by the League;

Noting that the importance of this was recognised by the last Assembly in Resolution No. III, adopted on September 26th, 1927, on the proposal of the Third Committee;

While gratified at the results of the initial efforts of the Committee for Communications and Transit to make the best possible use of existing means of communication;

Directs attention to the following passage in the Report of the Committee for Communications and Transit, dated March 1927, which was submitted to the Council and the Assembly:

" . . . that at a time of general emergency — for example, immediately before mobilisation and, above all, during the actual period of mobilisation — the total or partial taking over by the State of the means of communication must inevitably mean that, in many cases, communications of importance to the League might be rendered less rapid or less certain despite the successful application of the measures laid down in the report approved by the Council at its December session, unless some special means, independent of the general system of national communications, . . .";

Considers that the systematic study of the means to be employed by the organs of the League to enable Members to carry out the obligations devolving upon them in virtue of the different articles of the Covenant requires that communications for the purposes of League action in case of emergency should have every guarantee of independence and should be as little affected as

possible by the disturbance which a state of emergency will necessarily produce in the regular working of the communications controlled by the different Governments;

Trusts that the supplementary technical studies undertaken by the Transit Committee, at the request of the Council and in conjunction with all the authorities concerned, with a view to providing the League of Nations with independent air communications and a radio-telegraphic station enabling it to communicate direct with as many Members of the League as possible, may be rapidly completed;

And emphasises the desirability of enabling the next Assembly to take steps to put these schemes into effect, more particularly as regards the establishment of a radio-telegraphic station.

(c) RESOLUTION REGARDING FINANCIAL ASSISTANCE TO STATES
VICTIMS OF AGGRESSION.

The Committee on Arbitration and Security,

Having taken note of the report by the Joint Committee on questions relating to financial assistance;

Thanks the Joint Committee for its valuable collaboration;

Adopts the attached report submitted by its Rapporteur (document C.A.S.69);

Invites the Financial Committee to continue its technical enquiries on the basis of the results obtained after the meeting of the Assembly;

Recommends that the Assembly should give its opinion upon the questions raised;

For this purpose, requests the Secretary-General to forward the report and the minutes of the Joint Committee to Governments in order that they may give instructions to their delegates at the Assembly.

(d) REPORT ON FINANCIAL ASSISTANCE TO STATES VICTIMS OF AGGRESSION.

In pursuance of a Council resolution dated September 4th, 1926, the Financial Committee proceeded to study the question of financial assistance to States victims of aggression, limiting its enquiry to the purely financial aspects of the problem.

In the report in which it published the result of its work (document C.336.M.110.1927.II), it pointed out that, should the Governments decide to work out a scheme of financial assistance, they would have to reply to certain special questions; among other things, they would have to agree upon a "definition of the victim of aggression, the method of determination (such as by unanimous or majority vote of the Council), the States entitled to participate in the scheme (*e.g.* whether they may include non-members of the League), and also the maximum amount to be covered by the scheme."

* * *

The Council first communicated the Financial Committee's report to Governments and later submitted it to the Assembly at its eighth ordinary session.

The latter emphasised the importance of a system of financial aid for contributing to the organisation of security, which is an indispensable preliminary to general disarmament. It requested the Council to continue its examination of the plan and to prepare 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. It recommended that the plan and the documents relating to it should be submitted to the Committee on Arbitration and Security.

When transmitting the Assembly resolution, through the Preparatory Commission, to the Committee on Arbitration and Security, the Council authorised the latter to consult the Financial Committee whenever it thought fit and to request it to pursue any necessary technical enquiries into the question.

* * *

The Committee on Arbitration and Security first decided to request the Rapporteur appointed for the purpose to undertake a preliminary study of the scheme. In particular, he was to take account of the preliminary points raised by the Financial Committee regarding the criteria which would allow aggression to be presumed, and relating to the Council's procedure in this matter, as well as to the right of participation by States (the question of non-members of the League.)

In the memorandum submitted by the Rapporteur, the opinion was expressed that, unless the Council were from the outset entrusted with the free disposal of the necessary funds to guarantee a loan to the State attacked, it would be necessary to harmonise the system of financial assistance with the provisions of Article 16 of the Covenant. Every Member of the League should have the right to participate in the scheme, provided that it acceded to the proposed convention within a given period. Non-member States might be permitted to participate in the scheme in virtue of a special decision taken by a unanimous or majority vote of the signatory States.

Furthermore, the memorandum drew attention to the question whether the scheme could be brought into operation even before there had been a breach of the Covenant. It pointed out that, among the means of pressure which the Council could employ in the course of its efforts to prevent war under various articles of the Covenant, and especially Article 11, one of the most effective was the possibility of guaranteeing a loan on behalf of the party which might be the victim of

aggression. To hold out prospects of this possibility, and perhaps even make promises to this effect, would affirm the ties uniting Members of the League with States that might be attacked, and would be a pledge of their determination to take action to uphold the principles of the Covenant.

The memorandum concluded by stating that the question of financial assistance should continue to be studied from both the technical and political points of view.

Having taken note of the memorandum, the Committee on Arbitration and Security, in agreement with the Financial Committee, thought it advisable to set up a Joint Committee made up of members of the two Committees.

After a general discussion, the Joint Committee asked the Financial Committee what solutions it recommended to the preliminary questions raised in its report.

On receipt of the Financial Committee's reply, the Joint Committee pursued its work, and later submitted a report (see Annex) to the Committee on Arbitration and Security, in which it set forth the formulæ proposed by the Financial Committee and the observations to which they had given rise in the Joint Committee.

Among the solutions referred to the Committee on Arbitration and Security for examination, those concerning the field of application of the scheme and the decisions which the Council will have to take are of a definitely political nature.

The *Financial Committee* considers that, not only must financial assistance be given in the case provided for in Article 16, but that it should also be given even in the case of a threat of war, if such action should be deemed wise and effectual to safeguard or re-establish the peace of nations. It should be brought into operation by a unanimous vote of the Council, minus the votes of the parties to the dispute.

On this subject very varied opinions were expressed in the Joint Committee, in particular on the question of the guarantors as regards the application of Article 4, paragraph 5, of the Covenant and the character of the decisions the Council would be called upon to give.

* * *

The time has now come when an answer must be given — from the political point of view — to the preliminary questions raised by the Financial Committee. The Committee on Arbitration and Security was not able to enter into a thorough examination of the substance of the question, since Governments had not yet had an opportunity of taking cognisance of the Joint Committee's report, and the time available for discussion by the Committee on Arbitration and Security at its third session was too short.

In these circumstances, the Committee decided to transmit the Joint Committee's report to the Assembly and to communicate it to the Governments beforehand, so that they should be able to give the necessary instructions to their delegates to the Assembly.

It recommends that the Assembly should give its opinion upon the questions raised and instructions for the continuation of the work.

The Committee on Arbitration and Security, being desirous that the scheme of financial assistance should be successfully prepared as soon as possible, considers that the Financial Committee should continue its technical work on the basis of the results obtained after the meeting of the Assembly.

The Committee on Arbitration and Security once more desires to emphasise the importance which it attaches to financial assistance, and the value of such a measure for security and disarmament.

(e) Annex. — REPORT OF THE JOINT COMMITTEE.

Following a suggestion made by the Chairman of the Committee on Arbitration and Security at its second session, a Joint Committee consisting of members of the Financial Committee and of members of the Committee on Arbitration and Security was appointed for the joint study of the questions which required to be solved to enable the Financial Committee to work out the technical details of the Scheme of Financial Assistance to States Victims of Aggression.

The following were appointed to the Joint Committee:

(a) For the Committee on Arbitration and Security: M. VALDÉS-MENDEVILLE (Chile), M. ERICH (Finland), M. RUTGERS (Netherlands) and M. VEVERKA (Czechoslovakia);

(b) For the Financial Committee: M. le Comte DE CHALENDAR (France), Dr. MELCHIOR (Germany) and Sir Henry STRAKOSCH (South Africa).

The Committee held two meetings, on March 2nd and on June 5th, 1928, under the chairmanship of M. Veverka.

M. Chalendar, Dr. Melchior and Sir Henry Strakosch consulted the Financial Committee on the points raised at the first meeting of the Joint Committee; at the second meeting of the Joint Committee, they explained that the Financial Committee recommended that the technical details of the scheme of financial assistance should be worked out on the following lines:

- (1) The financial scheme should be embodied in a special Convention.
- (2) The Convention should be open to all Members of the League.
- (3) States not members of the League might be allowed to participate by a decision of the Council.
- (4) The machinery of the Convention should be so elastic that it would be possible for a State not signing the Convention to participate in the guarantees in general or in the guarantee of a specific loan.

(5) Instead of fixing the maximum for the rate of interest and amortisation of any loans, the maximum annual liability in respect of the service of loans would be fixed for each guarantor State.

As regards the terms of the loans, these could be approved before the issue — *e.g.*, by the Chairman for the time being and the two preceding Chairmen of the Financial Committee, acting by a majority vote if unanimity could not be secured.

(6) The issue of loans could take place on the strength of the undertakings subscribed to in the Convention, and represented by the general bonds, without waiting for the specific guarantee bonds to be deposited.

(7) The Convention would provide that financial assistance could be given in the case of war or threat of war, if such action were deemed wise and effectual to safeguard or re-establish the peace of nations.

(8) Financial assistance would be brought into operation by a unanimous vote of the Council (minus the parties to the dispute).

* * *

The first seven points were unanimously approved by the Joint Committee. During the discussion of these points the members of the Financial Committee explained that it appeared difficult to lay down in advance a definite rate for the service of the loans. It was impossible to determine there and then in what manner the loans would be issued, as the circumstances in which the issue would take place could in no way be foreseen. Moreover, to lay down in advance maximum terms, which would necessarily be high, might prejudice the negotiation of the loans.

The Financial Committee had intentionally defined the circumstances in which the Convention might be carried into effect in general terms in order to cover both the cases contemplated in Article 16 of the Covenant and those arising out of paragraph 1 of Article 11. The Financial Committee held that the Convention must be in complete harmony with the spirit of the Covenant generally and with Article 15 and paragraph 1 of Article 11 in particular. If the Council were called upon for a decision in regard to the enforcement of the Covenant, it would be entirely free to graduate the measures provided for in the scheme. In the event of a threat of war, it might confine itself to issuing a warning or to measures in the nature of a demonstration; for instance, it might intimate to one of the parties involved that, if it took certain steps of an aggressive character, the Council would unhesitatingly enforce the scheme of financial assistance for the benefit of the other party.

* * *

As regards point No. 8, the question arose whether the decision of the Council should be binding upon the signatories of the Convention, and whether signatories which were Members of the League but not members of the Council should sit on the Council for the purpose of such a decision. The Joint Committee was unable to reach a unanimous conclusion on this subject.

The Financial Committee was of opinion that the rule of unanimity in the Council was necessary, and considered that this provided a sufficient guarantee for the signatories of the Convention; M. Rutgers, however, pointed out that this guarantee would be much more substantial for signatories which were permanent Members of the Council. These would be sure that the scheme of financial assistance would never be enforced against their will, whereas the other signatories would not enjoy a similar advantage. This point appeared to M. Rutgers to be of particular importance, inasmuch as the contemplated scope of the Convention is very wide and covers, not only the cases of Article 16, but also those of paragraph 1 of Article 11.

M. Rutgers doubted whether the exchange of the general bonds against specific bonds could take place automatically, and thought that the States signatories must be allowed to decide for themselves, even after the Council had taken a decision. He was afraid that more than one State would refuse to subscribe to a convention whose signatories would be required to agree in advance to place themselves entirely in the hands of the Council. The disadvantages which might follow from allowing the signatories to determine their own obligations, and those which might arise out of the possible default of a signatory could be offset by the super-guarantee contemplated by the Financial Committee.

M. Valdés-Mendeville admitted that there might be great practical difficulties in the way of inviting all the States signatory to the Convention to send a representative to sit on the Council, but he wondered whether, in such a case, an exception might be made to the general provision contained in paragraph 5 of Article 4 of the Covenant. In any case, he considered that a fundamental question of principle was involved in this discussion, *i.e.* the nature of the Council's decisions. Referring to M. Rutgers' Memorandum on the Articles of the Covenant, he considered that, even in the most serious cases (Article 16), the Council's decisions could not be absolutely binding: the Council made *recommendations*, but did not *impose* its decisions upon States.

M. Erich was of opinion that the Council's decision should be binding upon all signatories. Should this be impossible, it should in any case be binding upon those signatories which had voted on the decision. The refusal of one of the signatories to accept the decision should not affect the undertaking given by the others. If each State were left free to decide whether financial assistance should be given to the victim of aggression, the machinery of assistance would in practice become ineffective.

