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OF THE

ASSEMBLY



MEETINGS OF THE COMMITTEES

MINUTES

OF THE

FIRST COMMITTEE

(CONSTITUTIONAL AND LEGAL QUESTIONS)

GENEVA 1926

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LIST OF MEMBERS

- Chairman :* His Excellency M. Giuseppe MOTTA (Switzerland).
- Vice-Chairman :* Dr. LIMBURG (Netherlands).
- Members :*
- Abyssinia :* His Excellency M. LAGARDE, Duc d'ÉNTOTTO ; or
His Excellency M. DEDJAZMATCH GUETATCHEOU.
Lidj MAKONNEN ENDELKATCHOU (Substitute).
- Albania :*
- Australia :* The Hon. J. G. LATHAM, C.M.G., K.C., M.P.
Mr. M. C. BONIWELL (Substitute).
- Austria :* Dr. Marc LEITMAIER.
- Belgium :* His Excellency M. Emile VANDERVELDE.
M. Henri ROLIN (Substitute).
- British Empire :* Sir Cecil James Barrington HURST, G.C.M.G., K.C.B., K.C. ; or
The Right Hon. Viscount CECIL OF CHELWOOD, K.C.
- Bulgaria :* His Excellency M. Vladimir MOLLOFF.
- Canada :* The Right Hon. Sir George E. FOSTER, G.C.M.G., P.C., L.L.D.
- Chile :* His Excellency M. Armando QUEZADA.
His Excellency M. Jorge VALDES-MENDEVILLE (Substitute).
- China :* His Excellency M. CHAO-HSIN CHU.
M. TCHANG GUI-TONG (Substitute).
- Colombia :* His Excellency Dr. URRUTIA.
- Cuba :* His Excellency M. Orestes FERRARA.
His Excellency M. Guillermo DE BLANCK (Substitute).
- Czechoslovakia :* His Excellency Dr. Stephan OSUSKY.
His Excellency Dr. Ferdinand VEVERKA (Substitute).
- Denmark :* His Excellency M. Herluf ZAHLE.
M. Holger ANDERSEN (Substitute).
- Dominican Republic :* Dr. Tulio Franco FRANCO.
His Excellency M. PARADAS (Substitute).
- Estonia :* His Excellency Dr. Friedrich AKEL.
M. Auguste J. SCHMIDT (Substitute).
- Finland :* His Excellency M. Rafael Waldemar ERICH.
- France :* His Excellency M. Aristide BRIAND.
M. Louis LOUCHEUR.
M. Joseph BARTHÉLEMY.
M. Marcel PLAISANT.
M. FROMAGEOT.
- Germany :* Dr. STRESEMANN.
Dr. von SCHUBERT.
Dr. GAUS.
- Greece :* His Excellency M. S. POLYCHRONIADIS.
- Guatemala :* M. Rafael Pinéda DE MONT.
- Haiti :* His Excellency M. Alfred NEMOURS.
- Hungary :* M. Paul DE HEVESY ; or
M. Zoltán BARANYAI.
- India :* Sir William Henry Hoare VINCENT, G.C.I.E., K.C.S.I.
Sir Edward Maynard DES CHAMPS CHAMIER, K.C.I.E. (Substitute).
Sir Basanta Kumar MULLICK (Substitute).
- Irish Free State :* Mr. Ernest BLYTHE.
Mr. Eoin MACNEILL (Substitute).

- Italy* : His Excellency M. Vittorio SCIALOJA.
M. Massimo PILOTTI (Substitute).
- Japan* : His Excellency M. Minéitciro ADATCI.
His Excellency M. Naotake SATO.
- Latvia* : M. Charles DUZMANS.
- Liberia* : His Excellency Baron Rodolphe A. LEHMANN.
- Lithuania* : His Excellency M. Venceslās SIDZIKAUSKAS.
- Luxemburg* : His Excellency M. Joseph BECH.
M. Gaston DIDERICH (Substitute).
- Netherlands* : Dr. Joseph LIMBURG ; or
His Excellency M. J. LOUDON.
- New Zealand* : The Right Hon. Sir Francis BELL, G.C.M.G., K.C.
- Nicaragua* : Dr. Antoine SOTTILE.
His Excellency M. Tomas Francisco MEDINA (Substitute).
- Norway* : M. Benjamin VOGT.
- Panama* : His Excellency Dr. Eusebio A. MORALES.
- Paraguay* : Dr. Ramon V. CABALLERO.
- Persia* : His Highness Prince ARFA.
Dr. Edmond PRIVAT (Substitute).
- Poland* : His Excellency M. Auguste ZALESKI.
His Excellency M. François SOKAL.
Professor Michel ROSTWÓROWSKI (Substitute).
M. Thadée JACKOWSKI (Substitute).
- Portugal* : His Excellency Dr. Augusto DE VASCONCELLOS ; or
His Excellency Dr. Bethencourt RODRIGUES.
- Roumania* : His Excellency M. Nicolas TITULESCO.
His Excellency M. Nicolas Petresco COMNÈNE (Substitute).
M. Démètre NEGULESCO (Substitute).
- Salvador* : His Excellency Dr. T. Gustavo GUERRERO.
- Kingdom of the Serbs,
Croats and Slovenes* : Dr. Youraj KRNYEVITCH ; or
His Excellency Dr. Momtchilo NINTCHITCH.
- Siam* : His Highness Prince CHAROON (temporarily replaced by His Highness
Prince Vipulya SVASTIVONGS).
Nai Thawin ARTHAYUKTI (Substitute).
- South Africa* : Mr. Jacobus Stephanus SMIT.
- Sweden* : His Excellency M. Jonas Éliel LÖFGREN.
His Excellency Baron E. T. Marks VON WURTEMBERG.
Mme. Anna BUGGE-WICKSELL.
- Switzerland* : His Excellency M. Giuseppe MOTTA.
M. Walther BURCKHARDT (Substitute).
- Uruguay* : His Excellency M. Albert GUANI ; or
His Excellency M. Enrique BUERO (Substitute).
- Venezuela* : His Excellency M. Diogenes ESCALANTE.
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FIRST COMMITTEE

(CONSTITUTIONAL AND LEGAL QUESTIONS.)

AGENDA.

1. CONSIDERATION OF THE PROPOSALS MADE BY THE COMMITTEE INSTRUCTED TO STUDY THE QUESTION OF THE COMPOSITION OF THE COUNCIL AS REGARDS THE METHOD OF ELECTION AND TENURE OF THE NON-PERMANENT SEATS.
 2. PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES : REPORT BY THE COUNCIL ON PROPOSALS, DECLARATIONS AND SUGGESTIONS MADE FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.
 3. ARBITRATION, SECURITY AND REDUCTION OF ARMAMENTS : REPORT BY THE COUNCIL ON THE PROGRESS IN GENERAL SECURITY BROUGHT ABOUT BY THE CONCLUSION OF CONVENTIONS AND TREATIES.
 4. INTERPRETATION OF THE PREAMBLE AND ARTICLES 3 AND 4 OF THE COVENANT : DRAFT RESOLUTION SUBMITTED BY VISCOUNT CECIL, DELEGATE OF THE BRITISH EMPIRE.
 5. CONSIDERATION OF THE SECTION OF THE REPORT ON THE WORK OF THE COUNCIL DEALING WITH THE WORK OF THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW : RESOLUTION PROPOSED BY M. LOUDON, DELEGATE OF THE NETHERLANDS, AND ADOPTED BY THE ASSEMBLY ON SEPTEMBER 15TH, 1926.
 6. QUESTION OF THE UTILITY OF NUMBERING THE PARAGRAPHS OF THE ARTICLES OF THE COVENANT : DRAFT RESOLUTION SUBMITTED BY MR. J. G. LATHAM, DELEGATE OF AUSTRALIA.
 7. APPOINTMENT BY THE COUNCIL OF A COMMITTEE TO EXAMINE CERTAIN QUESTIONS RELATING TO THE ELECTION OF THE NON-PERMANENT MEMBERS OF THE COUNCIL : DRAFT RESOLUTION PROPOSED BY M. HAMBRO, DELEGATE OF NORWAY.
 8. DISCUSSION OF THE DRAFT RESOLUTION PROPOSED BY M. LANGE, DELEGATE OF NORWAY, AND FORWARDED TO THE FIRST COMMITTEE BY THE THIRD COMMITTEE AT ITS MEETING OF SEPTEMBER 18TH, 1926.
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MEETINGS OF THE COMMITTEE

FIRST MEETING

Held on Tuesday, September 7th, 1926, at 4 p.m.

Chairman : M. MOTTA.

1. Election of the Vice-Chairman.

Dr. LIMBURG (Netherlands) was elected Vice-Chairman by acclamation.

He thanked the Committee for the honour conferred upon him by his election as Vice-Chairman.

2. Communication from the Chairman.

The CHAIRMAN reminded the Committee of the resolution adopted by the Council on September 4th concerning the composition of the Council. He informed the Committee that the General Committee of the Assembly had just decided to ask the Assembly to deal immediately with the following questions, without reference to a Committee :

- (a) Admission of Germany to the League ;
- (b) Attribution to Germany of a permanent seat on the Council ;
- (c) Increase from six to nine of the number of the non-permanent Members of the Council.

This decision, in conformity with the Rules of Procedure of the Assembly, would have to be taken by a majority of two-thirds.

The first of these items—the admission of Germany to the League—had been thoroughly examined by the special session of the Assembly in March, and it seemed unnecessary that it should be again referred to a Committee.

As regarded the permanent seat on the Council to be attributed to Germany, he would remind the Committee that it had only been possible to obtain unanimity on this subject in the Council on condition that it was bound up with that of the increase of the number of non-permanent seats from six to nine.

For this reason, the General Committee had decided to connect these three questions and to ask the Assembly to adopt for their examination the summary procedure contemplated by its Rules of Procedure.

It was understood that, in the event of the majority of two-thirds required for this procedure not being obtained in the Assembly, the three questions would be referred to a Committee.

He was persuaded that the procedure proposed by the General Committee was the best in the circumstances, and he hoped that the members of the Committee would share his view.

When the Assembly had adopted the three resolutions which would be submitted to it at the meeting to be held on the following day, the First Committee would have to deal with the rules to be followed for the election of the non-permanent Members of the Council, and he would urge the Committee to examine favourably the conclusions of the Special Committee.

On the proposal of the CHAIRMAN, *the Committee decided not to discuss before the Assembly meeting to be held on the following day the questions relating to the admission of Germany and the composition of the Council.*

3. Publicity of the Meetings.

The Committee decided that its meetings should be held in public.

4. Agenda of the Committee.

The CHAIRMAN informed the Committee that it would probably not be able to take up the discussion of its agenda before the Friday following. He hoped that by that time the German delegation would have arrived at Geneva.

The Chairman also informed the Committee that the draft resolution submitted by Viscount Cecil concerning the interpretation of the Preamble and of Articles 3 and 4 of the Covenant had been inserted in the Committee's agenda.

SECOND MEETING

Held on Friday, September 10th, 1926, at 5 p.m.

Chairman : M. MOTTA.

5. **Consideration of the Proposals made by the Committee instructed to study the Question of the Composition of the Council as regards the Method of Election and Tenure of the non-Permanent Seats on the Council (Annex 1).**

The CHAIRMAN thought it absolutely essential to begin this enquiry by a general discussion which should be as full as the delegates might desire. At the end of this discussion, in accordance with the usual procedure, a sub-committee would be requested to draw up a report containing definite proposals. When that report was submitted to the Committee, the latter would discuss it at a plenary meeting.

On the one hand, it appeared necessary that the Committee should work with some rapidity ; several delegations seemed to desire that the nine non-permanent Members of the Council should be elected as early as the following week. On the other hand, it seemed just as necessary to avoid giving the impression that the Assembly was being hurried and had been unable to proceed with the requisite calm and leisure. The Chairman begged the Committee as far as possible to reconcile these two necessities.

M. LÖFGREN (Sweden) delivered the following speech :

I take the liberty to speak at this early stage of the discussion owing to the special position the Swedish representative has had to take up in the Committee, whose report we are going to consider. To most of us it is a matter of general satisfaction that there is at last a definite prospect of our bringing about a system of rotation, so valuable for a confident co-operation between Council and Assembly.

The scheme elaborated by the Committee is the result of a compromise between those who, like the Swedish representative on the Committee, would have preferred a more stringent system of rotation similar to that recommended by the Assembly of 1922 and those who advocated that no regulations whatsoever should prevent the Assembly from re-electing indefinitely any Member of the League. The Committee's proposal provides thus by its principal stipulations a system of regular rotation. But at the same time it renders it possible for the Assembly to a limited extent to re-elect outgoing Members of the Council.

However, certain statements in the press have given an erroneous interpretation of this compromise as regards re-eligibility by drawing therefrom inferences which I do not consider as resulting from its clauses.

For this reason I feel bound, before the question is sent to a sub-committee, to emphasise the views of the Swedish delegation as to the right and proper interpretation of the proposition.

The Swedish Government could never have accepted any scheme that tended to put the Members of the League into different classes or categories, as in its opinion the juridical equality of States is one of the principles on which the whole system of the League is built. The possibility of re-election, embodied in the scheme, should also, in my mind, in no way be considered as a privilege to be conferred on this or that State. It is, on the contrary, a faculty which the Assembly in its sovereignty may exercise when it deems the continued services of a State on the Council to be needed. In fact, the regulations before us do not give and do not intend to give any kind of guarantee to any State to sit on the Council for an indefinite period.

I find this interpretation confirmed by the fact that the Committee not only rejected the idea of the allocation of new permanent seats, except for Germany, but also did not recommend a proposal to the effect that a State might be declared re-eligible already at the time of election. Instead, it was decided that such a declaration should only take place at the expiration of a mandate. Furthermore, the striking out from the scheme of the interesting Belgian proposal as to what I should like to call a *general* election of all the non-permanent Members was apparently due to the fact that all the members of the Commission were of the opinion that the stipulation in question was not necessary, the Assembly retaining nevertheless its rights derived from the Covenant to arrange such an election whenever it was required. That, in view of special circumstances, an exception is made in the transitory stipulations dealing with the election to take place this year should not in any way be allowed to weaken the force of the interpretation of the *general* rules I have just had the honour to develop.

May I add just one word with regard to the important task which the Sub-Committee will have to accomplish? I venture to say that the draft before us is not an entirely finished pro-

posal and I believe the Committee itself did not consider it as such. It should consequently be carefully considered by our Committee and its Sub-Committee in order to be made technically complete. For instance, to the proposed regulations will have to be added an explicit stipulation that the declaration of re-eligibility should be taken by a secret ballot, as is the case with the elections to the Council. Further, will not the Sub-Committee have to work out, in detail, the procedure to be followed by the Assembly when it has to decide the different periods of mandate—one, two or three years—for the nine Members of the Council to be elected this year?

I have not thought it right to let this occasion pass without stating the views of my delegation as to what we hold to be the real purpose of the regulations. Public opinion in my country is specially anxious that, if we now at last shall arrive at a plan for settlement of this difficult problem, it should, based on the full liberty of the Assembly and the equality of its Members, not only remove present difficulties but give constitutional peace and security for the future.

M. VOGT (Norway) said that the Norwegian Government was completely in favour of the system of rotation and that he would also have preferred that there should be no re-eligibility. However, if it were desired that a limited number of Members should be re-eligible, the Norwegian Government preferred the proposal adopted on May 17th, with regard to the composition of the Council, to that submitted that day to the Assembly.

The first proposal fully safeguarded the liberty of the Assembly. The statement of the Swedish representative had made the scope of that proposal quite clear and facilitated the work of the Conference.

Finally, the Norwegian Government considered that elections to the Council should be made according to a system of proportional representation; the speaker suggested, as Viscount Cecil had already done, the appointment of a Sub-Committee for the purpose of studying this question.

M. POLYCHRONIADIS (Greece) agreed with the opinions expressed by the Norwegian and Swedish delegates, especially in the matter of elections to the Council by a system of proportional representation. The question seemed to him too serious not to be carefully considered.

M. ZAHLE (Denmark) fully agreed with the statement of his Swedish colleague. He reminded the Committee that his Government had always been very reluctant to accept both an increase in the number of non-permanent Members and the system of re-eligibility proposed by the Committee of Enquiry. In the Danish Government's opinion the system of re-eligibility should not be of a nature to establish classification of a political kind, but to render possible the re-election of a State should its continued presence on the Council offer definite advantages. He also thought that the draft of the Committee of Enquiry was not complete and final. He would like the rules of election which are to be established to be clear and definite, to obviate any hesitation and friction in future elections. Elections to the Council should not be, as had been the case hitherto, one of the most delicate tasks of the Assembly.

M. LIMBURG (Netherlands) said that the Netherlands delegation desired that as a general rule the mover of a proposal should not at the same time be the Rapporteur on the question and he hoped that the Committee would take this desire into account.

The draft submitted to the Assembly was a compound of principles and methods. It was the amended Article 4 of the Covenant which empowered the Assembly to determine the rules of election and re-eligibility of the non-permanent Members of the Council, and it was these rules which the Committee was now called upon to establish.

The last paragraph of the draft appeared to him merely a recommendation and he considered that a recommendation should not appear in rules of procedure.

After careful consideration, the Netherlands delegation accepted the principle of re-eligibility; it appeared to him that the greatest difficulties the Committee would encounter would arise from the temporary provisions.

The speaker pointed out that, since the vote of September 8th at the Assembly, the first article of the draft of the Committee of Enquiry was no longer in conformity with the facts. In Article 2 the provision that the non-permanent Members of the Council "shall assume office immediately upon election" should be modified or made more definite. In Article 3 it had not been specified that the majority of two-thirds must be a majority of voters; as regards the appointment, by a majority of two-thirds, of the re-eligible Members, it had also been forgotten, as had been pointed out by the Swedish delegate, to specify the necessity for a secret ballot provided for in Article 22 (a) of the Rules of Procedure of the Assembly for the election of the Members of the Council.

The speaker had heard only one objection to the system recommended by the Council: a system of proportional representation had been suggested. He had nothing against this system but he was of opinion that the smaller the electoral body the worse must be any proportional system. Now the Assembly was a very small electoral body. Further, to apply a proportional system there must be organised groups. Who was to create these groups in the Assembly?

Finally, the speaker dealt with the temporary provisions. These provisions did not specify how, in 1926, nine non-permanent Members of the Council were to be elected for one, two or three years. He believed that the fairest system was to draw lots, if only to avoid the

disappointments which the system contemplated in the temporary provisions of the draft would be bound to produce. He thought there was no need to state at present that any particular State would be re-eligible on the expiration of its mandate ; the declaration of re-eligibility should rather be made at the end of the mandate.

The CHAIRMAN considered that there was no need to open a discussion or to take a vote on the proposal submitted by the Vice-Chairman of the Committee ; it would be sufficient merely to take it into account as far as possible in practice.

M. CHAO-HSIN CHU (China) was very glad that the number of non-permanent seats had been increased from six to nine. This would allow the realisation of what had been called proportional representation. China had always recommended a system of electing non-permanent Members according to geographical distribution. He recalled that every year from 1923 to 1925, the Assembly had unanimously adopted the Chinese proposal to appoint the non-permanent Members of the Council according to geographical distribution. He hoped that the increase in the number of the non-permanent Members would allow these resolutions of the Assembly to be put into effect.

The speaker quoted the passage in the report by the Committee of Enquiry which stated that three seats should be allocated to Latin America and adequate representation given to Asia. He thought that two seats should be reserved for non-European Members and non-American Members of the League ; if, however, the Assembly considered that a single seat constituted adequate representation for Asia, he thought that that seat should be occupied for three years.

The general discussion was closed.

The CHAIRMAN proposed that a Sub-Committee of thirteen members should be appointed composed of representatives of the following countries :

British Empire	Italy
Chile	Japan
China	Netherlands
Colombia	Norway
Denmark	Poland
France	Roumania
Germany	

The Chairman would be present at the meetings of the Sub-Committee without being a member of it.

