

# LEAGUE *of* NATIONS

Vol. III, No. 3

June, 1920

## The League Campaign in the Swiss and American Republics

PART I

## Swiss Commentary on the Covenant

Published Bimonthly by the  
WORLD PEACE FOUNDATION  
40 Mt. Vernon Street, Boston

Price. 5 cents per copy; 25 cents per year

# World Peace Foundation

Boston, Massachusetts

\*FOUNDED IN 1910 BY EDWIN GINN



The corporation is constituted for the purpose of educating the people of all nations to a full knowledge of the waste and destructiveness of war, its evil effects on present social conditions and on the well-being of future generations, and to promote international justice and the brotherhood of man; and, generally, by every practical means to promote peace and good will among all mankind.—*By-laws of the Corporation.*

It is to this patient and thorough work of education, through the school, the college, the church, the press, the pamphlet and the book, that the World Peace Foundation addresses itself.—Edwin Ginn.

The idea of force can not at once be eradicated. It is useless to believe that the nations can be persuaded to disband their present armies and dismantle their present navies, trusting in each other or in the Hague Tribunal to settle any possible differences between them, unless, first, some substitute for the existing forces is provided and demonstrated by experience to be adequate to protect the rights, dignity and territory of the respective nations. My own belief is that the idea which underlies the movement for the Hague Court can be developed so that the nations can be persuaded each to contribute a small percentage of their military forces at sea and on land to form an *International Guard or Police Force.*—Edwin Ginn.

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\*Incorporated under the laws of Massachusetts, July 12, 1910, as the International School of Peace. Name changed to World Peace Foundation, December 22, 1910.

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Published Bimonthly by

WORLD PEACE FOUNDATION

40 MT. VERNON STREET, BOSTON, MASS.

The subscription price is 25c. per year in advance, or \$1.00 for five years. Prices in quantities on application.

General Secretary, Edward Cummings.

Corresponding Secretary, and Librarian, Denys P. Myers.

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## INTRODUCTION

If there is one country in the world to which the question of entering the League meant more than it does to the United States, that country was Switzerland. Made up of three distinct nationalities, German, French, Italian; between the heavy mill stones of contending sides during the war; dependent heretofore for her very existence upon the jealousies of rival and neighboring powers; neutral by her own art in persuading formidable neighbors mutually to leave her alone; armed beyond her strength in the determination to sell herself most dearly if liberty, ever menaced, must succumb,— it would be difficult to conceive a more complex problem than that of Switzerland.

Switzerland approached the question of accession to the League of Nations with a seriousness appropriate to the gravity of the decision to be taken. She had had nothing to do with preparing the Covenant as first published on February 14, 1919, except that when the League of Nations Commission of the Interallied Peace Conference invited neutrals to confer with them on March 20–21, 1919, she sent her delegates, who presented proposed amendments based on a full project worked out by a consultative commission of the Swiss Political Department between May 4, 1918, and February 11, 1919. From the publication on April 28 of the final draft of the Covenant, Switzerland took up the study of its text, studiously, in the best of temper, seeking its legal meaning, weighing its debits and credits with all the statesmanship her Government could command.

The result was a report examining every detail, and concluding with a recommendation that Switzerland join the League, adding the Covenant itself to her constitution. It was eventually decided not to make this constitutional change, but the Federal Assembly stipulated in its enabling decree that the decree itself should “be submitted to the vote of the people and the cantons.” This was done on May 16, 1920, the vote being 11½ cantons for and 10½ cantons against, while the popular vote was 414,830 for and 322,939 against. Thus the opinion of the Federal Council was affirmed by what Switzerland regards as a double majority.

The vote was more impressive than the figures when examined in detail. Out of a population of 3,742,000 people 2,494,000 spoke German in 1910. Out of 25 cantons German prevails in 19. The Germans, with encouragement from Germany, conducted a most active campaign against the Covenant previous to the vote. French-speaking Vaud polled a vote of 63,284 for and 4,800 against; mixed Fribourg polled 20,080 for and 6,101 against; German Zurich 66,887 against and 46,280 for. Romance Switzerland gave an affirmative majority of 135,000 and German Switzerland, substantially two-thirds of the entire population, a negative majority of only 40,000.

Attached to the Message of the Federal Council of August 4, 1919, advising Switzerland's accession to the League of Nations is a commentary on the Covenant. This discussion of its significance and meaning as a fundamental document in international relations is here given in translation, with its full presentation of arguments pro and con, but with the omission of such passages as relate solely to Swiss national situations. The commentary itself is prefaced by a few paragraphs from the introduction of the Message. It should be added that the commentary incorporates many passages of the Message itself.

# THE SWISS COMMENTARY ON THE COVENANT

*Why the Republic Voted to Join the League as Set Forth  
in the Message of the Federal Council to  
the Federal Assembly*

. . . The conclusion of peace puts before us a question which demands a prompt reply, our entry into the League of Nations. Here is not a question of a progressive modification of our political position, of an adaptation more or less rapid to new circumstances, but of a *yes* or a *no*. A traditional policy of neutrality has permitted Switzerland to live her own existence and not to seek a durable support either from any state or from any given group of states. Must she enter the association of states created by the Peace Conference? Such a question has not been put to our country since in 1815 the Powers represented at the Congress of Vienna invited Switzerland to take part in common measures destined to re-establish the peace disturbed by the return of Napoleon from Elba. The decision which must now be taken has, however, a much greater bearing. The organization in question is destined to open to international policy ways entirely new, not only for the immediate future but for a time as distant as it is possible to conceive.

It is particularly difficult at the present time and in the present state of the world to decide to enter, in a matter of external politics, upon a path which in all its aspects is unexplored. Old states disappear or continue to exist with important modifications or decreases. New states appear or are about to form. The world has not yet recovered its balance. When will it do so, and what will that equilibrium be? No one can say, the more so as powerful social movements make themselves felt even in the midst of states, and may react upon international relations. Further, the question is not of entering an organization already tried by other states, but of a brand new one built upon an old order of things. We can, therefore, cast aside outright and completely

fears and apprehensions based on the experiences of the past, which up till now have been expressed in our country with more vehemence than feeling of joyous confidence; while, on the other hand, the partisans of a thorough-going reform met with some disappointment in not finding in the system proposed the reply to their fondest desires.

The Federal Council is aware of the exceptional gravity and importance of the decision which we have to take. With joy we hailed the idea, born of the miseries of war, of a new organization destined to assure respect for law and the maintenance of peace. With joy we saw all the belligerents accept this idea and make its realization one of the essential conditions for the conclusion of peace. This attitude of the Federal Council is not, however, a reason for approving unreservedly the League of Nations created by the Paris Conference. But it does not see a motive for abstention in the fact that this League does not respond in all essential points to the hopes which it had conceived. Its task is to examine what decision the interest of Switzerland requires. With this purpose, its duty is to study the problem without bias, deeply, in all its aspects and, on the basis of this study, to lay before the Chambers and the people all our hopes and all our fears.

#### LAW WITHOUT PROTECTION GREATEST DANGER

If it is concern for the welfare of our country which must guide our decision, we must nevertheless not confine ourselves to its immediate interests. We must endeavor to judge the question from a higher point of view than that of narrow and exclusive national interest. For every state, and especially for a small and pacific state like Switzerland, the future can be assured—the war has adequately taught us—only by the development and the re-enforcement of an international community based on law, even more than by the option of remaining aloof from conflicts arising between the great Powers. This national interest is likewise an interest of humanity as a whole. To serve loyally and with effectiveness is also in line with Swiss policy; we can and we must make the necessary sacrifices for this purpose. It is in the continuance of the present state of things, in which law is without protection and in which therefore states are the enemies



one of another, that for our country lies the greatest, if not perhaps the most immediate, danger.<sup>1</sup>

In the numerous projects for a League of Nations published in the last few years and coming from circles more or less official, three principal tendencies may be noted:

First, The League of Nations may tend to embrace and to organize international life in its entirety, or to limit its action to the prevention of war by the organization of a system for the pacific regulation of disputes.

Second, The organization destined to assure the maintenance of peace may either look to the absolute exclusion of war by imposing for all international disputes a settlement based on law or equity, or confine itself to opposing the utmost possible obstacles to war in the hope that, by gaining time and giving public opinion the possibility of expressing itself and acting, the critical instant will be passed, and the way opened to a pacific solution of the conflict.

Third, The League of Nations may command sanctions more or less efficient with a view to insuring the observance of the principles upon which it is founded.

It is apparent that the Covenant of Paris is a compromise between these various tendencies. It necessarily must be, all states not being equally disposed to accept obligations in the interest of the peace of the world, and all not having the same confidence in the efficacy and vitality of a League of Nations. The statesmen who worked out the Covenant have had to yield to the necessity of finding a solution which would secure not only their own assent but also that of the parliaments summoned to ratify their work. If difficulties resulting from this condition be considered, it will be understood that the Covenant does not completely realize any of the three points of view set forth above. The Covenant wishes to embrace all international life, but it refrains from solving in a definite and commanding way the important problems of world economics. It desires to assure the maintenance of peace and to guarantee it against every harm, but it regards as illegal only wars declared without following the procedure destined to safeguard peace, or in spite of the

<sup>1</sup>Pages 1-3 of the Message. A historical passage dealing with the origin of the idea and Switzerland's part therein, which immediately follows, is omitted.

opinion given by all the states not interested in the conflict. And it is only in those cases that all the power of all the League states guarantees the maintenance and protection of peace.

### THE LEAGUE OF NATIONS AND PRESENT INTERNATIONAL LAW

Compared to the constitution of an ideal League of Nations, the Paris Covenant is a very imperfect product and nothing is easier than to criticize it. But, to be just, we must first of all ask ourselves what is practically realizable and appraise the Covenant with regard to the present state of international life and the attempts hitherto made to purify it. From this point of view, it is undeniable that the Covenant of April 28, 1919, achieves an improvement of the highest order on the existing international system it aspires to replace. The League of Nations which it sets up may be compared to a confederation of states rather than to a simple alliance or to an organization such as the Hague Conferences vainly attempted to create. Those who have followed the evolution of peace ideas, those who know by what difficulties the organization of arbitration even between two states only has been hampered, finally those who do not forget that only a little time ago the idea of collective intervention against a breach of the state of peace was considered as a utopia outside the domain of practical politics, will all see in the Covenant of Paris an innovation truly great, an essential improvement of international politics, an event of capital importance in the history of the world. It is true that for this it is necessary to believe in the future of a League of Nations and to admit that it will realize at least what the apparently narrow limits imposed upon it allow.

Ability to appreciate a new thing in the political field is always largely a matter of temperament. Those who wish to stick to the text of the Covenant of Paris, materially incomplete and moreover scarcely clear in many places, and who consider egoism and distrust as dominant and inevitable factors of international politics, will see in the League of Nations only a still-born thing or a disguised means of perpetuating the domination of certain great Powers over the rest of the world and of assuring forever

the maintenance of the present status quo. But for those who base their confidence upon the fact of the ever greater evidence of the evil of war and upon the increasing repulsion of peoples to recourse to violence in relations between states, the League of Nations will appear at the very least as a serious attempt to open to international politics the road to a better future.

The fundamental idea of the Paris Covenant is that certain kinds of war must be prohibited and that the state which violates this prohibition is the enemy of all members of the League of Nations and must be combated by all. War itself as an extreme method of safeguarding the interests of the state is not prohibited. For the League of Nations, as its founders have deemed it possible to organize it, is not able to assure a complete protection of those interests. The only wars prohibited are those which are regarded as particularly dangerous to the general peace, that is, wars of surprise, or wars of aggression, and wars declared against a state which complies with an arbitral sentence or an opinion given unanimously by the Council.

In a number of cases, it is difficult to settle whether it is for a just or an unjust cause a state desires to go to war. It is not this criterion, therefore, which the Covenant of the League of Nations adopts. Its provisions are based upon an objective and very important fact: recourse, before the opening of hostilities, to a procedure of arbitration or mediation and also the observance of the delays of that procedure.<sup>1</sup>

The most important provisions of the Covenant of the League of Nations are explained in Sections I to X of the present Message. The following remarks, which are accompanied by references to the corresponding chapters of the Message, are intended to serve as a commentary on various provisions of the Covenant in so far as they are not immediately comprehensible and to the extent that they interest Switzerland.

The French text and the English text have equally the value of original texts of the treaty of peace concluded with Germany, a treaty of which the Covenant forms the first part.<sup>2</sup>

<sup>1</sup>Other portions of the introduction are incorporated in the following pages: Under Article 12, pages 12-17; under Article 10, pages 17-18; under Article 4, pages 18-19.

<sup>2</sup>Commentary, page 129.

## ARTICLE I

Article 1 of the Covenant makes a distinction between original members of the League and states admitted later.

Original members are enumerated in the Annex to the Covenant. They are, or may be, the following states:

a. All the Allied and Associated States which were at war with Germany. These states number 27, not counting the four British dominions and India, which will individually be members of the League simultaneously with the British Empire as such. By signing the treaty of peace these states have created the League of Nations. The Covenant will therefore enter into force for these states as soon as they shall have ratified it and when the conditions requisite for the entrance into force of the treaty of peace with Germany shall be realized. Before the war, these states had a total population of about nine hundred millions of souls,<sup>1</sup> representing about 60 per cent of the total population of the globe.

b. The 13 neutral states invited to the Conference of March 20 and 21, 1919, may enter the League by making a declaration of adhesion without reservations within the two months following the entrance into force of the treaty of peace. They thereby acquire the quality of original members. Various evidences create a presumption that the states which took no part in the war, whether European or non-European, are all or for the most part disposed to accede to the League of Nations; [and they all did so accede before March 10, 1920]. Without Switzerland these states have a population of about 116 millions of souls.<sup>2</sup>

<sup>1</sup>For 26 of these states, without counting China which did not sign the treaty of June 28, 1919. Counting her the figure would rise to 1,250 millions of persons or four-fifths of humanity.

<sup>2</sup>The states of both categories, members of the League of Nations on August 1, 1920, were: Argentine Republic, Belgium, Bolivia, Brazil, British Empire (which includes as separate ratifying entities the Commonwealth of Australia, Dominion of Canada, Empire of India, Dominion of New Zealand, and Union of South Africa), Chile, China (ratification of Austrian treaty, May 26, 1920; deposit of ratification, July 16, 1920), Colombia, Cuba, Denmark, France, Greece, Guatemala, Haiti (deposit of ratification, June 30, 1920), Hedjaz, Italy, Japan, Liberia, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Rumania, Salvador, Serb-Croat-Slovene State, Siam, Spain, Sweden, Switzerland, Czecho-Slovakia, Uruguay

## STATES NOT INVITED TO ADHERE

The states which, though not belonging to the group of the former Central Powers, have not been invited to enter the League are the following:

Luxemburg and Montenegro, which perhaps have been passed over on account of a prospect of their reunion with other states members of the League.

The small states of Andorra and San Marino, and the principalities of Liechtenstein and Monaco, up to the present have cut no figure as independent states. With the exception of Liechtenstein, they have always been represented internationally by other states which are among the founders of the League. Furthermore, France has demanded the admission of the principality of Monaco.

Albania and Mexico have not been invited to adhere, doubtless because at the time of the adoption of the League they did not possess governments recognized by the majority of states.

We do not know why Costa Rica and the Dominican Republic have not been invited.<sup>1</sup>

As to Abyssinia and Afghanistan it is probably on account of the still very incomplete character of the development of their international relations.

and Venezuela; total, 37, including the component parts of the British Empire, 42.

The Ecuadorian Congress does not meet for the purpose of ratification until August 10, 1920.

Eligible states which have not yet acted are Honduras and the United States.

The Assembly in November will have before it the question of the admission of Germany, Austria, Bulgaria, Hungary, Esthonia, Finland, Georgia, Luxemburg, San Marino and Ukraine.

<sup>1</sup>The omission of Costa Rica was due to the United States Government as existing in November, 1918. Costa Rica declared war on Germany early in 1917, Federico Tinoco having been the president of the republic. Tinoco was the head of a revolution in 1916 which had displaced the then president, but his *de facto* government had not been recognized by the American Government. Documents respecting the exclusion of Costa Rica from the Interallied Peace Conference are printed in the Hearings of the Senate Committee on Foreign Relations on the Treaty of Peace with Germany.

The Dominican Government was not the effective régime in the Dominican Republic at the time the Interallied Peace Conference produced the Covenant of the League of Nations. At that time the effective régime at Santo Domingo consisted of officers of the United States Marine Corps, who were acting as ministers of departments in the Dominican administration under the orders of the American secretary of the navy.

All these various states have only about 30 million of inhabitants, of which fifteen are in Mexico, eight in Abyssinia and five in Afghanistan.

There is still a group of states which, while not having possessed the quality of belligerents as states, are not invited to become original members of the League. With the exception of Poland, they are the countries which have separated from Russia and aspire to independence: the Ukraine, Lithuania, Livonia, Esthonia, Lettonia, Georgia, etc. Finland, whose political consolidation is most advanced and whose existence has been recognized by Switzerland and other states, is included neither in the group of Allied and Associated Powers nor in the group of neutrals, and consequently does not figure in the list of original members. The reorganization of Russia will without doubt determine for these various states the moment when their relations with the League of Nations can be established. It is difficult at present to estimate the number of their people.

The most important among the states which are not mentioned in the League as original members are, on the one hand, the so-called Central Powers (Germany, German Austria, Hungary, Bulgaria and Turkey), and on the other hand Russia. The momentary exclusion of the Central Powers, in particular, is of a nature to give to the League a special political character. With Russia, these states comprise more than half of the population of Europe. Their admission into the League is of the greatest importance at least for Europe, since even after the conclusion of peace Europe will remain the principal arena of international differences, on account of the multiplicity of states which it includes and of their great social and economic diversity.

In round figures, the various groups of states have from the point of view of population the following importance:

	Millions
Signatories of the treaty of peace.....	900 or 1250
2. Neutrals invited to accede.....	120
3. Central Powers and the territories which they retain	100
4. Russia, in its former limits, without Poland.....	160
5. Other states not invited.....	18
6. Afghanistan and Abyssinia.....	13 <sup>1</sup>

<sup>1</sup>Message, pages 52-54.

## TIME AND METHODS OF ADHESION

As mentioned above, the 13 neutral states referred to in the Covenant may accede to the League as original members by a declaration without reservations made within the two months following the entrance of the Covenant into force (Article 1). Failure to observe this period would not prevent these states from entering the League later, but their admission would then take place according to the forms provided for states not mentioned in the Annex.

The Covenant does not fix the date of its entrance into force. But by the final provisions of the treaty of peace with Germany this treaty will become effective as soon as it shall have been ratified by Germany and by three of the Allied and Associated Powers (United States, Great Britain, France, Italy and Japan), and it is from that date [January 10, 1920,] that the periods provided for will commence to run. . . .

Adhesion as an original member has the following advantages: Entrance into the League, taking place as a matter of right, is not subordinated to a vote of the Assembly. Thus we avoid the ill-founded objections, which might be made to the special situation accorded to Switzerland in the League. Furthermore, original members preserve their freedom in respect to the Council as to measures to be taken for the limitation of armaments (Article 8), a limitation prescribed by a regulation for the state not entering the League as an original member. This is a condition of its admission (Article 1, par. 2). If, after having refused to enter the League as an original member, Switzerland should nevertheless apply for admission later, the limitation of her military forces by the council of the Powers would appear to her as a grievous injury to her dignity and to her independence.

But there is more. The refusal of Switzerland to sign the Covenant as an original member would be regarded as a mark of defiance or at least as a lack of confidence respecting the League. We should lose the moral position acquired by reason of the very definite attitude which our country has taken up to the present in favor of a League of Nations. . . .

While renunciation of original membership of the League of Nations is not equivalent to an absolute refusal to join, it would

in some respects, nevertheless, and from the point of view of internal as well as external relations, have the inconveniences of such a refusal. By remaining for the time outside, Switzerland would not hasten the admission of the states at present excluded and if she entered the League with them her attitude would be interpreted not as a proof of independence but rather as an evidence of dependence upon those states. To apply tardily for admission under such conditions would manifestly be for Switzerland to renounce in the League of Nations a rôle corresponding to her international mission. The Federal Council can not in any case assume the responsibility of allowing the period of two months given us by the Covenant to lapse without pronouncing itself. It is for the Chambers to decide whether Switzerland shall reply within that time to the invitation which will be addressed to her.<sup>1</sup>

#### CONDITIONS OF LATER ADMISSION

Admission of new states, that is, of existing states not mentioned in the Annex of the Covenant or of states which shall be formed in the future, is decided by two-thirds of the Assembly of the delegates of all the states of the League (Article 1). The Assembly pronounces upon the conditions requisite for admission. Regulations concerning the forces and armaments of the state desiring to become a member are established by the Council (Article 8). The Assembly is judge of the question whether the state requesting its admission offers "effective guaranties of its sincere intention to observe its international obligations."

As only a small number of states is represented on the Council, the states admitted subsequently will naturally not have representatives in the first instance. However, the situation will in this respect be somewhat singular in the case of such states as Germany and Russia, which, in spite of the territories which they have lost and the disaster they have sustained, continue to be among the most important of states either on account of the number of their population or of their social and economic development. To admit these states into the League without granting them a place on the Council would create a situation

<sup>1</sup>Message, pages 90-91.



which in the long run would become untenable. That is why Article 4 provides that with the approval of the majority of the Assembly the Council may increase the number of members permanently or temporarily represented on the Council. It is true that, with the Council having to take its decision unanimously, this equitable extension may encounter difficulties. The insertion of this provision in the final text of the Covenant nevertheless shows that the necessity of an eventual enlargement of the Council is understood.

That two states, neighbors of our country, Germany and German Austria, are for the moment excluded from the League in spite of their express demand to be admitted, and that the most populous state of Europe, Russia, also remains outside are facts of the greatest importance for Switzerland. The decision of entering the League is rendered the more delicate for our country because, its neighbors to the north and east being excluded, it will find itself on the circumference of the League, that is to say, in a situation in which the guaranties instituted by the Covenant may not be enjoyed in an absolutely complete manner. The exclusion of certain states and, for Switzerland, especially the exclusion of neighbor states may also be dangerous because these countries, politically isolated, will be less apt to react against revolutionary foment. This agitation will even be encouraged by that fact.<sup>1</sup>

A last question must be examined, that of the right of denunciation of the Covenant provided by Article 1 and of withdrawal from the League given to member states by Article 26. The Covenant may be denounced only by two years' notice, while any member may retire at any time and without previous notice if it does not accept a decision to amend.

The exercise of the right of denunciation is in general regarded as being among the attributes of the executive government. The approval of parliament is necessary only to conclude a treaty, not to bring it to an end. However, if one considers the relations established by a treaty such as the Covenant, denunciation or withdrawal in all cases is an act of very great importance which may have consequences even more serious than adhesion.

<sup>1</sup>Message, pages 55-56.

Such an act would also have the effect of nullifying the decision taken by the people and the cantons on the subject of adhesion as well as the constitutional provisions adopted at that time. There is, therefore, reason for putting the decisions relative to the denunciation of the Covenant or to withdrawal from the League on the same basis as that relative to becoming a member.

The Covenant can be denounced only by a notice two years in advance, but it may be denounced at any time (Article 1). Article 26, on the other hand, fixes no period respecting the exercise of withdrawal. The slowness involved in a popular vote therefore presents no inconvenience.<sup>1</sup>

According to paragraph 2, countries which enjoy complete administrative autonomy without being sovereign may, on their own motion, be admitted as members of the League of Nations. Canada, Australia, New Zealand, South Africa and India now enter into calculation in this respect. It might be feared that certain states would obtain a majority of votes in a round about way for the admission of non-sovereign states if this admission is to be decided by a majority of two-thirds.