M. Erich had no objection to the proviso that the Council decision should be unanimous, but he pointed out that this rule should not preclude the possibility of defining certain case in which aggression might be presumed, either because one of the parties at issue displayed intentions which were incompatible with the Covenant, or because the attitude of the other was proof positive of its friendly and pacific intentions.

M. Erich was of opinion that the decision of the Council should be made binding upon all signatories of the Convention without there being any need for them all to have a share in the taking of the decision.

The members of the Financial Committee, on their side, emphasised the necessity for making the Council decision which would bring the plan into operation binding upon all signatories of the Convention. If a war were on the point of breaking out, it would be of the highest importance to the threatened State that the loan should be floated with the least possible delay, and that the amount available should be determined forthwith. If States signatories were allowed to question their liability and to defer the exchange of the bonds, this, in itself, would ruin the whole of the credit of the scheme. It would be better to have a limited number of signatories which were prepared to give their guarantee automatically as soon as the Council had taken a decision than a large number of signatories in whom no absolute reliance could be placed.

The super-guarantee advocated by the Financial Committee was not designed to provide for the contingency of one of the signatory States withdrawing its guarantee. It was intended solely to facilitate loan subscriptions by affording the subscribers the guarantee of a few financially strong States for the full amount of the loan.

In the opinion of the members of the Financial Committee, the participation of all signatories in the vote on the Council decision would not seem to be practicable at the time of the conflict. It would be desirable, in order to make the Convention effective, to obtain the greatest possible number of accessions to it. But the greater the number of acceding States the more difficult it would be, in the event of a dispute, to bring them together to participate in the decision of the Council, and the more difficult it would be to secure a unanimous decision.

They therefore considered it essential that a clause should be embodied in the Convention, provided that the guarantors would waive their right to sit on the Council, under paragraph 5 of Article 4, should the Council have to take a decision on the enforcement of the Convention.

* * *

The members of the Joint Committee hereby refer the results of their discussions to the Committee on Arbitration and Security for such action as it may see fit to take, and, in particular, in order to enable it to give its opinion of point No. 8.

(f) MINUTES OF THE FIRST AND SECOND SESSIONS OF THE JOINT COMMITTEE APPOINTED TO EXAMINE THE QUESTION OF FINANCIAL ASSISTANCE TO STATES VICTIMS OF AGGRESSION.

FIRST SESSION.

Held at Geneva on March 2nd, 1928, at 11 a.m.

Present:

M. J. VALDÉS-MENDEVILLE	}	Members of the Committee on Arbitration and Security.
M. R. W. ERICH		
Dr. V. H. RUTGERS		
M. VEVERKA	}	Members of the Financial Committee.
COUNT CHALENDAR		
Dr. MELCHIOR		
Sir Henry STRAKOSCH		

On the proposal of M. RUTGERS, M. VEVERKA was elected Chairman.

Sir Arthur SALTER, Director of the Economic and Financial Section of the Secretariat, requested by the Chairman to give some account of the questions to be discussed by the Joint Committee, said that, before continuing its work in connection with financial assistance, the Financial Committee wished to have information with regard to questions of a political nature. An exchange of views between certain members of the Financial Committee and of the Committee on Arbitration and Security accordingly seemed necessary.

There were three groups of political questions:

- (1) In what circumstances should the scheme of financial assistance be brought into operation? Was it necessary first of all to define the aggressor?
- (2) Were the conditions for the application of the scheme to be related to Article 11 or would they be limited to the application of Article 16? Should the Council's decision be taken by a majority vote or unanimously and, in the latter case, would the parties to the dispute be excluded?
- (3) Under what conditions should non-Member States be allowed to participate in the scheme of financial assistance?
- (4) Would not the exchange of the general bonds for specific bonds give rise to technical difficulties? Further, certain questions had been raised by the Belgian delegation to the Committee on Arbitration and Security. Neither the liability of the guarantors, the general conditions of the loan, nor the rate of issue had been fixed.

I also consider that the objections raised by Lord Cushendun in his last speech are very serious. But these objections existed at the time when we were studying the question, and it seemed to us that the adoption of the second suggestion required, as a logical consequence, the express recognition of the Council's right to exercise ample and effective supervision in the case of a threatened conflict.

The establishment of a system of supervision — of which Lord Cushendun made no mention — is, we think, of the greatest importance. The most perfect conservatory measures are only effective to the extent to which they are carried out in accordance with the intentions of the organ by which they were ordered. It appears to us essential, therefore, that they should be actually put in practice, if the whole system is not to prove illusory, ineffective and even harmful, and, as it were, to place a premium on treachery at the expense of loyalty. The French delegate, M. Paul-Boncour, said that the Council could only order measures the execution of which could be supervised. That observation is a very true one, and has my support, but I would add that, in the contingency which we are now considering, this supervision should be rapid and easy to carry out.

In addition to supervision, there are other considerations which I might have put forward with regard to the time within which the Council should begin to exercise supervision — which should be very short — and with reference to the composition of the supervisory organs, in regard to which the strictest guarantees should be given to the parties. But I do not wish to go into details of these complicated questions, and will merely add that this question of supervision appears to me to be one that is absolutely essential and of the first importance, for without it the most ingenious system of preventive measures would be nothing more than an attractive bait to the strong and a snare to the weak, as Lord Cushendun has just said.

In short, I think that, should our Committee not accept Lord Cushendun's proposal, the Drafting Committee might perhaps consider the German delegation's suggestion, provided that at the same time it submits proposals for effective and rapid supervision.

General DE MARINIS (Italy). — There is really no necessity for me to speak, since we are at present putting forward suggestions for the drafting of a bilateral or collective treaty, which will simply be open for signature to the countries prepared to accede to it. I shall merely say a few words from a strictly international standpoint, that is to say, from the standpoint of the League of Nations, with regard to the difficulties which will be encountered by the Council if it is called upon to apply the provisions stipulated in suggestion No. II now under consideration.

Lord Cushendun has said that it would be desirable to consult technical military, naval or air experts in regard to the possibility of applying the provisions of suggestion No. II. I will not make any attempt to suggest what replies would thus be obtained, but I can assure Lord Cushendun and all my colleagues that these questions have been discussed at length in the Commissions, Committees, Sub-Committees, etc., and that the reply desired by Lord Cushendun could be found in the League archives. I think I am right in saying that nearly all, or at all events the great majority, of the experts who have been called upon to give an opinion as to the practicability of these suggestions have given a negative answer.

There still remains the question of supervision. M. Sokal has just told us that he would be prepared to accept the suggestion, provided that it is supplemented by effective supervision. I have no desire to open a discussion on this delicate question of supervision which was also discussed at length when the Treaty of Mutual Assistance and the Geneva Protocol were drawn up. Opinions were divided, but a certain number of States decided that supervision would be absolutely ineffective and almost impossible to exercise. Moreover, I am convinced that the addition of sanctions and the possibility of supervision to these provisions would not make them any more practical, and it is for this reason that, in order to avoid hampering the Council by entrusting to it a task which it cannot perform, I cannot see my way to support these suggestions.

M. PAUL-BONCOUR (France). — I think that suggestion No. II forms one of the most important points — if not the main point — of the discussion, for it raises a number of questions, some of which are mentioned, whereas others are not. It suggests the idea of the military *status quo*, or more accurately, of the *status quo ante*; it implies supervision, and I think that, although these are not mentioned, it also implies sanctions.

The connection between our present discussion of the German suggestions and the previous work of the Committee of the Council could not have been more accurately stated than had been done by our Rapporteur, who reproduced a part of the actual text drawn up in the course of that work.

Nevertheless, there is a difference in the methods proposed. The scheme prepared by the Committee of the Council, which was drawn up within the framework of Article 11, merely proposed a recommendation, following on an agreement between the parties, when the dispute was submitted to the Council. It was therefore natural that, as the idea of supervision by the Council is closely connected with that of the application of the measures ordered by it, this supervision was considered as a possibility, not an obligation. Neither was submission to the decision taken by the Council in the case of a conflict compulsory. Accordingly, the Committee did not deal with the question of sanctions to be applied. Nevertheless, it stated clearly that the Council would in all probability obtain an indication

After some general observations, M. RUTGERS asked whether financial assistance was to be confined to States victims of aggression, or also extended to States threatened with aggression? In the former case, it would involve the application of Article 16 and, in the latter, of Article 11 as well. There were, however, certain disadvantages in applying the scheme of financial assistance at the provisional stage of threatened aggression. In this connection, the Polish Government had already referred to the possibility of a State recognised as threatened with aggression, obtaining a loan and, should the aggression not take place, being liable for the service of a loan which it did not need. M. Rutgers was under the impression that the Financial Committee had contemplated the possibility of financial assistance only when aggression had actually occurred. In his opinion, the definition of the aggressor should be the same in the case of financial assistance as in the case of the sanctions provided for in Article 16.

He thought that it was also necessary to determine whether the decision in regard to the exchange of general bonds for specific bonds should rest with the Council or with the various Governments.

If the scheme were to be applied in virtue of Article 11, a unanimous decision would require the votes of the parties, since no mention was made in Article 11 of the parties to the dispute.

M. ERICH reminded the members that the Finnish Government had already mentioned Article 11 in connection with financial assistance and quoted the relevant passages in the Finnish memorandum. He was, however, grateful to M. Rutgers, who, as rapporteur, had stressed the value of this memorandum. In his opinion, the fact that financial assistance had been co-ordinated with two Articles of the Covenant—11 and 16—was of great importance, since financial assistance would be much more effective if it were granted to a State threatened with aggression. In his conclusions, M. Rutgers had pointed out that, in the event of a conflict, the attitude of the two countries in regard to the Council's recommendations would afford a valuable indication of their respective intentions. Nevertheless, if financial assistance were wrongly granted, the matter would be less serious than an error in applying the sanctions contemplated in Article 16. It was very improbable, however, that such a case would arise, and it was more likely that the difficulty of determining the aggressor would cause a certain amount of delay, which would be prejudicial to the efficacy of the scheme.

He would recall the fact that the Rhine Pact provided for the case of violent aggression, in which event military assistance would be given to a State before it had been recognised to be the victim of aggression (Article 4, paragraph 3, of the Rhine Pact), and he thought that, as regards the putting into practice of the scheme of financial assistance, difficulties of principle should not be exaggerated.

The Finnish Government was of opinion that work in connection with the definition of the aggressor should be continued, but that financial assistance might be provided for, independently of that point. Although it was not possible to draw up a definite scheme until the aggressor had been determined, a preliminary scheme could, he thought, be worked out, in view of the rapporteur's proposals to co-ordinate Articles 11 and 16.

M. VALDÉS-MENDEVILLE noted with satisfaction that a relation had been established between financial assistance and Article 11. This would enable the work to go forward, and the framing of preventive measures against attack would be of the greatest assistance for the maintenance of peace.

The CHAIRMAN asked, as a first question, whether, in the Committee's opinion, financial assistance should be guaranteed only after aggression had taken place or whether it would also be granted in the case of a threat of aggression.

Sir Henry STRAKOSCH explained the Financial Committee's intentions in regard to the preparation of the scheme of financial assistance. It was necessary to decide, in the first place, in what circumstances the scheme should be applied. The political aspects of this question had not been dealt with. The memorandum which had served as a basis for the discussions of the Financial Committee referred to Articles 11 and 16. He was of opinion that financial assistance should be given in such a way as to prevent an attack and did not think there was any need for the direct co-ordination of the scheme of financial assistance with one of the Articles of the Covenant. If the Council's decision were taken unanimously, the parties to the dispute being excluded, it would be much easier to carry out the loan operations than if this decision were taken by a majority vote. Two decisions would therefore be imperative: one, to be taken immediately, concerned the granting of financial assistance; the other, regarding the amount of the loan, need not be taken until aggression had actually occurred. As regards the exchange of general bonds for specific bonds, the Financial Committee had endeavoured to make this operation as automatic as possible, in order to avoid loss of time.

Dr. MELCHIOR was of opinion that the question submitted to the Financial Committee was that of financial assistance to States victims of aggression, that was to say, States which had actually been attacked. If so, assistance would be given in virtue of Article 16. He had always considered the question from that point of view, and the idea of co-ordinating financial assistance with Article 11 was new to him and he had not yet had time to examine the proposal.

Count de CHALENDAR also thought that the proposal to co-ordinate the scheme of financial assistance with Article 11 might be a new one for certain members of the Financial Committee. He thought, therefore, a further discussion of the matter by the Financial Committee advisable.

Sir Arthur SALTER explained how financial assistance might usefully be co-ordinated with Article 11. Experience had shown that the intermediate period prior to the application of Article 16 might be used to bring the scheme of financial assistance into operation — thereby possibly preventing aggression and also the far-reaching sanctions contemplated in Article 16.