M. LOUCHEUR (France) proposed that the Chairman of the Committee should be a member of the Sub-Committee.

This proposal, seconded by many of the delegations, was carried unanimously.

The Sub-Committee was composed as follows :

British Empire	Italy
Chile	Japan
China	Netherlands
Colombia	Norway
Denmark	Poland
France	Roumania
Germany	Switzerland

THIRD MEETING

Held on Tuesday, September 14th, 1926, at 10.30 a.m.

Chairman : M. MOTTA.

6. **Draft Resolution concerning the Rules for the Election of the non-Permanent Members of the Council, their Term of Office and the Conditions of Re-eligibility : Text submitted by Sub-Committee No. 1.**

The CHAIRMAN read to the Committee the draft prepared by the Sub-Committee (Annex 2).

General Observations.

M. SIDZIKAUSKAS (Lithuania) stated that the Lithuanian Government would have preferred that there should be no exception in favour of certain States with regard to re-eligibility after the expiration of their term of office ; it would have preferred the principle of absolute rotation.

In view, however, of present circumstances, the Lithuanian delegation would not oppose the confirmation, in the resolution submitted, of the principle of re-eligibility formulated by the Sub-Committee.

The Lithuanian Government was also against any increase in the non-permanent seats on the Council. Nevertheless, it had not opposed the increase, owing to the political circumstances and the object in view.

At the same time, it would be impossible for it to agree to the Sub-Committee's proposal, which sought to accord this right of re-eligibility at once; that was to say, before the State, appointed a Member of the Council, had given proof of the value of its work on the Council. The Lithuanian delegation, therefore, reserved the right to demand the suppression of certain parts of the provisions proposed.

Prince ARFA (Persia) did not greatly favour elections which would create Members of the Council of different categories according to the term for which they were elected.

He desired to speak in order to communicate the instructions he had received from his Government. These were to demand two non-permanent seats for Asia, and, generally speaking, for the States of Asia and Africa which were already, or would become, Members of the League of Nations.

Asia was the cradle of the Aryan race, and it was only right that her people should have two representatives on the Council.

However, in case Asia should only receive one seat, that seat ought to be secured permanently for her by a system of rotation.

He had been assured by his Chinese colleague that this would be the case, but Persia required a guarantee, an official declaration by the First Committee or the Assembly, and his country hoped that this guarantee would not be refused it.

M. FERRARA (Cuba) read the following declaration :

" The Cuban delegation will, in view of the political necessities of the moment, vote in favour of the Sub-Committee's proposal. Nevertheless, it is under no misapprehension as to the true effects of the amendments introduced, which do not, in reality, constitute a right to re-election in favour of a State whose presence on the Council might be useful to the League of Nations, but an extension of the term of office conferred *a priori* upon certain selected nations.

" It is not the intention of the Republic of Cuba to uphold an abstract ideal or to raise difficulties in the way of the laborious but necessary adjustments and compromises which have to be made between political realities and the strict principles of justice.

" Accordingly the Sub-Committee's proposal, which crystallises in a formula, necessarily imperfect, the deliberations of great intellects and obviates an acute crisis from which the League emerges with no loss but rather with an increase of strength and prestige, justifies our vote and merits our approval.

" But, for the benefit of all, and especially of the American continent, we must give expression to the following wish. Three seats on the Council have been granted to Latin America and none of these positions carries with it the right of re-election in the form proposed by the Sub-Committee; if, therefore, the principle of re-election comes to be applied some day, as a result of exceptional circumstances, account should be taken, before the general vote of the Assembly, of the opinion of the majority of the Latin-American countries.

" We have decided to draw up this recommendation because in America an act involving inequality, although capable of explanation, would constitute a fresh departure and might create a precedent for all international assemblies which were exclusively American. We fully understand the great importance of European problems, and we must bow before the practical necessities to which they give rise; but we hope that the European nations will give evidence of the same spirit of impartiality if extra-European problems should arise.

" If the general interest should oblige us again, on some future occasion, to consent to a fresh sacrifice of principle, we think that the nations of Latin America should be in a position beforehand to appreciate for themselves the expediency of such action, and to weigh the good or the evil which might be produced.

" Consequently, the Cuban delegation, while approving the principle of re-eligibility, puts forward this recommendation which is, at the moment, purely theoretical but which may take the form of a resolution if the question should leave the sphere of possibilities and enter that of practical politics. "

M. QUEZADA (Chile) made the following statement :

I have listened with the greatest interest to the Cuban delegation's statement, and I am glad to say that I agree in considering that the question of re-eligibility does not arise for Latin America in the present circumstances. As you all know, the countries of Latin America make up a community of nations which, by reason of their common origin, language, history and economic and social development, are almost identical in their aims and policies. It may therefore be said that any of these countries can represent the joint interests of them all.

Accordingly, and with due reservations regarding the future, since no one knows what the future has in store for us, I express my agreement with the statement made by the Cuban delegation.

M. GUANI (Uruguay) entirely agreed with the statements of his Cuban and Chilean colleagues with regard to the solidarity of the peoples of Latin America. He reminded the Committee of the part he had played in obtaining three seats for Latin America in the proposal of the Committee of Enquiry.

At the same time, although South America formed one of the most homogeneous geographical and political entities at present in existence, that continent could never constitute a separate unit in the League of Nations—it could only collaborate in the general work of the League. That being so, he did not see how it would be possible to create special rules for the Latin-American States different from those governing the other Members of the League of Nations. He did not think that within the League a particular group could ever lay down rules to be imposed upon the whole Assembly. If he did not entirely approve of what had been said, it was because he was not sure that it accurately interpreted the views of the Powers not represented on the Committee.

The speaker and his Government were, therefore, of opinion that the States of Latin America could not proceed to special assemblies and elections among themselves the conclusions of which would be binding upon the plenary Assembly of the League.

Mr. BLYTHE (Irish Free State) regretted that the Sub-Committee's draft contained no procedure for allowing the Assembly to withdraw the mandate of a non-permanent Member of the Council. He was afraid that, under the new system of rotation, the work of the League might be obstructed by the view which one Member of the Council might hold with regard to its powers on that body. Such a situation might be prolonged for nearly three years. He thought that the arguments which had been advanced against an increase in the number of the Members of the Council pointed to the necessity of the Assembly's being able to withdraw the mandate of a Member of the Council. The possibility of withdrawal would reduce the disadvantages pointed out by the Scandinavian delegations and inherent in a Council of too large size.

He thought that it ought to be possible for a non-permanent Member of the Council to be deprived of his seat by a decision of the Assembly taken on a two-thirds majority, and he reserved the right to submit an amendment to this effect.

M. FERRARA (Cuba) desired to point out to M. Guani that he had spoken of the Latin-American States in general, and not of their unanimous views.

At the same time he reminded M. Guani that, at present, meetings actually took place between the representatives of Latin America and that behind the scenes these representatives were frequently asked which were the three candidates for seats on the Council chosen by the Latin Americans—he did not suppose that Uruguay intended to modify her policy in the matter or that it constituted the least danger or disadvantage to the League.

M. GUANI (Uruguay) explained that the Uruguayan delegation attended these meetings of the Latin-American States because it regarded them purely as a means of promoting exchanges of views. On the other hand, it would not countenance the taking of formal votes at these meetings, even by secret ballot. Decisions should not be taken at these special private meetings, but in the Assembly.

Discussion Article by Article.

The CHAIRMAN proposed that the title ("Draft Resolution...") should be preceded by the preamble ("The Assembly, acting...").

The Committee decided that the preamble should precede the title.

Article I, paragraph 1, was adopted without discussion.

With reference to *Article I, paragraph 2*, Mr. LATHAM (Australia) hoped that this paragraph would not prevent the holding of a special session of the Assembly to fill the vacant seat.

The CHAIRMAN pointed out that the Sub-Committee had intended to enable any session of the Assembly to fill this vacancy, and that was why it had deleted the word "ordinary" before the word "session" in the Drafting Committee's draft.

Mr. LATHAM (Australia) was satisfied with these explanations, and the paragraph was adopted.

With reference to *Article II, paragraphs 1 and 2*, M. LOUCHEUR (France) proposed an amendment. The declaration of re-eligibility was to be made by a majority of two-thirds of the votes cast, instead of by a majority of two-thirds of the voters. In his opinion a blank voting ticket was the normal way of expressing abstention in a secret ballot. It seemed to him extraordinary that a blank ticket should be regarded as a negative vote.

M. Zahle had justified the system proposed by the Sub-Committee with a reference to the "courteous passivity" of the Assembly, dictated by the wish not to have to indicate positively to a State that it did not wish to declare that State re-eligible. The speaker did not find this argument convincing; he thought that the members of the Assembly ought to express their opinion frankly. Finally, the precedent which had been quoted in favour of the system proposed by the Sub-Committee failed to convince him. He would like to prevent "Aye" tickets, which were void because they had been incorrectly filled in, being counted as negative votes.

M. VOGT (Norway) reminded the Committee of the reservations which he and the Norwegian delegation had previously made owing to their opposition to the principle of re-eligibility. With the best will in the world, his delegation had not been able to reach an acceptable compromise.

The Norwegian Government was particularly opposed to a declaration of re-eligibility even before the State in question had given proof of its capacity on the Council.

With regard to M. Loucheur's proposal, he thought that as re-eligibility was not a right granted to a State but an exceptional power conferred upon the Assembly under certain special conditions, that power ought to be openly exercised, and it must be assumed that those who did not express their opinion did not wish to exercise this exceptional power. A blank vote by a State ought therefore to be regarded not as an expression of hostility, but simply as expressing the view of a State which was not convinced of the necessity of the proposed re-eligibility.

M. ZAHLE (Denmark) said that the Danish delegation was in agreement with the Sub-Committee and he thought that re-eligibility should only be decided by express manifestations of wishes in its favour or against it.

The CHAIRMAN thought that the question had no practical importance. It was necessary to determine the value to be given to blank voting tickets, but once that value was fixed, the voting would take place accordingly, any opposition being expressed by a blank ticket or by voting "No".

Viscount CECIL OF CHELWOOD (British Empire) considered that the question was more important than appeared to the Chairman. It seemed to him that the members of the Assembly should be encouraged to express their opinion.

M. LIMBURG (Netherlands) thought that there was some confusion between a blank ticket and a ticket that was void. Re-eligibility was an exception which must be expressly voted for. Those, therefore, who voted blank were not in favour of re-eligibility. He was surprised that there could be any confusion between blank tickets and tickets that were invalid. He hoped that the Sub-Committee's draft would be adopted.

The CHAIRMAN requested the Committee, in order to save time, to limit discussion to what was strictly necessary. As regards blank tickets, it was enough to know their value—the rest mattered little.

The discussion was closed. On a vote being taken, *M. Loucheur's amendment was adopted by 19 votes to 15.*

The CHAIRMAN hoped that the minority would accept the point of view expressed by the majority.

With reference to *Article II, paragraph 3*, M. LÖFGREN (Sweden) doubted whether the best procedure for submitting a request for re-eligibility was an application by the candidate itself. He thought that it would be better to leave it to the President of the Assembly to put to the vote the proposal to declare a Member re-eligible.

The CHAIRMAN reminded the Committee that the Sub-Committee had discussed at length the question from whom the initiative should come. It had finally considered that the initiative should be taken by the candidate State.

M. LÖFGREN (Sweden) explained that he had meant that the Assembly should be entirely free to express its opinion that such and such a Member should, in the interests of the League, be re-elected to the Council.

M. VOGT (Norway) objected in principle to an automatic vote on re-eligibility. He did not think that a vote should be taken regarding a State against its wishes. He reverted to the proposal of a "semi-automatic" procedure which he had submitted to the Sub-Committee, namely, that the President of the Council should enquire of each retiring Member whether it was prepared to accept re-election.

Viscount CECIL OF CHELWOOD (British Empire) said he was not certain whether he understood exactly what was M. Löfgren's proposal and it was therefore difficult to form a conclusion. In any case he was in agreement with M. Vogt that it was not desirable to vote upon the re-eligibility of the Member against the wish of that Member.

The CHAIRMAN pointed out that the draft distinguished clearly between the procedure, and that the normal procedure—which the Committee was discussing—was not that laid down in the temporary provisions.

M. LÖFGREN (Sweden) put forward his amendment as follows :

"Before the election the President shall submit to the Assembly the question whether any of the outgoing Members shall be re-eligible. Votes shall be taken by secret ballot."

After explanations by M. Loucheur and the Chairman, M. Löfgren withdrew his amendment.

Article II, paragraph 4. M. ZAHLE (Denmark) asked what would happen if in the ballot referred to in the last phrase of that paragraph there was equality of votes.

The CHAIRMAN replied that the Sub-Committee had considered that this special case was covered by the ordinary rules of procedure of the Assembly and that it was unnecessary to make a special regulation.

M. ZAHLE (Denmark) asked that the Chairman's statement should be inserted in the Committee's report to the Assembly.

This proposal was adopted.

Article II, paragraph 4, was adopted.

M. VOGT (Norway) delivered the following speech :

" I rise to propose that the following, as *Article III*, be inserted :

" Notwithstanding the above provisions, the Assembly may at any time by a two-thirds majority decide to proceed, in application of Article 4 of the Covenant, to a new election of all the non-permanent Members of the Council. In this case the Assembly shall determine the rules applicable to the new election. "

" My Government thinks it necessary to have this principle clearly stated in connection with the alterations which are now being made in the constitution of the League, in order to have the rights of the Assembly upheld without doubt. It is true, as was so convincingly pointed out at our last meeting by the honourable delegate from Sweden, that, without this paragraph, the Assembly would always be entitled to arrange a new general election whenever it was found necessary. But this could only be exercised in a cumbersome way, by altering the rules, creating delay and ploughing up a fertile field of continued intrigues. In this paragraph, borrowed from the expert Committee's proposal of May last, is offered a clear-cut way, a sharp sword, very probably never to be used and certainly not to be used against a State which, from unselfish motives, pursues a policy of legitimate opposition. But there is a possibility—I do not wish to dwell on the past, I speak hypothetically of the future—there is a possibility that some State may be tempted by the rule of unanimity of Council decisions to take up an attitude of obstruction. There may be temptation, and you increased the other day the number of those to be tempted by 50 per cent. Now, said the young man, there is *one* thing I cannot resist and that is temptation. Hence the necessity of this paragraph. It is a flag hoisted to show the sovereign rights of the Assembly, it is a *mene tekel* written on the wall, an earnest warning—beware. Yes, beware. To give in to obstructive methods would lead to disaster. If a Member of the League would try to press its individual will upon the common will of all nations, it must be met with stern firmness from the very first day—otherwise we shall have to pay the price, the ever-increasing price, the price of Sibylline books. Let us not forget, the power of the League is moral, and on the moral of the League depends its power. Therefore beware. And here is the warning : *Il faut que les chevaliers de cette grande puissance, la Société des Nations, soient non seulement sans reproche mais aussi sans peur.* "

FOURTH MEETING

Held on Tuesday, September 14th, 1926, at 5.30 p.m.

Chairman : M. MOTTA.

7. Motion on Procedure by M. Loucheur.

M. LOUCHEUR (France) presented a motion on procedure. The amendment submitted by M. Vogt (Norway) appeared to him to be extremely important. It would be easier for him to give his opinion on the matter after the discussion on the temporary provisions, as the amendment referred also to the temporary period.

He proposed therefore that the discussion on the amendment submitted by M. Vogt should be adjourned until the end of the discussion on the temporary provisions.

M. Loucheur's proposal was adopted.

8. Temporary Provisions for the Election of the non-Permanent Members of the Council in 1926.

The CHAIRMAN drew the attention of the Committee to the last sentence of *paragraph 1* (election of nine members in 1926) of *Article III* (Temporary Provisions) : " The procedure of

the election shall be determined by the General Committee of the Assembly." The Sub-Committee had considered the question whether the nine Members should be elected together, followed by an election to fix the period of the mandate for each of the nine Members elected; or whether from the start there should be three elections, for the Members to be elected for three years, two years and one year, or whether first of all the one-year Members should be elected, then the two-year Members, and finally the three-year Members. The Sub-Committee being in doubt had finally decided to refer this point to the General Committee of the Assembly.

Mr. LATHAM (Australia) observed that the Assembly, before proceeding to the election, must first of all adopt the rules submitted by the General Committee. He was not sure if it would be possible in that case for the election to take place on Thursday.

The CHAIRMAN explained that, in the view of the Sub-Committee, it was a question of a power which the Assembly, by accepting the temporary provisions under discussion, had delegated to the General Committee; and the procedure, therefore, fixed by the General Committee should not be adopted once more by the Assembly.

M. CHAO-HSIN CHU (China) asked whether the members of the First Committee who were not members of the General Committee could attend the meetings of the General Committee which would decide this procedure.

The CHAIRMAN stated that in accordance with the general rules the meetings of the General Committee were not public.

Article III, paragraph 1, was adopted.

Referring to *Article III, paragraph 2*, M. SIDZIKAVSKAS (Lithuania) stated that it had at first been his intention to propose that this paragraph should be entirely deleted. Moreover, in view of the attitude adopted by two Powers towards the League of Nations, he thought this paragraph was now useless, especially as it was contrary to the principle of the equality of League Members. In view of the situation and of the opinion of the Committee, however, he refrained from asking for the deletion of this paragraph, and reserved the right to make a statement on this subject before the Assembly.

Article III, paragraph 2, was adopted.

Article III, paragraph 3, was adopted without discussion.

9. Amendment by the Norwegian Delegate to the General Rules dealing with the Election of the non-Permanent Members of the Council proposed by the Sub-Committee.

Viscount CECIL (British Empire) thought that it was very improbable that the power which was given to the Assembly would ever be used. The rules which the Committee had just adopted, however, had nevertheless provided for other circumstances, which were highly improbable. He admitted that it was possible for a Member to take advantage of his seat on the Council in order to place obstacles in the way of the Council and even of the Assembly.

The reasons for abandoning this provision were not such as to invalidate the arguments in favour of retaining it. He therefore supported the Norwegian proposal.

The CHAIRMAN reminded the Committee that the text proposed by M. Vogt was contained in the report submitted by the Committee on the Composition of the Council, on May 17th, 1926. The Committee had relinquished this text for purely legal reasons.

M. SCIALOJA (Italy) seconded the proposal of the Norwegian delegate.

The Assembly had laid down certain rules for the elections, which it had never followed, and the legal basis of which was, as a matter of fact, most uncertain. For this reason it had amended Article 4 of the Covenant. The provision which M. Vogt proposed to reintroduce had been abandoned in order to achieve a compromise and because it appeared advisable from the legal point of view. Afterwards, it became evident that the simultaneous existence in the Covenant of the provisions of paragraph 1 of the old Article 4 and of those of the new paragraph 3, which had just entered into force, had created a somewhat uncertain legal situation. The question arose whether, under the new paragraph, the Assembly had not in any case lost the right to dissolve the Council in office, a right certainly granted in paragraph 1 of Article 4 before the ratification of the new Article 4.

Viscount CECIL (British Empire) thought that it was just as well to provide for the possibility of a complete change of the Council in case of disagreement between the Council and the Assembly. This would also clear up all doubt concerning the competence of the Assembly in consequence of the re-drafting of Article 4, paragraphs 1 and 3, of the Covenant. He considered the text of the first report of the Committee of Enquiry excellent, especially as it did not claim to lay down in advance the rules of procedure for so exceptional a case.

M. LÖFGREN (Sweden) merely wished to state that, after the excellent speech by M. Scialoja, he would give his cordial support to the amendment submitted by M. Vogt.

M. LOUCHEUR (France) reminded the Committee that after considerable discussion the preparatory Conference had rejected the article dealt with in the Norwegian proposal.

He thanked the Norwegian delegate for stating that his proposal was not aimed at any State but inspired solely by the wish to preserve the complete freedom of the Assembly. He wondered whether it could be said that the provisions of the Covenant were sufficient. He thought that there really was some doubt. In the first place, it must be admitted that if they had only the provisions of Article 4, paragraph 1 of the Covenant, the procedure would be much longer. Moreover, it had been pointed out to him that a State which possessed a mandate for three years, might claim that the new rule to be voted by the Assembly could not have retroactive effect, and it might claim to remain in the Council until the expiry of its term of three years. In the face of these doubts, it appeared useful to specify clearly the right of the Assembly to proceed to a complete renewal of the Council.