There is a lacuna in the Covenant concerning the relations between countries vested with a certain amount of autonomy and colonies on the one hand, and the métropole on the other. As these states and these countries form an international unit in case of conflict, none of their votes could by virtue of Article 15, pars. 6 and 10, be counted in the adjustment of disputes which concern one of the group. The just solution would be to grant a non-sovereign member of the League of Nations a right of voting limited solely to matters which it has the right to handle in a sovereign capacity in its international relations (boundary questions, economic relations, immigration, etc.).

#### ARTICLE 2

It is worth remarking that the Assembly is mentioned in the Covenant before the other organs of the League of Nations. In principle and in case of doubt, the Assembly is, therefore, the supreme organ of the League. The Assembly is primarily competent for questions of organization (Articles 1, 6 and 26), while

<sup>1</sup>Message, pages 98-99.

political action, and especially the right of intervening in particular instances, is almost exclusively concentrated in the hands of the Council (Articles 10, 11, 15, 16 and 17).

### ARTICLE 3

The representatives of the states in the Assembly need not necessarily be representative of the Governments; but together they dispose only of one vote for each state. The Covenant contains no provision respecting their instructions. The function of member of the Council is not incompatible with that of delegate to the Assembly.

Article 3 realizes the wish expressed by the Second Hague Conference, to see the states meeting periodically in general assemblies.

It is regrettable that the Covenant is silent as to the right of the Assembly to meet spontaneously, as well as to the right of a minority of the states to demand the meeting of a conference.<sup>1</sup>

### ARTICLE 4

Aside from the provisions intending to assure the maintenance of peace, what particularly interests us is the organization of the League of Nations and the question of what is the position made for a state like Switzerland. As a matter of fact, the hegemony of the great Powers has always existed. It is, however, manifested in law only by the Congress of Vienna. However, from the time of the Second Hague Conference we see the tendency appearing to grant to certain states, that is, to the great Powers, a privileged position in regard to certain international institutions. This tendency is manifested very clearly in the organization of the Paris Conference and in that of the League of Nations. According to Article 4 of the Covenant, the Council is composed of the plenipotentiaries of five great Powers, which are always represented thereon, and of those of four other states, which may be replaced by others from time to time. As unanimity is necessary for most of the decisions of the Council—a unanimity which must in certain cases be completed by the majority of the Assembly of delegates,

<sup>1</sup>Commentary, pages 129-130.

in which all the states are represented—no important action of the League of Nations can take place without the assent of each of the states which has a plenipotentiary on the Council. A privileged position is thereby incontestably made for the great Powers, which are permanently represented on the Council. In so far as they are not directly bound by provisions of the Covenant itself, these Powers—excepting for certain administrative decisions of a formal character—preserve their full and entire liberty, since no decision can be taken without their consent. The other states, on the contrary, may—to a restricted degree only, it is true—find themselves bound, at least indirectly, against their wish by the decision of the Council. If, for example, the Council has unanimously made a proposition looking to the settlement of a dispute (Article 15), all the states are obliged to participate in the application of the sanction foreseen by Article 16 against the state that should make war in spite of the unanimous advice of the executive Council. The treaty of peace with Germany finally contains a series of provisions according to which the Council may take decisions by majority so far as concerns various points touching the application of the treaty.<sup>1</sup>

Aside from the five great Powers, four other states are represented on the Council. The Covenant has not thereby created another category of privileged states, because the Assembly may designate other states freely and when it pleases. No state has more right to be designated than another. This scheme of organization can not be regarded as a violation of the principle of the equality of states, because it is evidently impossible for all to be represented on the Council.<sup>2</sup>

The proportion of 5 to 4 is moreover not unfavorable to the other states, if the figures of population are considered, about 700,000,000 for the five great Powers and 550,000,000 for the other states of the League of Nations.

<sup>1</sup>See *Three Months of the League of Nations*, Appendix III, pages xviii, xx-xxi, xxv-xxvii, xxix-xxxiii, xxxv, xxxix, Articles 48, 49 and annex, 80, 102, 103, 213, 280, 304, 336, 342, 376, 386 of the treaty of peace with Germany.

<sup>2</sup>Message, pages 18-19.

## ADDITIONS TO COUNCIL

It has not been determined when and in what manner states not represented permanently will take places in the Council. The Covenant should be completed at this point. By way of example, it may be recalled that the Second Hague Conference in the convention relative to the International Prize Court laid down the rule<sup>1</sup> that states not among the eight great Powers then recognized are represented in rotation and this representation lasts, during a period of 12 years, a number of years which varies for each state according to its importance. All the states would thus have a place on the Council in turn; but on the other hand their influence would be feeble on account of the too great frequency of change. During the Conference of Neutrals (March 20 and 21, 1919) the possibility of the states combining together in order to obtain a representation on the Council in groups was examined.

Par. 2 permits the increase of the number of members of the Council, both of the permanent members and of the members designated by the Assembly. It will not be possible to modify the present proportion of 5 to 4 to the detriment of the states which are not great Powers, because for both categories of members this modification requires the consent of the majority of the states.

The Council will sit permanently so long as the political situation shall not be normal and tranquil. According to the Swiss Advance Project the Mediation Council should be permanent, in order to assure an uninterrupted contact among all the states at a central seat. The question remains open whether states that are not represented in the Council shall maintain delegates at the seat of the League of Nations, as the Swiss Advance Project contemplates.<sup>2</sup>

<sup>1</sup>The reference is to Article 15 of the convention of 1907 relative to the creation of an International Prize Court and the annex thereto. Texts of the Peace Conferences at the Hague, 1899 and 1907, 297, 316, 317. (Boston, Ginn & Co., 1908.)

<sup>2</sup>The provision referred to is in the Advance Project of the Swiss Consultative Commission on the constitutional statute of the League of Nations, November, 1918-January, 1919, and reads as follows:

"Article 5. The Mediation Council is composed of plenipotentiaries designated by the states of the League of Nations. These delegates reside at the seat of the Council. They may be recalled at any time by their Governments. Each state has a single representative in the Mediation Council...."

Par. 5, by virtue of which every state not represented on the Council is invited to send a delegate to sit when a question which particularly interests it is to be dealt with, must be understood in the sense that this state then exercises all the rights of a member of the Council, including therein the right of veto ("to sit as a member," says the English text). It falls to the Council to decide whether a state is to be represented or not; but if the interested state is not invited to take part in the deliberations it will not be bound by the decisions which concern it.

This invitation must be extended on one hand in the case of disputes in conformity with Article 15, and on the other when matters particularly interesting a state not represented on the Council are up for consideration. Questions especially affecting neutrality must be regarded as particularly interesting Switzerland. It is only in the case of the disputes foreseen in Article 15 that the votes of the interested parties are not counted.

#### ARTICLE 5

The treaty of peace provides for special majorities for certain decisions of the Council. Such is the case in par. 40 of the regulations concerning the Saar Basin and Articles 213 and 280 of the treaty of peace.<sup>1</sup>

The principle of unanimity conforms to the usage adopted up to now in international assemblies. In point of form, it constitutes a great obstacle to decisions; but in reality it is frequently easier to obtain unanimity than to secure a qualified majority, for the reason that a state will not assume without serious reasons the direct responsibility of defeating by its veto a resolution seriously desired by all the other Powers. Moreover, to admit that a great Power could be controlled by a majority would raise the risk of provoking dangerous tensions. The efficacy of the League of

<sup>1</sup>By the provisions referred to matters relating to the control of the Saar Basin are decided "by a majority;" as respects military, naval and air clauses of the treaty, "Germany undertakes to give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary;" provisions respecting the treatment of nationals of Allied and Associated Powers in Germany will remain in force beyond five years "for such further period, if any, not exceeding five years, as may be determined by a majority of the Council of the League of Nations."

Nations might thus be put to a severe ordeal. Is it possible that America, for example, would pledge herself in advance to participate in a European conflict in favor of a cause which American public opinion found to be unjust? The requirement of unanimity presents the practical advantage of being adaptable to diversities of circumstance. Further, it constitutes an efficacious guaranty against the hegemony of the Council. Moreover, one can count in each session only on the votes of the states represented. So that a state may easily abstain from voting without compromising unanimity, by inviting its representative not to participate in the session.

As to matters to be decided by a majority, it is evidently necessary to consider as a question of procedure the calling into the Council, according to Article 4, par. 5, of states not represented on it. By commissions to investigate particular matters,—to be appointed by a majority of the Council,—it is necessary to understand especially the Commissions of Inquiry which shall be constituted to examine the disputes foreseen by Article 15.

#### ARTICLE 6

The Secretariat must have a character wholly international and it will consequently have to include subjects of a great number of states.

The activity of the Secretariat is not determined in a precise manner, with the exception of the secretarial duties for the Assembly and the Council. It will probably consist, as for other international offices, in bringing together and publishing all the important information of interest to the League of Nations as well as in preparing for the labors of the Council and of the Assembly. The Swiss Consultative Commission had declared for an absolutely impartial service of publicity for international political news. Its rôle would be considerable.

The expenses of the Secretariat will be borne by all the members of the League of Nations according to the scale established for the Universal Postal Union; it has already been adopted in many other conventions.<sup>1</sup>

<sup>1</sup>Commentary, pages 132-133. On the details of the allocation of expenses see *Three Months of the League of Nations*, 32-33.

## ARTICLE 7

Article 7 of the Covenant designates Geneva as the seat of the League of Nations. The same article confers on the Council the power of establishing the seat in another place by a decision taken unanimously, not only temporarily and for extraordinary reasons, but permanently. The text designating Geneva is not, therefore, protected against all modification by the revision clause of the Covenant and it is not justifiable to speak here of a special and contractual right of Switzerland or of the creation on behalf of Switzerland of a special juridical situation due to the fact that it will house the seat of the League.

Article 7, nevertheless, has great importance for Switzerland. The choice of Geneva seems to be explicable by reasons of two kinds.

Account has first to be taken of high considerations of general policy. Switzerland, having remained neutral during the war, may offer to the authorities of the League of Nations that serene atmosphere which could not be expected in a country which, having taken part in the war, is still under the influence of the terrible events of the recent past. She constitutes a setting particularly favorable to the accomplishment of the political tasks of the future. Her history, the federative character of her constitution, the experiences which she has had in her closely united cantons, in spite of the diversity of the races, languages and religious confessions of her populations will permit her to serve usefully the interests of the League of Nations.

In the second place, historical reasons have certainly contributed to the choice of the city designated by the Covenant. A chain of memories unites the city of Geneva to the English and American democracies. The development of the modern state is closely linked with the name of Rousseau. Finally the Red Cross, founded at Geneva and from which it is still directed, is a symbol of the human fraternity which unites mankind across all frontiers, even during war. The designation of Geneva had a significance all the more important because other states had put themselves forward as candidates for the seat of the League. This was the case with Belgium, neutral and loyal, which in a heroic struggle sacrificed herself in the cause of international right.



## NEGOTIATIONS CONCERNING GENEVA

The idea of establishing the seat of the League in Switzerland and specifically at Geneva took form only in the course of the deliberations of the League of Nations Commission at Paris. The Swiss Consultative Commission had, it is true, proposed to install the organs of the League in Switzerland and other countries having like ours a constantly pacific policy. But Switzerland made no official move until the moment when in the peace conference itself she was asked, in view of the decision which the League of Nations Commission had to take, to declare herself ready to accept the seat of the League. The Federal Council had already been informed that influential members of this Commission had in mind the choice of Geneva. We could only congratulate ourselves on this disposition, especially since the establishment of the seat in our country constitutes in our judgment an important argument in favor of the maintenance of our perpetual neutrality. Switzerland, the seat of the League, will have as her mission not only the defense of her territory and this seat itself against all attack, but of keeping herself outside of conflicts and of contributing in this way to assuring to the organs of the League the atmosphere of impartiality and moral independence which will permit them to resist the influence of political passions.

The negotiations relative to the establishment of the seat at Geneva, like all the negotiations conducted on the subject of the League of Nations—this is a matter of course in all states—have been under reserve of ratification by the competent constitutional organs. The choice of Geneva leaves intact our freedom of decision respecting the accession of Switzerland to the League. It goes without saying that we should not think of postponing any decision relative to the seat to the time when the Swiss people shall have pronounced on the question of our entrance into the League. The League of Nations Commission desired to fix the place where the seat would be established, and other states which were candidates for it put forward serious claims. To act otherwise than the Federal Council deemed necessary would have lost to Switzerland the only opportunity for having the center of the new international organization upon her territory.

## DUTIES OF SWITZERLAND

The fact that the seat is in Switzerland imposes upon our country no special obligations save those of according the diplomatic immunities stipulated in Article 7 of the Covenant to the representatives of the member states and to the officials of the League itself, and of recognizing the inviolability of the buildings and the grounds occupied by the League, its services and its meetings. It is natural that the League of Nations should enjoy privileges and immunities similar to those of every state with which we maintain diplomatic relations.

The country in which the seat of the League is established must furthermore place at its disposition the necessary grounds. The Confederation could if necessary exercise the right of expropriation for this purpose. The Federal Council through its delegates has communicated to the League of Nations Commission that it was ready to take the necessary measures to assure to the League the real estate which it requires. The Commission for its part has declared that the League would assume all the expenses for this purpose. It, therefore, rests with the Chambers and the cantonal and communal authorities of Geneva to consider in what measure they desire to participate in the installation of the seat. The organs of the League and the plenipotentiaries of the member states accredited near it must be able to testify that in their persons our country salutes joyously the representatives of a great ideal.

So long as the officials of the League are small in number we may consider sufficient the common rules—imperfect in some respects—of international law on diplomatic privileges. If in time the League of Nations develops, if its officials multiply and if its services should end by occupying important grounds there would ensue the need of regulating by a convention the whole matter of these relations between the League and the local, federal and cantonal authorities. Perhaps it will also be necessary to put into federal legislation special provisions concerning the League, for example, provisions assuring to its officials a special protection.

The establishment of the seat in Switzerland will also very probably involve the installation of a wireless telegraphic station

on our territory for it is of great importance for the League of Nations to have a well-organized and independent news service.<sup>1</sup>

The news service might perhaps give rise to difficulties. It goes without saying that the state which shelters the seat of the League can not prohibit, restrict or censor, even in case of collective action in the sense of Article 16, communications by any medium whatever between the organs of the League and abroad. So long as the adverse party is given the benefit of the same treatment, there would be no difficulty under Articles 8 and 9 of the fifth Hague convention. By Article 3 of the same convention neutrality would not be more affected by the existence on our territory of a wireless or telegraph station of the League of Nations, on condition that it was not installed in the course of war and that it should also serve for public communications. However, as equal treatment of the two belligerent parties would in reality favor the covenant-breaking state, it is possible that a conflict might occur between the requirements of our neutrality and our duties toward the League of Nations.<sup>2</sup>

#### ARTICLES 8 AND 9

In two ways the Covenant may influence the military situation of Switzerland. First, by Article 8 the League shall fix a limit to the armaments of its members. Second, in case of the application of Article 16, the solidarity of League states may impose upon each of them obligations having a military repercussion.

Except for these provisions of the Covenant, which in this connection have a direct bearing, the fact of a state's being a member of the League of Nations is of a nature to influence its political situation and for that reason indirectly its military situation. The non-League states will necessarily have to take account of the new fact of the existence of the League of Nations and consequently to veer onto a new tack, perhaps in the field of national defense also.

Stating the importance of the question, the Federal Council instructed the Military Department to study from the military point of view what bearing the accession of Switzerland to the League of Nations might have. This Department submitted the

<sup>1</sup>Message, pages 49-52.

<sup>2</sup>Message, page 73.

question to the Commission on National Defense, which has been occupied with it at several sessions. This Commission has been unable to present a single report on this subject, its members differing in opinion on many of the most important points. It has formulated two contrary opinions. One of its reports concludes definitely for the absolute maintenance of neutrality in all cases and upholds the thesis that the entrance of Switzerland into the League of Nations would be dangerous for her security and for her independence. According to the other, Switzerland must adhere to the League of Nations, the inconveniences which might result therefrom not being of any decisive importance.

The Federal Council deems it its duty to make known here the military objections made to the adhesion of Switzerland. It is appropriate, however, to remark here that the question of risks arising from accession to the League for our country and as respects conflicts such as those especially involved in the application of Article 16 can not be regarded as a purely military problem which can be solved by starting with more or less probable strategic situations. The determining factor of the judgment to be reached in this connection is primarily and before everything the question of whether we can consider it probable both that the League will remain politically united and that in case of a conflict entailing its intervention it will not find itself face to face with a group of powers having chances of making headway against it. And this is a problem essentially political. This holds good for the question of what are the prospects of a war which the situation created by the treaty of peace might engender and what is the confidence to be placed in the efficacy of the organization established by the Covenant for assuring the maintenance of peace. Moreover, it goes without saying that we must take account not only of the present situation and of the supposition that the League of Nations will develop in a satisfactory manner but also of the fact that with the lapse of time a new equilibrium of forces may be established which would be of a nature to paralyze its action more or less completely at the critical moment.

#### LIMITATION OF ARMAMENTS

For a long time reduction of armaments has been demanded by peace workers. Its realization was to be the essential task of the

First Hague Conference. Another and much less bold attempt was made at the Second Hague Conference. It, likewise, came to naught. And the armament race continued at top speed. It was, therefore, natural that in the course of the war which has just ended, the idea of a limitation of national armaments, even of the substitution of an international army for the national armies, should be taken up again by those who desired to work for the establishment of a durable peace. The Wilsonian program of fourteen points also demanded that the armed force of each state should be reduced to the minimum compatible with the maintenance of its internal security.

Articles 8 and 9 of the Covenant realize this postulate in a very imperfect manner only. The Covenant confines itself to recognizing "that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." It thus combines the two partly contradictory ideas of the peace workers: On the one hand national armies must be reduced to the simple proportions of a police force; on the other hand, when brought together, they must permit the constitution of a crushing international force capable of preventing the return of war.

The weak point of Article 8 is that it permits the Council "to make recommendations" only to the League states in respect to the limitation of their armaments. The Governments are absolutely free to give effect to it or not. If they conform to it, the limits fixed by the Council may not be exceeded without its assent. The plan of armaments must be submitted to a new examination at least every ten years. If an alteration is decided upon, the League states are free to accept it or refuse it.

These provisions of the Covenant amount to saying that armaments will be subject to international negotiations. What permits the possibility of positive results is, especially and in addition to reasons resulting from the necessities of internal politics or the financial status of the various countries, the very heavy reductions which the treaty of peace imposes upon the armaments of Germany. This limitation is evidently of a nature to facilitate similar measures in other states also. The reply of the Allies to the German counter-proposition shows also that the provisions

concerning the German army and navy constitute in some measure the fixed point which may serve as a basis for fixing the level of armaments.<sup>1</sup>

The provisions of the Covenant concerning the control or nationalization of the private armament industry are still more obviously lacking in obligatory force. This is a demand which has been made for a long time on account of the presumed relations between the capitalists interested in this industry and a part of the press or certain political groups. Article 8 confines itself to instructing the Council to advise on the means of parrying this danger. No other authority on this subject is given to the organs of the League.

#### EXCHANGE OF INFORMATION

The states members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval [and air] programs and the condition of such of their industries as are adaptable to warlike purposes. Propositions have been made which contemplated conferring on the League of Nations a right of inquiry in this field. These propositions have not prevailed, the Governments not having been able to bring themselves to accept such a control, and also perhaps so that the most important and the most dangerous inventions may be kept secret. It is only in regard to Germany that a right of control of this kind is foreseen.<sup>2</sup>

<sup>1</sup>Part I, Sec. IV, of the reply of the Allied and Associated Powers to the German Delegation to the Interallied Peace Conference, dated at Paris, June 16, 1919, says:

"The Allied and Associated Powers have already pointed out to the German delegates that the Covenant of the League of Nations provides for—

"The reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations."

"They recognize that the acceptance by Germany of the terms laid down for her own disarmament will facilitate and hasten the accomplishment of a general reduction of armaments, and they intend to open negotiations immediately with a view to the eventual adoption of a scheme of such general reduction. It goes without saying that the realization of this program will depend in large part on the satisfactory carrying out by Germany of her own engagements."

<sup>2</sup>Article 213 of the treaty of peace with Germany provides:

"So long as the present treaty remains in force, Germany [as respects the military, naval and air clauses] undertakes to give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary."

The provisions of the Covenant concerning armaments interest the non-League states only from the following point of view: If one of these states applies for admission to the League of Nations it is, unlike original member states, bound to accept, respecting its military and naval [and air] forces and armaments, the regulation which the Council shall deem it necessary to impose upon them, taking into account their special situation and the general plan. Moreover, it must be understood that the League of Nations does not remain indifferent to the armaments of non-League states. It is probable that it will use its influence to prevent the program of armaments established for its own members being compromised by other states.<sup>1</sup>

#### ARTICLE 10

Article 10 of the Paris Covenant in particular has given rise to fears. It declares that the members of the League of Nations undertake to respect and preserve as against external aggression, that is to say, against any sudden attack, their territorial integrity and their "existing political independence."<sup>2</sup> To determine the meaning of this article it is necessary in our opinion to keep the following facts especially in mind:

a. The members of the League of Nations engage to protect the territorial integrity of the states only against aggression. They do not guarantee it against any modification. The possibility of modifying the present status quo is foreseen, at least in principle, by Article 19. An allusion to this has been made in the declarations of several influential authors of the Covenant.

b. This article contemplates only external aggression, that is to say, originating in other states, and not civil wars, which involve social troubles or the attempt to establish the political autonomy of certain territories. The League of Nations is distinguished from the Holy Alliance and from the legitimist pentarchy of 1815 in that it contains nothing in the nature of a mutual insurance for governments.

c. The expression "independance présent" of the French text does not exactly render the sense of the English term "existing independence." In the original French text the word "existing"

<sup>1</sup>Message, pages 61-64.

<sup>2</sup>Message, page 17.

was not translated. It is not the degree of independence existing in 1919 (full sovereignty, autonomy, etc.) which is protected but the state of things which shall exist in law at the moment of the unjust aggression.

*d.* The Council according to this article may only give counsel (advice) and not direct orders. Likewise, general sanctions as prescribed in Article 16 are in no wise brought into question here; recourse may be had to them only when Articles 12, 13 or 15 are violated. In support of the fact that as a perpetually neutral state Switzerland may not be held to a territorial guaranty the treaty of May 11, 1867, concerning the neutralization of Luxemburg may be cited. Article 2 of that treaty exonerates Belgium, on account of her neutrality, from any obligation of guaranty, although she was a party to the treaty itself.<sup>1</sup>

To get the exact sense of this article it must be considered with other provisions intended to assure the maintenance of peace. By the general rules of interpretation it follows from such an examination that the obligations prescribed by Article 16 for the case of collective action by the League of Nations exist only in the eventualities expressly enumerated in that article itself. They can not be extended to other measures which might be decreed by the League and in particular not to the case of its intervention to assure the maintenance of the territorial and political status quo. In our opinion, the conclusion must be that the League states are bound to abstain from any violent enterprise, but that they can not be compelled in all cases to defend the state attacked in the manner foreseen by Article 16.

#### DIRECTED AGAINST WARS OF CONQUEST

It can, however, be conceived that the League of Nations might wish to protect the territory and independence of its members not only against the aggressions prohibited by Articles 12-15 but also against any other attempt against it. Nevertheless, since all war—even a war tolerated by the Covenant—implies by definition an attack directed against the enemy territory, an enterprise of this kind could not obviously imply violation of Article 10 in all cases. There would be a collision only if a belligerent refused to

<sup>1</sup>Commentary, page 133.



evacuate an occupied territory or if at the outset it manifested a desire to make a war of conquest. For the consequences of this fact are not at all those which Article 16 attaches to wars of surprise. The Council will confine itself to making recommendations destined to assure the territorial maintenance of the status quo. The Council may formulate obligatory advice unanimously only, and solely for its own members and for the other states invited in the specific instance to be represented on the Council (Article 4, par. 5). There is, therefore, no reason for admitting that this provision must involve very heavy obligations for the members of the League of Nations. Article 10, in so far as it may serve as a basis for obligations growing out of the general idea of Article 12, only contemplates regulating the intervention which the powers have always had in mind in case of displacements of the boundaries effected by force.