Sir Henry STRAKOSCH pointed out that he had merely expressed his personal views on the matter, but, since no objection had been raised to them by the Financial Committee, he presumed that the latter had accepted these views.

M. RUTGERS was unable to agree with Sir Arthur Salter in regard to the intermediate stage between Article 11 and Article 16, and was doubtful whether it was really necessary to co-ordinate financial assistance with any special article of the Covenant.

Sir Arthur SALTER said that experience had shown that, in certain cases, it appeared to be inexpedient to stipulate that Article 16 should be brought into operation, and he was therefore of the opinion that financial assistance should be granted, not after aggression had taken place, but before the Council or States Members had decided that the sanctions provided for in Article 16 should be applied.

M. RUTGERS pointed out that he had expressed this same opinion in his report (paragraph 211). He thought that the question of the co-ordination of Articles 11 and 16 with the scheme of financial assistance should first be studied by the Financial Committee before the work of the Joint Committee was pursued any further.

As several other speakers also took this view, *it was decided*, on the proposal of the CHAIRMAN to allow the Financial Committee sufficient time to make a further study of the question.

Discussion was then opened on the exchange of specific and general bonds.

Sir Henry STRAKOSCH pointed out how advantageous it was that general bonds would specify the maximum amount of the payments to be made by each country. When depositing the general bonds with the Trustee, each country would specify a suitable place — a European legation for instance — where they would be exchanged, if necessary, for specific bonds.

M. RUTGERS asked whether a notification by the Council would not be sufficient for the Trustee without the need of a general bond.

Sir Henry STRAKOSCH replied that, assuming that the Banque Nationale Suisse were the trustee, it could act immediately, whereas, in the absence of general bonds, there would only be the Convention, and the bank would not have this in its possession.

Dr. MELCHIOR agreed with Sir Henry Strakosch. If the Secretary-General were appointed Trustee and the bonds deposited at Berne, where they could be countersigned by the Ministers Plenipotentiary, the whole procedure could be carried out in about ten hours.

Sir Henry STRAKOSCH thought that, after the Convention concerning financial assistance had been signed, it would be advisable that it should, when required, be brought into operation in virtue of a unanimous decision by the members of the Council other than the parties to the dispute. The signatory Governments would then be under the obligation immediately to exchange the general bonds for specific bonds by telegraphing to their Ministers, requesting them to effect this exchange.

M. RUTGERS pointed out that the Council would first have to inform the Governments of its decision.

Sir Henry STRAKOSCH replied that the procedure for the exchange of bonds would be carried out by each Government. In the case of Austria, there were no general bonds because the exact amount was known.

Dr. MELCHIOR adverted to the situation of States not represented on the Council. Financial assistance would be brought into operation by the unanimous decision of the Council, but each country would be the sole judge of whether the provisions of Article 16 should or should not be applied.

M. VALDÉS-MENDEVILLE thought that this question should be settled by the Convention and not only by Article 16.

M. ERICH was of opinion that, in order to render the Convention more effective, special rules should be drawn up, such as those contained in the Convention relating to the Aland Islands (mentioned on page 27 of M. Rutgers' report) and in the Finnish observations on the Geneva Protocol of 1924. The Convention in question provided that, if unanimity could not be obtained, a two-thirds majority would suffice.

On the CHAIRMAN'S proposal, it was decided that the next meeting of the Joint Committee should be held before the forthcoming session of the Committee on Arbitration and Security. This would enable the Financial Committee to take into consideration any new view that might be put forward. Members of the Financial Committee who were also members of the Joint Committee would thus be able to communicate to the latter the observations made by the Financial Committee on the matter.

SECOND SESSION

Held at Geneva on Tuesday, June 5th, 1928, at 10 a.m.

Chairman: H.E. Dr. F. VEVERKA.

Present: The same persons as at the first session.

The CHAIRMAN observed that the question had been left unsettled, as the Committee had thought it necessary to consult the Financial Committee once more before drawing up its report.

Sir Henry STRAKOSCH stated the views of the Financial Committee. Four questions had been raised at its last session:

1. In what circumstances was the scheme for financial assistance to be put in force ?
2. What would be the position of States not Members of the League ? Would they be authorised to participate in the scheme of assistance ?
3. A question raised by the Belgian Member of the Committee on Arbitration and Security: Would it not be desirable to fix a maximum limit in advance for the rate of interest and amortisation ?
4. Would there not be a danger of the exchange of general bonds against specific bonds involving a considerable delay in the application of the scheme, and must this exchange be regarded as a prerequisite condition for the issue of the loan ?

These four points were discussed by the Financial Committee. Its conclusions are summed up as follows:

1. It was thought desirable that the question of financial assistance should be regulated by a special Convention. The obligations under the Convention should become effective when the Council of the League, in the case of war or threat of war, decides by unanimous vote (minus the parties to the dispute) that, in order to safeguard or restore the peace of nations, it is desirable to afford financial assistance, in the manner and under the conditions defined in the Convention, to one or more signatory States.
2. The Financial Committee was of opinion that the scheme should be in the first place for Members of the League. Any Member of the League which desired to participate would be free to do so. States not Members of the League might be allowed to participate by a decision of the Council. The machinery should be so elastic that it would be possible for a State not signing the Convention to participate in the guarantees in general or in the guarantee of a specific loan. In such an event, the percentage of the guarantees of the individual States would need to be changed.
3. It was not thought feasible to fix a maximum for the rate of interest and amortisation of the loan to be raised under the scheme. It was suggested that the conditions of all loans to be issued should be approved, *e.g.*, by the Chairman and the two preceding Chairmen of the Financial Committee, acting if necessary by a majority vote. But it would be possible to fix the maximum annual liability of each guarantor State.
4. It was agreed that the issue of a loan could take place before specific guarantee bonds were deposited, and need not be delayed until these deposits had been effected.

Sir Henry Strakosch read paragraph 1 of that document and observed that, in the Financial Committee's view, it would be desirable to regulate the question of financial assistance by a separate Convention, the obligation to become effective after the Council of the League in case of war or threat of war, had decided by a unanimous vote, that it was important for the maintenance of peace that the scheme of financial assistance should come into operation. This first paragraph had intentionally been drawn up in very general terms, so that it might be in conformity with the terms of both Articles 11 and 16. The Financial Committee considered it essential that the decision to put this scheme of assistance in operation should be taken by a unanimous vote of the Council, minus the parties to the dispute, and he believed that such a unanimous vote would constitute a sufficient guarantee to enable the Parliaments of the different States to subscribe to this very extensive obligation.

Sir Henry Strakosch, passing to paragraph 2, pointed out that the Financial Committee, though recognising that the scheme was intended primarily for States Members of the League, had nevertheless agreed, at the request of the American representative, that individual countries not Members of the League might be allowed to participate in the Convention, in circumstances specified in regard to each particular case.

As regards the third point, the Financial Committee considered that it was not feasible to fix a maximum forthwith for the rate of interest and amortisation of the loan to be raised under the scheme, seeing that the decisions to be taken on this subject must depend entirely on the conditions of the money market at the time of the issue of the loan.

The Financial Committee was, however, of opinion that it would be possible to fix the maximum annual liability of each guarantor State.

As regards point 4, the Financial Committee had been of opinion that the issue of a loan could take place before the general bonds had been exchanged for specific guarantee bonds, on the ground that a State's signature to the Convention might be regarded as constituting a sufficient guarantee, on its part, to enable the loan to be issued. He pointed out that this view had already been expressed by the Financial Committee in its first report, and read the passage of the report relating to that point. He added that the most practical plan would be to request the Financial Committee to draw up the scheme in full detail, as only an outline was given in its report. There were still a great number of points to be settled, as the Financial Committee had so far only discussed the question from a general and technical standpoint.

The CHAIRMAN thanked Sir Henry Strakosch for his statement. He thought the Joint Committee might take the Financial Committee's conclusions as a basis for discussion.

Dr. MELCHIOR pointed out that the first of the Financial Committee's replies did not exactly answer the question which had been stated. The Committee had been asked whether it was possible to draw up a scheme of financial measures to assist a State victim of aggression, but the Financial Committee had raised the question whether this assistance should be confined to cases in which aggression had already taken place, *i.e.*, whether the scheme was to be kept within the terms of Article 16 or whether, on the contrary, it was to be extended to cases coming under Article 11, *i.e.*, when there was still only a threat of war. This extension appeared to the Financial Committee to involve important political issues, for it has recognised that, when peace was in danger, it was not always the country which first threatened aggression whose attitude during the subsequent negotiations was the most menacing to the maintenance of peace. Dr. Melchior took an imaginary case of a country A whose troops had crossed the frontier of a country B. The Council fixed a line of demarcation which might not be passed by the troops of either State. Now, if B failed to comply with the instructions of the Council, the threat of war would then be attributable to B, whereas the first act of hostility had been committed by A. The Financial Committee had therefore intentionally drafted paragraph 1 in very general terms, considering that the Convention must be primarily based on the fundamental ideas of the Covenant, and must offer an additional means of safeguarding the world's peace. It had therefore sought to make the Convention cover the cases provided for both in Article 11 and in Article 16. It was not, however, easy for the Financial Committee to do so, as a political issue was involved and it felt that it should confine itself to working out the technical and financial side of the Convention, leaving the regulation of the political issues to other Committees.

M. RUTGERS observed that Sir Henry Strakosch had argued that the requirements of unanimity, when the Council was deciding to put the scheme for financial assistance into operation, would offer a safeguard for the signatory States. In his view, this safeguard was not of equal value for all the countries acceding to the Convention. It was of much greater value for those that had permanent seats on the Council. They could, indeed, rest assured that the scheme for assistance would never be employed against their will. The other countries could not feel nearly so sure. It would be out of the question for all the States parties to the Convention to sit on the Council when the decision was adopted, though it might be possible to arrange that, when certain States were called upon to discharge their guarantees, they should be given seats on the Council. The clause in virtue of which the scheme was to be put into operation had been drawn in very wide terms. As a consequence, the situation of countries not represented on the Council became all the more dangerous, for their obligation was thereby extended. Of course, it was difficult to imagine a State not represented on the Council refusing to conform to a decision of the Council; but it must be recognised that the right of signatory States to determine their own course of action, in the last resort, after the Council had rendered its decision, was a factor of great moral weight, even if of no great practical importance. For these reasons, M. Rutgers considered that the signatory States should retain their right to decide for themselves after the Council had declared its decision, and he did not see any danger in allowing them this latitude.

Coming next to the question of the exchange of general bonds against specific bonds, M. Rutgers observed that the Financial Committee had proposed that this exchange should take place automatically. He doubted whether such an automatic arrangement was really possible. The authorities who would have to take steps for the exchange of the bonds — in the first place the Ministers of Finance and Foreign Affairs — were in no sense automatons. Suppose that some of the States entertained grave doubts regarding the justice of the Council's decision, could they expect that these States would automatically grant the financial assistance they had undertaken to provide in spite of their firm conviction that the Council had decided amiss? An automatic arrangement of this sort would be very difficult to apply. M. Rutgers believed that it was necessary to allow the States a certain degree of latitude and that they must be left free to take

the final decision. It might, however, perhaps, be arranged that the Convention should emphasise the immense importance of the Council's decision and make it binding on the signatory States unless they could show serious reasons for considering that a *casus fœderis* had not arisen.

M. ERICH wished to be assured as to the extent of the obligation which the Council's decision would involve for individual States. Sir Henry Strakosch had spoken of decisions by a unanimous vote of the Council. But would such a decision be equally binding on States not represented? M. Rutgers had already raised that question in paragraph 202 of his report, and had argued that a State not so represented would not necessarily be bound by the Council's decision. In its first report the Financial Committee had not expressed a definite opinion on that point. It had said: "Nevertheless the Committee is of opinion that as soon as the Council has solemnly declared a country to be an innocent party in the crisis, thus authorising the application of the international guarantees for its benefit and committing the States represented on the Council to its support, the moral effect, etc."

The Financial Committee had, therefore, been concerned solely with the scope of the Council's decision but not with the effects of this extended decision on all the signatory States. Moreover, it appeared that the Financial Committee's report recommended a system under which the decision of the Council would automatically extend to the signatory States. The report further added that a large number of States would wish to assist in guaranteeing the scheme of assistance and, finally, that the signatory States would bind themselves, not indeed to pay down a capital sum, but to provide for the annual service of the loan. The Financial Committee had, therefore, without expressing a final opinion on the question, based its scheme on the view that the Council's decision would be binding on all the signatory States.