The speaker would like to see the members of the Committee make yet one more small sacrifice in addition to those they had already had to make during the debates. He hoped that, once the discussion was concluded, the Sub-Committee's draft would be adopted unanimously, despite its imperfections, which he was the first to admit.

M. ZAHLE (Denmark) announced that the Danish delegation supported the Norwegian proposal.

M. VOGT (Norway) said that he was happy to see his proposal unanimously accepted. During the course of the debates he had frequently made reservations on points of importance. Despite the doubts which he still entertained, he was pleased to adhere to the request for a unanimous vote made by the French delegate. He too also hoped that a draft, which no member could consider as being directed against him, should be unanimously adopted.

The CHAIRMAN said that he interpreted these speeches to mean that M. Vogt's proposal had been adopted by the members of the Committee, especially as the Sub-Committee, by not adopting it, had considered that this right, which existed independently, need not be expressed.

The Norwegian delegation's amendment was unanimously adopted.

The whole of the Sub-Committee's draft was unanimously adopted.

The CHAIRMAN asked the Committee to appoint a Rapporteur, who would submit his report orally to the Assembly the next morning at 10 o'clock.

M. ADATCI (Japan), speaking for himself and for the Committee, requested M. Motta to be Rapporteur of the Committee to the Assembly.

M. MOTTA was unanimously appointed Rapporteur.

Draft Resolution submitted by His Highness Prince Arfa.

Prince ARFA (Persia) submitted the following draft resolution :

“ Of the nine non-permanent seats on the Council, two shall be reserved for the States of Asia and Africa. ”

Prince Arfa reminded the Committee that, despite the resolution adopted by the different Assemblies, the question of the representation of Asia on the Council had never been settled. An opportunity had now occurred to give Asia two non-permanent seats on the Council. It might be said that the Council did not represent the past, and that therefore Asia's glorious past was of little importance ; nevertheless, the immense populations of Asia represented also a present and a future force, and it was not just, and in fact it should be impossible, that they should be insufficiently represented on the Council, and that only one non-permanent seat should be accorded them.

The CHAIRMAN reminded Prince Arfa that, although the Council's report mentioned the granting of three seats to Latin America, there had never been any formal resolution or decision by the Assembly. The question raised by the Persian delegate had already been repeatedly discussed ; one of the reasons for increasing the number of the non-permanent seats was precisely to allow a more adequate representation to Asia. He thought, nevertheless, that it would be imprudent to tie the Assembly down to a fixed number ; it appeared to him that, by refraining from requesting a vote on his proposal, Prince Arfa would be making a gesture of conciliation and political wisdom characteristic not only of himself but of the noble traditions of his country.

M. ADATCI (Japan) said that he had listened to Prince Arfa's statement with sympathy and emotion. As an Asiatic, he had followed with interest the discussion in the Committee of Enquiry, but he wondered whether the Assembly could at the moment bind itself to a fixed number.

In any case he called upon the Chairman, as Rapporteur, to plead for Asia before the Assembly and to put forward the case of the Asiatic peoples.

The CHAIRMAN stated that he accepted this task with pleasure, if that would satisfy the Persian and Japanese delegates.

M. CHAO-HSIN CHU (China) supported Prince Arfa's statements. The principle of geographical distribution had been repeatedly adopted by the Assembly, If the Assembly did

not take it into consideration this year, he wondered when it would do so. He hoped that the Assembly would not forget that adequate representation should be given to Asia. He hoped that, if only one seat was to be given to Asia, the Assembly would remember that only three three-year seats were available and give one to each of three great Continents.

He thanked the Chairman for his impartiality and for the good will he had expressed towards Asia.

Prince ARFA (Persia) thanked the Japanese and Chinese delegates for the support they had given to his proposal.

If the Committee agreed with the substance of his proposal, he would be content with an expression of the Committee's opinion in the form of a declaration. He would like to see Asia obtain the same guarantees as Latin America.

Viscount CECIL OF CHELWOOD (British Empire) reminded the Committee that Asia was represented by five Members in the Assembly, of which one had a permanent seat on the Council, whilst another (India) was not a candidate for the moment. If Asia were inhabited by enormous populations, it was none the less true that in the Assembly voting was conducted by States. The situation of Asia was different from that of Latin America, which commanded nearly one-third of the seats in the Assembly.

M. POLYCHRONIADIS (Greece) thought that to accept Prince Arfa's proposal would be to detract from the principle of the freedom of the Assembly. He was of opinion that the exceptional situation of the permanent Members should not be extended to whole continents.

At the request of the CHAIRMAN, Prince Arfa refrained from asking that his proposal should be put to the vote. On the other hand, the Chairman's oral report to the Assembly would include the statement made by M. Adatci to the Committee.

FIFTH MEETING

Held on Thursday, September 16th, 1926, at 3 p.m.

Chairman : M. MOTTA.

10. **Pacific Settlement of International Disputes : Report by the Council on Proposals, Declarations and Suggestions made for the Pacific Settlement of International Disputes.**
11. **Arbitration, Security and Reduction of Armaments : Report by the Council on the Progress in General Security brought about by the Conclusion of Conventions and Treaties.**

The CHAIRMAN recalled the fact that these questions had also been submitted to the Third Committee of the Assembly, a Sub-Committee of which had prepared a draft resolution. He thought that it would be premature to discuss these important questions until the Third Committee had had an opportunity of pronouncing on this draft resolution.

The Committee decided to postpone the examination of these questions.

12. **Interpretation of the Preamble and of Articles 3 and 4 of the Covenant : Adjournment of the Discussion of the Resolution proposed by Viscount Cecil, Delegate of the British Empire.**

Sir Cecil HURST (British Empire) informed the Committee that Viscount Cecil, the author of the draft resolution, was preparing a memorandum on the subject and he requested the Committee to postpone the study of this question.

The CHAIRMAN hoped that, if this memorandum could not be ready for the following morning's meeting, the British delegation would submit it as soon as possible afterwards.

The Committee decided to postpone the discussion of this question.

13. **Consideration of the Section of the Report on the Work of the Council dealing with the Work of the Committee of Experts for the Progressive Codification of International Law : Adjournment of the Discussion of the Resolution proposed by M. Loudon, Delegate of the Netherlands.**

The CHAIRMAN pointed out that the Committee of Experts was presided over by M. Hammarskjöld, who was absent from Geneva at the moment, and that it was not yet known

whether he desired to attend the discussions of the present Committee. The speaker thought that it would be inadvisable to begin the study of this question as long as there was any possibility of M. Hammarskjöld wishing to be present at the debates.

The Committee adjourned the consideration of this question.

14. Question of the Desirability of Numbering the Paragraphs of the Articles of the Covenant : Draft Resolution submitted by Mr. Latham, Delegate of Australia.

The following resolution, adopted by the Assembly on September 16th, was read :

“ That the First Committee be requested to consider and to report to the Assembly upon the desirability of numbering the paragraphs of the articles of the Covenant published by the League. ”

Mr. LATHAM (Australia) thought that his proposal did not require an elaborate defence. Few documents were so often discussed and dealt with in many publications as the Covenant of the League of Nations ; unfortunately, it was somewhat difficult to refer to the Covenant owing to the length of certain articles.

It had been objected that the insertion of figures at the beginning of the paragraphs of the articles would constitute an amendment of the Covenant ; but he did not think that it constituted any more of an amendment than the numbers of the pages on which the Covenant was printed.

He thought that the Committee could easily find a legally correct method of facilitating references to the Covenant and that instructions accordingly might be given to the Secretariat.

Nobody having asked to speak, *the Committee adopted the following resolution for submission to the Assembly :*

“ The Assembly instructs the Secretary-General to cause the paragraphs of the articles of the Covenant to be numbered in all future editions published by the Secretariat. ”

Mr. LATHAM was appointed Rapporteur to the Assembly.

SIXTH MEETING

Held on Monday, September 20th, 1926, at 10.30 a.m.

Chairman : M. MOTTA.

15. Pacific Settlement of International Disputes : Arbitration, Security and Reduction of Armaments : Adjournment of the Discussion.

The CHAIRMAN read to the Committee the letter which had been sent him by the Chairman of the Third Committee (Annex 9) concerning a draft resolution by M. Lange (Norway) with regard to a collection of the inter-State Agreements at present in force and which provide for the compulsory judicial or friendly settlement of any disputes which might arise between States.

The Committee decided to wait until the Third Committee had terminated its examination of this question before itself examining it.

16. Interpretation of the Preamble and of Articles 3 and 4 of the Covenant : Resolution proposed by Viscount Cecil, Delegate of the British Empire.

The CHAIRMAN read the resolution by which this question had been submitted to the First Committee (Annex 3).

Sir Cecil HURST (British Empire) said that, after reflection, he did not think that the best plan would be the appointment of a Special Committee for the study of this question ; the Committee would be a somewhat costly affair. He thought that the British delegation would be satisfied if the Committee could agree on the general principles which should govern the scope of the work to be undertaken by the League of Nations, and that a statement of these principles, if adopted, should be communicated to the Bureau of each Committee and to the Bureau of the Assembly for their information.

He thought that the competence of the League of Nations had been defined by the Covenant, which was the fundamental charter of the League. The Preamble or introductory provisions showed that the League of Nations had been created in order to promote international co-operation and to achieve international peace and security. The four successive sentences of this Preamble showed the methods by which these two purposes were to be achieved.

He did not think that any doubt could ever arise as to the competence of the League in its primary function—the maintenance of peace. Nor could there be any doubt that certain administrative duties of a political nature came within the League's sphere of action. On the other hand, if the articles of the Covenant were examined, it would be seen that there were only three articles which related to the League's work in respect of non-political matters; *i.e.*, its social, humanitarian and economic activities; these were Articles 23, 24 and 25. Most of the matters referred to in Article 23 were primarily matters of national concern; the opening words of Article 23 showed that the League was only competent to deal with these questions subject to existing or future international conventions.

Article 24, concerning the International Bureaux, gave the League power to supervise these organisations, but such bureaux could only be set up by international agreement, and therefore, in Article 24 as in Article 23, it was international agreement which was the foundation of the League's activity.

On the other hand, Article 25 gave the League power to deal with *national* organisations relating to health questions.

He thought that it was only within the sphere indicated in Article 25 that the League of Nations could deal with humanitarian questions which were national in character and not international; indeed, if the authors of the Covenant had intended that the League of Nations should be competent to deal with purely national questions, Article 25 would have been useless.

Though it was important to agree on the interpretation of the Covenant, he thought it even more important to agree on the principles which should govern the future activity of the League of Nations.

For the purpose of formulating these principles, he divided the work of the League into three classes: its political activities, its administrative activities and its non-political activities.

As regarded all three, the rule must prevail that the League should only take up a question if it was in conformity with the aims of the League and came within the framework of the Covenant.

As regarded the political work of the League, the criterion was that the League should only take up a question if it were likely to lead to friction between two countries.

As regarded the administrative activities of the League, such questions only fell within the sphere of action of the League if they had been expressly entrusted to it and if it had accepted the proffered responsibility—for instance, the work which had been entrusted to the League under the Treaties of Peace in connection with Danzig or the Saar, the work in connection with mandates, with minorities, etc.

As regarded the non-political activities of the League (economic, social and humanitarian), any action which the League might take in these matters depended on the existence of general international conventions. It was therefore limited to questions regarding which the conclusion of international conventions was desirable and practicable. This would, of course, enable the League not merely to encourage the conclusion of conventions under its auspices but also to carry out all the preparatory work, such as the preparation of statistics concerning economic or humanitarian questions, provided that these related to a subject about which it might be desirable to conclude a treaty.

Lastly, he might be asked why he had raised this question, and he would reply as follows:

The League of Nations had been founded for certain definite purposes. It was right that it should confine itself to attaining these objects. The League of Nations was gradually becoming part of the life of all nations; the more it extended its sphere of action, the greater the danger it ran of arousing opposition. The League would be stronger if to all criticisms of its activities the reply could be made that these were the activities for which it had been founded and to the accomplishment of which by the League every State had consented when it became a Member of the League. This was a better answer to criticisms than a mere reference to the benefits which States Members of the League would derive from the League's activities.

He would not touch upon the financial question, which, nevertheless, should not be underestimated.

Furthermore, there had of late been defections from the League, and, consequently, the moment had come to consider whether the work which the League was doing was the work which it was intended to do.

The CHAIRMAN read a resolution which the Fourth Committee had just adopted, to the effect that the budget of the League should be maintained within such limits as to allow the contributions of States Members to remain the same as in the first year of the League's existence.

M. BARTHÉLEMY (France) said he was grateful to the British delegation for having renounced the idea of appointing a Sub-Committee of the Council. He was in doubt as to the legal quality of Viscount Cecil's proposal and wondered whether, after all, it did not involve an authentic interpretation of the Covenant such as could only be given by a unanimous vote of the Assembly. To define the sphere of activity of the League was to limit it and restrict it;

at the same time it was asserted that the Assembly was sovereign judge ; to give an abstract definition *a priori*, based on the charter of the League of Nations, appeared to him not only difficult but fraught with much danger. He thought there were many ideas which could not be defined absolutely and permanently, since the definition depended on circumstances, time and place. It seemed to him preferable not to attempt to define the aims and activities of the League of Nations too strictly. It had been said that the object of the League was to promote justice in international relations. He thought that to adhere closely to this definition would be to condemn many of the activities of the League, and much good work that had been undertaken as a result of Viscount Cecil's own moving appeals : the work of the repatriation of Russian refugees, the settlement of Armenian refugees, the International Institute for Intellectual Co-operation, were far beyond the scope of the definitions proposed by Sir Cecil Hurst.

It must be borne in mind that the Assembly and its Committees might at any moment take up a question and make it the subject of international treaties. On the other hand, the definitions contained in the British delegate's memorandum would necessitate an extremely subtle differentiation between matters of international interest and those which were only of a national interest.

He admitted that certain steps taken by the League had not been well chosen, but that was a question of tact, and no formal definition had been found for tact. The League of Nations should not become an instrument for the purpose of realising every sentimental aspiration and ideal ; it should confine itself to important questions. Others which were of great international importance, such as the question whether democratic Governments and the parliamentary control of the foreign affairs of States were not a guarantee of international peace, could not, for reasons of expediency, fittingly be dealt with at this juncture by the League of Nations.

He failed to see the advantage of strict definitions. In principle, he was in agreement with Sir Cecil Hurst, but he thought that each question should be considered with a view to discovering whether it fell properly within the sphere of action of the League.

The proper organ to inform the Assembly whether any given question placed on its agenda fell within its competence was the Legal Committee of the Assembly, and he would like to see its advice sought with increasing frequency by the League.

M. SCIALOJA (Italy) said that, to begin with, Sir Cecil Hurst wished to fix definite rules as regards competence and, further, to establish an authority instructed to fix these limitations.

He was opposed to the first part of Sir Cecil Hurst's proposal. He thought that the rules of competence were defined in the Covenant itself. One of the advantages of the Covenant was precisely that it did not lay down any strict limits for the activity of the League, a step which would only be possible after long experience. Article 15, paragraph 8, of the Covenant provided for cases in which a doubt arose as to the international nature of a question, a dispute which would have to be settled according to the rules of international law. That law being essentially fluid, the conclusions to which it might lead at the present time were perhaps not those to which it might lead fifty years hence.

The League should limit its activities for reasons other than purely legal ones. He referred to the resolution adopted by the Fourth Committee. Even if it were possible to restrict the activities of the League of Nations—and, personally, he thought it was impossible—such a restriction would constitute a danger for the League.

As regards Sir Cecil Hurst's second point, the authority which could fix the limitations of the League, he was in agreement with M. Barthélemy that the First Committee of the Assembly would be competent to do so, but he believed that, according to circumstances, the Assembly itself or the Council would be equally competent. Finally, when the question of competence was purely a legal one, the Permanent Court of International Justice appeared to him to be the proper organ.

In his opinion, Sir Cecil Hurst's memorandum was an excellent legal monograph, but he regretted that he could not accept the conclusions contained therein.

Mr. LATHAM (Australia) spoke as a professor of law with many years' experience, as practising barrister, as Member of Parliament and also as an enthusiast for the League of Nations.

He thought that the League of Nations would make a mistake if it were to seek to act in matters plainly outside its jurisdiction. It had been founded to safeguard the peace of the world. If its founders had wished to make it responsible for all matters concerning international relationships, they would not have considered it necessary to include in the Covenant a whole series of provisions definitely conferring upon it power and jurisdiction in certain specific international questions.

He thought that, even if, for the present, definitions were not desired, it was necessary at least to decide what was required. A report by the First Committee, adopted by the Assembly and even by the Council, would not, he thought, constitute a final interpretation of the Covenant creating precedents once and for all. The Assembly, at any subsequent session, might take its own course and even the Permanent Court of International Justice could not finally and conclusively interpret the Covenant. The Court gave judgments in cases of disputes, which bound only the parties to the dispute and, apart from that, it only gave advisory opinions which were not binding upon those who asked for them.

On the other hand, he thought it would be an advantage to sketch the general outlines of a policy for the League, without, of course, binding it permanently, and to divide its activities

under two heads ; first, matters which were more or less critical and likely to disturb the peace of nations ; and second, matters of general international interest in which international co-operation was desirable and which the Covenant placed within the sphere of action of the League.

Under the first heading, all Members of the League, by adhering to the Covenant, had bound themselves to submit to the authority of the League, except in the cases covered by the limitations contained in Article 15, paragraph 8.

Under the second heading, the League did not take any decision which was binding upon its Members, and he hoped that this class of activity would not become predominant, lest the idea should become too prominently developed that the decisions of the League were not compulsory. In considering the future activities of the League, it should not be forgotten that every country desired to be master of its own internal policy, and he thought it would be really to the advantage of the League if it always kept that fact in view.

SEVENTH MEETING

Held on Tuesday, September 21st, 1926, at 3 p.m.

Chairman : M. MOTTA

17. Interpretation of the Preamble and of Articles 3 and 4 of the Covenant : Resolution proposed by Viscount Cecil, Delegate of the British Empire (continuation of the discussion).

Mr. LATHAM (Australia), continuing his speech of the previous day, pointed out that the settlement of matters coming under the first category, namely, those threatening to disturb international peace, was dealt with in Articles 10 to 13 of the Covenant. It did not, however, appear from those articles that the League of Nations was called upon to deal with all questions which had given rise or might give rise to international disputes. It had been said that the League of Nations ought to concern itself with all matters which might become a cause of war—for example, international problems. This point of view was untenable. If it were correct, the League would also have to deal with religious questions, since there might be and had been religious wars.

Magistrates who had to deal with a breach of the peace were concerned with the assault itself, but not with the stones or knives which might have been the actual weapons of assault. Similarly, the League was responsible for settling disputes and not for dealing with all matters which might give rise to a dispute.

In conclusion, he referred to Article 15, paragraph 8, of the Covenant, which excluded from the League's sphere of action, even in the gravest cases—those in which the peace of the world was threatened—questions which were exclusively within the domestic jurisdiction of one of the parties. *A fortiori*, it must be admitted that, in questions which concerned only international co-operation, the League had not the right to deal with what came solely within the domestic jurisdiction of States.

He believed that the criterion of the League's activities in regard to international co-operation was to be found within the terms of the articles of the Covenant, and not in the international aspect of the questions which it was proposed to consider. The text of Article 23 (f) and Article 25 indicated clearly that the League's activities were subject to this limitation.

Stress had been laid on the difficulty which might arise from too strict a definition of the activities of the League of Nations. He himself believed that it was primarily the quality of internationality which should supply the criterion for the activities of the League of Nations. It might be impossible to find precise terms to define this sphere of action. A report to the Assembly might, however, be of use to it by laying down certain general lines. It must not be forgotten that the League of Nations had not a universal and indefinite aim. It had been founded to secure the peace of the world and to carry out certain administrative functions in accordance with the terms of Articles 23 to 25 of the Covenant.