Finally, the Covenant in no respect shows the tendency of perpetuating in all cases the existing international situations upon which territorial frontiers are based. On the contrary, Article 19 foresees the possibility of modifications in the existing state of things brought about in the interest of peace. To subscribe to the Covenant and thereby to accept Article 10 amounts not to giving an implicit approval to the present territorial division but only to admitting the principle that the status quo may not be modified by violence.<sup>1</sup>

Articles 10, 11 and 17, par. 4, provide that the League of Nations shall or may take measures with a view to safeguarding the peace of the world in case of threat of war or of declared war. The Covenant does not, however, say how the organs of the League shall then proceed and with what means they may be served. Still it is certain that the attitude prescribed by Article 16 for members of the League can not be insisted upon unless the conditions foreseen by that article are present. We have already explained this as it relates to Article 10. The right of members of the League to remain neutral and even to observe a neutrality absolute and without any distinction can not, therefore, be affected, except where Article 16 would apply, by the measures which the League of Nations might be led to take respecting armed conflicts.<sup>2</sup>

<sup>1</sup>Message, pages 17-18.

<sup>2</sup>Message, page 36.

## ARTICLE 11

This article confirms the right of the League of Nations to regard any threat of war as a matter of general interest. In distinction from the text of February 14, 1919, the present editing emphasizes the idea that a matter of general interest is involved in permitting the League of Nations to take the necessary preventive measures; the original text left these to the free judgment of the individual states. The danger that the Governments would act at their own pleasure and create accomplished facts has been effectually guarded against by declaring that the Council must *immediately* meet as soon as any member of the League requests it. Therefore, without a manifest violation of the Covenant the meeting of the Council can not be successfully obstructed and so the League of Nations can not be prevented from concerning itself with the dispute.<sup>1</sup>

## ARTICLE 12

If a difference can not be smoothed out by direct negotiations and if the parties persist in their claims, that one of them which is determined to resort to war to safeguard its rights must first submit to the procedure prescribed by the Covenant with a view to bringing about a peaceful solution of the dispute, if possible. The suit must be submitted either to a court of arbitration or to the Council or to the Assembly of the League of Nations.

If the dispute is judged by a court of arbitration, the sentence must be loyally executed and the affair is liquidated. Unfortunately, the Covenant does not determine in an obligatory manner those cases in which the parties shall be held to submit their difference to arbitration.

If the parties are not bound by a bilateral treaty of arbitration or if they can not come to an agreement on submitting their difference to a court, the suit must be sent to the Council or, in case one of the parties requests it, to the Assembly. By distinction from an arbitral sentence, the decision of the Council is a simple opinion. But if this decision has been taken unanimously by the Council and alternatively by a majority of votes in the Assembly—

<sup>1</sup> Commentary, pages 133-134.

the vote of the parties not being counted—recourse to war against the state which accepts it is prohibited.

The decision of the Council or of the Assembly must be rendered within a maximum period of six months. The courts of arbitration have an appropriate period for reaching their decisions, which in any case may not be shorter than that which the Covenant grants to the Council or to the Assembly. In addition, after the competent jurisdiction has made its opinion known, the parties are pledged to wait at least three months more before resorting to war.

The aim of this system is not only and primarily to provide a positive solution for the dispute but also to gain time and to give to the conflict the publicity which the procedure imposed on the parties implies. If the Council does not succeed in taking a decision unanimously, with or without the majority of the votes represented on the Assembly, the majority of the Council, as well as any state represented on the Council or on the Assembly, may give the widest publicity either to the facts which are at the bottom of the difference or to its own proposals. Trusting to the tendencies of all peoples, which are known to be pacific, the authors of the Covenant hope that war will in fact be rendered impossible, or reduced only to a problematical eventuality, by the single fact of the exclusion of any sudden attack, and as a result of the publicity given to the negotiations which every dangerous dispute will in every case have to undergo.

A material basis was given to this hope, even among the skeptics, by a second capital provision of the Covenant: The state which resorts to war in disregard of the prescribed methods and delays just recounted is in such a case placed under the ban of the League of Nations. It is regarded as the common enemy and is combated by all members. The advantages of the sudden attack in the future will thus be counterbalanced and exceeded by the risk of a state taking on itself the hostility of the rest of the world. A declaration of war mobilizes all the passions, which from that time on form an obstacle to the return of peace. The obligation of respecting certain delays, during which pacific negotiations will take place, will on the contrary mobilize all the forces of intelligence and reflection, which may operate in favor of conciliation and of the maintenance of peace.

The political history of recent times seems to justify this way of

looking at the facts. Not alone the world war but nearly all modern wars have broken out suddenly, on a quick decision excluding any attempt at mediation by means of international conferences or impartial commissions of inquiry. On the other hand, dangerous differences, such as the Anglo-American conflict relative to the Alabama question (1868-1870), the Anglo-Russian conflict over the Hull affair (1904), the Franco-German conflict at Casablanca (1909), the Austro-Russian conflict of 1913, have been smoothed out through arbitration, inquiry or international negotiations, even though the tension of the general political situation and the divergence of views between the parties were in no wise less serious than at the times when it was alleged that war was inevitable. The more the solution of disputes by organs of the community of states shall become the rule, the more difficult will it become for a given state to have recourse to force to make its will prevail.

#### CERTAIN KINDS OF WAR SUPPRESSED

While up to the present every war was considered in international law as an affair interesting only the parties themselves and their allies and no distinction was made between legal wars and illegal wars, the League of Nations will suppress entirely certain kinds of wars at least, or will oppose to them the combined forces of all. It is the first limit which, in the history of humanity, has been put to sovereignty, and thereby to the arbitrariness of states.

The two principal things lacking in the organization instituted by the Covenant are:

First, war remains admissible as one of the methods of international policy. The prime condition of disarmament, the renunciation of all war whatsoever, thus remains unrealized.

Secondly, in cases where the parties will not submit themselves voluntarily to an arbitration tribunal, the League of Nations does not put an end to international disputes by an executory and just sentence rendered by an impartial authority. The Covenant confines itself to excluding certain forms of recourse to force and it excludes them only in cases in which the parties are in agreement to submit their difference to arbitration, or if a solution is recommended unanimously, or, the case arising, by the qualified majority of the states not interested in the conflict.

The explanation of this defect—calm judgment must admit it—is that it is very difficult, not to say impossible, at present to impose on states more extended obligations. Indeed, if it were desired not only to interdict and prevent resort to war as a means of settling differences of all kinds, but to end by an executory judgment disputes arising between states, and if it were desired to impose the decision thus taken by the force of the League of Nations, the established principles of international law would be violated. In its present form, international law is dominated by the idea of the sovereignty of states even more than by that of international solidarity. This law can not be confirmed by the League of Nations, but how is it to be adapted to the new demands of international life and of justice?

Two ways may be conceived. Either the law might be progressively established solely by the jurisprudence of tribunals of arbitration or other organs of the League of Nations. But this would have the effect of conferring upon them a practically exorbitant power which in reality would exceed the limits of jurisprudence so-called. Or international law would have to be worked out and developed by the obligatory decisions of a conference of states, in accordance with the methods of development for internal law. The League of Nations would thereby tend to become like a federative state. But it is more than doubtful whether at the present hour a sufficient number of states—if indeed any states could be found to admit this idea—would consent to sacrifice their sovereignty to the power of an international legislator. Still further how would it be possible to organize the legislative organ of the League of Nations so as in reality to assure to it the power of the principal member states without at the same time reducing in too great a degree the share of influence accorded to the less important? The Swiss Advance Project proposes on this point a solution thoroughly thought out and perhaps acceptable. It admits in behalf of the legislative organ the power of making decisions of obligatory force only where this power should be conferred upon it by the unanimous vote of the federated states. The more perfect a League of Nations is, the more it trenches on the sovereignty of its members, the greater are the political difficulties to be surmounted in getting it accepted.

## MORAL PROGRESS MADE

Yet great progress must be seen in the fact that all states—and particularly all the great states whose effective aid is indispensable to combat war—engage not only to renounce war except under certain conditions, but to regard any state as an enemy which attacks another or which flouts an opinion given unanimously by the League of Nations. This is also moral progress, because this fact substitutes for the heretofore dominant principle of the egoism of the state—each for itself—the new idea of international solidarity—all for one.

This solidarity respecting any disturber of the peace implies obligations for the League states infinitely more important than the restriction of their right to make war. The application of sanctions provided by the pact affects all these states, even the most pacific, and does so in a manner which may impose upon them the heaviest sacrifices. We shall have to examine this part of the Covenant more closely in studying the question of our neutrality. We remark now that no state has ever assumed these obligations outside of a treaty of alliance. If the Covenant went further, it would result in restricting the independence of states, a condition before which, mayhap, the very ones who to-day criticize the weakness of the League would recoil most strenuously. To reach any political result, it is necessary to take account of what is practically realizable at a given moment. Perhaps this principle forced the authors of the Covenant to decide as they did.

In addition to Articles 12, 15, 16 and 17, which impose even on states not in the League of Nations very definite restrictions on the right to make war, the Covenant contains a series of other provisions destined to assure the maintenance of peace. They concern the limitation and control of armaments (Article 9), the mutual guaranty of territorial integrity and political independence (Article 10), the right of the League of Nations to consider any fact of a nature to jeopardize peace (Articles 11 and 19). But in all these cases the question is one of general guidance in matters of policy and not of determined duties imposed upon the states. The efficiency of these provisions depends essentially upon the authority which the League of Nations may have. The require-

ment of unanimity will prevent it from having a policy which would menace the independence of its members. If the great Powers remain united, they will, it is true, be able to exercise a very strong pressure. But this was taking place before. On the other hand, the League of Nations has the advantage of making peace more stable. By that very fact, it assures a greater security to the small states which may be implicated in conflicts between the great Powers. In the present unorganized state of the international community, the weak states may in certain instances take advantage of divergencies existing between stronger states. But to that extent their existence rests upon precarious foundations and they can only gain by the creation of an order of things dominated by the idea of peace, which will permit them to develop more completely and more certainly.<sup>1</sup>

#### AIMS TO SETTLE DISPUTES QUICKLY

Whether a difference is susceptible of causing a rupture can not be determined in advance. But, before entering upon war, every state must observe the procedure made obligatory by Article 12; it must have recourse to it as soon as a conflict takes a turn likely to lead to a "rupture," by which war is not necessarily meant, but the sudden cessation of negotiations. It is of the utmost importance that differences should be smoothed out as quickly as possible by a pacific procedure, and not only when they attain a degree of acuteness in which the possibility of war must be seriously taken into consideration.

For that very reason the Swiss delegation proposed,<sup>2</sup> as the Swiss Advance Project provided in its Art. 28-36, that a procedure of conciliation should precede every examination of the difference before the arbitral tribunal or before the Council. Recourse to the pacific methods of Article 12 would then occur only after having exhausted all efforts susceptible of bringing about a friendly

<sup>1</sup>Message, pages 12-17.

<sup>2</sup>Swiss project in the Conference with Neutrals, Paris, March 20-21, 1919, Article 12, par 1, to read:

"The High Contracting Parties agree that if there should arise between them differences which could be settled neither by the ordinary procedure of diplomacy nor by a commission of conciliation and of inquiry chosen by the parties, they shall in no case resort to war without having previously submitted the subject matter of the dispute to an arbitration or to an inquiry intrusted to the Executive Council."

understanding between the parties. The state which shall fail before the tribunal or before the Council will usually be tempted to make recriminations. Moreover, it is certainly in the interest of the small states, especially of those not represented on the Council, to be obliged only under exceptional circumstances to bring their cause before a jurisdiction whose composition is determined by considerations of power rather than by a concern for impartiality respecting the parties in dispute. Still, this inconvenience may be remedied by treaties of obligatory arbitration, the conclusion of which is expressly reserved by Article 21 of the Covenant.

The delay of three months must be observed in all cases, that is, after every sentence, even if pronounced by the court foreseen in Article 14, because, if this is not a tribunal of arbitration in the ordinary sense of the word, it is at least a court freely chosen by the parties. The three months likewise run from the time a report by the Council or the Assembly is drawn up in accordance with Article 15. This report must not be confused with the "recommendations" taken unanimously or by the majority of those voting; it must be worked out in all cases even when it is certain (Article 15, par. 8) that the question is a purely internal affair in which the League of Nations can not interfere.

Par. 2 gives to the arbitrators "a reasonable time" to render their sentence. This time is in any case at least six months, as with the Council, because a judicial procedure allows of inquiries involving both parties, and naturally takes more time than the free examination of an affair by a political jurisdiction.

#### ARTICLE 13

It is extremely regrettable that the League of Nations did not introduce obligatory arbitration. In this respect it lags behind the wishes of the great majority of the states at the Second Hague Conference which desired to introduce the principle of obligatory arbitration even though this would be somewhat limited by restrictions in definite clauses.

Article 13, however, recognizes the principle of arbitration in par. 2 and 3 and it does this to a considerable extent; but, judicially speaking, it does not oblige the parties to accept it. It must, however, be noted that in principle all disputes susceptible of solu-



tion by a judicial decision must be submitted to an arbitral tribunal when they can not be removed by direct diplomatic negotiation and this is so without awaiting their taking on acuteness enough to risk their leading to a rupture.

According to Article 13, the duty of states is to submit themselves to a judicial procedure only when they have engaged to do it by a treaty of arbitration. Most of these treaties, and especially those concluded by Switzerland, contain the so-called "honor and vital interest" clause by virtue of which any state may freely decide in each particular case whether or not the difference is susceptible of being solved by judicial means. But under Article 13, par. 1, the parties may, in the absence of a contrary provision of the Covenant, take the decision which seems proper to them on this subject. The practical value of treaties of arbitration is thus strongly compromised; therefore, Switzerland proposed, in accordance with the Advance Project of her Consultative Commission, the creation of a "court of conflicts," charged with deciding whether a decision may be within the cognizance of a court contrary to the plea of the plaintiff.<sup>1</sup>

Unfortunately, this proposal has not won. Without an institution of this kind the satisfactory development of arbitration can not be hoped for. The court of conflicts, on the one hand, assures to the courts cognizance of cases susceptible of being made the subject of a judicial decision, and on the other hand it prevents arbitration from entrenching upon the purely political domain, at the risk of being discredited or refused; it also avoids letting judges become involved, in the interest of the powerful, in the

<sup>1</sup> The Swiss proposal at the Conference of Neutrals, March 20-21, 1919, reads as follows:

"If one of the parties alleges that the difference is not susceptible of an arbitral solution, claiming that it is either not of a nature to be made the subject of a sentence based on juridical considerations or that it affects its independence or its vital interests, this question shall be referred to a special court composed in the following manner: Each party designates a member of the Council and a member of the Permanent Court of International Justice. Two other members are designated by this Court from its own members. Finally, a member is chosen by the Council from its members. The Court thus composed appoints its own president from among the members coming from the Permanent Court of International Justice.

"If the Court admits the exception, the party which finds itself denied the judicial method may refer the matter to the Council, which shall then proceed in conformity to Articles 12 and 15."

adjustment of differences of a political character by mutual concession, instead of being inspired by reasons of law.

When an arbitral sentence has been rendered, every act of war is prohibited, even after the expiration of the delay of three months, provided that in this period the state which is obliged by the court to do something, to submit to something or not to do something accepts the sentence. It is not the state in behalf of which the sentence runs which may in the first instance see to its execution. It is the League of Nations which itself takes the proper measures to assure the execution of the sentence. It is different with decisions taken unanimously by the Council, for the execution of which the League of Nations is not obliged to look out. By what measures the League of Nations must insure the obedience due to a sentence has not been determined. As the conditions of Article 16 are not present, it will have to confine itself to diplomatic overtures or to making recommendations to the states which are willing to consent to take other measures, economic reprisals, for example.

#### ARTICLE 14

One of the great omissions in the Covenant is that it does not organize a court. It has been recognized, however, in the reply to the conference of neutrals, that the constitution of this court must be one of the principal tasks of the League of Nations, and already preparatory steps have been taken to this end.

Switzerland supported in her own Advance Project (Arts. 12-16) for presentation to the Conference of Neutrals<sup>1</sup> the proposition of organizing a Permanent International Court which would offer all necessary guaranties against political influences. If we keep in mind the fact that the Second Hague Conference did not reach

<sup>1</sup>The Swiss proposal in the Conference of Neutrals, Paris, March 20-21, 1919, was a substitute for Article 14 of the project of Covenant of February 14, 1919, as follows

"There is created a Permanent Court of International Justice accessible at all times to the Contracting Parties. It is competent either by virtue of an agreement between the parties or at the request of either of the parties if they have been able to reach an agreement in due time on the compromis foreseen by Article 52 of the first convention of The Hague of October 18, 1907.

"The Permanent Court of International Justice is appointed by the Conference of States for a period of nine years. Each state proposes at least one and not more than four candidates, duly qualified, disposed to accept the duties of judge, and of

any positive result in this matter because the great Powers wished to reserve to themselves a privileged situation in the organization of the court, it is necessary to hope that for the Court of the League of Nations a solution acceptable to all states will be adopted. The counter project of the German Peace Delegation corresponds almost completely on this point to the Swiss project, which would allow of the organization of the court in a practical manner, basing it entirely upon unassailable principles.

The International Court of Justice is competent only when the two parties consent to submit themselves to its jurisdiction; it is not competent, as in the Swiss Advance Project,<sup>1</sup> at all times when the parties do not succeed within a reasonable time in bringing themselves into agreement as to the constitution of an arbitral tribunal.

The last sentence of Article 14, enabling the Court to give an advisory opinion upon any dispute or question submitted to it by the Council or by the Assembly, contains a valuable provision, similar to Art. 55 of the Swiss Advance Project.<sup>2</sup> Often, differences

whom at least one must not be a citizen of the said state. Each state then selects 15 persons from the list so made up. The 15 candidates receiving the greatest number of votes are elected.

"The Permanent Court of International Justice is composed of five judges when sitting in ordinary session upon differences submitted to it.

"As soon as a dispute is pending before the Court, each party must within a period of four weeks, challenge five judges. If a party allows this period to lapse without challenging, the five judges which it must challenge are designated by lot; the same procedure is followed when the challenges of the two parties have eliminated less than ten judges.

"Judges who are citizens of a party state, in its service or who are resident on its territory are challenged by the court (*d'office*). In the case where the Court is competent, on account of the parties not having been able to come to an understanding in due time upon the composition of the tribunal of arbitration, each party has the option of designating any member of the Court whose challenge by the opposing party is precluded.

"The five judges not challenged elect the president from their number."

<sup>1</sup>The Advance Project of the Swiss Consultative Commission of November, 1918, —January, 1919, on this point says:

"Art 37 The disputes referred for judicial solution are decided by the judges designated by the parties. If, within two months after the failure of the attempt at conciliation, the parties have been able to bring themselves into agreement on the compromise foreseen by Art. III of the first convention of The Hague of October 18, 1907, the plaintiff party may demand the judgment of the International Court of Justice."

<sup>2</sup>The article referred to reads:

"If it transpires from the mediatory procedure introduced in conformity with

brought before the Council or Assembly will in whole or in part be purely juridical disputes, whose solution it will not be proper to confide to a jurisdiction essentially political. This will especially be the case when a party is unjustly constrained to follow the arbitral procedure. The Council or Assembly, as the case may be, will then be able to submit the legal questions to the Court for rulings. The opinion of the tribunal will, it is true, not have the value of an executory sentence; but it is probable that it will frequently serve as the basis for a unanimous decision of the Council, imposing peace on the parties, and that it will thus successfully forestall any attempt made by a state to free itself from the fundamental duty of consenting to arbitration, which is incumbent upon it.

#### ARTICLE 15

While arbitration must be accepted by both parties, a single state may demand the application of the procedure provided for in Article 15. A party may only thereby free itself from violation of the Covenant of the League of Nations, but in spite of its abstention the procedure will take its course. The Council may give the widest publicity to the affair from the beginning. The Covenant unfortunately contains no provision which expressly obliges states and, on occasion, the press to see that the publications of the League of Nations should be widely and effectively disseminated; the Swiss Consultative Commission had such a provision.

In the first place, the Council shall endeavor to effect the "settlement of the dispute," that is, to get the two parties to accept a friendly solution. Before this effort at accommodation, the case according to the rule is to be the subject of an inquiry. For these inquiries it is desirable to constitute a commission in conformity with the first Hague convention, in which the two parties are equally represented, and which thus would have to present compromise proposals. Various neutral states besides Switzerland

Art. 49, par. 2 (after neither of the parties has accepted an offer of conciliatory procedure and the bureau of the mediation council regards mediation as indispensable), that the dispute submitted to the mediatory jurisdiction is of an essentially juridical character, the Permanent Delegation [representing states to guarantee sentences] intrusts the definitive solution to the plenary assembly of the International Court of Justice. No objection may be opposed to the decision ordering this reference."

insist that these inquiries and these negotiations for an arrangement should be intrusted to organs independent of the Council, and absolutely impartial. Article 15 does not exclude this procedure, but it does not prescribe, it is far from prescribing, this.

Pars. 4 and 5 organize the procedure which must take place when the Council has succeeded in effecting a "settlement." In all cases, with the exception of par. 8, the Council has the mission of adopting, unanimously or by majority vote, a proposition which meets the requirements of equity and expediency; it is not bound by rules of strict law. All the states represented on the Council — the interested parties shall always have representatives on it — may publish their findings and their propositions; the minority of the Council, or the party which has not obtained satisfaction, will certainly do so, and this will probably result in other publications in rejoinder.

Pars. 6 and 7 regulate the effects of the report of the Council. If the report is accepted unanimously by the states not interested in the dispute, the effect is that neither of the parties—and not the plaintiff only—may resort to war on account of the affair which has been liquidated unanimously by the Council, in so far as the other party satisfies the obligations devolving upon it from the report. In distinction from the project of February 14, 1919, and Article 13, which relates to arbitral sentences, the League of Nations does not intervene directly to assure the execution of the report. It leaves that to the parties: first, to the one which must fulfill the obligations resulting from the report, and then, if it refuses, to the other party, which may, after three months at the shortest, seek execution itself. Only in the case where the other party commences hostilities, with one of the parties conforming to the report, are the sanctions of Article 16 applied to the breaker of the peace.

#### PROBLEM OF SECURING UNANIMITY

The fact that the League of Nations does not positively go into action to make its views prevail presents the advantage of facilitating the securing of unanimity. But this system is marred by a serious defect: when the defendant enjoys possession, the claimant to which the Council has unanimously awarded the thing can bring

about justice only by its own means, if the other party does not voluntarily give it up. Therefore, in some instances, and particularly for a small state in the situation of Switzerland, the possibility of proper justice is entirely illusory for the claimant.

If unanimity is not obtained, the parties enjoy complete freedom of action after the expiration of the period of three months: they may therefore go to war.

A difficult question, which has given rise to various interpretations, is what, in this event, are the relations of the other states with the belligerent parties. The expression, "the members of the League," in pars. 6 and 7, may mean either all the members without distinction or only the members which, as parties, must assume the obligations flowing from Articles 12 and 15.

If one takes the first interpretation, that it means all League members, he reaches the conclusion that all the states of the League of Nations would enjoy their full freedom of action at all times unless unanimity was obtained in the Council. This would also be true of states which had taken no part in the procedure, since the dispute had not been brought before the Assembly. It is certain that the parties may go to war, but have other states this right as well? This might be thought, since par. 7 makes no distinction. Nevertheless, such an interpretation appears to be unacceptable, not only because it would mean a considerable weakening of the whole League of Nations and would be absolutely irreconcilable with the fundamental tendency of the Covenant to insure peace, but also because it would be in direct contradiction with Article 12. This fundamental article lays down that in all cases a determined procedure must have been observed before recourse to war is possible. The fact that a conflict between two states has not been unanimously liquidated can not free third states from obligations imposed upon them by Article 12. If, by virtue of a defensive alliance, a state desires to place itself at the side of one of the parties, it is necessary to do it as a litigant in the course of the pacific procedure, or else it must itself start a new case. It is clear from Article 15 that a state may not be at once a judge and a party—a self-evident principle. So it is necessary to qualify as a "party" not only the state which has the rôle of party in the pacific procedure, but quite as much the one which proposes to take part in any eventual armed conflict.

