LEAGUE OF NATIONS

ARBITRATION, SECURITY
AND
REDUCTION OF ARMAMENTS

General Report
submitted to the Fifth Assembly on behalf of the
FIRST AND THIRD COMMITTEES

by

M. Politis (Greece), Rapporteur for the First Committee,
and

M. Bénès (Czechoslovakia), Rapporteur for the Third Committee.

CONTENTS:

I. — INTRODUCTION: HISTORICAL SUMMARY ....... 2

II. — ANALYSIS OF THE SCHEME:
   1. — Work of the First Committee ............. 5
   2. — Work of the Third Committee ............ 15

III. — CONCLUSION ............................... 20
INTRODUCTION

After being examined for several years by the Third Committee, the problem of the reduction of armaments has this year suddenly assumed a different, a wider and even an unexpected form.

Last year a draft Treaty of Mutual Assistance was prepared, which the Assembly sent to the Members of the League for their consideration. The replies from the Governments were to be examined by the Fifth Assembly.

At the very beginning of its work, however, after a memorable debate, the Assembly indicated to the Third Committee a new path. On September 6th, 1924, on the proposal of the Prime Ministers of France and Great Britain, M. Edouard Herriot and Mr. Ramsay MacDonald, the Assembly adopted the following resolution:

"The Assembly,
"Noting the declarations of the Governments represented, observes with satisfaction that they contain the basis of an understanding tending to establish a secure peace,
"Decides as follows:
"With a view to reconciling in the new proposals the divergences between certain points of view which have been expressed and, when agreement has been reached, to enable an international conference upon armaments to be summoned by the League of Nations at the earliest possible moment:
"(1) The Third Committee is requested to consider the material dealing with security and the reduction of armaments, particularly the observations of the Governments on the draft Treaty of Mutual Assistance, prepared in pursuance of Resolution XIV of the Third Assembly and other plans prepared and presented to the Secretary-General since the publication of the draft Treaty, and to examine the obligations contained in the Covenant of the League in relation to the guarantees or security which a resort to arbitration and a reduction of armaments may require:
"(2) The First Committee is requested:
"(a) To consider, in view of possible amendments, the articles in the Covenant relating to the settlement of disputes;
"(b) To examine within what limits the terms of Article 36, paragraph 2, of the Statute establishing the Permanent Court of International Justice might be rendered more precise and thereby facilitate the more general acceptance of the clause;
"and thus strengthen the solidarity and the security of the nations of the world by settling by pacific means all disputes which may arise between States."

This resolution had two merits, first, that of briefly summarising all the investigations made in the last four years by the different organisations of the League in their efforts to establish peace and bring about the reduction of armaments, and, secondly, that of indicating the programme of work of the Committee in the hope that, with the aid of past experience, they would at last attain the end in view.

The Assembly had assigned to each Committee a distinct and separate task; to the First Committee, the examination of the pacific settlement of disputes by methods capable of being applied in every case; to the Third Committee, the question of the security of nations considered as a necessary preliminary condition for the reduction of their armaments.

Each Committee, after a general discussion which served to detach the essential elements from the rest of the problem, referred the examination of its programme to a Sub-Committee, which devoted a large number of meetings to this purpose.

The proposals of the Sub-Committees then led to very full debates by the Committees, which terminated in the texts analysed below.

As, however, the questions submitted respectively to the two Committees form part of an indivisible whole, contact and collaboration had to be established between the Committees by means of a Mixed Committee of nine members and finally by a joint Drafting Committee of four members.

For the same reason, the work of the Committees has resulted in a single draft protocol accompanied by two draft resolutions for which the Committees are jointly responsible.

Upon these various texts, separate reports were submitted, which, being approved by the Committees respectively responsible for them, may be considered as an official commentary by the Committees.

These separate reports have here been combined in order to present as a whole the work accomplished by the two Committees and to facilitate explanation.

Before entering upon an analysis of the proposed texts, it is expedient to recall, in a brief historical summary, the efforts of the last four years, of which the texts are the logical conclusion.
HISTORICAL STATEMENT.

The problem of the reduction of armaments is presented in Article 8 of the Covenant in terms which reveal at the outset the complexity of the question and which explain the tentative manner in which the subject has been treated by the League of Nations in the last few years.

“The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.”