M. Erich considered that this point was of the highest importance. The requirement of unanimity in the Council was already a considerable obstacle to the working of this scheme; but if each individual State were also free to decide as to the necessity for affording assistance to a given country victim of aggression, then, as M. Rutgers had indicated in his memorandum, the machinery of assistance would become practically inoperative. They must therefore choose between two courses: either the Council's decision must be binding on all the signatory States, or the States must be free to afford financial assistance to a State victim of aggression without waiting until the Council had first given a decision. The results might be very grave. The first report of the Financial Committee and Sir Henry Strakosch's statement showed clearly that it was the Council's decision which would be the pivot of the whole mechanism. It was said that, if this decision were unanimous, it would be very effective. In its first report, the Financial Committee had thought it possible to limit the obligation to the members of the Council themselves. As the Council consisted of the great Powers, the fact of all the great Powers on the Council being under this obligation would greatly diminish the importance of the obligation of the other States. Such an arrangement might be acceptable, but only on condition that no State Member of the Council could declare that the refusal of one or more States not represented on the Council to comply with the decision of that body entitled it to regard itself as absolved from its pledges. It was essential that the obligation contracted by the States Members of the Council should remain binding in all circumstances. Such an obligation would considerably reduce the danger which might arise from the opposition of a State not represented on the Council. The withdrawal of a State Member of the Council from the Convention would entail most serious consequences. For these reasons M. Erich preferred the view which he believed the Financial Committee had espoused in its first report, and desired that the Council's decision should be binding on all the signatory States. Such an arrangement appeared to him to be the most practical and the most in harmony with the principles of the Covenant. They had heard of the difficulties of defining aggression. It was recognised that the Council's declaration that aggression had taken place must be accepted by all signatory States if it was to be of any effect. The decision of the Council to grant financial assistance to a State would be of an even graver character. Returning to the point raised by M. Rutgers, as to the desirability of all signatory States being represented on the Council when the latter had to make a decision regarding financial assistance, M. Erich considered that, although such an arrangement might be in accordance with Article 4, paragraph 5, of the Covenant, it would not prove very workable. The great majority of States Members of the League were invited to accede to the Convention; a meeting of the Council, together with all the States parties to the Convention, would therefore assume the dimensions of a full Assembly of the League.

M. Erich said in conclusion that only two solutions appeared possible:

1. To agree that the Council's decision was binding on all the signatory States;
2. To limit the obligation to the States represented on the Council, irrespective of the attitude which might subsequently be assumed by signatory States not represented on the Council.

COUNT DE CHALENDAR desired to reply to the two questions raised by M. Rutgers: (1) the possibility of all the secondary States being represented on the Council, and (2) the possibility of the signatory States not being obliged to exchange the general bonds against specific bonds.

The idea of all the signatory States being represented on the Council was not realisable in practice. For the scheme of financial assistance to be really effective, it was necessary to obtain the accession of the largest possible number of States. The Convention would, it was assumed, be signed by all the States belonging to the League. It would be open not only to States Members of the League, but also to non-Members. Had they realised the time that would be needed to obtain the accession of all these States to a decision of the Council? There would not only be a serious loss of time, but there would be a grave risk of every one of these obligations being debated

by the Governments; and, if so, how would it be possible for the scheme to be put into effect when a conflict broke out? The machinery of the financial assistance must operate rapidly and almost automatically — that is, in virtue of a simple unanimous decision by the Council.

As regards the idea of allowing certain States which had signed the general bonds an opportunity for discussing their obligations and refusing to exchange the general bonds against specific bonds, he thought any such supposition must be rejected if the plan was to be workable; it would have the effect of depriving the scheme for financial assistance of all credit. The signature of the general bond must constitute a solemn obligation allowing no loophole for evasion. It was for that reason that the Financial Committee had considered that the signature of the Convention and of the general bonds constituted a sufficient guarantee to enable the loan to be issued, since when these two signatures had been given by a State, the exchange of the general bonds against the specific bonds would become a binding obligation, thus rendering the general bonds really effective instruments.

M. VALDÉS-MENDEVILLE observed that the question they were now discussing affected the basic principles of the League. He saw no objection to the adoption of a special Convention, providing that a unanimous decision of the Council would suffice to put the machinery for assistance in operation. But they must not forget that Article 4, paragraph 5 was part of the Constitution of the League and could not easily be ignored.

The other question of principle was whether the Council could take a binding decision with regard to certain States without those States being represented at the meeting. That question was not without importance. The Convention possessed in itself a binding character, but the Council had to decide when the moment had come to grant financial assistance. It would therefore in reality be for the signatory States to declare that they were willing to give their guarantee. Accordingly the decision of the Council could only be in the nature of a recommendation, and its acceptance would not be compulsory. The signatory States would be bound to discharge the engagement undertaken in the Convention, but it seemed that they were in no way obliged to accept the decision of the Council as to the moment when the scheme for assistance was to come into operation.

Sir Henry STRAKOSCH wished to make it perfectly clear that the Financial Committee had never contemplated giving the engagement of the signatory States an optional character. The Financial Committee's idea had always been to leave the decision entirely in the hands of the Council, and to exclude the other Members of the League not represented on the Council from a share in that decision. In a word, the Financial Committee had sought to frame a workable scheme, and this scheme would only be workable if it came into operation as automatically and promptly as possible. It was necessary, therefore, to invest the Council with all the attributes of a Court, allowing it to decide whether it was, or was not, necessary to grant financial assistance, this decision having the binding force of a judgment and being mandatory for all the signatory States. The whole scheme would be rendered nugatory if its application were to be made conditional on the assent of a parliament of nations.

As regards the question whether the decision of the Council should be binding on the Members of the Council alone, Sir Henry Strakosch declared that this view had never been entertained by the Financial Committee. According to the Financial Committee's report, the Members of the Council would provide a super-guarantee for the loan, but the other States would provide the primary guarantee. The Financial Committee's idea had been that the Council's decision would bind all the States parties to the Convention.

As regards the obligation laid upon the Council by Article 4 of the Covenant to convene all the States Members who were concerned in a question submitted to it, he thought this obligation was not unavoidable, and that it should be possible in a Convention to rule out the application of the Article in question. The Financial Committee had certainly intended that the Council should constitute the tribunal, having power to decide, without appeal, that the scheme for assistance should come into operation in such-and-such circumstances, and that the secondary States must discharge their obligations. There could be no question of leaving the individual States free to decide their course after the Council had delivered its judgment.

M. RUTGERS said that the obstacle caused by Article 4 of the Covenant had only occurred to him during his statement, and after Sir Henry Strakosch had pointed out that the unanimity of the Council constituted a guarantee for the States not represented on the Council. He fully recognised that it would be impossible to convene representatives of all the signatory States, but, as the Convention would be signed by the majority of the States Members, he doubted whether it would be possible in the text of that Convention to rule out one of the fundamental clauses of the Covenant. It would be almost like admitting that private persons might sign a Convention binding themselves to submit to the arbitration of a certain tribunal, and might decide in advance that the number of judges of the Court must be, say, four instead of five. If parties appealed to a tribunal, they must take it as they found it. It was really a legal problem that they were considering, and he would not like to give an opinion without making a thorough study of it. He therefore proposed that this question, which he had himself raised, should be left on one side for the time being and not referred to in the report.

The question of the binding character of the Council's decision was perhaps capable of an intermediate solution. They might, for instance, devise a system under which the States would not be bound in any absolute fashion. He thought that if the signatory States were allowed a certain latitude in deciding after the Council had declared its view, they would be more willing to accede to the Convention than if they were to be bound in advance by the Council's decision.

M. Rutgers concluded, moreover, from the fourth paragraph of the document submitted by the Financial Committee, that the issue of the loan could take place before the general bonds had

been exchanged against specific bonds. The Financial Committee had provided a supplementary guarantee; M. Rutgers supposed that this was probably in case some of the signatory States should default. There appeared little difference between the case of a signatory State refusing to exchange the general bonds against specific bonds and that of a State refusing to discharge the bond when it was presented after the exchange had taken place. The supplementary guarantee would, in a certain measure, offset the latitude allowed to the States to determine their course after the Council had announced its decision. There was no need for the engagement undertaken by the States to have an optional character; but, on the other hand, it did seem necessary to allow these States a certain freedom of decision. They might, for instance, make it an obligation for these States to furnish a clear statement of their objections in support of their refusal. M. Rutgers was still convinced that it would be dangerous to lay down in a Convention that the Council's decision would be binding upon the signatory States. Moreover, it would be an innovation on the Covenant, which did not confer such powers upon the Council, and it would deter some States from acceding to the Convention.

COUNT DE CHALENDAR, in reply to M. Rutgers, said that the Financial Committee had not sought to determine the legal character of Article 4, which was a constitutional article and must consequently take precedence of the terms of a Convention; but he was convinced that the application of Article 4 would render the scheme unworkable. He suggested that a special Convention, in which it was provided that Article 4 should not be applicable, would be binding upon the parties and would have a prior claim upon their obedience.

M. RUTGERS asked what would be the legal situation of the Council in case all the Members of the Council were not signatories of the Convention?

COUNT DE CHALENDAR said that it would be necessary to provide that the Convention could not come into operation until a certain number of States, designated by name, had signed it.

M. Rutgers' second objection, namely, that an obligation for the signatory States to consider themselves bound by the Council's decision would be too grave a condition for them to accept, did not appear to him very conclusive. The renunciation of sovereignty which would thus be required of the signatory States, the refusal of their freedom of action after the decision of the Council, would, M. Rutgers told them, be likely to deter certain States from acceding; nevertheless, he still thought it would be preferable to define the scope of the obligation with the utmost precision, even if they secured a smaller number of accessions, rather than to leave its character indefinite, and actually to state that it was not positively binding. The opinion of the Financial Committee was that, in the latter case, a scheme of financial assistance would be utterly ineffective. The obligation arising from the Convention must, in his opinion, be binding and categorical, so as to strengthen the credit of the scheme; if the door were left open to evasions, it would lose all its value. Nothing but an obligation, in virtue of which signatory States would be bound by a simple decision of the Council, would enable the scheme of assistance to be worked effectively.

SIR HENRY STRAKOSCH desired that the members of the Committee should fully realise the difficulties which would arise if a State not a Member of the Council were left free to decide at the last moment whether it was prepared to participate in the scheme of financial assistance. Suppose, for instance, that the Council decided to grant a loan of ten million sterling, that is, one-fifth of the total provided for. If the Council had to wait before issuing this loan for the decision of every guarantor State, no State would be aware, until the very last moment, what was the extent of the guarantee for which it was individually responsible. It might even be found, at the end of the negotiations, that the ten million sterling were not forthcoming. The acceptance of such a proposal would really render the scheme unworkable, since no country would know the extent of its liability.

As regards Article 4, Sir Henry Strakosch thought it should be quite possible to draw up a contract which should contain no reference to the Covenant. Precedents were not wanting. Take, for instance, the case of a loan issued under the auspices of the League: it was always laid down that the conditions of issue had to be approved by the Chairman of the Financial Committee. It was therefore the Chairman of the Financial Committee who had the responsibility of deciding whether the conditions of the loan were acceptable, and, consequently, what responsibility was incurred by the League of Nations which had authorised the loan. There they had a precedent of a decision taken on behalf of the League of Nations by a simple member of a Committee.

It would be a mistake to suppose, as M. Rutgers had done, that the Financial Committee had wished to provide for the possibility of a guarantor State withdrawing its guarantee. The Financial Committee had only desired that, when a crisis arose (as very prompt action would be essential, and as the public would desire, before subscribing, to have a guarantee in a more concentrated form), they should have a list of super-guarantor States who would be responsible for the issue of the loan before bringing into effect the primary guarantee of the other States. The Financial Committee had not therefore devised this system to meet the case of default by a guarantor State but, on the contrary, to provide a more concentrated form of guarantee which would expedite the negotiations prior to the issue of the loan.

M. ERICH said that the explanations of Count de Chalendar and Sir Henry Strakosch satisfied him. If the scheme of assistance was to be effective, it was necessary that the Council should be able to take a decision imposing an obligation on the signatory States. Moreover, it would not be equitable that the Members of the Council should, in the end, be the only States bound by the Council's decision. It was still uncertain how far the Members of the Council would be bound if a State, not a Member of the Council, withdrew from its obligation. Could a Member of the Council take advantage of the refusal of a State not represented on the Council to withdraw its own guarantee? As regards Article 4, M. Erich thought that Sir Henry Strakosch's explanations were

sufficient. It was quite true that there were Conventions in existence empowering the Council to take certain steps without the assistance of other Members of the League of Nations. The Convention of the Straits was an example; the Council decided on the measures to be taken without the other signatory States having a right to intervene. In his opinion, there was nothing to prevent the signatory States from conferring similar powers upon the Council.