The interpretation that pars. 6 and 7 concern only the members of the League of Nations between whom the dispute has arisen seems at the same time more in accordance with the nature of things and with the whole structure of Articles 12-15. By Article 12, the members of the League assume specific duties in their reciprocal relations, in contemplation of possible conflicts. Article 15 develops the principle set forth in Article 12; it defines what must follow, according to circumstances, from the intervention of the Council: so long as the parties are bound one to another, they may act as seems good to them after the expiration of a period of three months.

#### "PARTIES" MEANS THE DISPUTANTS

We can not conclude from the use of the word "parties" in Article 15, and particularly in pars. 6 and 7, that we must understand "all members of the League" every time "members of the League of Nations" are spoken of in these texts. So far as declaration of the result of the vote is concerned, the parties are designated by the word "parties" because they are not regarded in their reciprocal relations but in contrast with states not interested in the dispute. The clause, "the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report," means that, in such a case, military intervention is excluded against any state, that is, against each of the various parties interested in the dispute and without considering which has originally been the plaintiff.

According to our proposed interpretation, the provisions of Article 12 have the effect of limiting military conflicts possibly arising between states to the parties which have participated as such in the pacific procedure. The other states, conversely, may exercise their influence to liquidate the difference only in ways not in contravention of the provisions of the Covenant. They are not thereby condemned to an absolute passivity or held to observing an identical attitude toward both parties. But the members of the League of Nations might at most assume, according to Article 10, the right of taking measures of a military character immediately, and yet they could do that only with a purely defensive purpose.

It is likewise in this sense that the freedom of action of members of the League of Nations not parties to the dispute is to be interpreted, if the whole of the associated states is to be regularly understood by "members of the League of Nations."

The idea expressed in par. 8 is the following: The League of Nations is not to concern itself with anything which, according to international law, is for any state an internal affair, that is to say, matters in which a state may exercise its sovereignty without being hampered either by treaties or by the general principles of international law. The League of Nations must not interfere in the internal affairs of its members even by giving them advice which has not the power to obligate them.

The Assembly enjoys all the competency assigned to the Council by Article 15, when an affair has been referred to it by the Council or at the request of one of the parties. But it is one or the other which decides; there is no procedure for appeal. The possibility of bringing all disputes before the Assembly is a very important guaranty for the states which are not represented on the Council.

Originally, the necessity of unanimity was also stipulated for the Assembly; but unanimity would almost never be secured in it. It was Switzerland that demanded that a qualified majority be fixed;<sup>1</sup> the present text arrives at practically the same end in another way.<sup>2</sup>

#### ARTICLE 16

While it offers only slight positive advantages in economic matters, the Covenant imposes on League states, and indirectly even on all states, a very heavy obligation, that of breaking economic relations with any state which contravenes the prescriptions of Articles 12, 13 or 15. This sanction is also applicable by Article 17 to the non-League state which, having accepted the obligations

<sup>1</sup>The Swiss proposal at the Conference of Neutrals, March 20-21, 1919, at Paris, read:

"Instead of 'unanimity' read: 'The agreement of three-fourths of the members of the Council, representing at the same time three-fourths of the populations of the League.'"

The analogous provisions of the Covenant call for the concurrence of "the representatives of those members of the League represented on the Council and of a majority of the other members of the League, exclusive in each case of the representatives of the parties to the dispute."

<sup>2</sup>Commentary, pages 134-141.



of a member of the League for the purpose of settling a dispute, does not fulfill them or which, refusing to accept these obligations, goes to war against a member state. It is scarcely probable that a state would expose itself to the risks of such a conflict with the League. Nevertheless, this might occur and we must examine this question of sanctions very closely and see all the consequences which the application of Article 16 might have for us.

The economic sanctions comprise:

1. The immediate and general *rupture* of all commercial and financial relations.

2. The *prohibition* of all relations between the nationals of League states and those of the covenant-breaking state.

3. Measures with a view to *preventing* all communications, financial, commercial or personal, between the nationals of the rebel state and those of any other state *whatsoever*.

The term "nationals" may be interpreted, in conformity with Anglo-American doctrine, as applying not to the citizens of the state in question, but to persons who, having their domicile on its territory, are submitted to its sovereignty. If this interpretation is admitted, which the origin of the first Paris project seems to authorize, the application of Article 16 would be notably less and this clause of the Covenant would be less rigorous than its French text would at first sight seem to indicate.

The rupture mentioned above under No. 1 is the most important of the measures provided. It will be effected by closing the frontiers. This rupture would thus involve the prohibition of all payments to persons domiciled in the blockaded state.

The prohibition of all relations under No. 2 may comprehend, if the term "nationals" has, with the exception of domicile, the sense given to it by public law, the prohibition of all relations both across frontiers and to the interior of states participating in the blockade. It is difficult to see how, in respect to this latter point, Article 16 could in practice be applied without interment or expulsion. These measures, which Article 16 does not expressly prescribe, would be incompatible with neutrality. Switzerland, moreover, would find herself in an impossible situation if she had to take them, considering the great proportion of foreigners included in her population, especially in certain cities.

Very important is the obligation of No. 3 which Article 16 im-

poses on League states, to "prevent" all relations between nationals of the covenant-breaking state and those of every other state whatsoever. This provision evidently aims at keeping the nationals of third states from rendering illusory both the blockade established by League states on the latter's territory and the prohibitions decreed by them. It would without doubt result in a system of control of personal relations and traffic in merchandise analogous to that which has grown up a little at a time in the course of this last war. But in the event of applying sanctions by the League of Nations, this control would probably become still more complete and more rigorous.

### MUTUAL SUPPORT EQUALIZES RISKS

By the tenor of par. 3 of the same Article 16 the members of the League agree to lend each other mutual support. This is the necessary corollary of the inequality of risks. The economic measures taken by virtue of Article 16 may have a very different reaction on the various states participating in the blockade. It might happen that for some League state they had graver consequences than for the blockaded state itself.

The right of claiming the aid of the other members of the League is doubly enhanced by the duty of their lending support. It is not possible to define the degree to which each state may thus be aided or to which it shall itself have to furnish its aid to the other federated states. That is a question of the particular case. It may be admitted as a general rule that the support to be given to others by a given state will be the more important the less the risk that state itself incurs. States far from the theater of war will be the first ones called to assist economically those which are most exposed to undergoing the military and economic consequences of the common action. This is in the interest not only of the League but also of the states which are least in danger.

The Covenant does not expressly provide it, but it may be regarded as going without saying that the rebel state has the obligation of indemnifying the members of the League for at least the direct damage which its illegal attitude and the application of the sanctions ordered against it shall have caused them. This obligation may induce the covenant-breaking state to refrain from re-

plying by reprisals to the measures taken against it, or at least dictate a certain moderation by it in this respect.

It is improbable that Switzerland would ever be the subject of the sanctions of Article 16. She may, however, be affected by their application, either in case she should take part therein or in case, as a neutral state remaining outside the League, she should not participate or at least should participate only to a degree as restricted as possible. If as a member of the League, Switzerland desired and was able to maintain her relations at the same time with the League of Nations and with the rebel state her situation would not be different from that which it would be if she pretended to maintain her neutrality by remaining outside the League. For in the latter hypothesis the League would not allow one of its neutral members to weaken the efficiency of its sanctions more than a neutral non-League state.

Participation in sanctions to the degree which is reconcilable with neutrality may undoubtedly involve serious consequences for our country. Switzerland is so dependent on various other countries for her imports and her exports, she is especially in such close economic relations with her neighbors, that the sudden rupture of these relations would necessarily shake our economic life. Switzerland in proportion to her small size has also a considerable number of citizens established abroad. She has economic interests of all kinds beyond her borders. We can not conceal from ourselves, finally, that the covenant-breaking state would undoubtedly reply with measures of retorsion to measures that we should be able to take respecting its nationals.

It is to be remarked, however, that these risks are as a general rule important only in case the action of the League of Nations should occur in our vicinity, that is, if it is directed against one or more of our neighbors. In this case—we have had the most conclusive experiences in the course of the war just ended—our commerce and our relations abroad would undergo all manner of restrictions and the most prejudicial interruption, and this probably by each of the belligerents. However, as the rupture of relations would be complete, or at least nearly complete, with the covenant-breaking state, we should suffer harm from that side more serious than if we should desire to continue to observe the policy of neutrality which we have followed up to now. On the other hand, our

participation in the sanctions would have the advantage of assuring us the freest relations with the other states which should take part therein, that is to say, with the greatest part of the world. Our country would find itself at such a time probably in a situation less precarious than if, without having in principle the support of any of the belligerent parties, it had to negotiate at the same time with both for indispensable import and export licenses, and thus felt itself more and more tightly squeezed from an economic point of view. The advantages which would accrue to us from being a member of the League may, therefore, be regarded as compensating the political and economic risks resulting therefrom.

#### CONSEQUENCES OF NOT PARTICIPATING IN SANCTIONS

Finally, it must be asked what would happen to Switzerland if she remained outside the League of Nations, that is, if she wished in principle to maintain economic relations with both the parties at loggerheads. She would find herself on one side faced by covenant-breaking state or states which, being blockaded by the rest of the world, would probably not be in condition to provide her with what is indispensable to her. The League of Nations would in all probability and economically at least be the stronger and more apt to be self-supporting. For, by the tenor of Article 16, states members of the League would be bound to prevent, especially on their own territory, but also probably in the theater of maritime war, all economic and other relations between the nationals of the covenant-breaking state and every other person. States would therefore place their relations with a neutral state under rigid conditions, even if—and this has already been attempted in the course of the late war—they did not aim at subordinating the maintenance of these relations to a certain regulation of the relations of the neutral with the covenant-breaking state.

The League of Nations would devote all the greater energy to assure through the neutral state the efficiency of the blockade directed against its adversary, because it would believe that by doing this it would safeguard not only the interests of certain specific states but those of humanity at large. It may consequently be forecast that from the economic point of view the League would not show any particular good will toward a state •

which pretended to hold an even balance between it and the rebel state and which should desire in this field to follow a policy having the effect of reducing the pressure of measures taken by it.

The neutral state would thus run the risk of being forced in the end to adapt itself to the established blockade, under pain of finding itself completely isolated. That this should be voluntary and the result of engagements taken in advance or under the pressure of a constraint by which the neutral state's right of maintaining normal relations with the covenant-breaking state had been revoked, would indeed be indifferent to the latter. It may be admitted without dispute that the manner in which the rupture was effected might be important from the political point of view.

In the last analysis there exist no purely economic reasons which might influence a neutral state to attempt to maintain, in the very rare case of a coercive action of the League of Nations, the principle of equal treatment of the two parties, a principle, moreover, whose practical application would be very incomplete and would impose on the neutral painful sacrifices. Such a policy might be justified only if the risk of war was considerably aggravated by participation in economic sanctions and if the state were convinced of the necessity of this attitude. We have already examined this aspect of the problem.<sup>1</sup>

By this article the state of war is declared once for all when certain conditions are fulfilled; there is therefore no need to take a new decision, such as a formal declaration of war.<sup>2</sup>

The perpetual neutrality of Switzerland being exceptional in the League, the Covenant does not regulate its relations toward action to execute sanctions. Article 16, which starts from the idea of a state of war existing between the League and a covenant-breaking state, is not properly speaking applicable. By deduction, however, it permits a definition of the juridical situation of a neutral. Collective opposition to certain forms of war is one of the principal purposes of the Paris Covenant. The neutral state which accedes to the League must aid the other members in this task to the extent allowed by its neutrality. It is a duty of fidelity, an obligation which must be recognized as in the nature of things, even if it does not form the subject of any contractual provision.<sup>3</sup>

<sup>1</sup>Message, pages 79-83.

<sup>2</sup>Commentary, page 141.

<sup>3</sup>Message, page 38.

## VIOLATION OF PACIFIC PROCEDURE CLEAR

Article 16 expressly mentions Articles 12, 13 and 15. It is not possible to apply it to violations of other provisions of the Covenant.

By the rule, the violation of the Covenant will be clear. On occasion, it will be the duty of the Council—or the Assembly, if the dispute was before it — to state whether the conditions of Article 16 have occurred.

Par. 2, differently from par. 1, raises the question of actions which obligate the states only if they have agreed to them by participating in the decision of the Council itself, or if they are obligated thereto by a defensive alliance.

Par. 3. Economic sanctions, having reactions very different for the states which apply them, and being understood to expose each state very differently to measures of retorsion, the mutual support which states must lend to each other is the indispensable corollary of the solidarity which unites them against the state which has broken the peace. The right of passage, which is nothing else than a mutual military assistance, is conceded by the Covenant itself; no decision of the Council is necessary for it nor is the consent of the state over whose territory passage is to be made; an arrangement is necessary only for the mode of passage (use of railroads, etc.).

Par. 4, to take it literally, contains a penal provision which might be applied to any violation of the Covenant of the League of Nations. Nevertheless, since this provision was put into Article 16, which indicates the sanctions applying to the violation of Articles 12, 13 and 15, it is necessary to conclude therefrom that the exclusion stipulated by it may be pronounced only against the state which disturbs the peace and that its only purpose is to exclude that state from any subsequent participation in the Council and the Assembly.<sup>1</sup>

The question of who will legislate on the extent of the obligations imposed on the League states is settled by the Covenant as respects a conflict between two or more states, but not for the case where there should be a divergence of views between a state and an

<sup>1</sup>Commentary, pages 141-142.

organ of the League, the Council for example. The relations growing out of the Covenant being essentially of the contractual order, it can not be admitted that certain League states may impose on others a specific interpretation of the Covenant. Still indeed, a state may not free itself from the effect of a decision taken unanimously by the Council, which may eventually invoke Article 16, last paragraph, as authority for the exclusion of any state which should not comply with the provisions of the Covenant.<sup>1</sup>

#### ARTICLE 17

Article 17 of the Covenant permits the League to impose the observance of Articles 12-15 upon the states which are not of the League. The international community must have the right of demanding from all states recourse to the pacific procedure provided for the regulation of disputes. This system is not, however, without grave inconveniences, the more so since Article 17 does not guarantee a method of adjustment excluding all appearance of partiality. On the one hand, in fact, the Covenant does not expressly impose on the members of the League the obligation of following in this case the procedure laid down by Articles 12-15. On the other hand, the non-member state has not the right of demanding that the difference should be judged by an arbitral tribunal in the constitution of which the two parties take an equal part or that it be submitted to a jurisdiction of the same character. It may, on the contrary, see itself constrained to accept the jurisdiction of the Council or of the Assembly which, being composed of representatives of states associated with its adverse party, may incur the reproach of not being sufficiently impartial. The Council may in addition apply modifications which seem to it necessary in the provisions applicable to neutral states. The Covenant which confers this power upon it does not state in what sense nor in what limits these modifications may be ordained.

It is in the interest not only of states not in the League but also of member states that the procedure for pacific regulation should be applied to non-League states with entire impartiality. Without this, the provisions of Article 16 relative to sanctions might place member states in a delicate situation. Neutral Switzerland

<sup>1</sup>Message, page 24.

can contemplate the eventuality of a conflict of this character only with concern, and the very fact that a collective action of the League might be decided upon under these abnormal conditions is for our country an essential reason for turning aside as little as possible from the policy of neutrality which she has up to now pursued.

Considerations of another sort also come to the front for Switzerland. A series of states is temporarily excluded from the League. This fact is of a nature to create a certain opposition between those states and the League, the more so because those states are former enemies of the most important members of the League. It results, however, from the declarations contained in the final reply made by the Allies to the German negotiators that, in principle, the League of Nations must be regarded as open to all and that Germany may hope to be admitted to it in the near future.<sup>1</sup> To this effect authorized persons also have expressed themselves in the Allied countries, especially in England.

<sup>1</sup>The reply of the Allied and Associated Powers to the observations of the German delegation on the conditions of peace, dated June 16, 1919, in Part I, says:

"I. The Allied and Associated Powers regard the Covenant of the League of Nations as the foundation of the treaty of peace. They have given careful consideration to all its terms, and they are convinced that it introduces an element of progress into the relations of peoples which the future will develop and strengthen to the advantage of justice and of peace.

"The text of the treaty itself makes it clear that it has never been the intention of the Allied and Associated Powers that Germany or any other Power should be indefinitely excluded from the League of Nations. Provisions have accordingly been laid down which apply generally to states not members of the League and which determine the conditions of their admission subsequent to its formation.

"Any state whose government shall have given clear proofs of its stability as well as of its intention to observe its international obligations—particularly those obligations which arise out of the treaty of peace—will find the Principal Allied and Associated Powers disposed to support its candidature for admission to the League.

"In the case of Germany, it is hardly necessary to say that the record of the last five years is not of a character to justify an exception, at the present time, to the general rule to which reference has just been made. Her case demands a definite test. The length of this period will largely depend upon the acts of the German Government, and it is within the choice of that Government, by its attitude toward the treaty of peace, to shorten the period of delay which the League of Nations, without any intention of prolonging it unduly, shall consider it necessary to fix.

"Provided these necessary conditions are assured, they see no reason why Germany should not become a member of the League in the early future."

In the letter of the president of the Interallied Peace Conference covering the reply just quoted, it was stated:

"VI. The Allied and Associated Powers have given consideration to the request



No one denies that by destiny the League of Nations should be universal. That is why it has included not only Switzerland but still further the majority of those states which during the war officially or privately took notice of the creation of a federation of this kind. Universality is, moreover, demanded for reasons of political opportuneness. A League of Nations from which should be excluded one or more states which, on account of geographical situation or by reason of economic activity, were important for member states would not really be in a position to assure the maintenance of peace. The exclusion created by these divergencies and the divergencies themselves encourage hostile groupings. That would thus be traveling toward a goal opposed to the one which is proposed: Peace founded upon 'the solidarity of nations.'<sup>1</sup>

In principle, the procedure of Article 17 is the same as that which Articles 12-15 establish for members of the League of Nations. Still, it is necessary to observe the following differences from the application of Article 15:

a. According to par. 1 the Council may modify the ordinary rules in the way that seems just to it. Equity would desire that use of this option should be made only to introduce special guaranties of impartiality.

b. When the procedure is under way, the Council may still decide, if this seems necessary, upon modifications in Articles 12 to

of the German delegation that Germany should at once be admitted to the League of Nations. They are unable to accede to this request.

"The German revolution was postponed to the last moments of the war, and there is as yet no guaranty that it represents a permanent change. In the present temper of international feeling, it is impossible to expect the free nations of the world to sit down immediately in equal association with those by whom they have been so grievously wronged. To attempt this too soon would delay and not hasten that process of appeasement which all desire.

"But the Allied and Associated Powers believe that if the German people prove by their acts that they intend to fulfill the conditions of the peace, and that they have abandoned those aggressive and estranging policies which caused the war, and have now become a people with whom it is possible to live in neighborly good fellowship, the memories of the past years will speedily fade, and it will be possible at an early date to complete the League of Nations by the admission of Germany thereto. It is their earnest hope that this may be the case. They believe that the prospects of the world depend upon the close and friendly co-operation of all nations in adjusting international questions and promoting the welfare and progress of mankind.

"But the early entry of Germany into the League must depend principally upon the action of the German people themselves."

<sup>1</sup>Message, pages 56-57.

16 to be made for the particular case. But a right as essential as the appeal to the Assembly must not be suffered to undergo any harm.

#### ARTICLE 18

This important provision concerns future treaties only. But this is in no wise a serious limitation, for Article 20 of the Covenant abrogates all old treaties incompatible with the League of Nations, when concluded between its members, or it obliges them to free themselves therefrom as soon as possible, when other states are interested in them. In the relations between members of the League of Nations, the Covenant is the new treaty which invalidates the old law, and for future conventions it is the superior law which stands above any special understanding. Its validity is analogous to that attributed by public law to the national constitution in relation to ordinary legislation.

Registration and not publication of treaties by the Secretariat is the condition of international validity. But it is necessary to admit that all members of the League have the right to consult the registry of engagements kept by the Secretariat.

All conventions between members must be registered, whatever their nature. Still, unwritten (*dénuées de forme*) understandings, from which each party may absolve itself at its own election, fall outside this rule.

#### ARTICLE 19

This article imposes no immediate obligation on the state. It invests the League of Nations with no authority, but it does lay down the important principle of the evolution of existing law and the modification of acquired rights.

#### ARTICLE 20

See the commentary on Article 18.<sup>1</sup>

#### ARTICLE 21

. In the course of the conversations and negotiations which took place at Paris from the middle of January to the middle of May,

<sup>1</sup>Commentary, pages 142-143.

many methods of giving recognition to the special situation of perpetually neutral Switzerland were considered. The hope of obtaining this recognition, in the sense of the Swiss project, correlated with the assignment of the seat of the League, was not realized. By the final text of the Covenant, Switzerland was not able to make any reservations when entering the League of Nations. But on the other hand, Article 21 of the Covenant allowed the giving of recognition to the fact that neutrality is an engagement for safeguarding the state of peace. This article declares that such engagements are not incompatible with any provision of the Covenant. It cites as examples "treaties of arbitration and regional understandings like the Monroe doctrine." It is indisputable that the treaties of 1815, and especially the act of November 20, concerning our neutrality constitute in an eminent degree an "engagement for the maintenance of peace," which by the terms of Article 21 of the Covenant may hold good in the League of Nations.

The Swiss delegates presented this point of view to the president of the League of Nations Commission, and Mr. Ador, president of the Confederation, in the course of his second sojourn at Paris (April 28-May 31, 1919) had the satisfaction of convincing many of the most competent statesmen.<sup>1</sup>

By Article 1 the declaration of adhesion must be given without reservations. By "reservations" in the sense of this text must be understood a declaration by which a state, member of the League, should refuse to assume one of the obligations resulting from the Covenant, or should pretend to impose a personal interpretation of such and such a provision of the Covenant, or should claim a special right, other than those which belong to all League states. A reservation makes a breach in the Covenant to the benefit of the one that formulates it. The formal exclusion of any reservation is explained by the deplorable experiences on the occasion of the Second Hague Conference. Conventions which were the result of laborious compromises were in the end signed or ratified by certain states only under reservations excluding articles which did not suit them.

A reservation properly so-called on the subject of neutrality,

<sup>1</sup>Message, page 52.

which profoundly modifies the obligations flowing from Article 16, would not therefore be admissible. But Switzerland will not make a reservation declaring that by virtue of Article 21 her neutrality holds good as an international engagement assuring the maintenance of peace, and as such is compatible with all the provisions of the Covenant; because on this point, as well as for the Monroe doctrine, the reservation is made by the Covenant itself. This is not a case of a declaration made unilaterally by the interested state. Article 435 of the treaty of peace recognizes in fact that the neutrality of Switzerland must be regarded as an international engagement for the maintenance of peace. The Covenant of the League of Nations having been inserted in the treaty of peace and having been signed by the same states, Article 435 authentically interprets Article 21.

As our country attaches a particular importance to the maintenance of its neutrality and in order that no doubt may exist on the subject, it is important that, in acceding to the League of Nations, she should make an express declaration on this point. It is indisputable that the maintenance of neutrality relates especially to the sanctions of Article 16 because it is necessary only for this situation, but nothing must be neglected to avoid differences in the interpretation of important points. Switzerland equally desires neither to deceive the League of Nations by a too extensive interpretation of her neutrality nor to surprise the eventual adversary of the League by a policy which in its opinion would appear to be two-faced.<sup>1</sup>

The expression "regional understandings" may be variously understood. It may be conceived that neighbor states form within the League of Nations something like close communities for developing more completely the principles of the League of Nations. The Pan American Union would be an organism of this kind.