Many of the League's useful activities gave rise to criticism which could not be ignored. It had been reproached with dealing with all questions submitted to it provided that they were of a certain importance. Where would they stop if the principle were accepted that it was sufficient for the activities to be useful for the League of Nations to take them up ?

The British memorandum left the League a wide field of action, and he thought that they would be rendering it a service in submitting it for the information of the Assembly.

The CHAIRMAN reminded the Committee that speeches must be as short as possible. He pointed out that, so far, no definite proposals had been submitted to the Committee. It appeared to him that the Committee was dealing with two incompatible points of view, and he would suggest, in order that it might come to some conclusion, that one of the members should propose a concrete draft resolution.

M. ADATCI (Japan) said that, from the moment of its foundation, he had been one of the earliest workers on the League, and in particular on the Fourth Committee, which dealt with finance. He had frequently heard the severe criticism that the League of Nations, which had been set up to assure the peace of the world, was incapable of realising this ideal and consoled itself by dealing with questions which were not within its sphere of action. It was, however, the first time that he had heard this criticism actually voiced within the League itself.

He would not go so far as to accept the British delegation's proposal, but, after hearing the previous speakers, he had come to the conclusion that it was necessary to take some action. He concurred in M. Scialoja's opinion that it would be inexpedient to define too strictly the aims of the League, since it should, as a political institution, be a supple organisation, capable of adapting itself to circumstances.

He noted that the majority of fresh activities had been suggested by the Advisory Committees and subsequently approved by the Council. It might perhaps be possible to recommend to the Council to exercise more circumspection in creating new organisations. He wished to submit the following resolution to the Committee :

"The Assembly requests that, when new work is proposed or suggested to the Council by its Advisory Committees, the Council will, first of all, examine whether such new work really comes within the League's sphere of activity as defined in the Covenant."

The CHAIRMAN, while approving M. Adatci's proposal, suggested that it might be drafted on rather wider lines. He thought that, at the close of the discussion, the matter might be referred to a Drafting Committee.

M. ROSTWOROWSKI (Poland) thought that the problem raised by the British delegation was a matter of constitutional law and must therefore be treated with the utmost care. He pointed out that, when the Covenant was drawn up, the League did not exist, and it was for this reason that its jurisdiction had not been too strictly defined. The problem under discussion was an eternal one, which would always recur. He thought that, from the legal point of view, no one had yet succeeded in finding a satisfactory solution. He would urge that, as the question had been raised, it should be settled one way or another.

He was of opinion that it was in the interests of the League as a whole to define, in as exact terms as possible, the rights of the collective body and of each of its constituent States.

M. ROLIN (Belgium) thought that it was necessary to discriminate between the competence of the League and the question of expediency in dealing with certain questions.

He considered that the British delegation was mistaken in thinking that the Covenant contained any legal restrictions on the activities of the League other than those appearing in Article 15, paragraph 8. Sir Cecil Hurst had said that the Preamble of the Covenant defined the objects and methods of the League. He pointed out that, according to the French text, this was the case only in regard to the objects which were defined absolutely and without restriction, but not with regard to methods, which were not specified except by way of example. In actual fact, the methods enumerated did not cover the activities for which the League was definitely made responsible in Articles 23 to 25 of the Covenant. As regards Article 23 of the Covenant in particular, it did not appear to him to be restrictive in any way whatever.

In his opinion, the solution of the problem under discussion was to be found rather by considering special cases than by seeking to formulate rigid general principles. Moreover, the Council did not appear to him to be the right authority to decide in the last resort on the expediency of the League taking up certain kinds of work.

He, for his part, had also heard numerous criticisms of the activities of the League. He had been struck by the fact that the criticisms differed as between one nation and another. The best method of replying to them would perhaps be to enlarge the mental horizon of the critics, who could see nothing but the interests of their own countries. It would appear that many of the activities connected with international co-operation which made it possible to hasten the march of progress might be carried out with greater advantage by the methods adopted hitherto than by the conclusion of international conventions.

He pointed out that, at the present time, no decision involving expenditure could be taken without the approval of the Fourth Committee.

* * *

(Chairman : M. LIMBURG (Netherlands), Vice-Chairman of the Committee.)

M. BARTHÉLEMY (France) submitted the following draft resolution :

"The Committee has noted with the deepest interest the proposals of Viscount Cecil and the memorandum of the British delegation, and

" Approves the considerations which led to the drafting of the two documents ;

" It recognises that the League of Nations must guard against the danger of dissipating its energies on work that would divert it from its high mission, which is to establish international peace and to facilitate the co-operation of the nations with a view to the pacific progress of mankind ;

" It expresses the wish that any subject, before being taken up by the League, should be examined carefully and thoroughly, so as to determine whether it is in conformity with the aims and purposes of the League as defined in the Covenant ;

" It considers that it would be advisable if, upon the request of a Member, the question were submitted to the Council or, when in session, to the First Committee of the Assembly ;

“ It is of opinion, however, that the Covenant is adequate for the purpose and that it is for the Council and the Assembly, each within the limits of its jurisdiction, to exercise direct supervision over the activities of the League, under the authority of, and with scrupulous regard to, the Covenant. ”

M. OSUSKY (Czechoslovakia) stated that for years past the Fourth Committee had felt the same anxieties as the British delegation. As Chairman of the Supervisory Commission, he had frequently proposed the rejection of credits as not coming within the League's sphere of action. On many occasions the Fourth Committee had rejected the suggestions of the Supervisory Commission.

He thought that legal control was very easy. It was for the delegates at the Assembly, when discussing the Secretary-General's report, or submitting to the Assembly the draft resolutions of the Committees, to ask that some particular question should be referred to the First Committee in order that it might be examined from the constitutional point of view.

An adequate instrument was available, and it was only necessary to use it wisely. Perhaps the difficulty frequently arose from the want of cohesion within the various delegations.

Sir George FOSTER (Canada) thought that the League of Nations must have principles and that it must not be afraid of declaring them. Far from thinking that definitions were dangerous, as had been said, he considered, on the contrary, that they were essential if disputes were to be avoided or successfully settled. It had been said that, since the Committee could do no more than give opinions which were subject to change, it would be better to give none. He did not concur in this view. Undoubtedly, opinions would change as circumstances changed, but in the meanwhile it was necessary that there should be opinions and that they should be expressed. Only in this way could a man or an institution make progress.

Very few people knew what were the ideals and activities of the League of Nations. It would be impossible to exercise any educative action on the masses if they did not themselves know and wish to understand clearly what the League was and what were the subjects with which it dealt.

He thought that it would be very dangerous to have no touchstone by which it was possible to test the many questions which were submitted to the League. It would be necessary to have a criterion which would resist the sudden enthusiasms evoked for objects, good in themselves, but outside the sphere of the League. It was not sufficient that a thing should be good in itself for it to be dealt with by the League; it must also be within the scope of the League's work.

He considered that the present discussion should have taken place two or three years ago, in which case some of the activities which had been grafted on the League, and which involved considerable expenditure of time and money by its organisations, would either not have been undertaken or would have awaited future opportunities when the essentially important work had been further advanced.

Various proposals had been put forward which were proof of a general feeling that something ought to be done and some practical result achieved. He proposed that a small Committee should be set up, comprising the authors of the various proposals, in order that they might come to a unanimous conclusion on a concrete proposal.

M. CABALLERO (Paraguay) thought that it was unwise to make an absolute distinction between national and international law. International law might develop and include questions which now came exclusively within the domestic sphere. What was that day a question of national importance might next day become one of international concern.

He thought that nothing would be gained by a *ne varietur* definition of the jurisdiction of the League of Nations. The *status quo* was preferable to definitions which would only compromise the future of the League of Nations—at the moment limitless.

Sir Cecil HURST (British Empire) said he had had the impression, during the discussion, that the views of the members of the Committee who had spoken were not far removed from his own, with perhaps a single exception. Doubts had been expressed as to the opportuneness of the British proposal. He thought, however, that the discussion had proved that the problem ought to be considered by this Legal Committee. The League could not deal with all matters. There were at Geneva alone thirty-nine other international institutions, of which the fields of activity were certainly worthy of interest. The fact that they were worthy was not, however, sufficient to justify the League in taking over their activities.

He thought that the question whether a proposal came within the League's sphere of activity should always be considered when it was first submitted and should not wait until at a late stage it came before the Fourth Committee because it involved expenditure. He was of opinion that this legal supervision could not be exercised only by the First Committee, as this was only in existence during the Assemblies, whereas certain Advisory Committees were permanent institutions. When the Assembly was not in session, the Council should be the responsible body.

He submitted the following draft resolution :

“ The Committee recommends that any organ of the League to which a proposal is submitted should satisfy itself that the question to which it relates falls within the sphere of action of the League. In case of doubt, reference should be made, while the Assembly is in session, to the First Committee, and at other times to the Council. ”

On the proposal of the VICE-CHAIRMAN, and in agreement with the Chairman, the Committee appointed a Drafting Committee composed as follows:

M. ADATCI	(Japan)
M. BARTHÉLEMY	(France)
Sir Cecil HURST	(British Empire)
M. ROLIN	(Belgium)

EIGHTH MEETING

Held on Wednesday, September 22nd, 1926, at 11 a.m.

Chairman : M. MOTTA.

18. Pacific Settlement of International Disputes: Arbitration, Security and Reduction of Armaments.

The CHAIRMAN drew attention to the fact that the Third Committee had adopted a draft resolution the text of which was now before the members of the Committee (Annex 5). He thought that the First Committee could associate itself with the conclusions of the Third Committee and renounce its intention of submitting to the Assembly an independent report—which would mean duplicating the work of the Third Committee.

M. ERICH (Finland) delivered the following speech :

In the resolution proposed by the Third Committee the general ideas contained in the Locarno Treaties are presented as being capable of acceptance among the fundamental rules to be observed by nations, and the hope is expressed that these principles will be generally recognised.

Such a general and unreserved recognition as it is proposed to grant to the Locarno Treaties might easily lead to misunderstandings as to the real intentions of those Members of the League of Nations which contribute towards the adoption of this resolution. The very wide terms of the resolution might suggest that every Member was willing to accept for its own part all the principles established at Locarno.

There is, however, one point of general importance which calls for elucidation, and that is, Annex F of the Agreements.

Several of the honourable delegates present will remember that, in 1923, very insistent attempts were made in the First Committee and the Assembly to persuade the Members of the League to give to Article 10 of the Covenant an interpretation incompatible with the original meaning of that provision, and one calculated to weaken the obligations contained in it—an interpretation by no means pleasing to many small and medium-sized States, which have always insisted upon the force and value of the essential provisions of the Covenant. Nevertheless, in spite of their reluctance to accept the interpretation asked for, all these States ultimately agreed to it, though unwillingly, by abstaining from voting, with the single exception of Persia, which voted against the proposal. I think that to-day we are all glad to have avoided the fatal act which we were then about to accomplish. I might also quote what was said quite recently in an article on this subject by one of the honourable delegates for France at the present Assembly, M. Cassin : " What was called an interpretative resolution would indeed have been adopted unanimously in 1923, to the very great detriment of the League of Nations, if the opposing vote of Persia had not prevented it. "

We all recognise the great importance of the Locarno Treaties and the noble aims of their authors. Nevertheless, just as the interpretation of Article 10 of the Covenant, the adoption of which by the Assembly it was sought to obtain in 1923, was determined by the interests and the special views of a single Member, so the interpretation of Article 16 of the Covenant given in Annex F is inspired by the interests of a group of very important Powers, which, of course, had no intention of imposing their interpretation upon the other Members of the League. This interpretation is not, strictly speaking, a solution; it is in reality only a formula, to which recourse was had in order to overcome differences of opinion which, as everyone knows, had arisen before the Locarno Agreements. Although we can understand and appreciate the reasons which led the Powers concerned to pronounce on the meaning of Article 16 in the terms with which we are familiar, the interpretation given in Annex F is none the less a mere formula capable of giving rise to divergent and even inadmissible interpretations which might deprive the undertakings contained in Article 16 of all real value. These apprehensions are by

no means unfounded. We need only look at the official explanations and conclusions given with regard to this interpretation in the country concerned, to whose enquiries Annex F is in the nature of an interpretative reply. If these considerations—this interpretation at second hand, so to speak—were correct, and if therefore the subjective judgment and the individual circumstances of any Member of the League of Nations were the only standard to be applied in the event of a breach of the Covenant under the circumstances provided for in Article 16, the promised security based upon the solidarity of Members would be highly problematical.

In any case, the real meaning of Article 16 of the Covenant is not exhausted by the indefinite formula according to which "each Member of the League of Nations is bound to co-operate loyally and effectively in support of the Covenant and in resistance to any act of aggression to an extent which is compatible with its military situation and takes its geographical position into account". However any particular State may desire this formula to be understood, it is, as experience has shown, liable to lead to conclusions incompatible both with the text of Article 16 and with the interpretation hitherto upheld. Attention should be drawn to the resolutions and rules for guidance adopted by the second session of the Assembly. In the course of the latter it was stated, among other things, that "the obligations incumbent upon Members in virtue of Article 16 are derived directly from the Covenant and their observance depends upon the trust placed in the Treaties". Even if it may be said that the amendments voted in 1921, and which, by the way, have not entered into force, imply a certain weakening of Article 16, they nevertheless fully maintain this distinction between the various obligations laid down in Article 16, which distinction is made quite clear by the terms of the article itself. To be sure, the interpretation contained in Annex F is only a repetition of paragraph 2 of Article 11 of the Geneva Protocol, but it is a very important fact that in that Protocol this formula applies expressly to paragraphs 1 and 2 of Article 16 of the Covenant. On the other hand, paragraph 3 of the same article in the Protocol sufficiently indicates the special character of the obligations founded upon paragraph 3 of Article 16 of the Covenant, when it says :

"The signatory States give a joint and several undertaking to come to the assistance of the State attacked or threatened and to give each other mutual support by means of facilities and reciprocal exchanges as regards the provision of raw materials and supplies of every kind, opening of credits, transport and transit, and for this purpose to take all measures in their power to preserve the safety of communications by land and by sea of the attacked or threatened State."

Finally, we may recall the exchange of views which preceded the negotiations at Locarno. The Council's note of December 12th, 1924, contains the following passage :

"With regard to economic measures, the States Members of the League themselves decide, either separately or by prior agreement, the practical steps to be taken for the execution of the general obligation which they have undertaken. But the provisions of the Covenant do not permit that, when action is undertaken in pursuance of Article 16, each Member of the League should decide separately whether it shall take any part in that action. The Council feels bound to express its clear opinion that any reservation of this kind would undermine the basis of the League of Nations and would be incompatible with membership of the League. It seems to the Council impossible that a Member of the League, and of the Council, should, in the event of operations undertaken against a Covenant-breaking State, retain a status which would exempt its nationals from the general obligations imposed by the Covenant."

It may be objected that, from the point of view of the Members of the League which did not sign the Annex, this interpretation is *res inter alios acta*. This is true, but it is obviously important to dispel in advance the impression that the Members of the League have unanimously accepted this interpretation of Article 16 as a fundamental rule to be applied by the Members of the League of Nations. The fact that that interpretation may have been given by a number of important Powers must not determine a State which is not a signatory of the Locarno Agreements to renounce a divergent opinion.

It is only right to recognise the great progress made, in the interests of peace and in the interests of all, by the Locarno Agreements. In order, however, that it may not be claimed in the future that this recognition—which is no doubt sincere and unanimous and is to be expressed by the resolution now before us—refers to the Locarno Agreements as a whole and without any reservation, it is important to emphasise the fact that there may be States which deem it their duty expressly to reject the interpretation in question, which is too vague and calculated to lead to conclusions incompatible with the Covenant.

Accordingly, I venture to propose that there should be inserted in the report a passage explaining that a Member of the League, by supporting the resolution proposed, has not thereby adopted the interpretation of Article 16 given in Annex F of the Locarno Agreements :

"The recognition accorded to the Locarno Agreements does not imply any adhesion on the part of States which did not sign those Agreements to the interpretation of Article 16 of the Covenant given in Annex F."

The CHAIRMAN reminded the Committee that it was not called upon to discuss the meaning of Article 16 of the Covenant and that the draft resolution of the Third Committee did not contain an interpretation of that article.

Dr. GAUS (Germany) also did not feel that the resolution adopted by the Third Committee raised any question as to the interpretation of Article 16. He did not desire to express a view as to the previous discussions which had taken place within the League on that subject and which had been referred to by the representative of Finland. He could only stand by the text of Annex F of the Locarno Treaties—that is to say, the text of the note which the other Powers which signed the Locarno Agreements addressed to Germany on December 1st, and which, if he was well informed, was deposited in the archives of the League of Nations during a meeting of the Council.

The CHAIRMAN enquired whether M. Erich's scruples could be met by a statement whereby the Assembly would specify that, in unanimously voting the draft resolution submitted to it by the Third Committee, it in no way intended to adopt any interpretation whatever of Article 16 of the Covenant.

M. DUZMANS (Latvia) delivered the following speech :

The motion of the honourable delegate for Finland, Professor Erich, has doubtless been suggested by considerations of *principle* and the far-reaching nature of the resolution under discussion. I desire to give my full support to our Finnish colleague's important motion. Since we are dealing here not with some minor technical or purely formal amendment but with the very basis of the guarantees contemplated by the Covenant of the League of Nations, and since, by approving this resolution of the Third Committee, which will be adopted by the Assembly, we shall be prescribing rules of conduct for States Members of the League, I wish to give my reasons for supporting this motion in some detail, and to explain my views on the subject.

M. Erich has proposed that the reservations should be recorded in the report but not in the resolution, that is to say, in the explanatory statements preceding the Assembly vote. This can quite easily be done, and I cannot share the doubts of our Chairman as to the expediency of bringing these reservations up before the Assembly.

I wish, in the first place, to draw attention to the possible *sources* of future restrictive interpretations of the guarantees of the Covenant, which must be avoided and eliminated from the outset. It will be noted that the Third Committee's *report* concludes with the words :

“The seventh ordinary session of the Assembly, by adopting this resolution, would set the seal of its authority on the peaceful policy which it desires to see adopted by the States Members of the League in their individual policy, and would thus be discharging the duty so eloquently described in the Preamble to the Covenant as that of achieving international peace and security by the establishment of principles which should be regarded as the *actual rule of conduct* among Governments.”

Hence, the authority of the Assembly and of the Covenant itself will be invoked for this peaceful policy and for these actual rules of conduct.

Again, in the *resolution* the source of restrictive interpretations described above lies in the fifth paragraph :

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

It has been rightly pointed out that the Powers signatories of the Locarno Treaties have themselves observed that this is not in any way binding on the League of Nations. This is very true. But in view of Annex F, and of the “fundamental rules” to be laid down here, it is necessary for the League itself to reiterate the fact in its own way. The general ideas expressed in the resolution may, once they are formulated as fundamental rules of conduct, lead by implication to the interpretation of Article 16 of the Covenant according to Annex F of the Locarno Treaties, unless we state beforehand, here in the League of Nations, that this must not take place and that Article 16 remains unaffected. Everyone is aware that precisely these general ideas—the restrictive interpretation of Article 16 of the Covenant—which are set forth in Annex F of the Locarno Treaties, are sufficiently “general” in character and aroused worldwide attention at the time. It is therefore essential that any misunderstanding on that head should be provided against once and for all, and that is the object of the Finnish proposal, which I have the honour to support.

The Third Committee had doubtless no intention of implying any such interpretation in its resolution, so far as the meaning of Article 16 of the Covenant and the scope of the Locarno Annex F are concerned. I am far from believing or suggesting that. Unfortunately, however, the intentions of the authors of the resolution are not decisive on such a point. At some later date, a State might, if it chose, apply this resolution in its restrictive sense, *without* the Third Committee and the Assembly ever having wished to allow anyone the opportunity of so doing. How, therefore, can this danger arise? It may arise as a *reflex action of objective law*. Here I would quote the eminent German jurist Rudolph von Jhering, who expounded

this theory of the reflex action of objective law, according to which a given legal principle may produce effects neither foreseen nor desired by the legislators. Our objective law in this case is the resolution to be voted by the Assembly. It is we, the Legal Committee, who must in this case paralyse the latent force of legal reflex actions which possess a somewhat merciless logic of their own, as indeed is the case with all law. We can achieve this without difficulty by embodying in the report the few lines drafted by the honourable delegate for Finland.