M. RUTGERS recalled Sir Henry Strakosch's statement that serious consequences might ensue if the power of decision were left in the last resort to the signatory States. Nevertheless, they must foresee the contingency of a signatory State not exchanging its general bonds against specific bonds. There would always be at least one such State, if it were only the State declared to be the aggressor. Accordingly, the supplementary guarantee would seem necessary.

M. Rutgers wondered whether, if the signatory States were allowed greater liberty, a large number of States might be expected to repudiate their obligations. If it were anticipated that States would frequently refuse to accept decisions of the Council, it must be expected that a number of States would hesitate before signing a Convention which would render the Council's decision binding and might easily compel them to comply with a decision they could not recognise as just. If, however, as would seem probable, the number of cases in which individual States did not accept the Council's decision were extremely small, there would seem to be little danger from that source, and he thought that Sir Henry Strakosch had perhaps painted an unduly dark picture of the disastrous consequences which such a procedure would involve. Moreover, a parallel situation actually existed in regard to the military obligations imposed by the Covenant upon the States Members of the League. The States themselves were the ultimate judges of the desirability of military intervention on their part. According to the Protocol itself, all that the States would have undertaken would have been to fulfil their obligations loyally and effectively; the Council would not have had the right to impose any specific solution upon them. He was still convinced that it would be very difficult to draw up a draft convention such as States would accept if they were obliged in advance to promise blind obedience to the Council.

Sir Henry STRAKOSCH replied that the plan proposed by M. Rutgers would be impossible to apply. The Convention would have no value at all if each individual Member were left free to make its own decision. It could only be effective if it could be brought into play immediately; such, moreover, was the opinion of the Financial Committee. If the Joint Committee could not agree on that point, it might be left for the Committee on Arbitration and Security to settle; the important point was that a decision should be taken.

Dr. MELCHIOR agreed with Sir Henry Strakosch. If they desired to grant effective financial assistance to countries victims of aggression, they must act quickly, and therefore States not represented on the Council could not be allowed to withdraw their guarantees at the last moment. The vital point was not the actual conversion of general to specific bonds, but the obligation contracted by the States on signing the convention and thereby accepting the general obligation it entailed. According to point 4 of the resolutions proposed by the Financial Committee, however, the loan must be issuable without the need to convert general bonds into specific bonds. The provision of specific bonds in no way modified the juridical character of the general obligations undertaken by States, as this obligation was definitely constituted by the deposit of general bonds. Such was the opinion of the Financial Committee; all these questions, however, would undoubtedly have to be dealt with by the competent committees of the League, and, in particular, by the Committee on Arbitration and Security. No decision could be taken, therefore, before the last-named Committee's opinion had been obtained.

It was also important that the same Committee should be consulted on another question. Article I was worded in very wide terms. Indeed, the aim was to avoid making the scheme of financial assistance a kind of insurance policy alien to the fundamental principles of the Covenant. That was not the intention of the Financial Committee, which considered that the Convention should conform to the terms of Articles 11 and 16; and for that reason the Financial Committee had thought fit to lay down the principle that assistance should be granted not only in the event of war, but in the event of a threat of war. The Committee, when called upon to decide this point, might, for example, say that, in the event of a threat of war, the measures taken would be solely in the nature of a demonstration.

Count DE CHALENDAR considered that Sir Henry Strakosch had given a most accurate account of the Financial Committee's opinion. Even though the serious character of the obligation to be undertaken might lead certain States to reject the Convention, he thought this would be preferable to establishing a Convention not having an obligatory and definitive character. The slightest obscurity might ruin the whole scheme. He strongly urged that the obligation undertaken in the convention should be of a most solemn character. That consideration appeared in point 3, which laid down that the obligations undertaken by the signatory States must be clearly defined. Accordingly, although the exact maximum rates of interest and amortisation could not be defined, it was nevertheless thought possible to fix every year the maximum guarantee which each State would be liable to provide for the service of the loan. The more clearly the convention were drafted, the easier it would be to apply, because, if every signatory were left free to dispute its obligation, the consequences from the financial point of view would be disastrous.

Dr. MELCHIOR added that the object in view was to set on foot a practical plan, and it would be very difficult to issue a loan rapidly without knowing the exact number of States undertaking the guarantee.

M. RUTGERS asked that, if the Committee decided in favour of the Financial Committee's proposal, the objections raised by the various members of the Committee should be added to the report, so as to enable those objections to be taken into account in the discussion preceding the preparation of the report to be submitted to the Council. In his view, they were incurring the risk of drawing up a Convention which would not command a sufficient number of adherents. The idea of granting a State a loan for armaments might seem somewhat paradoxical in an organisation whose aim was to maintain peace — an aim for the sake of which they had hitherto endeavoured to cut down armament credits. Serious objections must be expected, particularly in certain circles, and they must therefore endeavour to make it easy for States to accede to the Convention. They might ultimately find that the fundamental objections, together with the practical objections, would considerably reduce the number of signatory States. In view, however, of the observations submitted by the Financial Committee, M. Rutgers did not think any procedure could be adopted other than to refer the Financial Committee's proposal to the Committee on Arbitration and Security, mentioning the objections which had been raised.

Sir Henry STRAKOSCH pointed out how important it was that the Joint Committee should take a decision. If the plan were referred to the Arbitration Committee without any decision on the majority of articles, the final drafting of the scheme might be still further delayed. It would be particularly unfortunate if the Joint Committee dispersed without having given its opinion on the Financial Committee's draft.

The CHAIRMAN concluded from the discussion that the Joint Committee might submit a report to the Committee on Arbitration and Security, at the same time formulating the suggestions submitted by Sir Henry Strakosch and the objections raised thereto, while leaving the Committee on Arbitration and Security to decide whether the draft should be referred to the Financial Committee.

Dr. MELCHIOR asked whether the draft would be accompanied by a Protocol.

Sir Arthur SALTER (Director of the Economic and Financial Section) replied that, if the opinion of the Joint Committee on the provisions of the draft were unanimous, a short report would be sufficient. If, however, differences of opinion still remained, the draft would have to be accompanied by either written or verbal explanations formulated by the Chairman. The present Joint Committee was not an official Committee constituted by the Council; it was simply a Committee established by two Committees for purposes of discussion, in order to facilitate the exchange of views on a common question.

M. RUTGERS observed that agreement could easily be reached between the representatives of the Financial Committee and of the Arbitration Committee on a number of points in the draft. It would therefore be sufficient to notify the objections submitted in regard to the points on which agreement had not been reached. The present Committee had perhaps more authority than Sir Arthur Salter thought, as the question at present under discussion had been referred to the Committee on Arbitration and Security by the Council, with the suggestion that the question should be studied in collaboration with the Financial Committee.

Sir Arthur SALTER replied that, from the juridical point of view, the present Committee had not been created by the Council; it had only been constituted by the two Committees concerned in order to simplify discussion of the outstanding points at issue between them.

The CHAIRMAN concluded that a small report would be submitted on this question to the Committee on Arbitration and Security; the latter would definitively decide whether it should again consult the Financial Committee before submitting the draft to the Council, which would take the final decision.

M. ERICH had no objection to the principle of unanimity which was required of the Council, but observed that the possibility of establishing a clear presumption of aggression had not been excluded. Emphasis should be laid on the necessity of deciding in what cases a State displayed intentions incompatible with the Covenant, such as refusal to submit a dispute to the procedure of arbitration or conciliation, failure to execute an award or judgment, aggravated perhaps by resistance to the measures taken by the Council to ensure execution, and, lastly, aggression as defined in Article 17. An evil intention was not the only one which could be deduced from this attitude of a State prior to rupture. It must be admitted that if a State requested the Council's intervention — that is to say, in the case with which the Committee was now dealing — and applied for financial assistance under Article 11, it might, by its attitude as a whole give conclusive evidence of its goodwill and of its intention to conform to the measures taken by the Council to safeguard peace. If, nevertheless, through the fault of the other party, peace could not be maintained, it would be easier, in view of all that happened prior to the rupture, to establish clearly the existence of the situation so admirably described by the Financial Committee in its first report. Nevertheless, the Committee considered that, if once the Council solemnly declared that one of the parties was in no way responsible for the crisis which had arisen, and that accordingly it authorised the application of financial guarantees on behalf of that State and pledged the countries represented on the Council to giving it their support, the moral effect, and the confidence produced in the success of the issue of the public loan, would be sufficient to enable the State attacked to obtain the temporary financial accommodation required for its most urgent needs.

M. RUTGERS asked whether the report could not indicate the reasons why it was decided not to fix a maximum for the obligations of States regarding the service of the interest and amortisation charges on the loan, as the Belgian delegation had requested.

Sir Henry STRAKOSCH repeated the reasons he had given. The conditions on which the loan would be issued could not be laid down at once, because it was quite impossible to foresee the circumstances attending the issue. Moreover, to lay down in advance conditions which would necessarily be onerous would create a situation which might subsequently hamper the course of negotiations.

Dr. MELCHIOR added that there would always be considerable differences, according to whether the loan were a long-, medium-, or short-term one.

COUNT DE CHALLENAR pointed out that the last sentence in point 3 was inserted after discussion by the Financial Committee, it being shown that a State assuming financial responsibility under the scheme of assistance could accede to the Convention much more readily if a definite maximum limit to its obligation were fixed. This provision met an unavoidable necessity which existed in certain countries where parliament would require to know the maximum obligation falling upon the country every year.

Point 3 was adopted with the above observations.

Point 4 was adopted without observations.

Sir Henry STRAKOSCH observed that the Joint Committee might already declare its unanimity on the practical question raised by the provisions of point 1, namely, that a decision unanimously taken by the Council should constitute an obligation upon the signatories, as it would not be practicable to allow the signatory States the option of deciding for themselves after the Council had stated its view. If the Joint Committee were unanimous on that point, a great advance would be made.

M. RUTGERS did not think he could share Sir Henry Strakosch's view on the point, as he was not wholly convinced by the arguments submitted by the Financial Committee; he still thought that the freedom of individual States could be reserved up to a certain point. No doubt the procedure proposed by the Financial Committee was the most practical, but no doubt, too, States would give their accession more readily if they felt they could retain a certain degree of freedom.

M. VALDÉS-MENDEVILLE thought that all the views expressed were intended to ensure the success of the scheme. The Financial Committee was of opinion that, in practice, individual States could not possibly be allowed the right to decide after the Council; M. Rutgers, on the other hand, thought that the number of acceding States would be much greater if they kept their individual freedom. It was, therefore, for the Committee on Arbitration and Security to decide whether the difficulties referred to were all as great as had been thought, and to determine the best way to obtain a decision binding upon the signatory States, while at the same time securing the accession of as many States as possible.

The CHAIRMAN concluded that the Joint Committee would submit a report setting forth the objections raised in connection with point 1. The Committee on Arbitration and Security would take a decision on that subject. The decision would be communicated to the Financial Committee and then to the Council, together with the draft scheme as a whole.

M. ERICH asked that the report should mention the objections put forward by the Finnish Government.

The meeting rose at 1 p.m.

as to aggression from the attitude of the State which refused to submit to the conservatory measures indicated.

Now, however, we have before us a different proposal providing for the acceptance of obligations — not a system of general obligations which would appear to have been rejected at the outset of our discussion, but a system of contractual obligations resulting from undertakings accepted in advance by a certain number of States which have signed a treaty to this effect. In these circumstances, you will realise that, if a *previous obligation* exists to submit to the Council's decisions in regard to conservatory measures, the idea of compulsory supervision provided for and organised *in advance*, in such a way that conservatory measures will be put into practice at the same time as this supervision, must also be associated with it.

Is that sufficient? For my part, gentlemen, I do not think so. We are faced with a contractual obligation — a formula which I think accurately defines the proposal with which we are dealing to-day. As Lord Cushendun rightly remarked, so long as the provisions of such treaties are optional, we must ensure their signature by the largest possible number of Powers. That is the most important part of our work, which would otherwise accomplish no useful purpose. You have already seen that nations will not deliberately sign a treaty binding them in advance to accept conservatory measures which, in the case of a dispute, might place them in a difficult situation unless they are assured beforehand that, once the measures have been ordered, their execution may be supervised. Again, if these measures are not observed, if one of the parties — despite the Council's injunctions — refuses to submit to them, is the Council to remain inactive? Does not the obligation to comply with the measures provided for in advance involve the obligation of mutual assistance for the nation complying with those injunctions, which is attacked by the nation that has not complied with them? I fully realise the extent of the problem, which I do not propose to expound. I would merely point out that, if we go beyond the system of recommendations provided for in Article 11, as defined and explained by the Committee of the Council and reproduced textually by our Rapporteur, and propose obligations, all the rest — supervision and sanctions — necessarily follows.