Treaties of obligatory arbitration are in no wise contrary to the League of Nations, for nothing in it is opposed to states engaging to settle their differences by the judicial method. In this connection it is proper to observe that the Hague convention for the pacific settlement of international disputes is always in force.

<sup>1</sup>Message, pages 93-94.

## ARTICLE 22

This article establishing mandatories, which has no immediate significance for Switzerland, contains no provision of a truly juridical nature, with the exception of the last three paragraphs, which deal with oversight by the League of Nations of the execution of mandates. It develops a program for the administration of the colonies ceded by the German Empire and the countries to be separated from the Ottoman Empire. A Permanent Commission of the League of Nations receives all the reports which the mandatory states are to send to it annually and gives its advice on this subject.

## ARTICLE 23

By this article, as well as by the preceding one, the states assume no immediate obligation; in its essential provisions it confines itself to developing a program of activity for the League of Nations in the field of public economy and of social foresight.

The organization foreseen in par. *a* for the development of international labor law has found its first realization in Part XIII of the treaty of peace with Germany.<sup>1</sup>

In requiring an equitable treatment of indigenous populations, par. *b* undertakes to declare that all states are bound by the principles applicable to colonial mandates in accordance with Article 22. This provision as well as that of par. *d*, prohibiting commerce and trade in arms, goes into a field already partly regulated by various international agreements (Kongo Act of February 26, 1885, Anti-Slavery Act of Brussels of July 2, 1890, and the Algeciras Act of April 7, 1906).

Par. *e*. The fight against certain immoral and dangerous forms of commerce which had already been undertaken before the war by international treaties is to be continued under the control of the League of Nations (international arrangement concerning the repression of the white slave trade of May 18, 1904; opium monopoly of Article 72 of the Algeciras Act).

Par. *f*. For the same reasons as in the case of par. *e*, the League of Nations has been intrusted with international hygiene and the measures to be taken for preventing and fighting epidemics;

<sup>1</sup>See "Labor in the Treaty of Peace," *League of Nations*, II, No. 5, October, 1919

efficient action is indeed possible only over a very large territory and if methodical employment and appreciation of all local means of assistance are involved. The most important of the agreements already concluded in this field is the International Sanitary Convention for the application of protective measures against the plague, cholera and yellow fever of December 3, 1903.

The activity of the League of Nations so far as concerns public health must be encouraged and popularized by the organization of the Red Cross mentioned in Article 25.

Par. 6. The very important field of economic relations has unfortunately been treated only in an extremely casual manner in the Covenant of the League of Nations.<sup>1</sup>

The Department of Public Economy has examined this question and has submitted it to a special commission. This study has led it to pronounce in favor of the adhesion of Switzerland.

It is quite generally believed that one of the principal tasks of the League of Nations is to assure an equitable international economic situation, economic peace being one of the essential bases of political peace. The German project for the League of Nations, for example, contains detailed provisions on freedom of commerce, free passage, etc. It must, however, be stated that opinions are very various on the subject of the proper methods of assuring economic peace. Some expect the elimination of all causes of international tension to come from an absolute freedom of commerce. Others, on the contrary, demand that economically weak nations be protected against those, which, thanks to the commercial aptitudes of their populations, or because they possess certain materials of prime importance, are in a privileged situation for the international economic struggle. If it had been tried to solve all these problems at a single stroke, for all states, by provisions of the Covenant of the League of Nations, it is very doubtful if any positive result could have been obtained in the very short time at disposal.

The founders of the League have not, however, completely neglected to approach the question of the regulation of economic interests. The Covenant itself on this subject presents only the following provisions:

1. By Article 23, *a*, the international regulation of labor is one

<sup>1</sup>Commentary, pages 143-145.

of the tasks of the League of Nations. A positive result has already been attained by the elaboration of the convention which forms Part XIII of the treaty of peace with Germany.<sup>1</sup>

2. Article 23, *e*, sets forth certain general principles concerning commercial relations and communications which we shall have to examine in their practical bearing.

3. The provisions of Article 16 (sanctions) are of very great importance from the economic point of view.

Such are the provisions of the Covenant which have the most significance in this respect, and for members of the League they are before everything a source of risks, and of grave risks.

But what is more important than the immediate advantages and the direct inconveniences which may result from accession to the League of Nations is the general political situation which the decision to enter the League or to remain outside of it may create, a political situation which will be determinant from the point of view of our economic relations and for the conclusion of treaties of commerce in general.

By Article 23, *e*, the members of the League, under reserve of the provisions of international conventions already existing or which shall be hereafter concluded must make "the necessary provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of *all* members."

Switzerland has up till now had, respecting states of the greatest importance in this domain, the benefit of treaties of commerce, friendship and establishment confirming the principle of freedom of transit and of the free establishment of the citizens of the two contracting countries and containing provisions relative to commercial relations. The régime most generally effective is that of the most-favored nation.

As the Covenant establishes no definite limit concerning the right of each state to regulate these questions at will, Article 23, *e*, contains in short only a declaration of principle. It would be deceptive to expect immediate advantages from it. But it would be equally wrong to believe that this provision is devoid of all practical value. It implies a program of development of commercial

<sup>1</sup>Labor in the Treaty of Peace with Germany, *League of Nations*, II, No. 5.

relations and communications, incontestably favorable to our economic interests.

It is very important for a country, which like ours is at the center of the continent, to have the possibility of communicating freely not only with its neighbors but also with states separated from it by other countries. Especially is it important for it to have free access to the sea. This principle is set forth in one of the fourteen points of President Wilson. Normally, freedom of communications and equality of treatment, from which the transports of all states must benefit, are a natural consequence of the competition between the various land and sea lines and between the various ports. It is, however, important that it should be recorded in a treaty binding, if possible, a great number of states, and excluding any arbitrary differentiation or restriction from the field of international relations.

Communications by railroad are the subject of the Bern convention of October 14, 1890, and of the conventions completing it. This convention, which had been denounced by several states (France, Belgium, Italy and Serbia), has been renewed between the signatories by the terms of Article 366 of the treaty of peace with Germany, and it must be replaced within five years by a new and enlarged treaty.

The situation of Switzerland is improved by Articles 354-356 of the treaty of peace, which set forth for all states the principle of freedom of navigation of the Rhine from Basel to the sea and which give Switzerland the right of representation on the Rhine Commission alongside France, Germany, the Netherlands, Great Britain and Italy. Switzerland thus obtains the full and entire recognition of her rights as a riverain state which have been unjustly refused to her since the treaty of Vienna.

The Paris Conference has also provided for working out a general convention concerning transit, waterways, ports and railroads. By Article 379 of the treaty, Germany has given her adhesion in advance to this convention when it shall have been approved by the League of Nations. Switzerland has secured the opportunity to make her desires known to the commission charged with studying this problem.



### HOW PROVISIONS MAY BE REALIZED

The peace treaty contains a series of provisions in the interest of freedom of communications, notably profitable to states which have no access or an insufficient access to the sea. The principles thus recognized may in their consequences have a real importance for Switzerland. Moreover, they show in what sense the program established by Article 23, *e*, of the Covenant will be realized.

The Covenant confines itself to setting forth this general principle, that the states members of the League shall, respecting commerce, mutually assure each other equitable treatment. The treaty of peace does not contain additional provisions directly touching the commercial relations of Switzerland.

By Article 23, *e*, of the Covenant, "the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind." This undoubtedly means that, in the League of Nations and in spite of the principle of equality of treatment set forth in favor of all its members, measures shall be taken to prevent states whose industry was not wiped out by the war from being able on this account to gain too much of an economic advance over those which will, during the years immediately to come, have to devote all their energies to the restoration of their industry.

What gives importance to the League of Nations for our economic life is the free play which may result to us from its establishment. Primarily, a country such as Switzerland, for which international exchanges have a fundamental importance, has every interest in the development of international law and in everything that may assure security to the relations between peoples. We should, therefore, in any case have cause to hail with joy the idea of a renovation of international policy, which is at the basis of the League of Nations. It at least makes entirely possible an economic organization of the world which can only be favorable to a small people, laborious but without political power. Without the League of Nations conversely, the isolation of states and their rivalry would engender a state of things in which international economic life, on the ground of being dominated by the principal Powers, would undergo more and more the counterblow of political interests and passions. Switzerland must, however, ask herself not only what interest she may have broadly in the creation of the

League of Nations but also what influence the decision she will take respecting entrance into the League may have on her commercial relations.<sup>1</sup>

The Covenant assures economic advantages to the League states only in a very indefinite form. It would, therefore, be erroneous to accede to the League with the idea that thereby we should obtain guaranties from which our commercial relations abroad would profit forthwith and directly.

But it must be understood that if we stay outside the League of Nations our political isolation will make the establishment of our foreign commerce on stable and advantageous foundations very difficult. Several states, to-day and doubtlessly for some time yet, are disposed to alter their commercial policy in the direction of protectionism. It is also possible that the states united by the war would mutually favor each other in the field of commercial relations. In any case, a state which after being invited to join the League of Nations preferred not to adhere to it will, as a general rule, find itself in a situation less favorable for the conclusion of treaties of commerce, than if, by the mediation of the League, it had entered into closer relations with its members. At a time when questions of sentiment have a very considerable influence on policy, these imponderabilia can no longer be neglected in the solution of economic problems. It would be exaggerated optimism to admit that as a great buyer Switzerland might, regardless of her international situation, assure herself of a satisfactory price as a seller.

In examining this aspect of the problem of the League of Nations, it must never be lost to sight that the economic existence of Switzerland rests to a very large degree on her relations with foreign countries. Our industries work especially for the export trade. Our primary materials come to us from abroad. Our transports, that is, both the utilization of our ways of communication through foreign countries and the necessary transportation of our imports, depend upon international agreements.

If the Covenant of the League of Nations by its text offers us very little tangibly from the point of view of commercial policy, if even to skeptical eyes it offers us nothing at all, our eventual ad-

<sup>1</sup>Message, pages 75-79.

hesion to the League is none the less of a nature to bring us closer to other member states and this constitutes an essential moral factor, which Switzerland could invoke on the day when she should be menaced in her vital interests. If we stay outside, a quantity of negotiations and of possibilities of agreements will be cut off. Relations between peoples will be settled in our absence and we shall lose the best occasions for making ourselves heard.

If it is not to be disregarded that the system of sanctions organized by the Covenant may be a source of dangers and of serious adverse economic influence, especially for a country like Switzerland which depends intimately on the rest of the world, it must also be remembered that these dangers and this adverse influence also threaten us, although in a different way, quite as much if we refuse to enter the League of Nations as if we accede to it. If we should stay out of the League and its sanctions should be ordered, it would probably be even more difficult for us to assure our economic existence than in the course of the last war. The blockade would be even more general and more strict and Switzerland, not belonging to the League of Nations, could not count on good will and sympathies any more than in the past. On the other hand, if, as a member of the League, Switzerland takes part in economic measures directed against a rebel state, she must take account not only of the rupture of relations between herself and that state, but also of measures of retorsion which the latter will be able to take at home in regard to properties belonging to Switzerland and even to her citizens. This risk may be very serious, especially in a conflict affecting the states bordering upon us. It has its compensation in the obligation imposed by the Covenant on the federated states to lend each other mutual support in economic matters.<sup>1</sup>

#### ARTICLE 24

There already exists a great number of international bureaus; they are offices created by international treaties to direct affairs regulated by these agreements; a certain number of these bureaus, among them the most important are at Bern (Bureau of the Universal Postal Union, Bureau of the International Telegraphic Union, International Bureau of Intellectual Property, Bureau of

<sup>1</sup>Message, pages 104-106.

the Union for Railroad Transportation; besides, there are an International Institute of Agriculture at Rome, an Office of the Metric Union at Paris, etc.). These offices are to be placed, with the consent of states members of these unions, under the supervision of the League of Nations, notwithstanding that up to the present this control was intrusted under the rule to the Government of the state in which the international office was located, this Government moreover having the right of making the necessary appointments. The possibility of obtaining the consent of the interested states to this new organization results indirectly from the fact that all these conventions of union may be recast. Since all the international bureaus still to be created and all the permanent international commissions will be equally under the League of Nations, it must be foreseen that in time a complete international administration will take form within the League of Nations.

For matters on which special bureaus or special commissions will not be constituted, the functions which they would have to assume will be assigned to the Secretariat of the League of Nations with the consent of the Council.

#### ARTICLE 25

Article 25 has been inserted in the Covenant at the request of a committee constituted by the representatives of the national Red Cross Societies of America, France, Great Britain, Italy and Japan. These societies, believing that the conclusion of peace must not interrupt the charitable action under the Red Cross flag during the war, decided upon the creation of a League of Red Cross Societies. The statutes of this league comprise a peace program in conformity with Article 25. In their desire to render a striking homage of gratitude to the International Committee of the Red Cross at Geneva, the founders of the league have also fixed upon that city as its seat. All the national Red Cross societies of the Allied and neutral countries have been invited to adhere to it and the majority have already responded favorably to this invitation, which will probably be extended to all the other Red Cross societies as soon as the League of Nations shall have been given a universal character.

## ARTICLE 26

The possibility of modifying an international treaty by decisions taken by the majority is, in international law, a radical novelty; up to the present, international unions remained in force in their earlier form for all contracting states which did not ratify the revised treaty. But the simultaneous maintenance of old and new agreements, concordant in the essential points, is not possible for the League of Nations, whose constituent Covenant frequently contains provisions of an organic character. This is why the rule has been laid down that the Covenant shall be obligatory for all members and that it shall entirely replace any earlier edition.

But as the states are, at present at any rate, not at all disposed to submit in advance to a decision of other states, the right of withdrawing from the League of Nations has been reserved to any dissident state. It is a right on which those states can not pass which are not represented on the Council, and which consequently do not enjoy the right of veto provided by Article 26. This rule agrees in principle with a proposition formulated by Switzerland.<sup>1</sup>

But the Swiss proposition permitted the withdrawal only when essential modifications were in question, and it left to a judicial jurisdiction the duty of deciding, in case of need, whether this requirement was or was not realized.

The procedure of revision is not defined by the Covenant. It must be supposed that it is the Assembly which will debate and decide the revision. But the decision will enter into force only when it shall have been ratified by the individual states and when it shall be possible thus to determine that this has been done by the majority provided by Article 26. It is to be admitted that

<sup>1</sup>The Swiss delegation to the Conference of Neutrals, March 20-21, 1919, proposed a new paragraph to Article 26 as it appeared in the draft of February 14, consisting of alternatives, as follows:

*“First variant:* Revision of the Covenant may not affect its essential elements, nor create, modify or abolish the special rights or particular obligations regarding certain states or groups of states. Provisions relative to this subject matter may be modified only with the consent of the interested parties.

*“Second variant:* In case of revision of the Covenant, non-consenting states shall be able to denounce the Covenant.

*“New par. 3:* Disputes relative to the application of the preceding paragraph shall be judged by the Permanent Court of International Justice sitting in plenary session.”

neither a qualified majority nor unanimity is needed for the decision of the Assembly, which is to be submitted to the ratification of individual states. Moreover, it is not necessary to suppose that the ratification of a state is prejudged by the vote given in its behalf in the Assembly. What determines the adoption of a revision and the exercise of the right of withdrawal is either ratification or a refusal of ratification. Withdrawal, following a refusal of ratification, must be signified as soon as possible and may not take place later at any time whatever. Refusal to ratify does not of itself signify that a state has the intention of withdrawing; it is to be regarded only as a final attitude adopted by a state in the course of the vote on the revision. Only after this has been finally accepted, in conformity with Article 26, the states which do not ratify it may declare whether they intend to yield to the majority or whether they prefer to withdraw from the League of Nations. In our judgment, there is need to apply in this connection the rule which the Swiss Advance Project expressly formulates and according to which a state which has not ratified may simply retire.<sup>1</sup>

<sup>1</sup> Commentary, pages 145-147.

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# THE UNITED STATES SENATE AND THE TREATY

## *A Record of all Votes, Those of the Bitter-Enders Specially Indicated*

The treaty of peace with Germany was transmitted to the Senate by the President on July 10, 1919. From July 14 to September 4 the Committee on Foreign Relations held hearings concerning it and submitted it to reading. It was presented to the Senate on September 4 and the majority report of the committee (S. Rept. 176) was published September 10. A Democratic minority and Senator McCumber alone also made reports from the committee. Amendments reported by a majority of the committee occupied the Senate in Committee of the Whole from October 2 to November 6. Reservations came to vote November 7 and the vote was completed in the Committee of the Whole on November 18. The Senate voted November 19, the reservations voted by a majority failing of the necessary two-thirds for ratification.

For two weeks prior to January 31, 1920, members of both parties negotiated respecting an agreement on reservations.

February 2 the Republican leader, following a similar announcement by the Democratic leader, gave notice that on February 9 he would ask unanimous consent to take up the treaty again. This was done. From that date until March 18 the Senate voted 15 reservations by majority in Committee of the Whole. Proceedings in the Senate began on March 18 and the resolution of ratification with those reservations came to a vote on March 19, when it failed of a two-thirds majority.

A resolution terminating the state of war was immediately introduced into the House of Representatives, from the Committee on Foreign Affairs of which it was reported on April 8 (H. Rept. 801), the Democratic minority also making a report. The resolution was passed April 9, sent to the Senate and referred to the Committee on Foreign Relations. That committee reported it back amended so as to be substantially a new resolution (S. Rept. 568) on April 30, and the Senate passed it in this form on May 15. The House concurred on May 21, and the President vetoed the resolution on May 27. The next day the House of Representatives failed to pass the resolution by the two-thirds majority required to override the veto. The Senate did not again have the resolution before it.

## PROCEEDINGS IN COMMITTEE OF THE WHOLE

## AMENDMENTS

Art. 35: Strike out the words "and Associated" from the phrase "Principal Allied and Associated Powers;" FALL; vote, October 2, 1919, yeas, 30; nays, 58; Bitter-enders, yea.

Eliminating the United States from commissions under the treaty, Art. 50, Annex, 17: add "or the United States of America" in last line; FALL; vote, October 2, 1919, yeas, 31; nays, 56; Bitter-enders, yea.

Art. 86: Strike out "and Associated" from the phrase "Principal Allied and Associated Powers;" FALL; vote, October 2, yeas, 28; nays, 53; Bitter-enders, yea.

Art. 88, Annex, Sec. 2: Strike out "the United States of America" and "and Associated;" FALL; vote, October 2, yeas, 31; nays, 46; Bitter-enders, yea.

Arts. 156, 157 and 158: Strike out "Japan" and insert "China;" COMMITTEE; vote, October 16, yeas, 35; nays, 55; Bitter-enders, yea.

Art. 3: Add to par. 4: "*Provided*, That when any member of the League has or possesses self-governing dominions or colonies or parts of empire, which are also members of the League, the United States shall have votes in the Assembly or Council of the League numerically equal to the aggregate vote of such member of the League and its self-governing dominions and colonies and parts of empire in the Council or Assembly of the League;" JOHNSON; vote, October 27, yeas, 38; nays, 40; Bitter-enders, yea.

Art. 15: Insert as next to last paragraph: "*Provided*, that when imperial and federal governments and their self-governing dominions, colonies or states are members of the League, as originally organized or hereafter admitted, the empire or federal government and the dominions, colonies or states, collectively, have one membership, one delegate and one vote in the Council and only three delegates and one vote in the Assembly;" SHIELDS; vote, October 29, yeas, 32; nays, 49; Bitter-enders, yea.

Art. 15: Insert as next to the last paragraph: "Whenever the case referred to the Assembly involves a dispute between one member of the League and another member whose self-governing dominions or colonies or parts of empire are also represented in the Assembly, neither the disputant members nor any of their said dominions, colonies or parts of empire shall have a vote upon any phase of the question;" MOSES; vote, October 29, yeas, 36; nays, 47; Bitter-enders, yea.

Preamble: Add to last line: "we invoke therefore the considerate judgment of mankind and the gracious favor of Almighty God;" SHERMAN; motion to table, October 29, yeas, 57; nays, 27; Bitter-enders, nay.

Art. 3: Add at end amendment on voting; JOHNSON; (text, Congressional Record, p. 8004, October 27, 1919) substantially the same as Mr. Johnson's reservation voted down on November 18, page 173; vote, October 29, yeas, 35; nays, 42; Bitter-enders, yea.

Arts. 156, 157 and 158 (Shantung): Motion to strike out; LODGE; vote, November 4, yeas, 26; nays, 41; Bitter-enders, yea.

Part XIII: To strike out Part XIII; LA FOLLETTE; vote, November 5, yeas, 34; nays, 47; Bitter-enders, yea.

Art. 12: Add to end of first paragraph: [The members of the League . . . agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council] "and not then until an advisory vote of the people shall have been taken;" GORE; vote, November 6, yeas, 16; nays, 67; Bitter-enders, yea.

### RESERVATIONS

#### *Preamble*<sup>1</sup>

1 "The reservations and understandings adopted by the Senate are to  
2 be made a part and a condition of the resolution of ratification, which  
3 ratification is not to take effect or bind the United States until the  
4 said reservations and understandings adopted by the Senate have  
5 been accepted by an exchange of notes as a part and a condition of  
6 said resolution of ratification by at least three of the four Principal  
7 Allied and Associated Powers, to wit, Great Britain, France, Italy,  
8 and Japan;" COMMITTEE; November 7, yeas, 48; nays, 40; Bitter-  
enders, yea.

The following efforts to change the text were made:

Strike out:

"Which ratification is not to take effect," line 2 to end; McCUMBER; vote, November 7, yeas, 40; nays, 48; Bitter-enders, nay.

Strike out the preceding and insert in lieu the following:

"The acceptance of such reservations and understandings by any party to said treaty may be effected by an exchange of notes;" McCUMBER. vote, November 7, yeas, 40; nays, 48; Bitter-enders, nay.

Strike out the words "three of" in line 6 and read: "by at least the four Principal Allied and Associated Powers, to wit, Great Britain, France, Italy and Japan;" BORAH; vote, November 7, yeas, 25; nays, 63; Bitter-enders, yea.

Strike out in lines 5 to 6 and insert so as to read: ". . . notes as a part and a condition of said resolution of ratification, or by participating in any of the proceedings authorized by this said treaty, by at least." etc.; KING; vote, November 7, yeas, 42; nays, 46; Bitter-enders, nay.

<sup>1</sup>Originally, and as voted, the Preamble was Reservation 1. For the sake of clarity, the final numbering has been followed.

*Reservation 1*

1 "The United States so understands and construes Article 1 that in  
2 case of notice of withdrawal from the League of Nations, as provided  
3 in said article, the United States shall be the sole judge as to whether  
4 all its international obligations and all its obligations under the said  
5 Covenant have been fulfilled, and notice of withdrawal by the United  
6 States may be given by a concurrent resolution of the Congress of the  
7 United States;" COMMITTEE; vote, November 8, yeas, 50; nays, 35;  
Bitter-enders, yea.

The following efforts to change the text were made:

After the word "given" in line 6 insert: "by the President or by";  
GORE; vote, November 8, yeas, 18; nays, 68; Bitter-enders, yea.

Strike out "concurrent" in line 6, insert "joint"; NELSON; vote,  
November 8, yeas, 39; nays, 45; Bitter-enders, nay.

Strike out all after the word "fulfilled" in line 5; WALSH of Montana;  
vote, November 8, yeas, 37; nays, 49; Bitter-enders, nay.

Strike out the words "the United States" in line 3 and substitute "any  
nation so withdrawing;" KING; vote, November 8, yeas, 32; nays, 52;  
Bitter-enders, nay.