In so doing, we shall also have contributed towards lending legal precision to those ideas of the Covenant which were brought up for our consideration at an earlier date in Viscount Cecil's proposal. A glance at the terse and straightforward wording of Article 16 of the Covenant, providing in plain legal terms for security guarantees in the event of aggression, will show clearly that the vague wording of Annex F of the Locarno Treaties represents a considerable retrograde step, when considered from a legal standpoint. During the discussions on Viscount Cecil's proposal, some of the delegates preferred to leave certain provisions of the Covenant for the time being in a kind of twilight, which would not involve us in anything too definite. At times, such a course is quite allowable in the case of a young and still growing organisation. But we were all agreed at the time that this twilight should be the twilight of *dawn*, whereas the vagueness imparted to Article 16 by Annex F would rather be an *evening* twilight, a result which none of us would ever wish to allow or to bring about. If this is the case, the reservations framed by M. Erich, the Finnish delegate, must be embodied in the report.

M. LIMBURG (Netherlands) thought that there was no occasion to insert anything at all in the draft resolution of the Third Committee. M. Erich was not alone in his opinion regarding the interpretation of Article 16, and for the supporters of his point of view it would be particularly dangerous to accept the formula proposed by the delegate of Finland. The draft resolution did not enter into any details but only expressed satisfaction at the conclusion of the Locarno Treaties.

For his own part, Annex F of those Treaties was *res inter alios acta*. It was an instrument in respect of which the authors declared that they were not qualified to act in the name of the League. The theory of "reflex action", which had been mentioned by M. Duzmans, was a theory of private civil law and could not be applied to the law of the League of Nations.

M. Erich's formula was dangerous because the draft resolution would no longer be merely pronouncing in favour of general principles but would be recognising in all its details, except as regards Article 16, the interpretations given by the Treaties of Locarno.

M. ROLIN (Belgium) recognised that it was impossible to graft on to a general discussion on arbitration a debate on the interpretation of Article 16. Any Member of the League of Nations might disagree with the interpretation of this article given in the Treaties of Locarno, but that disagreement ought not to be stated without thorough discussion. Such a discussion was impossible at that moment, and he wondered whether it was expedient in these circumstances to disavow the authors of the Treaties of Locarno in respect of an essential part of their work.

He moved the adjournment of the discussion and suggested that M. Erich, M. Fromageot and Dr. Gaus should jointly consider whether satisfaction could be given to the Baltic States without exposing themselves to the great political disadvantages which he had just explained.

M. ERICH (Finland) said that he did not wish to express reservations regarding the interpretation given to Article 16 by Annex F, but he desired that the absence of reservations should not in the future lead to the belief that the States represented at the seventh session of the Assembly had tacitly adhered to the interpretation adopted by the Parties to the Treaties of Locarno.

He added that he had not desired to start a full-dress debate on the scope of Article 16, but he drew attention to the fact that Annex F had caused interpretations to be given to Article 16 in the German Reichstag which were totally opposed to his own.

If necessary, he would accept the procedure proposed by the Chairman, which consisted in mentioning in the report of the Committee to the Assembly that the adoption of the draft resolution did not imply acceptance of any interpretation whatever of Article 16.

M. SCIALOJA (Italy) was opposed to M. Rolin's motion and to M. Erich's last proposal. The latter's first proposal went much too far, and would imply a public condemnation of Annex F; this danger was not entirely eliminated by the procedure ultimately agreed to by M. Erich. He thought that there was no reason to add anything to the draft resolution of the Third Committee, whereby the Assembly did not approve the Locarno Agreements in all their details but merely asserted:

"... its conviction that the general ideas embodied in the clauses of the Locarno Treaties... may well be accepted amongst the fundamental rules which should govern the foreign policy of every civilised nation".

The Assembly was not asked to approve the Locarno Treaties but three general principles upon which everyone was undoubtedly in agreement.

M. FROMAGEOT (France) approved M. Scialoja's explanations. The Third Committee's text was only concerned with conciliation, arbitration and security; there was no reference in it to Annex F of the Locarno Treaties, and it seemed to him that M. Erich's fears were unfounded.

M. ERICH (Finland) was not convinced by the explanations of the previous speakers. If in future there were no misunderstandings as to the meaning to be attached to the acceptance of the draft resolution, it would be entirely due to the discussion which had just taken place in the First Committee. He urged that the report of the Committee to the Assembly should mention the fact that the adoption of the resolution must not imply the acceptance of any interpretation whatever of Article 16 of the Covenant.

The CHAIRMAN first noted that *the First Committee approved the draft resolution prepared by the Third Committee.*

On the proposal of Sir Cecil HURST (British Empire), M. MOTTA, Chairman of the Committee, was appointed *Rapporteur to the Assembly.*

On the proposal of the CHAIRMAN, the Rapporteur was instructed to explain to the Assembly the scruples felt by the honourable delegate for Finland, after M. SCIALOJA (Italy) had urged that his observations to the Assembly should be very general; he particularly requested the Chairman-Rapporteur to confine himself to a clear statement of what the adoption of the resolution implied, without mentioning everything that it did not imply.

NINTH MEETING

Held on Wednesday, September 22nd, 1926, at 3.30 p.m.

Chairman : M. MOTTA.

19. Pacific Settlement of International Disputes: Arbitration, Security and Reduction of Armaments (continuation of the discussion).

M. DUZMANS (Latvia) delivered the following speech :

My object in supplementing my previous remarks is to dispel certain misapprehensions which arose in the course of this morning's discussion.

At this morning's meeting, it was contended that the interpretation of Article 16 of the Covenant had no bearing on the Third Committee's report and resolution, the Committee having restricted the scope of paragraph 5 of its resolution to mutual *agreements* between States, using the following words : " Whereby [*i.e.*, by the Locarno Treaties] provision is made for conciliation and arbitration and for security by mutual *agreements* between States ", etc. This is a mistake. The words used by the authors of the resolution are " by the mutual *guaranteeing* of States ", etc., and not " by mutual *agreements* ", etc. The two things are essentially different. In thought, this text takes us to the heart of Article 16 of the Covenant, which is concerned solely with providing mutual guarantees among States in the event of any breach of the Covenant. The report, moreover, begins with a reminder that " the sixth ordinary session of the Assembly recalled the guarantees provided by the Covenant... ", etc.

Now that is quite natural. It is to the credit of the Third Committee that it formulated these great and inseparable principles in the widest possible terms, whilst recalling the great Locarno achievement, of which we are all convinced admirers, even though it embodies certain special features which we cannot appreciate.

It is precisely for that reason, and because the achievement is so great and imbued with the spirit of conciliation and security, that anything calculated to prevent wholehearted adherence to the Third Committee's admirable resolution should be eliminated. The resolution is a demonstration in honour of Locarno. Let us also look to the future, when further demonstrations of this kind will be made. May they always be wholehearted; Locarno well deserves it.

The honourable delegate for Italy, Senator Scialoja, contended in this Committee this morning that the Finnish proposal would imply " a public condemnation of Annex F of the Locarno Treaties ". He is under a misapprehension. We are not intruding in this " *res inter alios acta* ", as was rightly pointed out by M. Erich himself, either by condemning or by praising Annex F. We are merely drawing a line of demarcation between the fundamental rules to be laid down for the League of Nations and the rules to be followed by the States signatory of the Locarno Agreements, whereby the latter, of their own sovereign will, subscribe to mutual obligations which concern themselves alone. As for Latvia—and the Finnish delegate has just made the same statement with regard to his own country—the friendly relations between my country and the Locarno signatory States preclude any idea of such intrusion, whether by way of public condemnation or in any other manner.

The CHAIRMAN reminded the Committee that the discussion could deal only with one point, namely, that of defining clearly the task of the Committee's Rapporteur to the Assembly.

Mr. LATHAM (Australia) thought that the Chairman could definitely state that the Third Committee's report and draft resolution had been approved by the First Committee but that

this did not imply approval of all the specific clauses of the Treaties of Locarno. On the other hand, a reservation to this effect did not imply disapproval of any special clause in these Treaties.

M. ROLIN (Belgium) wished to supplement the draft resolution submitted by the Third Committee. He pointed out that, in many of the Treaties of Arbitration and Security, the signatories had accepted the compulsory jurisdiction of the Permanent Court of International Justice. Would it not be possible to request the Council to draw the attention of Members of the League to the optional clause of the Court Protocol concerning the compulsory jurisdiction of the Court? He did not think that the majority of the States would find any difficulty in accepting such compulsory jurisdiction.

He proposed to add to the draft resolution a penultimate paragraph in the following terms :

“ Emphasises the advantage for the intensive development of the practice of arbitration of accession by Members of the League to the optional clause of the Permanent Court of International Justice ” ;

and to insert in the second line of the last paragraph, after the words “ above-mentioned principles ”, the words :

“ To ask them in particular to examine whether they do not find it possible to accede, with such conditions and reservations as they may require, to the optional clause of the Permanent Court of International Justice ”.

The CHAIRMAN said that the Committee had already unanimously adopted the text proposed by the Third Committee, and that M. Rolin's amendments could not be adopted now by the Committee except unanimously.

Sir Cecil HURST (British Empire) thought that it would be most embarrassing for his Government—which a few weeks hence would be considering the question as a whole—to find that its representative on this Committee had voted for a resolution which prejudged the whole matter.

Although not wishing to oppose M. Rolin's amendments, he felt compelled to abstain from voting.

Mr. LATHAM (Australia) said that an addition had been proposed to the draft resolution submitted by a Committee which had already completed its sittings. It appeared to him that the League was going beyond Article 36 of the Statute of the Court in recommending its Members to adhere to the Protocol as specified in the article in question. Moreover, how could the representative of a State which did not intend to adhere to the optional clause of compulsory jurisdiction vote for these amendments? He was therefore unable to support M. Rolin's proposal.

M. ESCALANTE (Venezuela) said that he could not accept M. Rolin's amendments since his country had not adhered to the optional clause for compulsory jurisdiction. He would therefore be obliged to abstain from voting.

The CHAIRMAN asked M. Rolin to withdraw his proposal since it was clear that a unanimous vote could not be secured.

Sir Edward Maynard DES CHAMPS CHAMIER (India) said that he also would be obliged to abstain since his Government would be taking part in the discussions referred to by Sir Cecil Hurst.

Sir George FOSTER (Canada) was not sure that M. Rolin's proposal was in its proper place in a discussion on the resolution submitted by the Third Committee. He wished to have time to study the proposal more at leisure than was possible in the circumstances under which it had been submitted. There was not sufficient time for him to refer to his Government and he could not form an opinion. He was in favour of the Chairman's suggestion that the author of the amendment should be asked to withdraw it. He did not think it desirable that a vote with numerous abstentions should give the impression that the Committee had taken up a position hostile to the compulsory jurisdiction of the Court.

M. ROLIN (Belgium) said that his amendment went much less far than the draft resolution which had been accepted without discussion and it was because the principle of laying down fundamental rules governing the foreign policy of the States had been unanimously accepted that he had thought it might be possible, without objection, to remind those States of the possibility open to them of signing the optional clause of the Court Protocol. Although withdrawing his proposal, he hoped, nevertheless, that one delegation or another would profit by it.

M. VOGT (Norway) pointed out that M. Rolin had specially underlined the following paragraph in the draft resolution :

“ [The Assembly] ...

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

M. Vogt desired to make it clear that, if this paragraph had stood alone, he would not have been able to vote for the resolution. Norway had the good luck of great friendship with

all her neighbours and there was no need for treaties of mutual guarantees. The draft resolution, however, both before and after the paragraph quoted, contained several reservations which showed that the paragraph did not exactly mean what it apparently said.

The discussion on M. Rolin's proposal was closed.

The CHAIRMAN suggested that, in his report to the Assembly, he should state that the proposal concerned general principles only and did not imply any interpretation of the Covenant.

M. SCIALOJA (Italy) would have preferred that the Chairman, as Rapporteur, should not make any mention of any possible interpretation of the Covenant. If this were considered necessary, he would prefer that the Chairman should make a longer statement, so that the sentence should not be emphasised and should not give rise to ideas which it was not advisable to suggest in the Assembly.

20. Interpretation of the Preamble and of Articles 3 and 4 of the Covenant: Draft Resolution submitted by Sub-Committee No. 2 (Annex 6).

Sir Cecil HURST (British Empire) said that he was satisfied with the draft resolution. He added that, in his opinion, the term "bodies forming part of the League" did not include the International Labour Office.

M. SCIALOJA (Italy) said that he accepted the fundamental idea of the draft resolution but feared that the obligation incumbent on all organisations of the League to take a decision on the preliminary question of competence would give rise to long and extensive discussions. He would suggest that the question of competence should not be made a compulsory subject for discussion in all cases.

M. LIMBURG (Netherlands), in order to give effect to M. Scialoja's remarks, suggested the following wording for the first sentence of the fourth paragraph :

"Recommends that every body forming part of the League, before proceeding to examine a proposal on its merits, should first consider the preliminary question whether the proposal falls within the objects of the League."

M. SCIALOJA (Italy) wished to omit the word "first" in order to obviate preliminary discussions on questions which might be held to be obviously of no concern to the League.

The CHAIRMAN asked that, in the last paragraph, the word "recommends" should be replaced by the following words : "requests the Secretary-General to bring the present resolution to the knowledge . . ."

M. BARTHÉLEMY (France), on behalf of the Sub-Committee, accepted these amendments.

M. FERRARA (Cuba) wished to amend the beginning of the fourth paragraph as follows : "decides that every body . . .". In his opinion, it involved amending Article 4 of the Rules of Procedure of the Assembly. What was proposed corresponded to the "prise en considération" ("taking into consideration") of certain Parliaments.

M. DUZMANS (Latvia) asked whether it was desired to give this fourth paragraph the form of a recommendation in view of the fact that it was said that a previous examination by the bodies of the League was optional.

The CHAIRMAN thought that, since an agreement had been arrived at in regard to the substance, the Committee might refer to its Drafting Committee the question of the appropriate wording of the resolution.

M. BARTHÉLEMY (France) thought that the Assembly could not give orders to the Council and that it could only make recommendations to that body. He reminded M. Scialoja that the draft resolution was a compromise, and he did not think there was really any occasion to fear that there would be long preliminary legal discussions.

M. LIMBURG (Netherlands) said he did not wish to uphold his amendment unless M. Scialoja was in agreement with him.

M. BARTHÉLEMY (France) suggested the following text :

" . . . Recommends that every body forming part of the League, when informed of a proposal, should consider whether it is in conformity with the objects of the League as defined by the Covenant and whether it is of practical interest from the point of view of the attainment of those objects. "

Sir Cecil HURST (British Empire) wondered whether it would not be better to refer the draft resolution to the Drafting Committee, as there appeared to be some misunderstanding.

The CHAIRMAN said that it was not the Committee's wish either to give the resolution an imperative character in regard to the Council or to make a preliminary decision compulsory.

M. BARTHÉLEMY (France) submitted a fresh text, which he was obliged to withdraw immediately.

The CHAIRMAN pointed out that it was impossible to improvise a satisfactory text at the end of a long meeting and he would suggest referring the task of drawing up a satisfactory text to the Drafting Committee. In order to meet M. Scialoja's suggestion to supplement, in the

penultimate paragraph, the reference to the First Committee of the Assembly, he would propose that the words "legal and constitutional questions" should be added, and that, in the last paragraph, an imperative form should be substituted for the "recommendation".

The Drafting Committee was instructed to draw up the draft resolution, taking into account the views expressed during the discussion.

It was decided that no report should be presented to the plenary Committee.

M. BARTHÉLEMY was appointed Rapporteur to the Assembly.

21. **Consideration of the Section of the Report on the Work of the Council dealing with the Work of the Committee of Experts for the Progressive Codification of International Law (Annex 7).**

M. LIMBURG (Netherlands) expressed his regret at the absence of the distinguished Chairman of the Committee of Experts. He had the greatest admiration for the work of that Committee and he therefore very much regretted that there was so little information with regard to its work.

The Committee had sent seven questionnaires to the various Governments, and he thought it might be expedient to select certain subjects which appeared to be of immediate urgency to be dealt with first at the international conferences that were to be convened. He also thought it would be advisable that the Committee of Experts should not deal with subjects which were already dealt with by conventions or came within the competence of existing international organisations, as, for example, the Office of Intellectual Property at Berne, private maritime law, etc. It seemed to him desirable, therefore, that the Committee of Experts should leave questions which were within the competence of existing organisations to be dealt with by them.

Finally, he wished to know whether the reports submitted by the Committee of Experts represented the unanimous opinion of the members or of a large majority of them.

He did not propose at the moment to submit any draft resolution. He thought that the Council might be asked to draw the attention of the Committee of Experts to the discussions of the First Committee.

Baron Marks^oVON WURTEMBERG (Sweden) asked whether it was desirable at the present time that the Committee should concern itself with the work of the Committee of Experts appointed at the fifth session of the Assembly. Too little was known in regard to the work in question, although this was not entirely the fault of the Committee. He admitted that for the League to take action in certain spheres would be inopportune, but he thought that there were sufficient subjects with which it might deal with advantage. He thought that, before taking action, it would be as well to await the publication, which he believed to be imminent, of the Committee of Experts' report.

M. FROMAGEOT (France) said that the Committee had found itself confronted with a gigantic task, which it was difficult even to define. The Committee's task was a multiple one. First, it had been necessary for it to draw up a list of the subjects of international law the solution of which by means of international agreements appeared to be most desirable. If this list were to be complete, it must obviously contain matters which were within the competence of existing organisations, but this did not imply that the Committee had any intention of encroaching upon their competence.

Subsequently, it had had to forward questionnaires to various Governments. The Committee had from the outset and for various reasons excluded certain subjects.

The third stage of the Committee's work—the report to the Council—had not yet been reached. Hitherto, the activities of the Committee had been merely of a documentary character. It had never been the intention of the Committee to recommend the convening of seven world congresses. He was in entire agreement with the view that the subjects of the various questionnaires were not all of equal urgency and that they did not fall within the competence of the same persons.

He concurred in the conclusions of Baron Marks von Wurtemberg and asked that the Committee of Experts should be allowed to continue its work.

The CHAIRMAN thought that a fundamental discussion was out of the question. Would it not be possible to satisfy everybody by recommending that the Assembly should not for the moment intervene in the work of the Committee of Experts and by transmitting the present discussion to that Committee?

M. GUERRERO (Salvador) believed that the Committee of Experts had worked with great zeal. If any criticism were to be made, it should be directed perhaps towards the drafting of the resolution adopted by the Assembly in 1924 rather than towards the Committee of Experts. He gave M. Limburg certain supplementary information in regard to the Committee's work.

Sir Cecil HURST (British Empire) was not wholly convinced by M. Fromageot's and M. Guerrero's explanations. The Committee had been created with a view to hastening the codification of certain matters in international law. He thought that the work of the Committee, in order to be useful, should lead to the conclusion of international conventions and to their signature by a large number of States. Codification necessarily implied the concurrence of the preponderant majority of States. The views of the Committee as a whole or of the majority of its members would be more useful to the various Governments than the questionnaires which they had hitherto received and which only represented the individual opinions of the

Rapporteurs of the Committee. He would suggest that the reports should not be forwarded to the Governments until they had been adopted by the Committee. Frankly, he did not think that the Committee had as yet advanced far towards the stage of codification.

M. LIMBURG (Netherlands) deprecated the suggestion that he had criticised the Committee of Experts, but, as it had fallen to him to concern himself, on behalf of his Government, with the reports of the Committee of Experts, the question had occurred to him whether these reports were a true expression of the Committee's opinion. He was grateful for the information received, but it had not satisfied him. He still did not know whether these reports represented the opinion of the majority of the Committee of Experts, and the same remark was applicable to the list of subjects drawn up by the Committee.