I should like to express a personal view which in no way modifies the decisions which our Committee on Arbitration and Security has apparently taken; for my part, I confess that the great interest which I have found in the German suggestions, with which I expressed myself in sympathy from the outset, is that they are possibly less adapted to the framing of a special treaty than to inclusion in model treaties of mutual assistance on the drafting of which we are now working. I cannot conceive of these definite engagements with regard to conservatory measures without a definite guarantee of mutual assistance in the case of their observance by one of the parties and violation by the other. Moreover, as we are framing model treaties of mutual assistance, I should like conservatory measures to form one of the chapters of those treaties of mutual assistance.

Suggestion No. II raises another question which has just been the subject of interesting discussion. This discussion, though disappointing, seems to have brought to light the facts of the case. The question to which I am referring is that of the *status quo*, the *status quo ante*. That little word *ante*, as Molière has it, says a great deal. Although I am not sure why our Rapporteur replaced it by the expression: "military *status quo* normally existing in time of peace" which appears in the report on the German suggestions, I think that the reasons are the same as those which have been stated at the meetings of the Committee of the Council. The Council's first act in the case of a threat of war is to order the maintenance of the *status quo*. Instead of saying "Go forward", it says "Stay where you are". There are reasons to believe, however, that the result might be favourable to the party which had carefully prepared the aggression and unfavourable to the victim and that the parties should be called upon, not to maintain the *status quo* existing at the time of the Council's intervention, but to re-establish the *status quo ante*, that is to say, the situation existing before the aggression was prepared. This is why we spoke of the *status quo ante*.

But to what moment does this *status quo* refer? If it were merely a question of strictly military or naval measures, there would probably be no difficulty. We know, however, that, at the present time, preparations for conflict are industrial no less than military and that, consequently, the *status quo ante* must also include the measures of industrial mobilisation taken by the States concerned. From what time are these measures deemed to have been taken?

In formulating this suggestion, the German delegation doubtless had these difficulties in mind when it included these much more definite words: "the military *status quo* normally existing in time of peace". But is it possible to measure, appreciate and hence to supervise this military *status quo* normally existing in time of peace? I adhere to my own view — and thank M. Sokal for his reference to it — which is that the Council can only order measures the execution of which it is possible for it to supervise. To order the military *status quo* normally existing in time of peace assumes a limitation of armaments which has not yet been effected. So long as this has not been agreed upon, it is, I think, impossible to decide with any degree of accuracy the military *status quo* normally existing in time of peace.

If our Drafting Committee formulates proposals, either in the form of a complete treaty of mutual assistance or in the form of a special treaty to which I am not opposed, nations will be free to sign or not to sign such undertakings but, for my part, I cannot contemplate preliminary engagements of this kind without the necessary corollary of supervision and sanctions.

V.

GERMAN DELEGATION'S SUGGESTIONS.

(a) INTRODUCTORY NOTE TO THE MODEL TREATY TO STRENGTHEN THE MEANS OF PREVENTING WAR.

1. During the second session of the Committee on Arbitration and Security, the German delegation presented a series of suggestions designed to strengthen the means of preventing war.

At its meeting on March 5th, 1928, the Committee on Arbitration and Security decided to appoint M. Rolin-Jaequemyns, Belgian delegate on the Committee, as Rapporteur, and to request him to prepare a memorandum with a view to the discussion of these suggestions during the Committee's third session.

2. After carefully considering and discussing the German suggestions and M. Rolin-Jaequemyns' memorandum during its third session, the Committee on Arbitration and Security framed on first reading a model Treaty to strengthen the Means of preventing War, which it has the honour to submit to the Assembly, requesting at the same time that Governments will give the necessary instructions to their delegations on the subject.

3. In the passages which follow, the Committee on Arbitration and Security ventures to draw the attention of Governments to certain points which arose during the discussion.

(a) It should be observed in the first place that the purpose of the contemplated treaty, as clearly shown by the debates, is to facilitate, by undertakings to be assured voluntarily in advance by the contracting States, the action taken by the Council of the League of Nations under the Covenant.

(b) The German delegation's second suggestion, that States should undertake in advance to accept the recommendations of the Council to the effect of maintaining and re-establishing the military *status quo* normally existing in time of peace, gave rise to a lengthy exchange of views.

Certain delegations held that a provision of this kind might with advantage be included among the measures designed to prevent war. Other delegations contended, however, that this suggestion would appear to be impracticable, especially in view of the fact that the difficulty of devising a rigid system for the definition of the military *status quo* normally existing in time of peace would be so great that the drawbacks of any attempts to provide for such action by the Council would outweigh its advantages.

As the Committee was unable to reach agreement on this point, it thought it preferable not to take the German delegation's second suggestion into consideration for the time being. This delegation thought that better results could be achieved when further progress had been made in the work connected with the limitation of armaments, and reserved the right to revert to suggestion No. II in due course.

(c) Another question which gave rise to lengthy discussion was that of supervising the execution of the measures recommended by the Council. Certain delegations expressed the view that the contemplated treaty would not be acceptable unless, in return for the undertakings given, States could be assured that the Council would take prompt and efficient measures to satisfy itself of the execution of the measures recommended. Other delegations, however, said that supervision on lines to be settled in advance appeared to them difficult if not impossible to accept.

The Polish delegation expressed the view that the question of supervision could best be settled by the following draft:

"The High Contracting Parties, considering that the provisions referred to above will not be effective unless accompanied by a system of prompt control, undertake forthwith to conform to such measures of supervision as may be applied by the direction of the Council."

A certain number of delegations having declared that they could not accept this form of draft, it appeared to the Committee that the various opinions might be reconciled by drafting Article 4 in the form which appears in the attached model, and which reads as follows:

"The High Contracting Parties between whom hostilities may have broken out, undertake to lend themselves to any action which may be decided upon by the Council with a view to ensuring the observance and execution of the measures it may have recommended in conformity with Article 3."

The Polish delegation agreed that the model should be submitted to Governments, with Article 4 drafted in this manner, provided the attention of Governments was drawn, in the introductory note, to the form of draft it had proposed.

(d) With regard to the question of the Council's vote, a number of delegations held that it would be much preferable, and much more in keeping with the idea of the effective prevention of conflicts, if the provision of Article 5 of the model were not limited to the Council recommendations covered by Articles 3 and 4, but extended to the recommendations covered by Article 1.

(e) The Committee did not feel that it could accept the idea of a general protocol open to the signature of all States. It merely prepared a model multilateral treaty, whilst recording its opinion that the practical value of such a treaty would be directly proportional to the number of contracting States. It did not wish, moreover, to exclude the possibility of using this model for bilateral treaties as well, in all cases in which this procedure might appear preferable to certain States owing to the particular circumstances of their special situation.

(f) Finally, the Committee would point out that, in contemplating the conclusion of special treaties of the kind indicated, it did not wish to exclude the possibility of supplementing treaties of mutual assistance on these lines, if certain States preferred to adopt this procedure.

A solution of this kind would meet the views of certain delegations which considered that the Council could not avoid drawing the necessary consequences from the measures prescribed by it and referred to in the treaty. In the view of these delegations, the indispensable corollary of the undertakings to be given is a system of mutual assistance against any State which fails to keep its pledges, as their violation ought to entail the same consequences as the violation of Article 3 of the model Collective Treaty of Mutual Assistance.

(b) MODEL TREATY TO STRENGTHEN THE MEANS OF PREVENTING WAR.

Preamble.

(List of Heads of States.)

Being sincerely desirous of developing mutual confidence by strengthening the means of preventing war;

Noting that to this end the task of the Council of the League of Nations in ensuring peace and conciliation might be facilitated by undertakings assumed voluntarily in advance by the States;

Have decided to achieve their common aim by means of a treaty and have appointed as their plenipotentiaries:

(List of plenipotentiaries.)

who, having deposited their full powers found in good and due form, have agreed on the following provisions:

Article 1.

The High Contracting Parties undertake, in the event of a dispute arising between them and being brought before the Council of the League of Nations, to accept and apply provisional recommendations by the Council relating to the substance of the dispute and designed to prevent any measures being taken by the parties which might have a prejudicial effect on the execution of an arrangement to be proposed by the Council.

Article 2.

In the case provided for in Article 1, the High Contracting Parties further undertake to refrain from any measures which might aggravate or extend the dispute.

Article 3.

In the event of hostilities of any kind having broken out, without the possibilities of a peaceful settlement having in the Council's opinion been exhausted, the High Contracting Parties undertake to comply with the recommendations which the Council may make to them for the cessation of hostilities, prescribing, in particular, the withdrawal of forces having penetrated into the territory of another State, or into a zone demilitarised in virtue of international treaties, and in general inviting them to respect each other's sovereignty and any obligations assumed in regard to demilitarised zones.

Article 4.

High Contracting Parties between whom hostilities may have broken out undertake to lend themselves to any action which may be decided upon by the Council with a view to ensuring the observance and execution of the measures it may have recommended in conformity with Article 3.

Article 5.

In the cases referred to in Articles 3 and 4, the High Contracting Parties undertake 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.

Article 6.

The provisions of the present Treaty shall only apply on the basis of reciprocity, *i.e.*, in respect of disputes between the High Contracting Parties.

Article 7.

The present Treaty may not be interpreted as entailing any change in the task of the Council of the League of Nations as laid down in the Covenant.

Article 8.

The present Treaty shall bear to-day's date¹; it shall be ratified. The instruments of ratification shall be forwarded to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League.

Article 9.

The present Treaty shall enter into force as soon as all the ratifications have been deposited. The present Treaty, done in one copy, shall be deposited in the archives of the League of Nations.

¹ Date of signature.

The Secretary-General of the League of Nations shall be requested to deliver certified true copies to all the High Contracting Parties.

Article 10.

The present Treaty shall be concluded for a period of.....

Article 11.

The present Treaty shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

IN FAITH WHEREOF the above-mentioned plenipotentiaries have signed the present Treaty.

DONE at on

(c) RESOLUTION ON THE SUGGESTIONS SUBMITTED BY THE GERMAN DELEGATION WITH A VIEW TO STRENGTHENING THE MEANS OF PREVENTING WAR.

The Committee on Arbitration and Security,

Having taken note of the memorandum of its Rapporteur, Baron Rolin-Jaequemyns, on the suggestions submitted by the German delegation with a view to strengthening the means of preventing war;

Thanks its Rapporteur for the exhaustive report which he has submitted;

Adopts the model Treaty designed to give effect to the German delegation's suggestions and submits it to the Assembly;

And requests the Secretary-General to forward the said model with the introductory note, as well as Baron Rolin-Jaequemyns' memorandum and the minutes of its third session, to the Governments in order that they may give the necessary instructions to their delegations at the Assembly.

(d) Annex. — MEMORANDUM ON THE GERMAN DELEGATION'S SUGGESTIONS FOR THE PREVENTION OF WAR.

Submitted by M. ROLIN-JAEQUEMYS, Rapporteur.

CHAPTER I. — PRELIMINARY STATEMENT.

At the last session of the Committee on Arbitration and Security, the German delegation submitted a series of *suggestions* designed to strengthen the existing means of preventing war.

According to the statements of M. von Simson, the German delegate, his Government's proposal was that the League of Nations should use these suggestions in framing certain measures which would lead to an increase in security "by strengthening mutual confidence, and particularly by strengthening such confidence by methods which can be rapidly applied".

Subsequently, at its meeting on March 5th, 1928, the Committee on Arbitration and Security, "appreciating the great importance of these suggestions", adopted the following resolution, stating that it:

"Considers that they should be thoroughly examined and that Governments should be enabled to study them in detail; and

"Decides to place them on the agenda of its next session and to appoint a rapporteur, who will report to the Committee in the light of the Committee's discussions and of any observations which may be forwarded by Governments".

Lastly, at the close of its last session, the Committee on Arbitration and Security decided, more particularly under paragraph 3, "to examine at its third session the suggestions of the German delegation on the basis of the memorandum prepared by" the undersigned rapporteur.

* * *

It may be well to reproduce the text of the above-mentioned suggestions, numbered I to V:

"I. In case of a dispute being submitted to the Council, the States might undertake in advance to accept and execute provisional recommendations of the Council for the purpose of preventing any aggravation or extension of the dispute and impeding any measures to be taken by the parties which might exercise an unfavourable reaction on the execution of the settlement to be proposed by the Council.

"II. In case of threat of war, the States might undertake in advance to accept and to execute the recommendations of the Council to the effect of maintaining or re-establishing the military *status quo* normally existing in time of peace.

"III. In the case of hostilities of any kind breaking out without, in the Council's opinion, all possibilities of a pacific settlement having been exhausted, the States might undertake in advance to accept, on the Council's proposal, an armistice on land and sea and in the air, including especially the obligation of the two parties in dispute to withdraw the forces which might have penetrated into foreign territory and to secure the respect of the sovereignty of the other State.