*Reservation 2*

1 "The United States assumes no obligation to preserve the territorial  
2 integrity or political independence of any other country or to inter-  
3 fere in controversies between nations—whether members of the  
4 League or not—under the provisions of Article 10, or to employ the  
5 military or naval forces of the United States under any article of the  
6 treaty for any purpose, unless in any particular case the Congress,  
7 which, under the Constitution, has the sole power to declare war or  
8 authorize the employment of the military or naval forces of the  
9 United States, shall by act or joint resolution so provide;" COM-  
MITTEE; vote, November 13, yeas, 46; nays, 33; Bitter-enders, yea.

The following efforts to change the text were made:

Substitute the following: "That the suggestions of the Council of the  
League of Nations as to the means of carrying the obligations of Article 10  
into effect are only advisory, and that any undertaking under the pro-  
visions of Article 10, the execution of which may require the use of Ameri-  
can military or naval forces or economic measures, can under the Consti-  
tution be carried out only by the action of the Congress, and that the  
failure of the Congress to adopt the suggestions of the Council of the  
League or to provide such military or naval forces or economic measures  
shall not constitute a violation of the treaty;" THOMAS; vote, November  
10, yeas, 36; nays, 48; Bitter-enders, nay.

Substitute the following: "The United States assumes no obligation, legal or moral, under Article 10 and shall not be bound by any of the terms or conditions of said article;" BORAH; vote, November 10, yeas, 18; nays, 68; Bitter-enders, yea.

Strike out in lines 7 to 9: "or authorize the employment of the military or naval forces of the United States;" WALSH of Montana; vote, November 10, yeas, 38; nays, 45; Bitter-enders, nay.

CLOTURE, point of order, November 13, appeal from decision of the Chair; HITCHCOCK; vote, yeas, 44; nays, 36; Bitter-enders, yea.

Add at end: "and the United States hereby releases all members of the League from any obligation to it under Article 10 and declines to participate in any proceeding of the Council authorized thereby;" WALSH of Montana; vote, November 13, yeas, 4; nays, 68; Bitter-enders, nay.

After the word "obligation" in line 1 insert the following: "beyond the expiration of five years from the ratification of this treaty;" THOMAS; vote, November 13, yeas, 32; nays, 46; Bitter-enders, nay.

Add at end the following: "*Provided*, however, That the United States assumes for the period of five years, with other members of the League, the obligation of said Article 10 as to the following republics, to wit: Poland, Czecho-Slovakia and the Serb-Croat-Slovene State;" WALSH of Montana; vote, November 13, yeas, 32; nays, 44; Bitter-enders, nay.

Add at end the following: "*Provided*, however, That the United States assumes for the period of five years with the other members of the League the obligation of said Article 10 as to the Republic of France in maintaining her sovereignty over Alsace-Lorraine;" MCKELLAR; vote, November 13, yeas, 31; nays, 46; Bitter-enders, nay.

Substitute the following: "That the advice mentioned in Article 10 of the Covenant of the League which the Council may give to the member nations as to the employment of their naval and military forces is merely advice which each member nation is free to accept or reject, according to the conscience and judgment of its then existing Government, and in the United States this advice can only be accepted by action of the Congress at the time in being, Congress alone under the Constitution of the United States having the power to declare war;" HITCHCOCK; vote, November 13, yeas, 32; nays, 44; Bitter-enders, nay.

Substitute the following: "The United States in assuming the obligation to preserve the territorial integrity or existing political independence of any other country, or to interfere in controversies between nations, whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States, does so with the understanding that the advice or recommendation of the Council or Assembly under Articles 10 and 15 is purely advisory and absolutely subject to such judgment and action as the Congress of the United States

may find justified by the facts in any case submitted;" OWEN; vote, November 13, yeas, 33; nays, 44; Bitter-enders, nay.

As an addition: "But, finally, it shall be the declared policy of our Government, in order to meet fully and fairly our obligations to ourselves and to the world, that the freedom and peace of Europe being again threatened by any Power or combination of Powers, the United States will regard such a situation with grave concern as a menace to its own peace and freedom, will consult with other Powers affected with a view to devising means for the removal of such menace, and will, the necessity arising in the future, carry out the same complete accord and co-operation with our chief cobelligerents for the defense of civilization;" HITCHCOCK; vote November 13, yeas, 34; nays, 45; Bitter-enders, nay.

CLOTURE: To table appeal from decision of Chair; ASHURST; vote, November 15, yeas, 62; nays, 30; Bitter-enders, nay.

CLOTURE: LODGE; vote, November 15, yeas, 78; nays, 16; Bitter-enders, yea, but divided.

#### *Reservation 3*

1 "No mandate shall be accepted by the United States under Article  
2 22, par. 1, or any other provision of the treaty of peace with Ger-  
3 many, except by action of the Congress of the United States;" COM-  
MITTEE; agreed to, November 15, without division; see also Pro-  
ceedings in the Senate, p. 177.

#### *Reservation 4*

1 "The United States reserves to itself exclusively the right to de-  
2 cide what questions are within its domestic jurisdiction and declares  
3 that all domestic and political questions relating wholly or in part to  
4 its internal affairs, including immigration, labor, coastwise traffic, the  
5 tariff, commerce, the suppression of traffic in women and children  
6 and in opium and other dangerous drugs, and all other domestic  
7 questions, are solely within the jurisdiction of the United States and  
8 are not under this treaty to be submitted in any way either to  
9 arbitration or to the consideration of the Council or of the Assembly  
10 of the League of Nations, or any agency thereof, or to the decision  
11 or recommendation of any other Power;" COMMITTEE; vote,  
November 15, yeas, 59; nays, 36; Bitter-enders, yea.

The following efforts to change the text were made:

Substitute the following: "That no member nation is required to submit to the League, its Council, or its Assembly, for decision, report, or recommendation, any matter which it considers to be in international law a domestic question, such as immigration, labor, tariff, or other matter relating to its internal or coastwise affairs;" HITCHCOCK; vote, November 15, yeas, 43; nays, 52; Bitter-enders, nay.

After the word "questions" in line 7, insert the following:  
 "and all questions affecting the present boundaries of the United States and its insular or other possessions;" HALE; vote, November 15, yeas, 52; nays, 40; Bitter-enders, yea.

This amendment was subsequently stricken out.

*Reservation 5*

1 "The United States will not submit to arbitration or to inquiry by  
 2 the Assembly or by the Council of the League of Nations, provided  
 3 for in said treaty of peace, any questions which in the judgment of  
 4 the United States depend upon or relate to its long-established  
 5 policy, commonly known as the Monroe doctrine; said doctrine is  
 6 to be interpreted by the United States alone and is hereby declared  
 7 to be wholly outside the jurisdiction of said League of Nations and  
 8 entirely unaffected by any provision contained in the said treaty of  
 9 peace with Germany;" COMMITTEE; vote, November 15, yeas, 55;  
 nays, 34; Bitter-enders, yea.

The following efforts to change the text were made:

Substitute the following: "That the national policy of the United States known as the Monroe doctrine, as announced and interpreted by the United States, is not in any way impaired or affected by the Covenant of the League of Nations and is not subject to any decision, report, or inquiry by the Council or Assembly;" HITCHCOCK; vote, November 15, yeas, 43; nays, 51; Bitter-enders, nay.

Substitute the following: "The United States does not bind itself to submit for arbitration or inquiry by the Assembly or the Council any question which in the judgment of the United States, depends upon or involves its long-established policy, commonly known as the Monroe doctrine, and it is preserved unaffected by any provision in the said treaty contained;" PITTMAN; vote, November 15, yeas, 42; nays, 52; Bitter-enders, nay.

*Reservation 6*

1 "The United States withholds its assent to Articles 156, 157 and 158,  
 2 and reserves full liberty of action with respect to any controversy  
 3 which may arise under said articles between the Republic of China  
 4 and the Empire of Japan;" COMMITTEE; vote, November 15, yeas,  
 53; nays, 41; Bitter-enders, yea.

The following efforts to change the text were made:

Substitute the following: "The United States refrains from entering into any agreement on its part in reference to the matters contained in Articles 156, 157 and 158, and reserves full liberty of action in respect to any controversy which may arise in relation thereto;" McCUMBER; vote, November 15, yeas, 42; nays, 50; Bitter-enders, nay.

Substitute the following: "*Provided*, That in advising and consenting to the ratification of said treaty the United States understands that the German rights and interests, renounced by Germany in favor of Japan under the provisions of Articles 156, 157 and 158 of said treaty, are to be returned by Japan to China at the termination of the present war by the adoption of this treaty as provided in the exchanged notes between the Japanese and Chinese Governments of date May 25, 1915;" PITTMAN; vote, November 15, yeas, 39; nays, 50; Bitter-enders, nay.

*Reservation 7*

1 "The Congress of the United States will provide by law for the  
2 appointment of the representatives of the United States in the  
3 Assembly and the Council of the League of Nations, and may in its  
4 discretion provide for the participation of the United States in any  
5 commission, committee, tribunal, court, council or conference, or in  
6 the selection of any members thereof and for the appointment of  
7 members of said commissions, committees, tribunals, courts,  
8 councils or conferences, or any other representatives under the  
9 treaty of peace, or in carrying out its provisions, and until such  
10 participation and appointment have been so provided for and the  
11 powers and duties of such representatives have been defined by  
12 law, no person shall represent the United States under either said  
13 League of Nations or the treaty of peace with Germany or be  
14 authorized to perform any act for or on behalf of the United States,  
15 thereunder, and no citizen of the United States shall be selected  
16 or appointed as a member of said commissions, committees, tri-  
17 bunals, courts, councils or conferences except with the approval  
18 of the Senate of the United States;" COMMITTEE; vote, November  
15, yeas, 53; nays, 40; Bitter-enders, yea.

*Reservation 8*

1 "The United States understands that the Reparation Commission  
2 will regulate or interfere with exports from the United States to  
3 Germany, or from Germany to the United States, only when the  
4 United States by act or joint resolution of Congress approves such  
5 regulation or interference;" COMMITTEE; vote, November 15, yeas,  
54; nays, 40; Bitter-enders, yea.

*Reservation 9*

1 "The United States shall not be obligated to contribute to any ex-  
2 penses of the League of Nations, or of the Secretariat, or of any com-  
3 mission, or committee, or conference, or other agency, organized  
4 under the League of Nations or under the treaty or for the purpose



5 of carrying out the treaty provisions, unless and until an appropria-  
6 tion of funds available for such expenses shall have been made by the  
7 Congress of the United States;" COMMITTEE; vote, November 15,  
yeas, 56; nays, 39; Bitter-enders, yea.

*Reservation 10*

1 "If the United States shall at any time adopt any plan for the limita-  
2 tion of armaments proposed by the Council of the League of Nations  
3 under the provisions of Article 8, it reserves the right to increase such  
4 armaments without the consent of the Council whenever the United  
5 States is threatened with invasion or engaged in war;" COMMITTEE;  
vote, November 15, yeas, 56; nays, 39; Bitter-enders, yea.

*Reservation 11*

1 "The United States reserves the right to permit, in its discretion, the  
2 nationals of a covenant-breaking state, as defined in Article 16 of the  
3 Covenant of the League of Nations, residing within the United  
4 States, or in countries other than that violating said Article 16, to  
5 continue their commercial, financial and personal relations with the  
6 nationals of the United States;" COMMITTEE; vote, November  
15, yeas, 53; nays, 41; Bitter-enders, yea.

*Reservation 12*

1 "Nothing in Articles 296, 297, or in any of the annexes thereto, or in  
2 any other article, section or annex of the treaty of peace with Ger-  
3 many, shall, as against citizens of the United States, be taken to  
4 mean any confirmation, ratification or approval of any act otherwise  
5 illegal or in contravention of the rights of citizens of the United  
6 States;" COMMITTEE; vote, November 15, yeas, 52; nays, 41;  
Bitter-enders, yea.

*Additional Reservations*

"The United States declines to accept, as trustee or in her own right,  
any interest in or any responsibility for the government or disposition of  
the overseas possessions of Germany;" COMMITTEE; vote, November 17,  
yeas, 29; nays, 64; Bitter-enders, yea.

"The United States reserves to itself exclusively the right to decide what  
questions affect its honor or its vital interests and declares that such  
questions are not under this treaty to be submitted in any way either to  
arbitration or to the consideration of the Council or of the Assembly of the  
League of Nations or any agency thereof or to the decision or recom-  
mendation of any other power;" COMMITTEE (for Reed); vote, November  
17, yeas, 36; nays, 56; Bitter-enders, yea; see also Proceedings in the  
Senate, p. 177.

*Additional Proposals*

"The protectorate in Great Britain over Egypt is understood to be merely a means through which the nominal suzerainty of Turkey over Egypt shall be transferred to the Egyptian people; and shall not be construed as a recognition by the United States of any sovereign rights over the Egyptian people in Great Britain or as depriving the people of Egypt of any of their rights of self-government and independence;" OWEN; vote, November 17, yeas, 37; nays, 45; Bitter-enders, yea.

"Resolved, That the United States in ratifying the Covenant of the League of Nations does not intend to be understood as modifying in any degree the obligations entered into by the United States and the Entente Allies in the agreement of November 5, 1918, upon which as a basis the German Empire laid down its arms. The United States regards that contract to carry out the principles set forth by the President of the United States on January 8, 1918, and in subsequent addresses, as a world agreement, binding on the great nations which entered into it and that the principles there set forth will be carried out in due time through the mechanism provided in the Covenant, and that Article 23, par. b, pledging the members of the League to undertake to secure just treatment of the native inhabitants under their control, involves a pledge to carry out these principles;" OWEN; November 17, rejected without roll call.

*Reservation 13*

1 "The United States withholds its assent to Part XIII (Articles 387  
2 to 427, inclusive), of said treaty unless Congress, by act or joint reso-  
3 lution, shall hereafter make provision for representation in the organ-  
4 ization established by said Part XIII, and in such event the par-  
5 ticipation of the United States will be governed and conditioned by  
6 the provisions of such act or joint resolution;" McCUMBER; vote,  
November 17, yeas, 54; nays, 35; Bitter-enders, yea.

The following proposal immediately preceded the vote on the reservation:

"The United States withholds its assent to Part XIII, comprising Articles 387 to 427, inclusive, of the said treaty of peace, and excepts and reserves the same from the act of ratification, and the United States declines to participate in any way in the said general conference, or to participate in the election of the Governing Body of the International Labor Office constituted by said articles, and declines in any way to contribute or to be bound to contribute to the expenditures of said general conference or International Labor Office;" KING; vote, November 18, yeas, 43; nays, 48; Bitter-enders, yea.

*Additional Proposal*

"The Senate of the United States advises and consents to the ratification of said treaty with the following reservations and conditions, any-

thing in the Covenant of the League of Nations and the treaty to the contrary notwithstanding.

"When any member of the League has or possesses self-governing dominions or colonies or parts of empire, which are also members of the League, the United States shall have representatives in the Council and Assembly and in any labor conference or organization under the League or treaty numerically equal to the aggregate number of representatives of such member of the League and its self-governing dominions and colonies and parts of empire in such Council and Assembly of the League and labor conference or organization under the League or treaty; and such representatives of the United States shall have the same powers and rights as the representatives of said member and its self-governing dominions or colonies or parts of empire; and upon all matters whatsoever, except where a party to a dispute, the United States shall have votes in the Council and Assembly and in any labor conference or organization under the League or treaty numerically equal to the aggregate vote to which any such member of the League and its self-governing dominions and colonies and parts of empire are entitled.

"Whenever a case referred to the Council or Assembly involves a dispute between the United States and another member of the League whose self-governing dominions or colonies or parts of empire are also represented in the Council or Assembly, or between the United States and any dominion, colony, or part of any other member of the League, neither the disputant members or any of their said dominions, colonies, or parts of empire shall have a vote upon any phase of the question;" JOHNSON; vote, November 18, yeas, 43; nays, 46; Bitter-enders, yea.

The last paragraph was not voted upon.

#### *Reservation 14*

1 "The United States assumes no obligation to be bound by any  
2 decision, report or finding of the Council or Assembly in which any  
3 member of the League and its self-governing dominions, colonies  
4 or parts of empire in the aggregate have cast more than one vote,  
5 and assumes no obligation to be bound by any decision, report or  
6 finding of the Council or the Assembly arising out of any dispute  
7 between the United States and any member of the League if such  
8 member, or any self-governing dominion, colony, empire or part of  
9 empire united with it politically has voted;" LENROOT; vote,  
November 18, yeas, 55; nays, 38; Bitter-enders, yea.

The following effort to change the text was made:

Add at end: "Unless upon the submission of the matter to the Council or Assembly for decision, report or finding, the United States consents that the said dominions, colonies or parts of empire may each have the right to cast a separate vote upon the said election, decision, report or finding;" McCUMBER; vote, November 18, yeas, 3; nays, 86; Bitter-enders, nay.

*Additional Proposals*

"Inasmuch as the '14 points' so-called, as declared by the President of the United States, were accepted as the basis of peace by all the chief belligerent nations, the sole reservation being the interpretation on the part of Great Britain of the clause relating to the freedom of the seas, the United States reserves the right to interpret the Covenant of the League and the treaty of peace in harmony with the principles laid down by the said '14 points,' and that it does not consider itself bound to any line of conduct, military, or financial, in conflict therewith;" PHELAN; vote, November 18, yeas, 12; nays, 79; Bitter-enders, divided.

"Resolved, That the Senate of the United States unreservedly advises and consents to the ratification of this treaty in so far as it provides for the creation of a status of peace between the United States and Germany.

"Resolved further, That the Senate of the United States advises and consents to the ratification of this treaty, reserving to the United States the fullest and most complete liberty of action in respect to any report, decision, recommendation, action, advice or proposals of the League of Nations or its executive Council or any labor conference provided for in the treaty, and also the sole right to determine its own relations and duties and course of action toward such League or toward any member thereof or toward any other nation in respect to any question, matter or thing that may arise while a member of such League, anything in the covenants or constitution of such League or the treaty of Versailles to the contrary notwithstanding, and also reserves to itself the unconditional right to withdraw from membership in such League and to withdraw from membership in any body, board, commission, committee or organization whatever set up in any part of the treaty for the purpose of aiding its execution or otherwise; effecting by such withdrawal as complete a release of any further obligations or duties under such treaty as if the United States had never been a party thereto. It is also

"Resolved further, That the validity of this ratification depends upon the affirmative act of the Principal Allied Powers named in the treaty of peace with Germany, approving these reservations and certifying said approval to the United States within 60 days after the deposit of the resolution of ratification by the United States;" KNOX; vote, November 18, yeas, 30; nays, 61; Bitter-enders, yea.

"The representative of the United States on the Council of the League of Nations shall not give his consent to any proposal under any provision of the Covenant of the League of Nations which may involve the use of the military or naval forces of the United States until such proposal shall be submitted to the Congress and the Congress shall authorize him to give his consent thereto;" JONES of Washington; vote, November 18, yeas, 34; nays, 50; Bitter-enders, yea.

"No.— Nothing contained in this treaty or Covenant shall be so construed as to require the United States of America to depart from its

traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign state;" GORE; vote, November 18, yeas, 28; nays, 50; Bitter-enders, yea.

Add at end of Reservation 2: "*Provided*, That the United States shall have the privilege of nominating at any time any non-member nation of the world for membership in the League of Nations and the privilege of offering at any time any amendment to the League Covenant, and in case unfavorable action shall be taken by the League, resulting in a failure to elect to membership the nation so nominated or a rejection of the proposed amendment, the United States reserves the right to withdraw immediately without condition or notice;" FRANCE; November 18, rejected without roll call.

Add to reservations: "Except that, in accordance with the principles declared in Article 22, that the tutelage of the peoples which are no longer under the sovereignty of the states which formerly governed them and which are not yet able to stand by themselves should be intrusted to the advanced nations who can best undertake this responsibility, the Principal Allied and Associated Powers shall renounce in favor of the United States all their rights and titles to the colonies and territories in Africa formerly held by Germany and transferred by Germany to said Principal Allied and Associated Powers under Articles 119 to 127, inclusive, and the United States shall act as mandatory of such territories to the end that the inhabitants of these colonies and territories may be civilized, educated and fitted for self-determination, and to the further end that the United States shall closely co-operate with Great Britain, France and Belgium and with such other Powers as have interests in Africa in a permanent, progressive and upbuilding policy for the development of all of the peoples and resources of Africa, and further that the ratification of this treaty by the United States shall be only on condition that the Principal Allied and Associated Powers take such action as is herein provided by the renunciation of such rights and titles to the United States;" FRANCE; vote, November 18, yeas, 3; nays, 71; Bitter-enders, divided.

The following series by LA FOLLETTE, November 18:

"1. That nothing contained in Article 11 of the League Covenant, or any other provision thereof, shall be construed to deny to the people of Ireland, India, Egypt, Korea, or to any other people living under a government which, as to such people, does not derive its powers from the consent of the governed, the right of revolution or the right to alter or abolish such government, and to institute a new government, laying its foundations in such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness;" yeas, 24; nays, 49; Bitter-enders, yea.

"2. The United States hereby gives notice that it will withdraw from the League at the end of one year from the date of the exchange of ratifications of this treaty, unless within that time each member of the

League shall abolish and discontinue the policy of maintaining its army or navy in time of peace by conscription;" yeas, 21; nays, 54; Bitter-enders, yea.

"3. The United States hereby gives notice that it will withdraw from the League at the end of five years from the date of the exchange of ratifications of this treaty, unless within that time each member of the League shall have agreed that in no case will it resort to war except to suppress any insurrection or repel an actual invasion of its territory, until an advisory vote of its people has first been taken on the question of peace or war;" yeas, 13; nays, 58; Bitter-enders, yea.

"4. The United States hereby gives notice that it will withdraw from the League of Nations at the end of any year during a period of five years from the date of the exchange of ratifications of this treaty, unless during each and every year of the five-year period every member of the League now expending in excess of \$50,000,000 for the maintenance of its military forces or in excess of a like sum for the maintenance of its naval establishment, shall fail to reduce such expenditures by a sum equal to one-fifth of the amount, by which the total annual expenditure for the maintenance of military forces or naval establishment, respectively, exceeds the sum of \$50,000,000 for either, to the end that by the close of the period of five years from the date of exchange of ratifications of this treaty no member of the League of Nations shall expend for the maintenance of its military forces or its naval establishment, respectively, an amount in excess of \$50,000,000 per annum; and the United States gives notice that it will withdraw from the League of Nations at the end of any year thereafter whenever any member expends for the maintenance of its military forces, or its naval establishment, respectively, an amount in excess of \$50,000,000 per annum;" yeas, 10; nays, 60; Bitter-enders, divided.

"5. The United States hereby gives notice that it will withdraw from the League of Nations whenever any member or members of the League of Nations shall attempt to acquire the whole or part of the territory of any member or of any nation not a member of the League of Nations against the will and without the full and free consent of the people of such member or of such nation not a member of the League of Nations;" yeas, 19; nays, 51; Bitter-enders, yea.

"6. The United States hereby gives notice that it will withdraw from the League of Nations whenever any member, exercising a mandate or a protectorate over any country, or claiming and exercising a sphere of influence in or over any country, shall, without the free and full consent of the people of such country, appropriate the natural resources thereof, or shall, directly or indirectly, aid any individual or corporation alien to such country to acquire any right or title to, or any concession in its natural resources, or right or title to its property, real or personal, or shall fail or neglect, within such authority or influence as it may properly exercise, to preserve in trust for the people of such country all right and title to and in its natural resources and real and personal property, or shall fail to exercise such mandate, protectorate or sphere of influence over such country

for the sole benefit of the people thereof;" yeas, 23; nays, 51; Bitter-enders, yea.

"The provision of Article 11 shall in no respect abridge the rights of free speech, the liberty of the press, and the advocacy of the principles of national independence and self-determination of any people or peoples; and no circumstance directly related to the enjoyment of any of the aforesaid rights shall be construed as providing any member of the League with cause to declare that the exercise of such aforesaid rights as heretofore construed under the provisions of the Constitution of the United States warrants the Assembly or Council in determining what course of action, legal measures of control, or regulation shall be enforced or prescribed by the United States;" WALSH of Massachusetts; vote, November 18, yeas, 36; nays, 42; Bitter-enders, yea.