He concurred in the Chairman's suggestion that the Minutes of the present discussion should be forwarded to the Committee of Experts.

M. GUERRERO (Salvador) agreed that the Committee of Experts ought not to have been satisfied with forwarding reports to the Governments but should also have discussed them. The Committee of Experts had perhaps been too conscientious. It had kept strictly to the terms of reference, as laid down by the Assembly, *i.e.*; that it should give advisory opinions.

He would be in agreement with the proposal to suggest to the Committee that it should give an opinion on the reports of its members.

M. ROLIN (Belgium) thought that the Committee should take some notice of the questionnaires which had already been forwarded to the Governments. The Governments should not be able to infer from the present discussion that there was no need to reply to the questionnaires. They might be asked to consider that the Committee, although not approving of the individual schemes which it forwarded, had at least been of opinion that it was possible to find a solution on the lines of the preliminary schemes.

The CHAIRMAN pointed out that no definite proposal had been submitted.

The Committee decided to forward the Minutes of the present discussion to the Committee of Experts.

TENTH MEETING

Held on Thursday, September 23rd, 1926, at 5 p.m.

Chairman : M. MOTTA.

22. Appointment by the Council of a Committee to study Certain Questions connected with the Election of the non-Permanent Members of the Council: Draft Resolution proposed by M. Hambro, Delegate of Norway.

M. VOGT (Norway) delivered the following speech :

The Norwegian delegation has modified its proposal in order to avoid any extra expenses being incurred by the study of this question. Therefore, we do not propose that the Council shall appoint a Special Committee.

Why does the Norwegian Government take a particular interest in the introduction of a new method of election to the Council? Because it is convinced that only some form of election which gives the right to possible minority groups to be adequately represented on the Council can give proper security to all the interests in the Assembly.

I shall not at this stage dwell upon any technicalities. The members of the Committee will find a memorandum regarding the single transferable vote from Viscount Cecil on page 143 of the report given by the Special Committee¹ which, under the leading of our honoured Chairman, elaborated new rules for the composition of the Council, and I venture to suggest to my colleagues that they might find it valuable to study this memorandum.

Like any form of proportional representation, it looks on paper somewhat complicated, but is in reality very easy to practise. Where three Members are to be elected, the method mentioned gives the right to any group which numbers more than one-fourth of the Assembly to elect one Member of the Council. This method has been used in Denmark for the election of the Senate for two generations, and it is in use to-day in other countries represented on this Committee, such as the Irish Free State and South Africa, for their Senate elections. The system of minority representation was created in Denmark and Holland, two highly civilised and progressive countries.

I know that strong objections have been made to the use of this method at ordinary political elections. Such criticism was voiced by the eminent lawyer whom we have the honour to see as our Vice-Chairman. *Inter alia*, he mentioned the importance of not losing a single vote. May I point out that, in my short experience at the Assembly, there seems to be no danger of this kind here; never is there a fuller attendance than at the Council elections, and, besides, any member of a delegation can be deputed to vote for his country if the first delegate should be prevented from so doing. We need indeed fear no absences of voters.

¹ See Annex 8.

I want, however, to emphasise that we have not in this matter to deal with an ordinary political election. We have to elect a Council, and my Government, which has, from the very first day, taken a keen interest in the League of Nations and its work, is led to the present proposal by a warm desire to see the best possible Council elected.

What do we want to see in the Council ?

We desire the Council to be fully representative.

Fully representative of what ?

Of the whole world, if I may be allowed to use so strong a word ; of the world which takes part in this League of Nations, fully representative of the world politically, intellectually, geographically.

Lord Cecil said the other day that we should all have the courage of our opinions. Let us hope that we all have. But it is necessary that all the different opinions should be able to show that courage in the Council, and my Government dare not feel sure that that will always be so unless there is a right of minority representation.

The future of the League may, to some degree, depend on the representative character of the Council, and I venture to make an appeal to my colleagues that they support a demand for the study of this question. We ask only for a study—nothing more, nothing less. May I add that my Government's interest in this question is so great that it is quite willing to assist in this study by forwarding a memorandum to the Secretariat and, if so desired, by sending someone to Geneva to discuss the question ?

M. Vogt submitted the following draft resolution :

“ The Assembly requests the Council to instruct the Secretariat to study the system of the single transferable vote and the principle of proportional representation in general, in connection with the problem of the election of the non-permanent Members of the Council, with a view to laying this question before the next Assembly.”

M. ZAHLE (Denmark) said that his delegation agreed with the Norwegian proposal. He did not think it could be said that this proposal was premature, since the rules of election for the non-permanent Members of the Council had only been established this year ; it had therefore taken six years to arrive at the point of adopting these rules.

The CHAIRMAN thought that the Norwegian proposal, as M. Vogt now submitted it could be adopted by the Committee, since it left the question unchanged and did not involve the League in any fresh expenditure.

Mr. LATHAM (Australia) asked whether the Governments would be entitled to send memoranda to the Secretariat on the subject.

The CHAIRMAN said he thought that Governments might do so and the matter might be referred to in the report with which the draft resolution would be submitted to the Assembly

The Committee adopted the draft resolution submitted by M. Vogt.

M. ZAHLE was appointed Rapporteur.

23. Consideration of the Draft Resolution proposed by M. Lange, Delegate of Norway, and referred to the First Committee by the Third Committee, to the effect that the Secretariat should be instructed to draw up as complete a List as possible of Inter-State Agreements at present in force which provide for the Compulsory, Judicial or Friendly Settlement of any Disputes which might arise between States (Annex 9).

The CHAIRMAN read the essential passages of the draft resolution and pointed out that its adoption would involve considerable expenditure ; consequently, even if it were adopted by the First Committee, it would have, first of all, to be approved by the Fourth Committee before it could be submitted to the Assembly.

M. LEITMAIER (Austria) supported the proposal. He thought that, in order to attain the object in view, the Secretariat should not merely publish treaties of arbitration concluded before the foundation of the League of Nations but should, in publishing its memorandum, also take into account the numerous and important treaties concluded since. He thought that the Secretariat might from time to time publish supplements in order to keep the information up to date. The financial question should be left to the Fourth Committee.

The CHAIRMAN pointed out that all new treaties concluded by Members of the League had to be deposited and were therefore published ; he thought that M. Leitmaier's proposal was different in essence to that of M. Lange.

M. VOGT (Norway) said he thought there ought to be a list of treaties in force showing exactly how the matter stood.

He considered that it was one of the duties of the League of Nations to keep a watch on existing treaties and to see whether they were in contradiction with the Covenant. Should the latter be the case, the Members of the League would be bound to denounce them.

He suggested that the Committee should adopt M. Lange's proposal, provided it did not involve the Secretariat in fresh expenditure. Such a solution, he thought, was not altogether impossible.

Sir Cecil HURST (British Empire) said that, much as he had appreciated the motives which had inspired M. Lange's proposal, he must confess that it frightened him. He understood that what M. Lange wanted was a second edition of the work edited by himself for the Inter-Parliamentary Union in 1914. This work consisted of a synoptic table of all the arbitration treaties by which every country was bound and included a column which gave an analysis of each treaty. It was inevitable that an analysis of this kind constituted to some extent an interpretation of the treaty. If published under the auspices of the League of Nations, it might be thought to amount to an authoritative interpretation by the latter of the treaties summarised therein. Such a work, if it were published by a private individual or institution, might be very useful. Far more than the financial side of the question, he feared the risk of the League's giving something like an official interpretation to treaties of arbitration concluded before its foundation.

M. FROMAGEOT (France) said he shared Sir Cecil Hurst's apprehensions. He pointed out that the gap in the collection of such treaties to which M. Lange had alluded referred to the period prior to the foundation of the League. A collection of existing treaties of arbitration was published by the Permanent Court of Arbitration at The Hague in 1914 and 1917. That collection still existed and he thought it filled the gap referred to by M. Lange. He therefore thought that the Norwegian proposal should not be retained for the present.

M. LIMBURG (Netherlands) agreed with M. Fromageot and Sir Cecil Hurst. He feared that they would be putting too heavy a burden on the Secretariat, apart from the expenditure, which would be quite considerable. He observed that, among the conventions which would be included in the definition of the draft resolution, were, among others, all the innumerable treaties of commerce which had been concluded. He thought that such a work should be carried out not by the League of Nations but by a private institution.

M. VOGT (Norway), noting that his draft resolution could in no circumstances be unanimously approved by the Committee, withdrew his proposal.

As there were no more items on the Committee's agenda, the CHAIRMAN thanked the members of the Committee for the support which they had accorded him, thus greatly assisting him in his task.

On behalf of the Committee, Sir Cecil HURST thanked the Chairman for the tact and skill with which he had directed the work of the Committee.

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ANNEX 1.

QUESTION OF THE COMPOSITION OF THE COUNCIL.

I.

LETTER FROM THE PRESIDENT OF THE COUNCIL TO THE PRESIDENT OF THE ASSEMBLY.

[Translation.]

Geneva, September 6th, 1926.

I have the honour to forward to you, with the request that you will communicate it to the Assembly, the attached resolution which the Council adopted at its meeting held on September 4th, after having taken note of the report submitted to it by the Committee on the Composition of the Council.

(Signed) E. BENEŠ,
Acting President of the Council.

II.

RESOLUTION OF THE COUNCIL, ADOPTED ON SEPTEMBER 4TH, 1926.

The Council, taking note of the resolution proposed by the delegate of France and passed by the Special Assembly of March 1926—resolution which reads as follows :

“ The Assembly,

“ Regrets that the difficulties encountered have prevented the attainment of the purpose for which it was convened,

“ And expresses the hope that between now and the ordinary September session of 1926 these difficulties may be surmounted so as to make it possible for Germany to enter the League of Nations on that occasion ”;

And acting in pursuance of the wish expressed in that resolution :

1. Approves the report of the Committee on the Composition of the Council ;
2. In consequence and in virtue of the powers which it derives from Article 4 of the Covenant, decides upon :

(a) The appointment of Germany as a permanent Member of the Council upon her entry into the League of Nations ;

(b) The increase in the number of the non-permanent seats to nine ;

3. Recommends to the Assembly the approval of these decisions ;

4. Commends to the favourable consideration of the Assembly the proposals made by the Committee as regards the method of election and tenure of the non-permanent seats.

Appendix A.

REPORT BY VISCOUNT ISHII, ADOPTED BY THE COUNCIL ON SEPTEMBER 4TH, 1926.

At a meeting held on March 18th, 1926, the Council, after hearing a report by the Acting President, adopted the following resolution :

“ The Council :

“ Considering that it is desirable that a thorough study should be made of the problems connected with the composition of the Council and the number and the method of election of its Members,

“ Decides to appoint a Committee for the purpose.

“ This Committee shall give particular attention to the claims up to now put forward by, or on behalf of, any Members of the League and shall be authorised to invite the Governments of any Members of the League which so desire to lay before it any statement, whether in writing or through an official representative, in support of

their case, or containing their views on any of the problems falling within the competence of the Committee. It shall bear in mind the various proposals on the subject which have been previously discussed by the Council or the Assembly, and in particular the resolution regarding 'geographical and other considerations' repeatedly adopted by the latter body.

"The Committee shall consist of representatives of the Members of the Council and of the following States : the Argentine Republic, China, Germany, Poland and Switzerland. The names of these representatives shall be communicated to the Secretary-General as soon as possible.

"The Committee shall meet on May 10th, 1926, and shall prepare a report to the Council, which shall be communicated to the Members of the League for information as soon as possible. In case it is not able to make a unanimous report, it shall make such majority and minority reports as may be necessary in order to acquaint the Members of the League with the full results of its deliberations."

The Committee appointed in virtue of this resolution has held two sessions, the first from May 10th to 17th, the second from August 20th to September 3rd, 1926.

My colleagues will recollect that the Committee proposed to meet again on June 28th to finish its work. The Council, however, considered it advisable to postpone this second meeting. It was eventually called for August 30th, upon the request of the Spanish member of the Committee. The report laid before the Council to-day embodies the results of this second session.

In accordance with its intentions mentioned in its provisional report, the Committee, at its second session, proceeded :

- (1) To a second reading of the draft regulations which it had previously drawn up in regard to the number and method of election of non-permanent Members, and
- (2) To consider the question of the number of permanent Members of the Council and the claims put forward by several Members of the League.

The Committee's report (Appendix B) gives the Council definite conclusions on both these points. In regard to the question of the number and method of election of non-permanent Members, the Committee has adopted a certain number of amendments to its original draft, the importance of which will be obvious to my colleagues.

The record in the report of the exchange of views in the Committee on the question of the permanent seats will enable the Council to base its resolutions on a thorough knowledge of the various aspects of the problem.

As the Committee notes in the last sentence of its report, it lies with the Council to decide upon the number of seats, permanent or non-permanent, which it is intended to create, and to communicate to the Assembly any resolutions which it may adopt, together with draft regulations concerning the number of non-permanent seats.

Should the Council approve the Committee's report, I would venture to submit a draft resolution. (See page 38.)

I am sure that I am interpreting the unanimous feeling of the Council in conveying to the members of the Committee, and in particular to its Chairman, M. Motta, the eminent representative of Switzerland, an expression of the Council's appreciation of the excellent work which they have done.

Appendix B.

REPORT OF THE COMMITTEE ON THE COMPOSITION OF THE COUNCIL.

In its report to the Council dated May 17th, 1926, the Committee on the Composition of the Council stated that its task had not been completed. It submitted a draft proposal regarding the number and method of election of the non-permanent Members, which was adopted at the first reading.

The date proposed for the second session was June 28th. The Council, having taken note of the report at its meeting on June 10th, 1926, considered it advisable, with the full agreement of the Chairman of the Committee, to adjourn the meeting. In a letter dated July 30th, the representative of Spain, having regard to the fact that the question of the number of permanent Members and the consideration of his Government's proposal on the subject had been referred to the second session, requested the Chairman of the Committee to fix the date of the meeting in agreement with the acting President of the Council. The Committee was called for June 30th at Geneva.

Brazil having, in the interval between the two sessions, notified her decision of withdrawing from the Council and from the League itself, the Brazilian member of the Committee informed the Chairman, in a letter dated August 30th, that in view of the circumstances, his Government had decided to send no representative.

In accordance with the programme laid down for the second session, the Committee, at a public meeting, considered, in order, the two questions which had been referred to it for final consideration. It opened its proceedings with the second reading of the draft rules regarding

the number and method of election of the non-permanent Members of the Council. Subsequently, at its last meeting, its members expressed their views on the question of an increase in the number of permanent seats, and the claims which had been put forward in this connection.

In regard to the first point, the Committee had to consider amendments to the draft rules submitted by the French Government. After a general discussion, it referred the preparation of a final draft to a Sub-Committee of nine members, whose conclusions it subsequently approved on the morning of September 1st, 1926. The text adopted was the following :

“ *Article 1.*—The non-permanent Members of the Council shall be increased to nine in number.

“ *Article 2.*—The non-permanent Members of the Council shall be elected for a term of three years. They shall assume office immediately upon election. One-third of the number of the Members shall be elected each year.

“ *Article 3.*—A retiring Member may not be re-elected within a period of three years commencing with the date of expiration of its mandate unless the Assembly shall so decide, either at that date or in the course of three years, by a majority of two-thirds ; the number of Members thus re-elected shall not, however, exceed one-third of the total number of non-permanent Members of the Council.

“ *Article 4.—Temporary Provisions.*

“ 1. In 1926, the nine non-permanent Members of the Council shall be elected by the Assembly, three for a period of three years, three for a period of two years, and three for a period of one year.

“ 2. Of the nine Members thus elected in 1926, a maximum of three may be immediately declared ‘re-eligible’ by a decision of the Assembly taken upon a special vote and adopted by a majority of two-thirds of the number of voters.

“ 3. Any qualification of ‘re-eligibility’ recognised in advance in 1926 in the case of one, two or three Members elected then shall not affect the right of the Assembly to have recourse in 1927 and 1928 to the option provided in Article 3 for the benefit of other non-permanent Members retiring from the Council in those years. It is, however, understood that, if three Members are already qualified for re-election in 1926, the Assembly shall only make use of its right in very exceptional cases. ”

The Spanish representative said that he would abstain from voting.

The Italian representative stated that, if he accepted the clause raising the number of non-permanent Members to nine, it was on the express condition that the total membership of the Council should in no case exceed fourteen.

The Polish representative said that, while not wishing to prevent unanimity from being secured with regard to the draft as a whole, he was obliged to make reservations regarding paragraph 3 of Article 4.

The Argentine and Swedish representatives accepted the draft, but renewed the reservations they had made on points of principle on previous occasions and in the course of the present session.

The question of increasing the number of permanent seats was intimately bound up with the claims put forward by certain Members of the League, notably Spain, whose representative repeated his former statement on this subject and asked the Committee to take a decision on the question raised by his Government.

The Chinese delegate declared that he supported the claim of Spain and reserved his right to put forward the Chinese claim to a permanent seat whenever a suitable opportunity offered.

The Polish representative, while also admitting the justice of the Spanish claim to a permanent seat, stated that, while maintaining the claim of Poland to a permanent seat, he was willing in the present political situation to refrain from opposing a solution which might solve the present crisis.

The statements of the other members of the Committee showed that, notwithstanding the anxiety of their Governments to give the greatest consideration to the claims and interests of Spain, they could not submit to the Council any proposal which would involve creating any fresh permanent seats apart from the seat which the Committee unanimously recognised should be occupied by Germany. The Committee therefore greatly regretted that it could not recommend the Council to comply with the Spanish request.

The German representative, while expressing no opinion on the question of the permanent seats, joined in the unanimous demonstration of good will towards Spain.

The Spanish representative thanked his colleagues for their remarks and stated that, while maintaining his claim, he would lay the situation before his Government.

In submitting the present report to the Council, the Committee thinks it desirable to repeat the opinion given in the final passage of its provisional report of May last :

“ The Committee considers that the increase of the number of the non-permanent seats on the Council will permit the Assembly to take account in a more comprehensive and equitable measure of the principle of geographical distribution of seats, in accordance with the recommendations adopted by the third, fourth, fifth and sixth Assemblies.

“ It is right to record that the Committee was unanimously favourable to an allocation of three of the non-permanent seats to Latin America and that adequate representation should be given to Asia. The Chinese delegate strongly urged that at least two seats should be allotted to Asia and the other parts of the world outside America and Europe. ”

In the Committee's opinion, the changes which the draft rules would make in the present organisation of the Council would enable the Assembly to give satisfaction to the special claims of certain countries to representation for an extended period on the Council. The Committee trusts that, so far as lay in its power, it has carried out the task entrusted to it by the Council in its resolution of March 18th, 1926, and has thus contributed to the solution of the present difficulties.

The Minutes of the Committee's meetings at both its first and second sessions show in detail the views expressed by the members. At the request of the Spanish representative, the Committee specially draws the attention of the Council to the statements made by him on May 13th and September 1st, 1926, in support of his Government's request. It will be for the Council, if it approves this report, to take a resolution on the creation of one permanent and three non-permanent seats, and for the Assembly to confirm the Council's decisions and to adopt the rules dealing with non-permanent seats.

Appendix C.

RESOLUTION PROPOSED BY VISCOUNT CECIL AND ADOPTED BY THE COMMITTEE AND THE COUNCIL.

The members of the Committee entrusted with the examination of the question of the composition of the Council, before separating, desire to ask their Spanish colleague to transmit to his Government their earnest hope that it will give favourable consideration to the efforts which they have made to meet to the fullest extent possible in the circumstances the wishes of the Spanish Government.

They have recommended the creation of re-eligible seats in the Council which will enable their holders to remain Members of the Council for an indefinite time limited only by their ability to retain the confidence of their fellow-Members in the League of Nations. In order to give to these seats dignity and security, they have provided that nomination to them shall be made not as part of the election of non-permanent members but by a special vote of the Assembly. To prevent the occurrence of any interval during which the countries with a just claim to such seats might be uncertain of their position, they have arranged that the first nomination to them shall take place immediately after the election of 1926. To avoid any impression of insecurity in the tenure of these seats, the Committee has withdrawn its proposal as to the power of the Assembly to order a general re-election of all the non-permanent seats in the Council, a point on which the Spanish Government was understood to have expressed anxiety.