"IV. The question should be considered whether the above-mentioned obligations should be undertaken only in case of a unanimous vote of the Council (the votes of the parties to the dispute not being counted), or whether the majority, simple or qualified, might suffice in the matter. Furthermore, it should be considered in what form the obligations would have to be drawn up in order to bring them into conformity with the Covenant.

“ V. These obligations might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations, and which might come into force separately for the several continents, in a way similar to that provided for in the draft Treaty of Mutual Assistance of 1923. ”

The suggestions reproduced above supplement the ideas put forward in the *Observations submitted in January 1928 by the German Government on the programme of the work of the Committee on Arbitration and Security* (document C.A.S. 10, pages 58 to 60).

We would note more particularly the following passage in those Observations:

“ 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 II 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. ”

The idea underlying the suggestions which form the subject of the present memorandum is therefore that special voluntary undertakings should be entered into by means of a general agreement, or at all events an agreement between a large number of parties.

The arguments put forward by the German delegate, M. von Simson, at the last session of the Committee, in support of these suggestions by the German Government, may be summed up as follows:

1. In order that the action of the Council of the League of Nations may be exercised with increasing effect in the pacific settlement of international disputes, provision must be made for measures which will prevent either party to the dispute from employing the delay involved by such intervention to modify the *status quo* improperly in its own interests. Accordingly “ conservatory measures ” of a purely *provisional* character should be taken by the Council.

2. In order to prevent a difference or dispute between States from leading to war between them, the Council of the League of Nations must be in a position to prevent the said States from making military preparations with this object, such preparations being of a nature to lead to war despite the pacific efforts of the responsible statesmen.

3. The League of Nations must endeavour to stop armed conflicts, even when a state of war already exists, and this, not only in the case of a war waged in violation of the Covenant, but even in the case of a war not prohibited by the Covenant. Hence the first step to be considered must be an *armistice*, under clearly defined conditions.

4. The possibility might be considered whether the Council, in the above-mentioned contingencies should not take its decision by majority vote, simple or qualified, as otherwise it might be unable to take any action whatever.

5. To increase the feeling of confidence, an essential factor in security, the measures proposed by the Council must be binding upon the parties, in virtue of a general treaty or of collective treaties open to signature by all States, including even those which are not Members of the League.

The above is a summary of the considerations put forward during the discussions, in support of preventive measures for the more adequate maintenance of peace.

In the following chapter, the suggestions are examined individually from this standpoint.

CHAPTER II. — OBSERVATIONS ON THE SUGGESTIONS SUBMITTED.

Suggestion No. I.

“ In case of a dispute being submitted to the Council, the States might undertake in advance to accept and to execute provisional recommendations of the Council for the purpose of preventing any aggravation or extension of the dispute and impeding any measures to be taken by the parties which might exercise an unfavourable reaction on the execution of the settlement to be proposed by the Council. ”

Suggestion No. I aims at provisional measures touching the actual subject of the dispute. These closely resemble the system of “ conservatory measures ” found in a number of national codes of civil procedure and in various systems of arbitration and conciliation procedure under international law.

Most arbitration and conciliation treaties contain a provision requiring the parties, while the procedure is in progress, to refrain from certain acts which might “ prejudicially affect the execution of the award or the final proposal ”.

Furthermore, the arbitration treaties confer on the arbitral court, in the majority of cases, the right to order conservatory measures. In the arbitration and conciliation treaties, this power is generally conferred on the Conciliation Commission, especially as there is a growing tendency in conciliation procedure to recognise the Commission's proposals as binding. The position is the same as regards the Council of the League when arbitration and conciliation treaties provide for its intervention in disputes. Article 19 of the Locarno Treaties of Arbitration and Conciliation is a case in point.

The German delegation's first suggestion is simply a proposal to generalise this system of conservatory measures, so that the actual principle is not likely to encounter opposition.

Difficulties in the matter of application, however, may be anticipated, since many States would undoubtedly refuse to assume undertakings conferring unlimited discretionary powers on the Council. Accordingly, it might be expedient to limit the Council's powers in the matter. This would also facilitate agreement within the Council itself in regard to the conservatory measures it is entitled to propose.

One way of thus limiting the powers of the Council or, more correctly, of conferring specific powers on it in this matter of conservatory measures, would obviously be to enumerate and define all the categories of conservatory measures that it might have to order. But considering the extreme diversity of cases that might arise and the differences in internal legislation, such a definition seems neither opportune nor feasible. For this reason, none but general formulas have hitherto been adopted, the Arbitral Court, the Conciliation Committee or the Council being empowered at its discretion to define the measures in each particular case.

This would appear then to point to the advisability of conferring general powers on the Council in the matter of conservatory measures, particularly as it is the Council's special function to intervene in political disputes, in which a definition or limitation of such measures is even more difficult than in legal disputes.

Furthermore, even in the absence of any exact statement or definition, the actual nature of the conservatory measures specifically limits their scope. They cannot in any case prejudice the fundamental issue.

Accordingly, adopting the suggestion to be found in Article 19 of the Locarno Treaties, States might rely on the wisdom of the Council and recognise that it will only order such conservatory measures as are fair in themselves and really indispensable.

If, however, it were deemed advisable, especially in general agreements, to limit the power conferred on the Council in the matter of conservatory measures in order to relieve the anxiety of States unwilling to undertake obligations not defined beforehand, use might be made of the following or other similar indications:

(a) For all questions generally left by international law to the exclusive jurisdiction of a State, the latter would retain its liberty of action. For example, in the case of a serious dispute arising out of increases in the Customs tariff (failing a commercial treaty) or the expulsion of aliens, it would hardly be possible to place any restraint on a State in the regular exercise of its sovereign rights.

(b) As a general rule, no conservatory measures should be taken in regard to a State, save in the case of injury which cannot be made good by the payment of ordinary compensation or some other material form of reparation. This principle appears to be generally accepted in international law and was explicitly recognised quite recently by the Permanent Court of International Justice, in Judgment No. 8 (Denunciation of the Treaty between China and Belgium).

(c) Again, it will have to be decided whether conservatory measures might be taken by the Council in the case of all disputes, or only if there is danger of war. In this last eventuality, the Council's intervention would be of the first importance and the prevention of war would seem to justify a greater restriction on the liberty of the parties. Such restriction is, however, open to various objections which seem very difficult to overcome. In the first place, the conservatory measures would depend on one of the States parties to the dispute adopting an uncompromising and threatening attitude calculated in actual fact or in appearance to create the danger of war, whereas the same State should it adopt a more moderate and conciliatory tone would not secure the benefit of conservatory measures. Furthermore, it would be unfortunate to confine conservatory measures to cases involving a danger of war, when there is every reason to hope that, if such measures were taken in good time, they might prevent that danger from arising. Lastly, is it really desirable that the Council should be obliged, for the purposes of ordinary conservatory measures, to raise the very serious question of the threat of war?

The Committee on Arbitration and Security will decide whether these various limitations are necessary. It will be open to the Committee to adopt all of them in principle, or only one, or more.

Suggestion No. II.

“ In case of threat of war, the States might undertake in advance to accept and to execute the recommendations of the Council to the effect of maintaining or re-establishing the military *status quo* normally existing in time of peace.”

It may perhaps be useful, in this connection, to recall Article 12 of the Covenant of the League, which also deals with the threat of war, Members of the League agreeing more particularly “ in no case to resort to war until three months after the award by the arbitrators or the report by the Council ”.

The second of the Geneva suggestions, relating to the question of the “ military *status quo* ”, appears to be based on the same principle.

It is not the first time that this question has come before the League of Nations. Apart from the Protocol of 1924, the work of the Preparatory Commission for the Disarmament Conference involved a protracted investigation into the *status quo ante*. The results are incorporated in the report of the Committee of Three on Article 11 of the Covenant, approved by the Council on December 6th, 1927 (document C.169.M.119. 1927 — C.D.C.67 (1)).

The report states, in paragraph III (*d*), that “ the Council may take steps to see that the *status quo ante* is not disturbed in such manner as to aggravate or extend the dispute, and thus to compromise the pacific settlement thereof. For this purpose, it may indicate to the parties any movements of troops, mobilisation operations and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended ”.

Sub-paragraph (*e*) reads: “ In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute ”.

It seems impossible to define the measures to be taken more precisely beforehand. The great diversity of cases must preclude any attempt to catalogue them all in advance. Accordingly, the Council should be left wide powers of action, not only in order to ensure that States shall abstain from all threatening or provocative acts, but also, if necessary, with a view to restoring the *status quo* existing before such measures were taken. In each particular case, moreover, the Council will of course ask the opinion of its competent technical organs or of qualified experts.

If this procedure were adopted, it would perhaps be possible to avoid certain disadvantages which attach to the Council's intervention for the maintenance of the military *status quo ante*, and which consist in consolidating the advantages of the State harbouring aggressive designs. Such a State would, indeed, probably have been making particularly intensive military preparations for some time past.

The German suggestion appears to require supplementing in another direction, namely, by some provision where by the Council should supervise the execution of any measures ordered, as proposed in the above-mentioned report of the Committee of Three (III (*e*)). A State would not be likely to undertake to execute measures of such gravity from the point of view of its national security unless it were sure and possessed some guarantee that the other party of the dispute would also execute them in good faith and in their entirety. These measures, which would be clearly defined and enforceable without delay, should of course always be suited to the individual case.

Suggestion No. III.

“ In the case of hostilities of any kind breaking out without, in the Council's opinion, all possibilities of a pacific settlement having been exhausted, the State might undertake in advance to accept, on the Council's proposal, an armistice on land and sea and in the air, including especially the obligation of the two parties in dispute to withdraw the forces which might have penetrated into foreign territory and to secure the respect of the sovereignty of the other State.”

The idea that the Council might call upon the parties to agree to an armistice after hostilities have broken out is to be found in the Geneva Protocol (Article 10). It was taken up again by the French delegation in the memorandum submitted in 1926 to the Preparatory Disarmament Commission, and by M. Politis in his “ Memorandum on Security Questions ” (*Cf.* document C.A.S. 10, paragraphs 79 and 96).

In these documents, however, the main purpose was to facilitate the designation of the aggressor; the idea accordingly formed of *the procedure respecting sanctions*.

The German suggestion, on the other hand, would make the undertaking of the parties to accept an armistice primarily a link in the chain of *preventive measures*.

Whatever the object in view, the suggestion would undoubtedly be of very great value, both as a preventive measure and as one of the means by which the Council might subsequently determine the aggressor.

The obligations in regard to the armistice should of course always include, as the German delegation suggested, an obligation on the parties to withdraw any forces which might have entered a foreign territory and to respect the sovereignty of the other State.

But even under the simplest conditions, the enforcing of an armistice is bound to meet with considerable difficulties.

As was mentioned at the second session of the Committee on Arbitration and Security, a State which had resolved to become an aggressor in violation of the Covenant and any other undertakings would probably not be inclined to accept the Council's recommendations in regard to an armistice.

Furthermore, considering the variety of possible cases, the duty of laying down equitable armistice conditions might involve the Council in a very difficult and very delicate technical task.

Accordingly, as a solution of the difficulty, the Council might first take a preliminary decision stating that an armistice was necessary and ordering the parties to withdraw such of their forces as might have penetrated into foreign territory and to respect the sovereignty of the other State. These provisions might also apply to demilitarised zones, in virtue of international agreements. As regards the other conditions of the armistice, the Council would grant the parties a short time to come to a direct understanding, and only if they failed to do so would it proceed itself to lay down the conditions, after consulting its technical organs or qualified experts.

It seems unlikely that any State would openly refuse to accept the actual principle of an armistice and the principle that the territory and sovereignty of the other State should be respected. The other armistice conditions, however, might easily lead to protracted discussions and thus enable a State in certain circumstances to oppose a lengthy resistance to the Council's efforts. If, on the other hand, the parties are given time to come to a direct understanding, the prospect of an agreement would undoubtedly be promoted by the knowledge that, in the event of failure, the Council would itself proceed to lay down the conditions and that an uncompromising attitude would be bound to influence those conditions.

Lastly, it should be noted that, despite the considerable *technical* difficulties referred to, the chief obstacle to the adoption of the suggestion for an armistice appears to be of a *political* character. It is doubtful whether, having regard to the existing international situation, States would be prepared to enter into such far-reaching undertakings. If so, this would undoubtedly constitute a very considerable guarantee of security.

It is of course understood that, in all the cases considered above, the question of the supervision of the armistice conditions by the Council is just as important here as it is in the case of Suggestion No. II.

Suggestion No. IV.

"The question should be considered whether the above-mentioned obligation should be undertaken only in the case of a unanimous vote of the Council (the votes of the parties to the dispute not being counted), or whether the majority, simple or qualified, might suffice in the matter. Furthermore, it would be considered in what form the obligations would have to be drawn up in order to bring them into conformity with the Covenant."