### PROCEEDINGS IN THE SENATE

To amend Preamble to read: "The reservations and understandings adopted by the Senate are to be made a part and a condition of the resolution of ratification;" HITCHCOCK; vote, November 18, yeas, 36; nays, 45; Bitter-enders, nay.

Reservation 3 (text, ante, p. 168); vote, November 18, yeas, 52; nays, 31; Bitter-enders, yea.

Reed reservation (text, ante, p. 171); vote, November 18, yeas, 33; nays, 50; Bitter-enders, yea.

Owen reservation on the protectorate in Great Britain over Egypt (text, ante, p. 172); vote, November 18, yeas, 31; nays, 46; Bitter-enders, yea.

### RESOLUTION OF RATIFICATION

*Resolved* (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted by an exchange of notes as a part and a condition of this resolution of ratification by at least three of the four Principal Allied and Associated Powers, to wit, Great Britain, France, Italy and Japan:

1. The United States so understands and construes Article 1 that in case of notice of withdrawal from the League of Nations,

as provided in said article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said Covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between nations—whether members of the League or not—under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under Article 22, par. 1, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the Council or of the Assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other Power.

5. The United States will not submit to arbitration or to inquiry by the Assembly or by the Council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said



League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

6. The United States withholds its assent to Articles 156, 157 and 158, and reserves full liberty of action with respect to any controversy which may arise under said articles between the Republic of China and the Empire of Japan.

7. The Congress of the United States will provide by law for the appointment of the representatives of the United States in the Assembly and the Council of the League of Nations, and may in its discretion provide for the participation of the United States in any commission, committee, tribunal, court, council or conference, or in the selection of any members thereof and for the appointment of members of said commissions, committees, tribunals, courts, councils or conferences, or any other representatives under the treaty of peace, or in carrying out its provisions, and until such participation and appointment have been so provided for and the powers and duties of such representatives have been defined by law, no person shall represent the United States under either said League of Nations or the treaty of peace with Germany or be authorized to perform any act for or on behalf of the United States thereunder, and no citizen of the United States shall be selected or appointed as a member of said commissions, committees, tribunals, courts, councils or conferences except with the approval of the Senate of the United States.

8. The United States understands that the Reparation Commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the Secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States.

10. If the United States shall at any time adopt any plan for the limitation of armaments proposed by the Council of the

League of Nations under the provisions of Article 8, it reserves the right to increase such armaments without the consent of the Council whenever the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking state, as defined in Article 16 of the Covenant of the League of Nations, residing within the United States, or in countries other than that violating said Article 16, to continue their commercial, financial and personal relations with the nationals of the United States.

12. Nothing in Articles 296, 297, or in any of the annexes thereto, or in any other article, section or annex of the treaty of peace with Germany, shall, as against citizens of the United States, be taken to mean any confirmation, ratification or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (Articles 387 to 427, inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

14. The United States assumes no obligation to be bound by any election, decision, report or finding of the Council or Assembly in which any member of the League and its self-governing dominions, colonies or parts of empire in the aggregate have cast more than one vote, and assumes no obligation to be bound by any decision, report or finding of the Council or the Assembly arising out of any dispute between the United States and any member of the League if such member, or any self-governing dominion, colony, empire or part of empire united with it politically has voted.

**RESOLUTION OF RATIFICATION**, being the preamble and the 14 reservations passing the Committee of the Whole, two-thirds vote required; vote, November 19, yeas, 39; nays, 55; Bitter-enders, nay.

**MOTION TO RECONSIDER**; REED; vote, November 19, yeas, 63; nays, 30; Bitter-enders, nay.

Motion to adjourn; HITCHCOCK; vote, November 19, yeas, 42; nays, 51; Bitter-enders, nay.

Chair rules: "That the vote whereby the rejection of the resolution of ratification was ordered puts the treaty back into the Committee of the Whole;" vote on decision of the CHAIR, yeas, 42; nays, 51; Bitter-enders, nay.

Chair rules "That other amendments may be offered, or rather a resolution of ratification may be offered if the majority of the Senate so wants to proceed;"—point of order, POINDEXTER: "No amendments are in order under the express and explicit provisions of" Rule XXXVII; overruled by CHAIR; appeal from ruling, LODGE; vote, yeas, 43; nays, 50; Bitter-enders, nay.

Same appeal sustained; same vote.

"That the treaty, the resolution of ratification, and the reservations heretofore presented to the Senate be referred to a committee of conciliation composed of six Senators to be appointed by the President of the Senate, among whom shall be the leader of the majority, the Senator from Massachusetts (Mr. Lodge), who shall be chairman of the committee, and the leader of the minority, the Senator from Nebraska (Mr. Hitchcock), and that said committee be instructed to prepare and report to the Senate such a resolution of ratification and reservations as in their judgment will meet the approval of not less than two-thirds of the Senate;" POMERENE; motion to table, LA FOLLETTE; vote on tabling, yeas, 48; nays, 42; Bitter-enders, yea.

"That the treaty be referred to the Committee of the Whole with instructions to report it back to the Senate with the following reservations:

"That any member nation proposing to withdraw from the League on two years' notice is the sole judge as to whether its obligations referred to in Article 1 of the League of Nations have been performed as required in said article.

The substitute proposed to Reservation 4 by Mr. Hitchcock on November 15, p. 168.

The substitute proposed to Reservation 5 by Mr. Hitchcock on November 15, p. 169.

The substitute proposed to Reservation 2 by Mr. Hitchcock on November 13, p. 167.

"That in case of a dispute between members of the League if one of them have self-governing colonies, dominions, or parts which have representation in the Assembly, each and all are to be considered parties to the dispute, and the same shall be the rule if one of the parties to the dispute is a self-governing colony, dominion, or part, in which case all other self-governing colonies, dominions, or parts, as well as the nation as a whole, shall be considered parties to the dispute, and each and all shall be disqualified from having their votes counted in case of any inquiry on said dispute made by the Assembly."

HITCHCOCK; vote, yeas, 41; nays, 50; Bitter-enders, nay.

Motion to adjourn; SMITH of Georgia; vote, yeas, 42; nays, 48; Bitter-enders, nay.

**SECOND VOTE ON COMMITTEE RESERVATIONS; vote, yeas, 41; nays, 51; Bitter-enders, nay.**

**1 "RESOLVED (two-thirds of the Senators present concurring  
2 therein), That the Senate do advise and consent for the ratifi-  
3 cation of the Treaty of Peace with Germany concluded at  
4 Versailles on the 28th day of June, 1919;" UNDERWOOD; vote,  
yeas, 38; nays, 53; Bitter-enders, nay.**

**MOTION TO RECONSIDER; LODGE; and pending that motion  
to lay the motion to reconsider on the table; LODGE; vote, yeas, 48;  
nays, 42; Bitter-enders, yea.**

## COMPROMISE RESERVATIONS

### PROCEEDINGS IN COMMITTEE OF THE WHOLE

#### *Reservation 1*

**1 "The United States so understands and construes Article 1 that in  
2 case of notice of withdrawal from the League of Nations, as provided  
3 in said article, the United States shall be the sole judge as to whether  
4 all its international obligations under the said Covenant have been  
5 fulfilled, and notice of withdrawal by the United States may be given  
6 by a concurrent resolution of the Congress of the United States;"  
COMMITTEE; vote, February 21, 1920, yeas, 45; nays, 20; Bitter-  
enders, yea.**

The following efforts to change the text were made:

Strike out "concurrent," in line 6 and insert "joint"; HITCHCOCK;  
vote, February 21, yeas, 26; nays, 38; Bitter-enders, nay (several not  
voting).

Change lines 5 to 6 to read: "and notice of withdrawal by the United  
States may be given by the President or by Congress alone whenever a  
majority of both houses may deem it necessary;" LODGE; vote, February  
21, yeas, 32; nays, 33; Bitter-enders, nay.

#### *Reservation 3*

**1 "No mandate shall be accepted by the United States under Article  
2 22, par. 1, or any other provision of the treaty of peace with Germany,  
3 except by action of the Congress of the United States;" COMMITTEE;  
vote, February 26, yeas, 68; nays, 4; Bitter-enders, yea.**

#### *Reservation 4*

**1 "The United States reserves to itself exclusively the right to decide  
2 what questions are within its domestic jurisdiction and declares that**

3 all domestic and political questions relating wholly or in part to its  
4 internal affairs, including immigration, labor, coastwise traffic, the  
5 tariff, commerce, the suppression of traffic in women and children and  
6 in opium and other dangerous drugs, and all other domestic questions,  
7 are solely within the jurisdiction of the United States, and are not  
8 under this treaty to be submitted in any way either to arbitration or  
9 to the consideration of the Council or of the Assembly of the League  
10 of Nations, or any agency thereof, or to the decision or recommenda-  
11 tion of any other power;" COMMITTEE; vote, March 2, yeas, 56; nays,  
25; Bitter-enders, yea.

The following efforts to change the text were made:

Strike out the word "commerce" in line 5; FLETCHER; vote, March 2, yeas, 34; nays, 44; Bitter-enders, nay.

"That the United States is not required, and hereby declines to submit to the League, its Council or Assembly, for decision, report, or recommendation, any matter which it considers to be a domestic question, such as immigration, labor, tariff, or other matter relating to its internal or coastwise affairs;" HITCHCOCK; vote, March 2, yeas, 36; nays, 44; Bitter-enders, nay.

A substitute by Mr. King was rejected without division.

#### *Reservation 5*

1 "The United States will not submit to arbitration or to inquiry by  
2 the Assembly or by the Council of the League of Nations, provided  
3 for in said treaty of peace, any questions which in the judgment of  
4 the United States depend upon or relate to its long-established  
5 policy, commonly known as the Monroe doctrine; said doctrine to  
6 be interpreted by the United States alone and is hereby declared  
7 to be wholly outside the jurisdiction of said League of Nations and  
8 entirely unaffected by any provision contained in the said treaty of  
9 peace with Germany;" COMMITTEE; vote, March 2, yeas, 58; nays,  
22; Bitter-enders, yea.

Substitute: "That the national policy of the United States known as the Monroe doctrine as announced and interpreted by the United States is not in any way impaired or affected by the Covenant of the League of Nations and is not subject to any decision, report, or inquiry by the Council or Assembly;" HITCHCOCK; vote, March 2, yeas, 34; nays, 43; Bitter-enders, nay.

#### *Reservation 6*

Strike out the words "between the Republic of China and the Empire of Japan" at end; LODGE; vote, March 4, yeas, 69; nay, 2; Bitter-enders, yea.

1 "The United States withholds its assent to Articles 156, 157 and 158,  
2 and reserves full liberty of action with respect to any controversy  
3 which may arise under said articles;" COMMITTEE; vote, March 4,  
yeas, 48; nays, 21; Bitter-enders, nay.

Substitute: "That in advising and consenting to the ratification of said treaty, the United States does so with the understanding that the sovereign rights and interests renounced by Germany in favor of Japan under the provisions of Articles 156, 157 and 158 of said treaty, or now exercised by Japan pass to China at the termination of the present war by the ratification of this treaty;" HITCHCOCK; vote, March 4, yeas, 27; nays, 41; Bitter-enders, nay.

#### *Reservation 7*

Substitute: "No person is or shall be authorized to represent the United States nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Congress of the United States providing for his appointment and defining his powers and duties;" WALSH of Montana; vote, March 4, yeas, 37; nays, 32; Bitter-enders, nay.

The CHAIR accepts the view that when an amendment is adopted in the form of a substitute there must be a vote on the question as amended by the substitute.

1 "No person is or shall be authorized to represent the United States,  
2 nor shall any citizen of the United States be eligible as a member of  
3 any body or agency established or authorized by said treaty of peace  
4 with Germany, except pursuant to an act of the Congress of the  
5 United States providing for his appointment and defining his powers  
6 and duties;" COMMITTEE, AS AMENDED; vote, March 4, yeas, 55;  
nays, 14; Bitter-enders, nay.

#### *Reservation 8*

1 "The United States understands that the Reparation Commission  
2 will regulate or interfere with exports from the United States to Ger-  
3 many, and from Germany to the United States, only when the United  
4 States by act or joint resolution of Congress approves such regulation  
5 or interference;" COMMITTEE; vote, March 5, yeas, 41; nays, 22;  
Bitter-enders, yea.

Substitute: "The United States understands that the Reparation Commission will in its control over German economic resources in no respect so exert its powers as to discriminate against the commerce of the United States with Germany;" HITCHCOCK; vote, March 5, yeas, 23; nays, 37; Bitter-enders, nay.

*Reservation 9*

Add at end: "Provided, That the foregoing limitation shall not apply to the United States' proportionate share of the expenses of the office force and salary of the Secretary General;" KELLOGG; vote, March 6, yeas, 55; nays, 12; Bitter-enders, nay.

1 "The United States shall not be obligated to contribute to any  
2 expenses of the League of Nations, or of the Secretariat, or of any  
3 commission, or committee, or conference, or other agency, organized  
4 under the League of Nations or under the treaty or for the purpose  
5 of carrying out the treaty provisions, unless and until an appropria-  
6 tion of funds available for such expenses shall have been made by  
7 the Congress of the United States: *Provided*, That the foregoing  
8 limitation shall not apply to the United States' proportionate share  
9 of the expenses of the office force and salary of the Secretary Gen-  
10 eral;" COMMITTEE; vote, March 6, yeas, 46; nays, 25; Bitter-  
enders, yea.

*Reservation 10*

"If the United States shall at any time adopt any plan for the limitation of armaments proposed by the Council of the League of Nations under the provisions of Article 8, it reserves the right to increase such armaments without the consent of the Council whenever the United States is threatened with invasion or engaged in war;" COMMITTEE.

1 "No plan for the limitation of armaments proposed by the Council  
2 of the League of Nations under the provisions of Article 8 shall be  
3 held as binding the United States until the same shall have been  
4 accepted by Congress, and the United States reserves the right to  
5 increase its armament without the consent of the Council whenever  
6 the United States is threatened with invasion or engaged in war;"  
NEW; vote, March 8, yeas, 49; nays, 27; Bitter-enders, yea.

Motion by Mr. HENDERSON to reconsider vote just taken.

Motion by Mr. LODGE to lay Mr. Henderson's motion on the table; yeas, 45; nays, 32; Bitter-enders, yea.

COMMITTEE reservation as amended; vote, March 8, yeas, 49; nays, 26; Bitter-enders, yea.

*Reservation 11*

1 "The United States reserves the right to permit, in its discretion, the  
2 nationals of a covenant-breaking state, as defined in Article 16 of the  
3 Covenant of the League of Nations, residing within the United States  
4 or in countries other than such covenant-breaking state, to continue  
5 their commercial, financial, and personal relations with the nationals  
6 of the United States;" COMMITTEE; vote, March 8, yeas, 44; nays,  
28; Bitter-enders, yea.

*Reservation 12*

1 "Nothing in Articles 296, 297, or in any of the annexes thereto or in  
 2 any other article, section, or annex of the treaty of peace with Ger-  
 3 many shall, as against citizens of the United States, be taken to mean  
 4 any confirmation, ratification, or approval of any act otherwise  
 5 illegal or in contravention of the rights of citizens of the United  
 6 States;" COMMITTEE; vote, March 8, yeas, 45; nays, 27; Bitter-  
 enders, yea.

*Reservation 13*

1 "The United States withholds its assent to Part XIII (Articles 387  
 2 to 427, inclusive) unless Congress by act or joint resolution shall here-  
 3 after make provision for representation in the organization estab-  
 4 lished by said Part XIII, and in such event the participation of the  
 5 United States will be governed and conditioned by the provisions of  
 6 such act or joint resolution;" COMMITTEE; vote, March 8, yeas, 44;  
 nays, 27; Bitter-enders, yea.

*Reservation 14*

1 "Until Part I, being the Covenant of the League of Nations, shall be  
 2 so amended as to provide that the United States shall be entitled to  
 3 cast a number of votes equal to that which any member of the  
 4 League and its self-governing dominions, colonies, or parts of  
 5 empire, in the aggregate shall be entitled to cast, the United States  
 6 assumes no obligation to be bound, except in cases where Congress  
 7 has previously given its consent, by any election, decision, report,  
 8 or finding of the Council or Assembly in which any member of the  
 9 League and its self-governing dominions, colonies or parts of empire,  
 10 in the aggregate have cast more than one vote.

11 "The United States assumes no obligation to be bound by any  
 12 decision, report, or finding of the Council or Assembly arising out of  
 13 any dispute between the United States and any member of the  
 14 League if such member, or any self-governing dominion, colony,  
 15 empire, or part of empire united with it politically has voted;"

COMMITTEE AS AMENDED; vote, March 9, yeas, 57; nays, 20; Bitter-  
 enders, yea.

Add at beginning; lines 1-5: "Until Part I, being the Covenant of the  
 League of Nations, shall be so amended as to provide that the United  
 States shall be entitled to cast a number of votes equal to that which any  
 member of the League and its self-governing dominions, colonies, or parts  
 of empire, in the aggregate, shall be entitled to cast, the," etc.; LODGE;  
 vote, March 9, yeas, 39; nays, 28; Bitter-enders, yea.



Change lines 5 to 7 to read: "the United States assumes no obligation to be bound, except in cases in which its consent has previously been given," etc.; WALSH of Montana; vote, March 9, yeas, 33; nays, 45; Bitter-enders, nay.

Amend in lines 6 to 7 to read: "bound, except in cases where Congress has previously given its consent," etc.; LODGE; vote, March 9, yeas, 55; nays, 22; Bitter-enders, yea.

Divide the reservation into two paragraphs so that the second begins "The United States assumes no obligation to be bound," etc., at line 11; LODGE; agreed to without division.

"Unless within one year after the filing of the act of ratification, Part I, being the Covenant of the League of Nations, shall be so amended as to provide that the United States shall be entitled to cast a number of votes equal to that which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast, the United States shall cease to be a member of the League of Nations;" McCORMICK; vote, March 9, yeas, 19; nays, 57; Bitter-enders, yea.

Substitute: "The Senate of the United States advises and consents to the ratification of said treaty with the following reservations and conditions, anything in the Covenant of the League of Nations and the treaty to the contrary notwithstanding:

"When any member of the League has or possesses self-governing dominions or colonies, or parts of empire which are also members of the League the United States shall have representatives in the Council and Assembly and in any labor conference or organization under the League or treaty numerically equal to the aggregate number of representatives of such member of the League and its self-governing dominions and colonies and parts of empire in such Council and Assembly of the League and labor conference or organization under the League or treaty; and such representatives of the United States shall have the same powers and rights as the representatives of said member and its self-governing dominions or colonies or parts of empire; and upon all matters whatsoever, except where a party to a dispute, the United States shall have votes in the Council and Assembly and in any labor conference or organization under the League or treaty numerically equal to the aggregate vote to which any such member of the League and its self-governing dominions and colonies and parts of empire are entitled.

"Whenever a case referred to the Council or Assembly involves a dispute between the United States and another member of the League whose self-governing dominions or colonies or parts of empire are also represented in the Council or Assembly, or between the United States and any dominion, colony, or part of any other member of the League, neither the disputant members nor any of their said dominions, colonies or parts of empire shall have a vote upon any phase of the question.

"Whenever the United States is a party to a dispute which is referred

to the Council or Assembly, and can not, because a party, vote upon such dispute, any other member of the Council or Assembly having self-governing dominions or colonies or parts of empire also members, voting upon such dispute to which the United States is a party or upon any phase of the question shall have and cast for itself and its self-governing dominions and colonies and parts of empire, all together, but one vote;" **PHELAN**; vote, March 9, yeas, 4; nays, 73; Bitter-enders, divided.

Substitute: "That in case of a dispute between members of the League, if one of them have self-governing colonies, dominions, or parts which have representation in the Assembly, each and all are to be considered parties to the dispute, and the same shall be the rule if one of the parties to the dispute is a self-governing colony, dominion, or part, in which case all other self-governing colonies, dominions, or parts, as well as the nation as a whole shall be considered parties to the dispute, and each and all shall be disqualified from having their votes counted in case of any inquiry on said dispute made by the Assembly;" **HITCHCOCK**; vote, March 9, yeas, 34; nays, 41; Bitter-enders, nay.

#### *Reservation 2*

"The United States assumes no obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between nations—whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide;" **COMMITTEE**.

Substitute: "The United States assumes no obligation to preserve the territorial integrity or political independence of any other country.

"The United States assumes no obligation to interfere in controversies between nations or to employ its military or naval forces or its resources for any purpose under any article of the treaty;" **FRELINGHUYSEN**; vote, March 15, yeas, 17; nays, 50; Bitter-enders, yea.

Substitute: "The United States assumes no obligation to employ its military or naval forces or the economic boycott to preserve the territorial integrity or political independence of any other country under the provisions of Article 10, or to employ the military or naval forces of the United States under any other article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war, shall, by act or joint resolution, so provide. Nothing herein shall be deemed to impair the obligation in Article 16 concerning the economic boycott;" **KIRBY**; vote, March 15, yeas, 31; nays, 45; Bitter-enders, nay.

Substitute: "The United States declines to assume any legal or binding obligation to preserve the territorial integrity or political independence of any other country under the provisions of Article 10 or to employ the military or naval forces of the United States under any article of the treaty for any purpose; but the Congress, which under the Constitution has the sole power in the premises, will consider and decide what moral obligation, if any, under the circumstances of any particular case, when it arises, should move the United States in the interest of world peace and justice to take action therein and will provide accordingly;" KIRBY; vote, March 15, yeas, 30; nays, 46; Bitter-enders, nay.

Substitute: "The United States understands that by Article 10 the United States undertakes separately to respect the territorial integrity and existing political independence of each other member of the League, but that Article 10 does not impose upon the United States the separate, sole, and singular duty to preserve the territorial integrity and existing political independence of every member of the League as against the external aggression of the other Powers; but only that in case of such aggression or threat of the same, the Council will advise upon the means for preserving the territorial integrity and existing political independence of the member against which such aggression is exerted, and will recommend to members of the League the measures which it may deem proper and necessary to protect the covenants of the League and that the United States may consider such recommendations and take such action as Congress may in its discretion deem appropriate in such case;" KING; March 15, rejected without division.

Substitute: "The United States agrees to use its friendly offices, when requested so to do under the provisions of Article 10, in assisting to procure a just and peaceful settlement of territorial or political controversies between nations, or to protect any member of the League from external aggression; but it does not assume any obligation to use its military or naval forces, or its financial or economic resources for the purpose of intervention in the controversies or conflicts between nations or to protect the territorial integrity or political independence of any nation under the provisions of Article 10, unless in any particular case the Congress, in the exercise of full liberty of action and in the light of full information as to the national justice and human rights involved, shall by act or joint resolution so provide. Nothing herein shall be deemed to impair the obligations of the United States under Article 16;" SIMMONS; vote, March 15, yeas, 27; nays, 51; Bitter-enders, nay.

The following attempts to amend the Simmons substitute were made before the vote thereon:

Read: "Article 10 or any other article of the treaty;" SHIELDS; vote, March 15, yeas, 22; nays, 55; Bitter-enders, yea.

Substitute: "The United States agrees to use its friendly offices, when requested so to do, under the provisions of Article 10, in assist-

ing to procure a just and peaceful settlement of territorial or political controversies between nations, or to protect any member of the League from external aggression; but it does not assume any obligation to use its military or naval forces or its financial or economic resources for the purpose of intervention in the controversies or conflicts between nations, or to protect the territorial integrity or political independence of any nation under the provisions of Article 10, unless in any particular case the Congress, in the exercise of full liberty of action, and in the light of full information as to the national justice and human right involved, shall by act or joint resolution so provide;" REED; vote, March 15, yeas, 18; nays, 60; Bitter-enders, yea.