The Committee ventures to think that these provisions show that the unanimous expression of good will to Spain uttered by its members are no empty words, but are irrefutable evidence of their desire to respond to Spanish wishes within the limits of what they conceive to be their duty to the organisation in which Spain has so far borne such a conspicuous and honourable part.

A. I. 3. 1926.

ANNEX 2.

DRAFT OF A RESOLUTION MAKING RULES DEALING WITH THE ELECTION OF THE NINE NON-PERMANENT MEMBERS OF THE COUNCIL, THEIR TERM OF OFFICE AND THE CONDITIONS OF RE-ELIGIBILITY.

TEXT SUBMITTED BY SUB-COMMITTEE No. 1 TO THE FIRST COMMITTEE ON SEPTEMBER 13TH, 1926.

The Assembly, acting in virtue of Article 4 of the Covenant, decides as follows :

Article I.

The Assembly shall each year in the course of its ordinary session elect three non-permanent Members of the Council. They shall be elected for a term commencing immediately on their election and ending on the day of the elections held three years later by the Assembly.

Should a non-permanent Member cease to belong to the Council before its term of office expires, its seat shall be filled by a by-election held separately at the session following the occurrence of the vacancy. The term of office of the Member so elected shall end at the date at which the term of the Member whose place it takes would have expired.

Article II.

A retiring Member may not be re-elected during the period between the expiration of its term of office and the third election in ordinary session held thereafter unless the Assembly either on the expiration of its term of office or in the course of the said period of three years shall, by a majority of two-thirds of the votes cast, previously have decided that such Member is re-eligible.

The Assembly shall pronounce separately, by secret ballot, upon each request for re-eligibility. The number of votes cast shall be determined by the total number of valid voting tickets, including blanks.

The Assembly may not decide upon the re-eligibility of a Member except upon a request in writing made by the Member itself. The request must be handed to the President of the Assembly not later than the day before the date fixed for the election ; it shall be submitted to the Assembly which shall pronounce upon it without referring it to a Committee, and without debate.

The number of Members re-elected in consequence of having been previously declared re-eligible shall be restricted so as to prevent the Council from containing at the same time more than three Members thus elected. If the result of the ballot infringes this restriction to three Members, those of the Members affected which have received the smallest number of votes shall not be considered to have been elected.

Article III. Temporary Provisions.

1. In 1926, the nine non-permanent Members of the Council shall be elected by the Assembly, three for a term of three years, three for a term of two years, and three for a term of one year. The procedure of the election shall be determined by the general Committee of the Assembly.

2. Of the nine Members thus elected in 1926, a maximum of three may be immediately declared re-eligible by a decision of the Assembly taken by a special vote by secret ballot, a separate ballot being held for each Member, and adopted by a majority of two-thirds of the number of votes cast.

Immediately after the announcement of the results of the election the Assembly shall decide upon the requests for re-eligibility which have been presented.

Should the Assembly have before it more than three requests for re-eligibility, the three candidates having received the largest number of votes, in excess of two-thirds of the votes cast, shall alone be declared re-eligible.

3. [New translation of original French] :

The according in advance in 1926 to one, two or three Members elected at that date, of the quality of re-eligibility, shall not affect the Assembly's right to exercise the power given by Article II in the years 1927 and 1928 in favour of other non-permanent Members retiring from the Council in those years. It is, however, understood that if three Members already possess the quality of re-eligibility, the Assembly will only exercise this power in very exceptional cases.

A. I. 5. 1926.

ANNEX 3.

INTERPRETATION OF THE PREAMBLE AND OF ARTICLES 3 AND 4 OF THE COVENANT.

MEMORANDUM BY THE BRITISH DELEGATION, DATED SEPTEMBER 18TH, 1926, ON
VISCOUNT CECIL OF CHELWOOD'S RESOLUTION¹.

In the sixth and seventh sessions of the Assembly, as well as earlier, questions have been raised as to whether particular proposals did not go beyond the sphere of action of the League. The phrase "sphere of action of the League", as used in Articles 3 and 4 of the Covenant, is nowhere defined; but its meaning may be gathered from various passages in that document.

The wording of Articles 3 and 4 of the Covenant is sufficient to show that a matter may fall within the sphere of action of the League even though it does not affect the peace of the world. Both the Assembly and the Council are authorised at their meetings to deal with any matter "within the sphere of action of the League or affecting the peace of the world". The first phrase would be superfluous if the activities of the League were limited to matters relating to peace and war.

On the other hand, its activities are limited to matters of international concern. Thus, in the Preamble of the Covenant it is stated to have been agreed to for the purpose of: (1) promoting *international* co-operation; and (2) achieving *international* peace and security. Again, Articles 8 to 17 inclusive consist of various provisions declared to be essential for the maintenance of peace and "the good understanding between nations". No one questions that these are within the sphere of the League. They deal primarily with armaments, aggression and international disputes which may be likely to lead to a breach of the peace. But it is to be noted that, even in a dispute likely to lead to a rupture, if the matter "is solely within the jurisdiction" of one of the parties, the Council is not to attempt to pronounce upon its merits.

Further, by the Preamble, international co-operation is to be promoted by, first, open diplomacy; secondly, observing international law; and thirdly, maintaining justice and a scrupulous respect for treaties in the dealings of organised peoples *with one another*. All these presuppose international relations. Diplomacy is only concerned with the relations of Governments. International law only comes into play as between different Governments or their nationals, and the last heading is specifically limited to the dealings of organised peoples with one another.

It is worth noting that this last clause of the Preamble as to maintaining justice in the dealings of organised peoples with one another, though containing two phrases, is again restricted in its operation by Articles 23 and 24 of the Covenant, by which the obligations of Members of the League with regard to a variety of matters which primarily are matters of national concern are to be carried out in conformity with international conventions present or future. This shows that the two phrases of the last clause of the Preamble must be read together and not separately.

The activities of the League may be roughly divided into its political functions and its non-political, the political functions including the administrative duties which have been cast upon the League.

The administrative duties now exercised by the League all originate in special treaty provisions, such as those in connection with the Saar (Treaty of Versailles, Article 49), Mandates (Covenant, Article 22), Minorities (various special treaties and declarations).

All the administrative duties of the League originate in special treaty provisions. Their existence, therefore, throws no light on the question of the correct interpretation of the words "sphere of action of the League".

The political activities of the League (other than its administrative functions) fall, like disarmament, into the category of questions affecting the peace of the world. Any circumstance which threatens to disturb that good understanding between nations upon which peace depends is proclaimed by Article 11 of the Covenant to be a subject which a Member of the League may bring before the Council or the Assembly. It is the element that it may be a potential source of quarrel which is important; as such, it may affect the peace of the world.

¹ "The Assembly requests the Council to appoint a Committee to consider and report what questions are and what are not within the sphere of action of the League within the meaning of the Preamble and of Articles 3 and 4 of the Covenant, especially with reference to the questions which are now being dealt with by the organs of the League or are proposed to be so dealt with."

However much a matter of internal politics might constitute a burning question in a State, the League would have no *locus standi* to take it up unless there was reason to think that it might prejudice and disturb relations with another State. To fall within the province of the League, a political question must be international in the sense of being a potential source of quarrel.

It is in connection with non-political matters that the chief difficulty arises in deciding what is or is not within the proper function of the League.

An examination of the articles of the Covenant shows that only Articles 23 to 25 deal with such matters. The earlier Articles 1 to 7 relate to its organisation. Articles 8 to 17 relate to the maintenance of peace. Articles 18 to 21 relate to treaties, *i.e.*, international engagements; Article 22 to administrative work, *viz.*, mandates; and Article 26 to amendments. Only Articles 22 to 25 remain to cover the social and economic activities of the League, and these articles show the limitations of the League's action in such matters.

The subjects covered by Article 23 are primarily national matters. To enable the League to intervene, there must be either a treaty or (under Article 24) an international bureau, and a bureau must of necessity be the creation of a treaty or an agreement. The sphere of the League no doubt comprises the encouragement of States to conclude treaties upon these matters, but actual intervention in national affairs is not compatible with the Covenant until such time as a treaty has been concluded. As no treaty can be concluded without the concurrence of the States which accept it, the League cannot intervene in the national affairs of any such State unless by its own action that State has consented thereto.

In most of the cases covered by Article 23, no progress can be made except by international agreement. This applies to every subject which raises questions of international communication, such as those enumerated in sub-paragraph (c) of Article 23. To this class also belong all the questions dealt with by the Transit Committee. Closely allied to these are the economic questions referred to in sub-paragraph (e) of the same article, which include not only the questions of communication and transit there mentioned but also such matters as tariffs and other commercial barriers. To these must be added a variety of matters dealing with commerce, such as unfair competition, commercial arbitration, etc., which are necessarily international in their character and are, therefore, rightly to be regulated by treaty. So, too, the conditions and hours of labour in the various countries; though from one point of view they are primarily of national interest, yet by reason of the economic unity of the world, labour conditions in one country have a very direct bearing on labour conditions in another. A more difficult case is perhaps that of health. Epidemics of infectious diseases clearly warrant international regulation by means of a treaty, since their existence in one country constitutes a danger for its neighbours. Beyond that, a more difficult ground is reached. Some matters of hygiene certainly appear national. Questions of nutrition, housing, even cleanliness, except so far as it is a contributory cause to infectious disease, seem primarily national matters and should so remain. Again, education is evidently normally a national matter, though it may be argued that it is in the interests of peace that the population of the world may be educated in sound moral and religious principles. Certainly, textbooks which glorify war and ignore the League of Nations may be justly considered to be an international danger. At the other end of the educational scale, no one would maintain that the best method of teaching reading, writing and arithmetic was anything but a matter of national concern; and the same applies to provision for recreation, such as swimming-baths and the like. Morals, too, are normally national rather than international, though deleterious literature and films, since they travel from one country to another, have an international aspect. Further, even in strictly national matters there may be, and often is, an international interest in providing by agreement for the pooling of knowledge and experience. In fighting some intractable disease, for instance, it may be very important that the knowledge of what is being done and the experiences in different countries should be collected and compared, and this is equally true of many other subjects.

In all those matters which are national in their essence but which have a direct bearing on the well-being of populations, international interest may justify efforts to conclude international agreements for improving comparative knowledge, but cannot extend to recommendations of changes in national legislation or administration. Many matters, of course, have nothing but a national interest, such as national customs, dress, food, recreations, etc.

Article 25 might at first sight appear to run counter to the principle enunciated above. In reality, it supports it. The Red Cross organisations there referred to are specifically stated to be national organisations. It was the fact that the organisations were national which necessitated a special article of the Covenant with regard to them. If the League could concern itself with any national organisations, Article 25 would have been unnecessary.

The principle which emerges appears to be fairly clear.

In non-political matters, such as those of a social or economic character, the League has no *locus standi* except : (1) where a treaty has been concluded, and then, of course, the observance of the treaty is a matter of international interest ; or (2) where the subject-matter has sufficient repercussion outside the frontiers of a particular State to justify consideration of the subject by the League, and in that case the efforts of the League must be directed first to securing the adoption of a suitable treaty. Without such a treaty, action by the League would constitute intervention in national affairs in a manner and to an extent not provided for by the Covenant. Thirdly, the collection and comparison of information with regard to national activities in the various States as to matters of serious interest to humanity in general may be often profitably undertaken by the League.

A. 6 (a). 1926.

ANNEX 4.

REPORTS OF THE COUNCIL ON ARBITRATION, SECURITY AND THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

The Council, at its meeting on June 10th, 1926, adopted the following two reports prepared by the special Committee which it had constituted :

(a) ARBITRATION AND SECURITY.

The sixth Assembly, after declaring that it regarded favourably the conclusion of arbitration conventions and treaties of mutual security conceived in the spirit of the Covenant of the League of Nations and in harmony with the principles of the Protocol (Arbitration, Security, Disarmament), recommended that, after these conventions and treaties had been deposited with the League of Nations, the Council should examine them in order to report to the seventh Assembly on the progress in general security brought about by such agreements.

In order to enable us to report to the seventh Assembly, the Secretariat, under our instructions, prepared a systematic survey of the arbitration conventions and treaties of mutual security deposited with the League of Nations.

This survey (document C. 34. 1926. V) comprises chapters on treaties of arbitration, treaties of conciliation, treaties both of arbitration and conciliation, treaties of guarantee and mutual security, and the Locarno Treaties. It is followed by the text of all these treaties.

The Council will see at once what a large number of treaties of conciliation, arbitration and mutual security have been registered by the League.

Under the head of " Arbitration Treaties ", the Secretariat survey gives :

- 17 which had been concluded before the war and have been prolonged since the year 1920 in virtue of fresh agreements between the parties. The characteristic feature of these treaties is that they establish arbitration between the contracting parties in respect of a limited number of disputes ;
- 5 subsequent to that date which provide for compulsory arbitration between the contracting parties in respect of all disputes of whatever nature ;
- 5 which are special arbitration conventions dealing with particular questions.

The group of " Conciliation Treaties " comprises :

- 12 treaties, including the Treaty for the Pacific Settlement of Disputes between American States, signed at Santiago de Chile on May 3rd, 1923.

The group of " Combined Arbitration and Conciliation Treaties " comprises :

- 5 treaties and conventions.

The group of " Treaties of Guarantee " comprises :

- 17 treaties.

The "Locarno" group :

4 treaties.

Finally, an Appendix to the Secretariat's survey contains :

2 treaties which were registered after the survey had been compiled and would in the ordinary course have been included in it.

Apart from similar pre-war agreements which have not required renewal since 1920 and have consequently not been registered with the League¹, though they are still in force, we have :

71 treaties registered, all aiming at the pacific settlement of international disputes.

The Council is happy to note this striking evidence of the spirit of conciliation which now reigns in international relations.

Without doubt, the most complete success achieved by this spirit of conciliation in recent times is the Locarno group of treaties.

The Final Protocol of the Locarno Conference contains the following paragraph :

"The representatives of the Governments represented here declare their firm conviction that the entry into force of these Treaties and Conventions will contribute greatly to bring about a moral relaxation of the tension between nations, that it will help powerfully towards the solution of many political and economic problems in accordance with the interests and sentiments of peoples, and that, in strengthening peace and security in Europe, it will hasten on effectively the disarmament provided for in Article 8 of the Covenant of the League of Nations."

On the occasion of the deposit of the Locarno Treaties with the League of Nations, the Members of the Council spoke as follows :

Sir Austen CHAMBERLAIN (representative of the British Empire) :

"In handing these documents to the Secretary-General, as the representative of the Council, and placing them in the custody of the League, I venture to say that the Powers immediately concerned have entered on a new phase of their mutual relations; that, carefully avoiding anything in the nature of provocation or offence to others, they have by mutual agreement guaranteed peace between themselves; that they have thus helped to stabilise the peace of the world and give rest and confidence to our nations; and that, in placing these documents under the guardianship of the League and attributing to the League all the authority which is therein specified, not less than by the agreement come to between Germany and the other nations that, as part of those agreements, Germany should enter the League of Nations, we have made a contribution, which I trust will be acceptable to the League, towards the support and increase of its authority and strength."

M. PAUL-BONCOUR (representative of France) :

"The French Prime Minister, aware that the Treaties of Locarno were to be deposited this morning (December 14th, 1925) in the archives and under the protection of the League of Nations, has sent me the following telegram, which he has asked me to read to you :

"At the moment when the treaties which were drawn up at Locarno are being deposited in the archives of the League of Nations, I desire to associate myself from where I am now retained by the imperious duties of my office with the feelings which Sir Austen Chamberlain will express with his full authority. France is proud to have put her signature at the foot of these Acts, which record her desire to maintain peace. She sees in the ever-growing authority of the League of Nations and in the enlightened and vigilant action of its Council the best guarantee against war. This work of peace-making performed by the League of Nations among the Members of which we hope soon to welcome Germany can but be facilitated and strengthened by the conclusion of the Treaties of Locarno. These treaties, which are inspired by the provisions and directing principles of the Covenant, are designed to be the beginning, between the States which have signed them, of normal relations based on an equal desire to achieve conciliation within the limits of the treaties and of the rights of each party."

¹ To this survey should be added the following Conventions which have since been registered by the Secretariat :

Conciliation Convention between Estonia and Sweden signed at Reval on May 29th, 1925.

Conciliation and Arbitration Treaty between Sweden and Czechoslovakia signed at Prague on January 2nd, 1926.

Conciliation and Arbitration Treaty between Poland and Czechoslovakia signed at Warsaw on April 23rd, 1926.

Convention between Finland and Sweden for the Pacific Settlement of Disputes, with the Protocol of Signature, signed at Helsingfors on January 29th, 1926.

Since this report was adopted, the following Treaties have been registered :

Agreement between the United States and Portugal, further renewing the Arbitration Convention of April 6th, 1908.

Conciliation and Arbitration Treaty between Poland and Switzerland signed at Berne on March 7th, 1925.

Conciliation Treaty between Norway and Switzerland, signed at Oslo on August 21st, 1925.

Convention between Denmark and Sweden for the Pacific Settlement of Disputes, with Protocol of Signature, signed at Stockholm on January 14th, 1926.

Conciliation and Arbitration Treaty between Austria and Czechoslovakia, signed at Vienna on March 5th, 1926.

Convention between Denmark and Finland for the Pacific Settlement of Disputes, with Protocol of Signature, signed at Helsinki (Helsingfors), January 30th, 1926.

M. HYMANS (representative of Belgium) :

“ These treaties are closely connected with the League of Nations, with the spirit which inspires and with the Covenant which directs its actions. I am convinced, as has been pointed out with so much authority and truth, that these treaties will strengthen the League of Nations, will develop the part it plays as a peace-maker and will enable it in the future to devote itself more and more widely to the mission entrusted to it by its authors. ”

M. BENEŠ (representative of Czechoslovakia) :

“ The agreements of Locarno concern areas which were specially affected during the last war. If peace and security are assured in these areas, those who negotiated the treaties are by this fact entitled once more to our gratitude. ”

“ In my opinion, the conclusion of these agreements means a new phase in the politics of post-war Europe. Further, the importance of this event is still more increased by the entry of Germany, which will mark a new stage in the work of the League of Nations. ”

M. QUIÑONES DE LEÓN (representative of Spain) :

“ Sir Austen Chamberlain has just reminded the Council of the decisions of the Assembly. I should like to inform the Council on this solemn occasion that Spain, which has always supported the principle of arbitration, is negotiating at the moment with several Powers agreements similar to those of Locarno and inspired by their provisions. ”

Viscount ISHII (representative of Japan) :

“ I explained to my colleagues that my Government was especially gratified to learn of the conclusion of the Treaties and Conventions of Locarno, since it had expressed through me, as far back as the beginning of September last, its sincere desire and hope for the early conclusion of the Treaty of Security then in question and for the eventual conclusion of similar conventions in other parts of the world. To-day the hope of my Government is realised— a most happy event in the interest of the peace of the world. ”

M. UNDÉN (representative of Sweden) :

“ We cannot yet perfectly appreciate the importance of these agreements, but I have no doubt that the hopes which we have all placed in this work of peace and confidence will be realised. ”

M. GUANI (representative of Uruguay) :

“ In the name of my Government, allow me at this moment to express profound gratitude for the efforts made by the distinguished men who have co-operated in this work. It will not only secure peace for Europe but also, as I have just said, confidence and security for the whole world. ”

M. DE MELLO-FRANCO (representative of Brazil) :

“ Allow me to express the hope that the system of guarantees which is the basis of the Locarno Agreements may be developed little by little and bear, in the near future, fruit from which the whole world can benefit. ”

M. SCIALOJA (representative of Italy, Acting President of the Council) :

“ We have established at Locarno (and I am happy to remind you of my modest presence at that conference) a system of treaties inspired by a new spirit which has been justly called the spirit of Locarno, the spirit of real peace which strives to eliminate all causes of war. ”

“ As a lawyer, allow me to emphasise the legal side of these treaties. The great difficulty met with in seeking to achieve a friendly settlement of international disputes consists in distinguishing between purely legal cases and cases of a political character, which present far greater difficulties for peaceful settlement because the ordinary means to which recourse is had, such as arbitration or the Permanent Court of International Justice at The Hague, are insufficient to settle questions which are not of a purely legal kind. ”

At the signature of the Locarno Treaties in London, M. SKRZYŃSKI said :

“ We find in these agreements initialled at Locarno and signed in London a harmonious work, a juridical system, as well as a powerful guarantee for peace in Europe. We hope that these agreements signed to-day will be maintained in the spirit and in the letter. ”

Dr. LUTHER, Chancellor of the Reich, in a speech before the Reichstag on November 23rd, 1925, said :

“ I can only interpret the result of the Locarno negotiations as the manifestation of real progress in the strengthening of the forces which work for peace in Europe . . . ”

“ The Locarno Treaties have not yet come into force, as Article 10 of the Treaty of Mutual Guarantee included among them stipulates that they shall come into force as soon as all the ratifications have been deposited and Germany has become a Member of the League of Nations. ”

The Council notes with satisfaction the unanimous tenor of the official declarations made by the Members of the Council and the States represented at the Locarno Conference regarding the obvious progress in general security which has been brought about by those Treaties.