(a) *Vote of the Council.* — The question of the simple or qualified majority vote of the Council brings us back to the difficulties encountered during the discussion on M. Politis' memorandum at the second session. These led him to adopt the view of those delegates who maintained that the rule of unanimity should remain unchanged.

The dangers, however, are perhaps less serious in the present case. The Council's decisions, it must be remembered, would never touch the fundamental issue in the dispute, but would be limited to preventing the parties from modifying the situation to their own advantage while the procedure is in progress, or from continuing hostilities.

The Governments would have to decide whether in these circumstances the idea of a majority vote might be considered.

The majority vote undoubtedly possesses a very special importance in the case of measures which must be taken as rapidly as possible if they are to have the desired effect. Accordingly, a mixed system might be feasible whereby the Council would normally comply with the rule of unanimity (naturally excluding the votes of representatives of the parties), an exception to this rule being allowed in the case of decisions in the nature of questions of procedure. But how are such decisions to be defined?

(b) *Conformity with the Covenant.* — When studying the German suggestions from the point of view of conformity with the letter and spirit of the Covenant, it is important first to note that, to a considerable extent, the proposed convention is simply a confirmation of existing law. As regards the first of the German suggestions, the provisions of the League Covenant would appear to be comprehensive enough to empower the Council to recommend that the parties should take conservatory measures. As to the second and third of these suggestions, it must be remembered that the Council, on December 6th, 1927, adopted a report concerning measures calculated to facilitate the application of Article II of the Covenant. This report contemplates a series of similar measures designed mainly to arrest military preparations and even, up to a point, to enforce their suspension. A system of supervision was also included.

The German suggestions, however, go even further. The fundamental idea lies in the proposal that States should assume an explicit undertaking in advance to accept the Council's recommendations.

The usefulness of this proposal would appear in itself to admit of no dispute. The establishment of a definite international undertaking must undoubtedly strengthen the obligations assumed under the Covenant. The first effect would be to facilitate action by the Council and to increase its efficacy. This is in keeping with the policy of those who insist on the progressive and systematic development of preventive measures.

From the standpoint of sanctions, equally valuable results might be anticipated. A State that refused to obey a recommendation of the Council would place itself in a very serious position. It would be violating a definite and specific international undertaking, and would thereby provide the Council, as already shown, with valuable evidence to be used when the latter came to determine the aggressor and, if necessary, to set in motion the machinery of sanctions. This legal offence appearing among disputes of a purely political character would also assist the Council in its work.

But notwithstanding the undoubted advantages of adopting the German suggestions, it is obviously necessary to determine whether these agreements could exist side by side with the machinery of the Covenant, or whether they would have to be drawn up in some particular form, with a view at least to this requirement.

This point is referred to in the last sentence of Suggestion No. IV.

It raises, in effect, the question whether the proposed system might not create difficulties as regards the application of the Covenant of the League. This difficulty does not appear likely to arise. What would happen if a State actually violated undertakings of the nature contemplated in the German suggestion? The matter would be brought before the Council in virtue of one of the articles of the Covenant — Article 11 in the first instance. The Council would be in possession of additional evidence (violation of an international obligation under the Convention in question) when deciding what arrangements should be made or what measures should be adopted. The normal working of the machinery of the Covenant, however, would not thereby be affected.

Suggestion No. V.

“ These obligations might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations, and which might come into force separately for the several continents, in a way similar to that provided for in the draft Treaty of Mutual Assistance of 1923. ”

The German delegation suggests, lastly, that the obligations of the States “ might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations ”.

An agreement of so general a scope undoubtedly has much to recommend it. Moreover, as several delegates pointed out at the second session of the Committee on Arbitration and Security, the German suggestions could not be expected to give practical results of any importance unless they were accepted by a large number of States. In other words, the efficacy of the agreements would depend essentially on the number of contracting parties.

At the same time, it must be borne in mind that important projects undertaken by the League have failed chiefly by reason of their general character. Some States might feel doubtful whether their vast, numerous and varied interests would permit of their assuming a general undertaking in regard to all States without exception, even if the undertaking appeared acceptable, or had already been accepted, in regard to specific States.

This difficulty also exists in the present case, as was amply demonstrated in the discussion at the second session of the Committee on Arbitration and Security. It is of capital importance, as the general form of the undertaking to be entered into by States appears to be one of the essential features which distinguish the German suggestions from similar provisions contained in many special treaties.

The German delegation, however, has foreseen these objections and suggests that the general agreement might come into force separately for the several continents in a way similar to that provided for in the Draft Treaty of Mutual Assistance of 1923.

The provisions for the entry into force of this Treaty are as follows:

“ It (the Treaty) shall come into force:

“ In Europe when it shall have been ratified by five States, of which three shall be permanently represented on the Council;

“ In Asia, when it shall have been ratified by two States, one of which shall be permanently represented on the Council;

“ In North America, when ratified by the United States of America;

“ In Central America and the West Indies, when ratified by one State in the West Indies and two in Central America;

“ In South America, when ratified by four States;

“ In Africa and Oceania, when ratified by two States. ”

The legal and political difficulties of such a system appeared so great, however, that the Third Committee mentioned expressly, in its report to the Assembly on the Draft Treaty of 1923, that the text proposed was not a definite text, but merely an indication “ of subject-matter requiring further study by those Governments to which the Draft is submitted with a view to arriving at a satisfactory and definite result ”. The question is thus seen to be both delicate and complicated. It may be granted, however, that the political difficulties will be less serious in the present case, which does not involve measures of mutual assistance, like the Draft of 1923, but simply provisional measures that do not touch the actual substance of the disputes, and can, moreover, failing a general agreement, be adopted in the form of regional pacts.

The question of the signature of the proposed agreement by States non-members of the League raises an even more delicate political issue. From the legal standpoint, it does not appear to

I do not think that supervision is as impossible as General de Marinis has just told us it is. The Italian representative was no doubt referring to the work in which we have co-operated long enough to find out all the difficulties, but I still do not think it impossible, because our object is to endeavour to bring about a general reduction of armaments, which is our Committee's sole purpose. Its task being to increase security in order to facilitate the extent of disarmament; and as I do not believe in disarmament without supervision, I cannot think that this latter is impossible. In any case, with regard to the suggestions now before us, I would say that, in my view, supervision is indissolubly bound up with the idea of a preliminary engagement.

M. VON SIMSON (Germany). — If I thought that we were speaking on this question for the last time during our session, I should have to make a very long speech. But I am optimistic enough to believe that we shall return to the matter, and so, in view of the late hour, and the Chairman's tacit recommendation, I shall try to be brief in replying to some of the observations made.

At the beginning of his speech, Lord Cushendun asked whether suggestions Nos. I and II were connected, and whether all or part of the second suggestion was covered by the first. What I meant when I spoke last was that we intended to deal with two different things. I am, however, quite prepared to consider whether part of our second suggestion is covered by the first, and I should be very glad to find that it was in this way possible to save a part of our second suggestion. This question could, I think, be examined by the Drafting Committee.

Secondly, Lord Cushendun enquired whether the military experts of any country would consider such a suggestion acceptable.

On this point, I would first mention that the German Government drafted its suggestion after consulting its responsible experts and advisers. But — and I have every respect for military experts both present and absent — I am personally of opinion that this is not a purely military question, but a question primarily political. We are here touching upon the very delicate point whether, in the case of a threat of war, we should first consult political opinion or military opinion.

In my opinion, this is first and foremost a political question.

The honourable representative of the British Empire spoke next of the danger we should run, supposing the suggestions were adopted, of assisting the State which first threatened the other. He very rightly added that this was a consequence which none of us intended, particularly the German Government. On this point, M. Rolin Jaequemyns' excellent memorandum has given very valuable information, and I refer you to Chapter II, suggestion No. II, where you find the following passage :

“ Accordingly, the Council should be left wide powers of action, not only in order to ensure that States shall abstain from all threatening or provocative acts, but also, if necessary, with a view to restoring the *status quo* existing before such measures were taken.”

That principle indicates, I think, the policy the Council should adopt. It is for the Council to act in such a way as to restore the *status quo* which existed before threatening or provocative measures have been taken by one or another country.

As regards the “ normal *status quo* ” referred to in our suggestion, M. Paul-Boncour considers that this would be a much easier matter to determine if there were already a general limitation of armaments. I made that remark myself at the first session, and I entirely agree with the honourable representative of France. M. Paul-Boncour added that this is not yet the state of affairs. I do not regard that as an objection to our suggestion, but rather as a further argument in favour of accelerating our endeavours to secure a limitation of armaments.

With regard to the question of control, I repeat what I said at the first session, that we are quite agreed in principle with M. Paul-Boncour and M. Sokal. The Council must be able to ascertain whether its orders are carried out or not. On this point, therefore, we have no objection. I fear, however, that, in their desire to establish full control, the partisans of this policy are asking for the insertion of provisions which might not obtain the consent of certain members of the Committee otherwise inclined to accept our suggestion. I shall therefore ask M. Paul-Boncour and M. Sokal not to insist upon the maximum security in this direction, but to be content with a step forward. Personally, I think that this problem of control is not so hard to solve as some of our colleagues seem to think, and I am less pessimistic in this matter than General de Marinis.

The honourable representative of the British Empire appealed to me to withdraw my Government's suggestion. I very much regret that I cannot do so. I in my turn venture to appeal to the courtesy of the British representative and request him not to prevent this question from being dealt with in the Drafting Committee. A great number of problems

involve insurmountable difficulties, in view of the principles of the Covenant, more particularly Articles 11 and 17.

CHAPTER III. — CONCLUSIONS.

Following on the account of the German suggestions and the observations thereon given in the preceding chapters, the Rapporteur has decided to summarise the questions of principle raised, questions in regard to which the Committee on Arbitration and Security might be required to give a decision at its next session:

With reference to Suggestion No. I.

1. Should the Council have power, in virtue of an agreement to be concluded between States, to lay down "conservatory measures" for the purpose of preventing any aggravation or extension of a dispute between States?

2. Should such conservatory measures be left entirely to the discretion of the Council, or should the powers of the latter be restricted in conformity with the following principles, or with one or more of those principles?

(a) In all questions left by international law to the exclusive jurisdiction of a State, the latter will retain its liberty of action (*e.g.* Customs tariffs, expulsion of aliens);

(b) Conservatory measures may not be ordered when satisfaction may be given for the injury by the payment of ordinary compensation or by some other national form of reparation;

(c) The Council will only have power to take conservatory measures if there is a danger of war.

With reference to Suggestion No. II.

1. Should the Council have power, in virtue of an agreement to be concluded between States, to order measures, when there is a danger of conflict between the said States, with a view to maintaining or restoring between them the *status quo ante* in the matter of preparations for war?

2. Should the above rule relating to principle be supplemented in accordance with the following provisions reproduced from Article III (*d*) and (*e*) of the report on Article 11 of the Council, approved by the Council on December 6th, 1927?

(*d*) The Council "may indicate to the parties any movements of troops, mobilisation operations and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended";

(*e*) "In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute."

3. Should the Council be given explicitly a right of supervision in regard to the execution of measures prescribed with a view to restoring the *status quo ante*, and should it be granted entire freedom to adopt for this purpose measures clearly defined and of immediate application?

With reference to Suggestion No. III.

1. Should the Council have power, in virtue of an agreement to be concluded between States, to order the parties to accept an armistice when hostilities have broken out between the said States?

2. Should it be laid down that the Council will first order the parties to withdraw any forces which may have penetrated into foreign territory and to respect the sovereignty of the other State, and that it will only proceed to fix the other conditions of the armistice if the parties fail to reach a direct agreement within a specified time?

3. Should the execution and observance of the armistice conditions be placed under the supervision of the Council?

With reference to Suggestion No. IV.

1. Should the Council resolutions concerning the cases mentioned in the above suggestions be adopted unanimously (not counting, of course, the votes of the representatives of the parties to the dispute), or would a majority vote, simple or qualified, be admissible, at all events in certain cases? If so, in what cases?

2. Would the Council's action in virtue of the above-mentioned agreements between States be in conformity with the Covenant?

With reference to Suggestion No. V.

1. Should the above-mentioned agreements take the form of an open protocol, or general or regional conventions, or even separate agreements ?
2. In each of the above-mentioned cases, could the agreements in question include States not members of the League ?
3. In the case of an open protocol or general convention, should this come into force separately for the several continents in a manner similar to that provided for in the Draft Treaty of Mutual Assistance of 1923 ?

* * *

After a discussion on the above questions, the Committee will no doubt be able to frame proposals to be submitted to the next Assembly.