Substitute: "The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide;" LODGE; vote, March 15, yeas, 56; nays, 24; Bitter-enders, yea.

The following attempts to amend the Lodge substitute were made before the vote thereon:

Strike out in lines 5 to 6, the words "including all controversies relating to the territorial integrity or political independence;" WALSH of Montana; vote, March 15, yeas, 35; nays, 45; Bitter-enders, nay.

Add to the proposed substitute: "Any act or threat of external aggression involving the territorial integrity or political independence of any nation, whether a member of the League or not, in the judgment of the United States, menaces or threatens the peace of the world, will be a matter of grave concern to the United States, and assurance is hereby given that the United States will seek to co-operate, entirely within the powers conferred by the Constitution, with the other members of the League to the end that such menace or threat to the peace of the world is removed;" WALSH of Montana; vote, March 15, yeas, 34; nays, 44; Bitter-enders, nay.

Substitute: "That the advice mentioned in Article 10 of the Covenant of the League which the Council may give to the member nations as to the employment of their naval and military forces is merely advice, which each member nation is free to accept or reject according to the conscience and judgment of its then existing government; and in the United States this advice can only be accepted by action of the Congress at the time in being, Congress alone, under the Con-

stitution of the United States, having the power to declare war;" KING; vote, March 15, yeas, 81; nays, 47; Bitter-enders, nay.

Substitute: "It is understood that the United States does not in any sense or particular abandon or modify its doctrine that an obligation rests upon every advanced nation which has colonies, protectorates or dependencies to hold all such in wardship only as a trust and to adopt adequate measures for the elevation, education, training, and preparation as equals in the society of nations, and it is further understood that under no circumstances will the United States interfere to preserve the territorial integrity of any imperial country in any controversy growing out of the ambitions of a subject nation or colony to gain its independence, and it is further understood that the loaning by any external power of financial assistance to such subject nation or colony seeking its independence shall not be considered as an act of external aggression, for the United States looks forward to the time when all of the ancient nations, such as Ireland, India, and Egypt, may attain that liberation and right of self-determination which they may desire;" FRANCE; March 15, rejected without division.

1 "The United States assumes no obligation to preserve the territorial  
2 integrity or political independence of any other country by the em-  
3 ployment of its military or naval forces, its resources, or any form of  
4 economic discrimination, or to interfere in any way in controversies  
5 between nations, including all controversies relating to territorial  
6 integrity or political independence, whether members of the League  
7 or not under the provisions of Article 10 or to employ the military  
8 or naval forces of the United States under any article of the treaty  
9 for any purpose, unless in any particular case the Congress which  
10 under the Constitution has the sole power to declare war or authorize  
11 the employment of the military or naval forces of the United States  
12 shall in the exercise of full liberty of action by act or joint resolution  
13 so provide;" COMMITTEE, AS AMENDED BY THE SUBSTITUTE; vote,  
March 15, yeas, 56; nays, 26; Bitter-enders, yea.

#### *Additional Proposals*

"The United States understands the protectorate referred to in section 6 (*sic*) of the treaty to have been merely a war measure to preserve the integrity and independence of Egypt during the war. The United States further understands that in fulfillment and execution of the great principle of self-determination of peoples and equality of all Governments pervading and underlying the Covenant of the League of Nations, at the close of the present war with Germany it will recognize the political independence of Porto Rico, the Philippine Islands, and the Virgin Islands, and also the territory of Hawaii: *Provided*, That a major-

ity of the residents of said territory over the age of 21 years votes for such independence. And the United States further understands that in fulfilment of said principle Great Britain and Japan, respectively, will forthwith recognize the existence and political independence of the republic of Ireland and the ancient kingdom of Korea, and agree that they become members of the League of Nations with equal representation accorded to other sovereign and independent Governments;" KING; motion to lay on table; KELLOGG; vote, March 17, yeas, 54; nays, 21; Bitter-enders, nay.

"The United States construes Part I of the treaty of peace with Germany, known as the Covenant of the League of Nations, to the effect that such territorial readjustments, if any, as may in the future become necessary by reason of changes in present racial conditions and aspirations, or present social and political relationship, pursuant to the principle of self-determination, and also such territorial readjustments as may, in the judgment of three-fourths of the Council or Assembly, be demanded by the welfare and manifest interest of the people concerned may be effected if agreeable to those peoples. The high contracting powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary;" REED; motion to lay on the table; LENROOT; vote, March 17, yeas, 46; nays, 21; Bitter-enders, nay.

"The United States withholds its assent to Article 147 of the treaty in so far as recognition of the said protectorate is extended beyond the going into force of this treaty;" NORRIS; vote, March 17, yeas, 15; nays, 51; Bitter-enders, yea.

"That the United States in ratifying the Covenant of the League of Nations does not intend to be understood as modifying in any degree the obligations entered into by the United States and the Entente Allies in the agreement of November 5, 1918, upon which as a basis the German Empire laid down its arms;" OWEN; vote, March 17, yeas, 12; nays, 55; Bitter-enders, divided.

"It shall be the declared policy of this Government that, the freedom and peace of Europe being again threatened by any power or combination of powers, the United States will regard such a situation with grave concern and will consider what, if any, action it will take in the premises;" LENROOT; vote, March 17, yeas, 25; nays, 39; Bitter-enders, nay.

"The United States reserves to itself exclusively the right to decide what questions affect its national honor or its vital interests and declares that such questions are not under this treaty to be submitted in any way either to arbitration or to the consideration of the Council or of the Assembly of the League of Nations or any agency thereof or to the decision or recommendation of any other power;" REED; vote, March 18, yeas, 27; nays, 48; Bitter-enders, yea.

Subsequently, a second vote resulted in yeas, 16; nays, 57; Bitter-enders, yea.

"The United States assumes no obligation to employ its military or naval forces or resources or any form of economic discrimination under any article of the treaty;" REED; vote, March 18, yeas, 17; nays, 52; Bitter-enders, yea.

*Reservation 15*

"In consenting to the ratification of the treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when self-government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations;" GERRY.

The following efforts to change the text were made:

Add at end the following: "And the United States, also adhering to the principle of self-determination, declares its sympathy with the grievances and aspirations of the people of Korea for the restoration of their ancient kingdom and its emancipation from the tyranny of Japan, and it further declares that when so consummated it should be promptly admitted as a member of the League of Nations;" THOMAS; motion to lay Mr. Thomas's amendment on the table; GERRY; vote, March 18, yeas, 34; nays, 34; Bitter-enders, nay; motion lost.

Mr. Thomas's amendment; vote, March 18, yeas, 34; nays, 46; Bitter-enders, yea.

Motion to lay Mr. Gerry's proposed reservation on the table; KELLOGG; vote, March 18, yeas, 28; nays, 51; Bitter-enders, nay.

Strike out the words "the principle of self-determination and," so that it will read: "In consenting to the ratification of the treaty with Germany, the United States adheres to the resolution of sympathy with the aspirations of the Irish people, etc.;" LODGE; vote, March 18, yeas, 37; nays, 42; Bitter-enders, divided.

Mr. Gerry accepts the following form:

- 1 "In consenting to the ratification of the treaty with Germany the
  - 2 United States adheres to the principle of self-determination and to
  - 3 the resolution of sympathy with the aspirations of the Irish people for
  - 4 a government of their own choice adopted by the Senate June 6, 1919,
  - 5 and declares that when such government is attained by Ireland, a
  - 6 consummation it is hoped is at hand, it should promptly be admitted
  - 7 as a member of the League of Nations;" GERRY; vote, March 18,
- yeas, 38; nays, 36; Bitter-enders, yea.

Before the vote:

After the word "self-determination" in line 2 to insert the words

"as heretofore applied by it;" WADSWORTH; vote, March 18, yeas 36; nays, 42; Bitter-enders, divided.

To make the proposed reservation in line 2 read "self-determination for the people of Ireland;" LODGE; vote, March 18, yeas, 26; nays, 53; Bitter-enders, nay.

#### *Additional Proposal*

"The United States understands that no mandatory power shall, without the consent of the Council, enjoy any monopoly, privilege, or preference in respect of the natural resources or the acquisition, development and operation of the same in any territory placed under its control, influence, or mandate; and the United States further understands that no member of the League shall, without the consent of the Council, enjoy any monopoly, privilege, or preference prejudicial to the equal rights and opportunities of any other member in respect of the natural resources, or the acquisition, development, or operation of the same situate in any colony, dependency, or sphere of influence, its title or claim to which shall have been vested or confirmed by the treaty or by virtue of the action or authority of the League itself;" GORE; March 18, rejected without roll call.

### PROCEEDINGS IN THE SENATE

Motion to postpone Reservation 2; HITCHCOCK; March 18.

To amend by eliding Reservation 15; KELLOGG; vote, March 18, yeas, 29; nays, 46; Bitter-enders, nay.

Strike out word "commerce" from Reservation 4, line —; SMITH of Georgia; to lay the amendment on the table; WATSON; vote, March 18, yeas, 40; nays, 33; Bitter-enders, yea.

#### *Resolution 15*

Substitute: "In consenting to ratification of the treaty with Germany the United States adheres to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice, adopted by the Senate, June 6, 1919, and declares that when self-government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations;" CALDER; motion to lay the substitute on the table; THOMAS; vote, March 18, yeas, 51; nays, 30; Bitter-enders, yea.

Strike out the words "a consummation it is hoped is at hand," in line 6; STERLING; motion to lay the amendment on the table; MCKELLAR; vote, March 18, yeas, 70; nays, 11; Bitter-enders, yea.

Motion to concur in Reservation 15; vote, March 18, yeas, 45; nays, 38; Bitter-enders, yea.



*Reservation 2*

Substitute previously defeated, March 15; re-offered by Mr. SIMMONS; motion to lay this amendment on the table; LODGE; vote, March 18, yeas, 45; nays, 34; Bitter-enders, yea.

Strike out the words "in any way" in line 4, and insert after "independence" in line 6 the words, "by the employment of its military or naval forces, its resources or any form of economic boycott;" SIMMONS; motion to lay on table; LODGE; vote, March 18, yeas, 44; nays, 35; Bitter-enders, yea.

Substitute for lines 1 to 7: "The United States assumes no obligation to preserve the territorial integrity and political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination under the provisions of Article 10;" SMITH of Georgia; motion to lay the amendment on the table; LODGE; vote, March 18, yeas, 45; nays, 34; Bitter-enders, yea.

Motion to concur in Reservation 2; vote, March 18, yeas, 54; nays, 26; Bitter-enders, yea.

*Resolution of Ratification*

Strike out in the Resolution, at end, the words: "by an exchange of notes as a part and a condition of this resolution of ratification by at least three of the four Principal Allied and Associated Powers, to wit, Great Britain, France, Italy and Japan;" and add at end: "as a part and a condition of this resolution of ratification by the Allied and Associated Powers and a failure on the part of the Allied and Associated Powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States shall be taken as a full and final acceptance of such reservations and understandings by said Powers;" LODGE; accepted, March 19, without roll call.

Add after the words "United States" in line 7 the words "unless the instrument of ratification shall have been filed within 60 days after the adoption of the resolution of ratification by the Senate, nor;" BRANDEGEE; vote, March 19, yeas, 41; nays, 42; Bitter-enders, yea.

1 "RESOLVED (two-thirds of the Senators present concurring  
2 therein), That the Senate advise and consent to the ratification  
3 of the treaty of peace with Germany concluded at Versailles on the  
4 28th day of June, 1919, subject to the following reservations and  
5 understandings, which are hereby made a part and condition of this  
6 resolution of ratification, which ratification is not to take effect or  
7 bind the United States until the said reservations and understand-  
8 ings adopted by the Senate have been accepted as a part and a con-  
9 dition of this resolution of ratification by the Allied and Associated  
10 Powers;" COMMITTEE; vote, March 19, on the Senate's agreeing to  
the resolution of ratification (two-thirds vote required), yeas, 49;  
nays, 35; Bitter-enders, nay.

## RESOLUTION OF RATIFICATION

*Resolved* (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted as a part and a condition of this resolution of ratification by the Allied and Associated Powers, and a failure on the part of the Allied and Associated Powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States shall be taken as a full and final acceptance of such reservations and understandings by said Powers:

1. The United States so understands and construes Article 1 that in case of notice of withdrawal from the League of Nations, as provided in said article, the United States shall be the sole judge as to whether all its international obligations under the said Covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States, under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under Article 22, par. 1, or any other provision of the treaty of peace

with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the Council or of the Assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other Power.

5. The United States will not submit to arbitration or to inquiry by the Assembly or by the Council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe doctrine; said doctrine to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

6. The United States withholds its assent to Articles 156, 157 and 158, and reserves full liberty of action with respect to any controversy which may arise under said articles.

7. No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Congress of the United States providing for his appointment and defining his powers and duties.

8. The United States understands that the Reparation Commission will regulate or interfere with exports from the United States to Germany, and from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the Secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States: *Provided*, That the foregoing limitation shall not apply to the United States' proportionate share of the expenses of the office force and salary of the Secretary General.

10. No plan for the limitation of armaments proposed by the Council of the League of Nations under the provisions of Article 8 shall be held as binding the United States until the same shall have been accepted by Congress, and the United States reserves the right to increase its armament without the consent of the Council whenever the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking state, as defined in Article 16 of the Covenant of the League of Nations, residing within the United States or in countries other than such covenant-breaking state, to continue their commercial, financial and personal relations with the nationals of the United States.

12. Nothing in Articles 296, 297 or in any of the annexes thereto or in any other article, section, or annex of the treaty of peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratification, or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (Articles 387 to 427, inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States shall be governed and conditioned by the provisions of such act or joint resolution.

14. Until Part I, being the Covenant of the League of Nations, shall be so amended as to provide that the United States shall be entitled to cast a number of votes equal to that which any mem-

ber of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast, the United States assumes no obligation to be bound, except in cases where Congress has previously given its consent, by any election, decision, report, or finding of the Council or Assembly in which any member of the League and its self-governing dominions, colonies or parts of empire, in the aggregate have cast more than one vote.

The United States assumes no obligation to be bound by any decision, report or finding of the Council or Assembly arising out of any dispute between the United States and any member of the League if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

15. In consenting to the ratification of the treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations.

**RESOLUTION OF RATIFICATION**, being the resolution and the 15 reservations passing the Committee of the Whole, two-thirds vote required; vote, March 19, yeas, 49; nays, 35; Bitter-enders, nay.

1 *“Resolved*, That the Secretary of the Senate be instructed  
2 to return to the President the treaty of peace with Germany  
3 signed at Versailles on the 28th day of June, 1919, and re-  
4 spectfully inform the President that the Senate has failed to  
5 advise and consent to the ratification of the said treaty, being  
6 unable to obtain the constitutional majority therefor;”  
LODGE; vote, March 19, yeas, 47; nays, 37; Bitter-enders, yea.

Motion to reconsider the vote by which the Senate refused to agree to the resolution of ratification; ROBINSON; motion to lay that motion on the table; WATSON; vote, March 19, yeas, 44; nays, 43; Bitter-enders, yea.

## DECLARATION OF PEACE

## HOUSE OF REPRESENTATIVES

April 8, 1920, H. J. Res. 327 reported from Committee on Foreign Affairs by Mr. PORTER, as follows:

- House joint resolution No. 327 terminating the state of war declared to exist April 6, 1917, between the Imperial German Government and the United States; permitting on conditions the resumption of reciprocal trade with Germany, and for other purposes.

*Whereas*, the President of the United States, in the performance of his constitutional duty to give to the Congress information of the state of the Union, has advised the Congress that the war with the Imperial German Government has ended:

*Resolved, etc.*, That the state of war declared to exist between the Imperial German Government and the United States by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.

Sec. 2. That in the interpretation of any provision relating to the date of the termination of the present war or of the present or existing emergency in any acts of Congress joint resolutions, or proclamations of the President containing provisions contingent upon the date of the termination of the war or of the present or existing emergency, the date when this resolution becomes effective shall be construed and treated as the date of the termination of the war or of the present or existing emergency, notwithstanding any provision in any act of Congress or joint resolution providing any other mode of determining the date of the termination of the war, or of the present or existing emergency.

Sec. 3. That with a view to secure reciprocal trade with the German Government and its nationals, and for this purpose, it is hereby provided that unless within 45 days from the date when this resolution becomes effective, the German Government shall duly notify the President of the United States that it has declared a termination of the war with the United States and that it waives and renounces on behalf of itself and its nationals any claim, demand, right, or benefit against the United States or its nationals that it or they would not have had the right to assert had the United States ratified the treaty of Versailles, the President of the United States shall have the power, and it shall be his duty, to proclaim the fact that the German Government has not given the notification hereinbefore mentioned, and thereupon and until the President shall have proclaimed the receipt of such notification commercial intercourse between the United States and Germany and the making of loans or credits and the furnishing of financial assistance or supplies to the German Government or the inhabitants of Germany, directly or indirectly, by the Government or the inhabitants of the United States shall, except with the license of the President, be prohibited.

**Sec. 4.** That whoever shall wilfully violate the foregoing prohibition whenever the same shall be in force shall upon conviction be fined not more than \$10,000, or, if a natural person, imprisoned for not more than two years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

**Sec. 5.** That nothing herein contained shall be construed as a waiver by the United States of any rights, privileges, indemnities, reparations, or advantages to which the United States has become entitled under the terms of the armistice signed November 11, 1918, or which were acquired by or are in the possession of the United States by reason of its participation in the war, or otherwise; and all fines, forfeitures, penalties, and seizures imposed or made by the United States are hereby ratified, confirmed and maintained.

H. Rept. 801; minority report, H. Rept. 801, pt 2, 66th Cong., 2d. sess.

April 9, 1920, Mr. Flood moves:

That House joint resolution No. 327 be recommitted to the Committee on Foreign Affairs with instructions to the committee to report the same to the House forthwith with the following amendment:

Striking out all the preamble and all after the enacting clause and insert following the enacting clause the following:

"That all acts and joint resolutions of Congress which have been passed since April 6, 1917, and which by their terms are to be effective only for the period of the war, or for the present or existing emergency, or until a treaty of peace should be ratified, or until the proclamation by the President of the ratification of a treaty of peace, are hereby repealed; and all such acts and resolutions which by their terms are to be effective only during and for a specified period after such war, or such present or existing emergency, or the ratification of such treaty, or the proclamation by the President of the ratification of such treaty are hereby repealed, which repeal shall be effective at the end of the specified period, such specified period being construed as beginning on the date of the final passage of this resolution."

Vote: yeas, 171; nays, 222.

On the passage of the Joint Resolution: yeas, 242; nays, 150.

#### THE SENATE

April 12, 1920, H. J. Res. 327 read twice by title and referred to the Committee on Foreign Relations.

April 30, 1920, reported to the Senate with amendments by S. Rept. 568.

Joint resolution repealing the joint resolution of April 6, 1917, declaring that a state of war exists between the United States and Germany, and the joint resolution of December 7, 1917, declaring that a sta

of war exists between the United States and the Austro-Hungarian Government.

1 That the joint resolution of Congress passed April 6, 1917, de-  
2 claring a state of war to exist between the Imperial German Govern-  
3 ment and the Government and people of the United States, and  
4 making provisions to prosecute the same, be, and the same is hereby,  
5 repealed, and said state of war is hereby declared at an end: *Pro-*  
6 *vided*, however, That all property of the Imperial German Govern-  
7 ment, or its successor or successors, and of all German nationals  
8 which was, on April 6, 1917, in or has since that date come into the  
9 possession or under control of the Government of the United States  
10 or of any of its officers, agents, or employees, from any source or by  
11 any agency whatsoever, shall be retained by the United States and  
12 no disposition thereof made, except as shall specifically be hereafter  
13 provided by Congress, until such time as the German Government  
14 has, by treaty with the United States, ratification whereof is to be  
15 made by and with the advice and consent of the Senate, made  
16 suitable provisions for the satisfaction of all claims against the Ger-  
17 man Government of all persons, wheresoever domiciled, who owe  
18 permanent allegiance to the United States, whether such persons  
19 have suffered, through the acts of the German Government or its  
20 agents since July 31, 1914, loss, damage, or injury to their persons  
21 or property, directly or indirectly through the ownership of shares  
22 of stock in German, American, or other corporations, or have suffered  
23 damage directly in consequence of hostilities or of any operations of  
24 war, or otherwise and until the German Government has given  
25 further undertakings and made provisions by treaty, to be ratified  
26 by and with the advice and consent of the Senate, for granting to  
27 persons owing permanent allegiance to the United States, most-  
28 favored-nation treatment, whether the same be nationals or other-  
29 wise, in all matters affecting residence, business, profession, trade,  
30 navigation, commerce, and industrial property rights, and confirm-  
31 ing to the United States all fines, forfeitures, penalties, and seizures  
32 imposed or made by the United States during the war, whether in  
33 respect to the property of the German Government or German na-  
34 tionals, and waiving any pecuniary claim based on events which  
35 occurred at any time before the coming into force of such treaty, any  
36 existing treaty between the United States and Germany to the con-  
37 trary notwithstanding. To these ends, and for the purpose of  
38 establishing fully friendly relations and commercial intercourse  
39 between the United States and Germany, the President is hereby  
40 requested immediately to open negotiations with the Government  
41 of Germany.



42 . Sec. 2. That in the interpretation of any provision relating to the  
43 date of the termination of the present war or of the present or exist-  
44 ing emergency in any acts of Congress, joint resolutions, or procla-  
45 mations of the President containing provisions contingent upon the  
46 date of the termination of the war or of the present or existing  
47 emergency, the date when this resolution becomes effective shall  
48 be construed and treated as the date of the termination of the war  
49 or of the present or existing emergency, notwithstanding any pro-  
50 vision in any act of Congress or joint resolution providing any other  
51 mode of determining the date of the termination of the war or of the  
52 present or existing emergency.

53 Sec. 3. That until by treaty or act or joint resolution of Congress  
54 it shall be determined otherwise, the United States, although it has  
55 not ratified the treaty of Versailles, does not waive any of the rights,  
56 privileges, indemnities, reparations, or advantages to which it and  
57 its nationals have become entitled under the terms of the armistice  
58 signed November 11, 1918, or any extensions or modifications thereof  
59 or which under the treaty of Versailles have been stipulated for its  
60 benefit as one of the Principal Allied and Associated Powers and to  
61 which it is entitled.

62 Sec. 4. That the joint resolution of Congress approved December  
63 7, 1917, "declaring that a state of war exists between the Imperial  
64 and Royal Austro-Hungarian Government and the Government  
65 and people of the United States and making provisions to prosecute  
66 the same," be, and the same is hereby repealed and said state of war  
67 is hereby declared at an end, and the President is hereby requested  
68 immediately to open negotiations with the successor or successors  
69 of said Government for the purpose of establishing fully friendly re-  
70 lations and commercial intercourse between the United States and  
71 the Governments and peoples of Austria and Hungary.

May 13, 1920, unanimous consent agreement reached.

May 15, 1920, Mr. Brandegee offered the following amendment: In  
Sec. 1, after the word "corporations" in line 22, insert the following words:  
"or have suffered damage directly in consequence of hostilities or of any  
operations of war;" amendment was agreed to.

On the substitute proposed by the Committee on Foreign Rela-  
tions, the vote was: Yeas, 43; nays, 38; Bitter-enders, yea.

On the motion "shall the joint resolution pass," the vote was:  
Yeas, 43; nays, 38; Bitter-enders, yea.

## HOUSE OF REPRESENTATIVES

May 21, 1920, Mr. Porter moved to take H. J. Res. 327 from the Speaker's table and to concur in the Senate amendments; vote: Yeas, 228; nays, 139.

May 27, 1920, Resolution as passed by both Houses vetoed by the President.

May 28, 1920, Mr. Porter moved the previous question, "Will the House on reconsideration pass the resolution, the objections of the President to the contrary notwithstanding;" two-thirds vote required; vote: Yeas, 220; nays, 152.