The Council shares the view, several times expressed at the sixth Assembly, that the conclusion of such agreements would be calculated to develop a sense of security.

(b) PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

An Assembly resolution requests the Council to submit to careful examination the proposals, declarations and suggestions made at the Assembly and the Council with a view to the pacific settlement of international disputes, and to report to the seventh Assembly upon the progress which can be made in this matter.

Under instructions from the Council, the Secretariat has prepared the material for this enquiry in the form of a document (C. 33. 1926. V) consisting of an introductory note and a series of extracts from the Minutes of the sessions of the Council and Assembly, reproducing the proposals, declarations and suggestions concerning the pacific settlement of international disputes in the actual form in which they were made by their authors.

The general impression given by these proposals, declarations and suggestions is that the movement for the pacific settlement of international disputes, which has undoubtedly started in the public opinion of all civilised nations, has acquired an ever-increasing force and can already be regarded as part of the practical policy which a number of States are in a position to adopt.

Although all these proposals, declarations and suggestions collected by the Secretariat were made in the course of the debates on the Protocol of 1924, it is quite clear that their authors do not wish to confine themselves to the field covered by the Protocol or to the general ideas on which it is based. In other words, the movement for the pacific settlement of international disputes goes beyond the scope of the Protocol and may be said to be independent of it. The Protocol itself is only one of the lines which this movement might follow in the future.

I.

In these proposals, declarations and suggestions a certain number of tendencies can be observed :

1. The first is towards the development of methods of conciliation. This method of conciliation is regarded from two points of view—as a preliminary stage, coming before arbitration and judicial settlement in the case of disputes which could ordinarily be settled by those methods if conciliation failed, or as a subsidiary method of settlement for disputes which are not submitted to judicial settlement. The tendency towards the development of conciliation takes two different forms :

(a) The consideration of the problem of conciliation as a whole, that is to say, from the standpoint of a general convention for the avoidance and, if possible, the settlement of international disputes by the system of conciliation. This tendency appears in the proposal to consider the possibility of improving the model conciliation convention drafted by the third Assembly (proposal of the Japanese delegation).

(b) The discussion of the desirability of establishing special conciliation committees—for example, for the affairs of Eastern Europe, for Eastern affairs, for American affairs—which would be in the nature of advisory committees to advise the Council when necessary.

2. A tendency to reaffirm, on the morrow of the failure of the Protocol, the principle of compulsory arbitration. In the words of the First Committee's report, the intention is “ to emphasise . . . that development of the principle of compulsory arbitration was desirable in itself and realisable in abstraction from other questions ”, since this principle is calculated to give the international world that sense of moral security which might eventually enable any machinery of sanctions, other than the sanctions provided by the Covenant, to be dispensed with.

Here we may trace two separate ideas :

(a) The first proclaims the utility of the principle of compulsory arbitration as a general measure. This is the view underlying the Swedish draft resolution whereby the Assembly was asked to submit for re-examination to a committee of experts the provisions concerning compulsory arbitration contained in the 1924 Protocol in order to facilitate the acceptance by all Powers of the principle of compulsory arbitration for the settlement of international disputes.

(b) According to the second idea, as circumstances are not very favourable to the general adoption of the principle of compulsory arbitration, such arbitration might, if local conditions are favourable, be adopted at once by groups of Powers, thereby creating arbitration zones which it is hoped would gradually extend.

In connection with these ideas may be mentioned the observation of the Belgian delegation at the Assembly which linked conciliation and arbitration with the guarantees derived from the Covenant, which can be assured at the present time to any State that scrupulously observes its international obligations. At the Assembly, the Belgian delegation drew the attention of the States Members of the League to the desirability, *from the point of view of their security*, of concluding special conventions for arbitration or for the judicial settlement of disputes, and pointed out, through its delegate, M. Rolin, that, "in the event of two Members of the League of Nations which are parties to a dispute deciding to have recourse to arbitration or judicial settlement, Article 13 of the Covenant provides that 'in the event of any failure to carry out such an award the Council shall propose what steps shall be taken to give effect thereto', and the sanctions of Article 16 apply to any Member of the League which, in violation of the undertakings contained in Article 13, has recourse to war against another Member which complies with the award given."

II.

3. At the deposit of the Locarno Agreements in the archives of the League of Nations, a number of declarations were made in the Council. The Locarno Agreements may be said to contain, in varying degrees, all the ideas set forth above, with the addition, in certain well-known cases, of the idea of military guarantees or sanctions, which was also embodied in the Treaty of Mutual Guarantee of 1923 and in the Protocol of 1924. Under the Locarno Treaties, as under those two earlier instruments, military intervention on behalf of the State attacked takes place under the strictest international guarantees, but at the same time the sovereignty of the guarantor States is scrupulously respected. On several occasions at the sixth Assembly, the adoption of agreements on the same general lines as the Treaty of Locarno was recommended for other zones of insecurity. Many speakers emphasised the possibility of achieving the universal solution at which the Protocol had aimed, through this more modest system of local solutions, which might gradually cover the entire international situation, e.g. the declaration of M. Titulesco.

4. It should, however, be made clear that the immediate and complete solution which the authors of the Protocol had proposed was not abandoned by the sixth Assembly, and that while, for reasons of political expediency, the supporters of the Protocol associated themselves with other solutions, which were for the time being more in favour, they were careful to state that they remained faithful to their original idea and believed that sooner or later it would be realised.

5. Finally, side by side with the proposals made for the pacific settlement of international disputes, mention should be made of the views expressed as to the causes of these disputes, so that, in the striking words of M. Scialoja, "law, no longer confined to the external form of international relations, may better regulate these relations themselves". It is difficult to draw a line between the moment when a dispute could be settled and the moment when it could be avoided. In 1924, when the Protocol was under discussion, M. Jouhaux, of the French delegation, called the Assembly's attention to the economic causes of international disputes and the necessity of coping with them by means of an international organisation. This idea has been expressed on several occasions by the Italian delegation at the Assembly in 1924 and 1925. It reappears in 1925 in a speech by Dr. Caballero, delegate of Paraguay, and obviously exercised a strong influence on the decisions of the sixth Assembly upon the French proposal for the convening of an Economic Conference.

III.

Such in general are the ideas discussed at the sixth Assembly and at the subsequent sessions of the Council in connection with the pacific settlement of international disputes. The sixth Assembly asks for a report to the seventh Assembly "upon the progress which can be made in this matter". It is not, of course, proposed to make a theoretical study of the advantages and disadvantages of all these ideas, but to give some indication of the immediate possibilities of progress in the pacific settlement of international disputes.

In the opinion of the Council—as appears from another report which it is submitting to the Assembly on conciliation and arbitration treaties—the movement for the pacific settlement of international disputes is daily spreading in international politics. This is no mere movement of ideas; it can be seen in actual facts, for it is producing an increasing number of conciliation and arbitration agreements. The Council sees no advantage in laying down too definite rules for the form in which this tendency is to find expression in the many different and complicated situations to which international political life gives rise. The Council would merely

record that this movement, already so vigorous in the case of special agreements, is a sure sign of the good will of the different States to establish peace on a solid footing. Such agreements concluded within the framework of the Covenant of the League constitute perhaps the best solution that can be found in the present circumstances. We may express the hope that their development will help to bring about the general solution which the Assembly has so often endeavoured to find. In any event, the conclusion of such special agreements, far from being an obstacle to such a general solution, can do nothing but assist it.

A. 79. 1926. IX.

ANNEX 5.

ARBITRATION AND SECURITY.

DRAFT RESOLUTION SUBMITTED BY THE THIRD COMMITTEE OF THE ASSEMBLY.

The Assembly,

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

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

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

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

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

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

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

A. I. 7. 1926.

ANNEX 6.

INTERPRETATION OF THE PREAMBLE AND OF ARTICLES 3 AND 4 OF THE COVENANT (see also Annex 3).

DRAFT RESOLUTION SUBMITTED TO THE FIRST COMMITTEE BY SUB-COMMITTEE No. 2, ON SEPTEMBER 22ND, 1926.

The Committee,

Having considered with the deepest interest Viscount Cecil's proposal and the memorandum of the British delegation annexed hereto ;

Shares the feelings which inspired these two documents ;

Recognises that the League of Nations should avoid dissipating its activity upon subjects which might divert it from its lofty mission of promoting the peace of the world and facilitating co-operation between nations for the peaceful progress of humanity ;

Recommends that every body forming part of the League, before proceeding to examine a proposal on its merits, should first decide the preliminary question whether the proposal falls within the objects of the League, as defined by the Covenant, and pronounce upon the importance of the proposal from the point of view of the attainment of those objects ;

Considers that it would be desirable that, if so requested by a member of such body, the question should be submitted to the First Committee of the Assembly or, in the interval between the Assembly's sessions, to the Council ;

Recommends that the present resolution should be brought by the Secretary-General to the knowledge of the various bodies forming part of the League of Nations.

A. I. 4. 1926.

ANNEX 7.

EXTRACT FROM THE REPORT ON THE WORK OF THE COUNCIL DEALING WITH THE WORK OF THE COMMITTEE OF EXPERTS FOR THE PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW.

The Committee of Experts for the Progressive Codification of International Law, appointed under the resolution of the Assembly of September 22nd, 1924, met for its second session at Geneva from January 12th to January 29th, 1926. The terms of reference of the Committee are as follows :

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable and realisable at the present moment ;

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received ; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

The Committee drew up a number of questionnaires which were forwarded to the Secretary-General for transmission to the Governments. It asked the Secretary-General to request the Governments to send to him by October 15th, 1926, for transmission to the Committee, their opinion upon the question whether the regulation by international agreement of the subjects treated, both in their general aspects and as regards the specific points mentioned in the questionnaires, was desirable and realisable in the near future.

The subjects dealt with in the questionnaires were as follows :

- No. 1. Nationality ;
- No. 2. Territorial Waters ;
- No. 3. Diplomatic Privileges and Immunities ;
- No. 4. Responsibility of States in respect of Injury caused in their Territory to the Person or Property of Foreigners ;
- No. 5. Procedure of International Conferences and Procedure for the Conclusion and Drafting of Treaties ;
- No. 6. Piracy ;
- No. 7. Exploitation of the Products of the Sea.

The Committee will examine the replies received from the Governments and report subsequently to the Council on the questions which appear to be sufficiently ripe and on the procedure to be followed for their solution.

In addition to the subjects on which questionnaires were drawn up, the Committee examined and decided not to include in its list the subjects of " Extradition " and " Criminal Competence of States in respect of Offences committed outside their Territory ". The reasons for this decision are set out in reports which have been distributed to the Governments. Finally, the Committee presented to the Council a report on the subject of " The Legal Status of Government Ships employed in Commerce ", which was placed on the agenda of the Council's session of June 1926 and will be further dealt with in the Supplementary Report to the Assembly.

The Committee has also appointed Sub-Committees to report to it at its next session upon the desirability of including in its list of subjects to be submitted to Governments for their opinion all or any of the following matters :

1. Is it possible to establish, by way of a general convention, provisions concerning the communication in criminal matters of judicial and other documents (*actes judiciaires et actes extra-judiciaires*) and concerning commissions to take evidence (*commissions rogatoires*) in criminal matters ?

2. Is it possible to establish by way of a general convention provisions concerning the legal position of private, non-profit-making international associations and private international foundations ?

3. Are there questions concerning the conflict of laws in the matter of domicile of which a solution by way of a convention could be contemplated without encountering political obstacles ? In the affirmative, what are these questions and what solutions might be found for them ?

4. Is it possible to establish by way of a general convention provisions as to the legal position and the functions of consuls, and, if so, to what extent ?

5. Is it possible to reach an international agreement determining, in the absence of special provisions, the effect of the most-favoured-nation clause ?

6. Is it desirable to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle ? In the affirmative, in what form should this revision be made ?

7. Is it possible to establish, by way of a convention, international rules concerning the competence of the courts in regard to foreign States, and, particularly, in regard to States engaging in commercial operations (excluding the questions already dealt with in the report sent to the Council of the League of Nations by the Committee of Experts at the Committee's second session) ?

8. Is it possible, without encountering political or economic obstacles, to formulate by way of a convention international rules concerning the nationality of commercial corporations and the determination of the question to what State the right of affording them diplomatic protection belongs ?

9. Is it possible to establish, by way of a convention, international rules concerning the recognition of the legal personality of foreign commercial corporations ?

10. Is it possible to establish, by way of a convention, international rules for the settlement of conflicts of laws concerning contracts for the sale of goods ?

11. Whether, and to what extent, it would be possible to draw up treaty provisions concerning the application in international law of the conception of prescription, whether as establishing or as barring rights, and what such provisions should be ?

At its session of March 1926, the Council referred to the Committee for examination the question of the admissibility of reservations to general conventions.

ANNEX 8.

C. C. C. 10. 1926.

ELECTION OF THE NON-PERMANENT MEMBERS OF THE COUNCIL BY THE ASSEMBLY ACCORDING TO THE " SINGLE TRANSFERABLE VOTE " SYSTEM.

MEMORANDUM COMMUNICATED BY VISCOUNT CECIL OF CHELWOOD TO THE COMMITTEE ON THE COMPOSITION OF THE COUNCIL.

Three Members Elected by Fifty-two Delegates on One Ballot.

1. *Brief Description of the System.*

By this device an elector can indicate on his ballot paper not only his first choice, but also his second or third, etc. To ensure election a candidate need not obtain a majority of the votes polled, but only a certain number, so fixed that it can be obtained by a number of candidates equal to the number of seats to be filled, but by no more ; this number of votes is called the " quota ". At the first count first choices only are reckoned, and those candidates who have received a " quota " or more are declared duly elected. If all the seats have not then been filled up, the surplus votes of those candidates who have received more than the " quota " are transferred according to the second choices indicated on them. If these transfers still do not bring the requisite number of candidates up to the " quota ", the lowest candidate is eliminated and his votes transferred according to the next preferences, and so on till the seats are filled.

This system is designed to guarantee a fair representation of majorities and minorities alike. To attain this the vote must be made transferable, for the delegate does not know (1) whether the State for which he desires to vote will get more support than it requires to ensure election, or (2) whether it will obtain so few votes as to be hopelessly out of the running. The delegates wish to vote for their favourite but do not wish to throw their votes away. The transferable vote meets this situation.

2. *Example of Election.—Three Members of the Council to be chosen by the Assembly.*

(a) Each of 52 delegates voting in the Assembly express their first, second, third, fourth, etc. choices, with the following results for the first two :

Country	First	Second
Persia	30	5
Netherlands	12	3
Switzerland	5	10
Uruguay	2	25
Spain	1	5
China	1	3
Sweden	1	1
	52	52

(b) As already explained, in order to obtain election, the candidate must secure one vote more than one quarter of the total number of votes, i.e., 14 votes. This requirement is called the "quota".

(c) Applying the quota to the first choice, it is evident that Persia alone is elected.

(d) Persia obtained 16 votes which it did not actually require to secure election, and therefore these 16 votes must be apportioned among the other candidates in proportion as those who voted for Persia in the first place distributed their second choices. The distribution of the second choice on the 30 ballots which gave first place to Persia are as follows : Netherlands 2, Switzerland 4, Uruguay 22, Spain 0, China 2, Sweden 0.

Netherlands therefore gets $\frac{2}{30}$ ths of Persia's 16 surplus votes, or $\frac{32}{30}$ ths votes ; Switzerland $\frac{4}{30}$ ths of the 16 votes or 2 and $\frac{4}{30}$ ths votes, etc. In order to use round numbers, fractions below $\frac{1}{2}$ will be eliminated and those above $\frac{1}{2}$ counted as one. Persia's 16 surplus votes are therefore found to be divided as follows :

Netherlands 1, Switzerland 2, Uruguay 12, Spain 0, China 1, Sweden 0 = 16.

The second count is therefore as follows :

Country	Votes
Persia	14
Netherlands	13
Switzerland	7
Uruguay	14
Spain	1
China	2
Sweden	1
	52

Uruguay has thus secured the necessary quota and is elected as the second Member of the Council.

(e) The candidate or candidates (if two are equal as in this case) with the smallest number of votes on the last count (Spain and Sweden) are now eliminated and the second choices on the ballots of the delegates who voted for them in the first place are counted. Both these second choices are for Switzerland.

The third count is therefore as follows :

Country	Votes
Persia	14
Netherlands	13
Switzerland	9
Uruguay	14
China	2
	52

No candidate has received a quota and there is no election.

(f) The lowest candidate (China) is again eliminated and the second choices distributed as previously. They are as follows : Netherlands 1, Switzerland 1. This gives Netherlands

14 votes, which is sufficient to secure her election as the third Member of the Council, the fourth count being as follows :

Country	Votes
Persia	14
Netherlands	14
Switzerland	10
Uruguay	14
	—
	52

A. I. 6. 1926.

ANNEX 9.

DRAFT RESOLUTION PROPOSED BY M. LANGE, DELEGATE OF NORWAY, TO THE EFFECT THAT THE SECRETARIAT SHOULD DRAW UP A LIST OF INTER-STATE AGREEMENTS AT PRESENT IN FORCE WHICH PROVIDE FOR THE COMPULSORY JUDICIAL OR FRIENDLY SETTLEMENT OF ANY DISPUTES WHICH MIGHT ARISE BETWEEN STATES.

Geneva, September 18th, 1926.

[*Translation.*]

I have the honour to inform you that, at its meeting of September 18th, 1926, the Third Committee decided to send to the First Committee the following draft resolution submitted by M. Lange, Norway :

“ The Third Committee, having examined document C.34.M.74.1926.V, entitled “ Systematic Survey of the Arbitration Conventions and Treaties of Mutual Security deposited with the League of Nations ”,

“ Expresses its genuine satisfaction with this valuable survey.

“ The Committee observes, however, that, owing to the lines on which it is compiled, this survey necessarily presents serious deficiencies as a statement of the present situation in regard to engagements binding countries to resort to peaceful means for settling disputes, since a considerable number of such engagements, dating from before the formation of the League of Nations but still in force, have not been deposited with the Secretariat.

“ The Third Committee suggests that the First Committee should discuss the question of instructing the Secretariat to prepare as full a schedule as possible of the engagements at present in force between States Members or non-Members of the League providing for the compulsory judicial or friendly settlement of any disputes which might arise between them, as also treaties of security by mutual guarantee. ”

I shall be obliged if you will kindly bring the present letter to the knowledge of the members of the First Committee.

(Signed) E. VILLEGAS,
Chairman of the Third Committee.

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ABBREVIATIONS

Com.	=	Committee.
Int.	=	International
Memo.	=	Memorandum.
Perm.	=	Permanent.
Temp.	=	Temporary.

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