Here we see clearly expressed the need of reducing the burden which armaments imposed upon the nations immediately after the war and of putting a stop to the competition in armaments, which was, in itself, a threat to the peace of the world. But, at the same time, there is recognised the duty of safeguarding the national security of the Members of the League and of safeguarding it, not only by the maintenance of a necessary minimum of troops, but also by the co-operation of all the nations, by a vast organisation for peace.

Such is the meaning of the Covenant, which, while providing for reduction of armaments properly so called, recognises at the same time the need of common action, by all the Members of the League, with a view to compelling a possible disturber of the peace to respect his international obligations.

Thus, in this first paragraph of Article 8, which is so short but so pregnant, mention is made of all the problems which have engaged the attention of our predecessors and ourselves and which the present Assembly has specially instructed us to solve, the problems of collective security and the reduction of armaments.

Taking up Article 8 of the Covenant, the First Assembly had already outlined a programme. At its head it placed a pronouncement of the Supreme Council:

“In order to diminish the economic difficulties of Europe, armies should everywhere be reduced to a peace footing. Armaments should be limited to the lowest possible figure compatible with national security.”

The Assembly also called attention to a resolution of the International Financial Conference of Brussels held a short time before:

“Recommending to the Council of the League of Nations the desirability of conferring at once with the several Governments concerned with a view to securing a general reduction of the crushing burdens which, on their existing scale, armaments still impose on the impoverished peoples of the world, sapping their resources and imperilling their recovery from the ravages of war.”

It also requested its two Advisory Commissions to set to work at once to collect the necessary information regarding the problem referred to in Article 8 of the Covenant.

From the beginning the work of the Temporary Mixed Commission and of the Permanent Advisory Commission revealed the infinite complexity of the question.

The Second Assembly limited its resolutions to the important, but none the less (if one may say so) secondary, questions of traffic in arms and their manufacture by private enterprise. It only touched upon the questions of military expenditure and budgets in the form of recommendations and, as regards the main question of reduction of armaments, it confined itself to asking the Temporary Mixed Commission to formulate a definite scheme.

It was between the Second and Third Assemblies that the latter Commission, which was beginning to get to grips with the various problems, revealed their constituent elements. In its report it placed on record that:

“The memory of the world war was still maintaining in many countries a feeling of insecurity, which was represented in the candid statements in which, at the request of the Assembly, several of them had put forward the requirements of their national security, and the geographical and political considerations which contributed to shape their policy in the matter of armaments.”

At the same time, however, the Commission stated:

“Consideration of these statements as a whole has clearly revealed not only the sincere desire of the Governments to reduce national armaments and the corresponding expenditure to a minimum, but also the importance of the results achieved. These facts” — according to the Commission — “are indisputable, and are confirmed, moreover, by the replies received from Governments to the Recommendation of the Assembly regarding the limitation of military expenditure.”

That is the point we had reached two years ago; there was a unanimous desire to reduce armaments. Reductions, though as yet inadequate, had been begun, and there was a still stronger desire to ensure the security of the world by a stable and permanent organisation for peace.

That was the position which, after long discussions, gave rise at the Third Assembly to the famous Resolution XIV and at the Fourth Assembly to the draft Treaty of Mutual Assistance, for which we are now substituting the Protocol submitted to the Fifth Assembly.

What progress has been made during these four years?
Although the Treaty of Mutual Assistance was approved in principle by eighteen Governments, it gave rise to certain misgivings. We need only recall the most important of these, hoping that a comparison between them and an analysis of the new scheme will demonstrate that the First and Third Committees have endeavoured, with a large measure of success, to dispose of the objections raised and that the present scheme consequently represents an immense advance on anything that has hitherto been done.

In the first place, a number of Governments or delegates to the Assembly argued that the guarantees provided by the draft Treaty of Mutual Assistance did not imply with sufficient definiteness the reduction of armaments which is the ultimate object of our work. The idea of the Treaty was to give effect to Article 8 of the Covenant, but many persons considered that it did not, in fact, secure the automatic execution of that article. Even if a reduction of armaments was achieved by its means, the amount of the reduction was left, so the opponents of the Treaty urged, to the estimation of each Government, and there was nothing to show that it would be considerable.

With equal force many States complained that no provision had been made for the development of the juridical and moral elements of the Covenant by the side of material guarantees. The novel character of the charter given to the nations in 1919 lay essentially in the advent of a moral solidarity which foreshadowed the coming of a new era. That principle ought to have, as its natural consequence, the extension of arbitration and international jurisdiction, without which no human society can be solidly grounded. A considerable portion of the Assembly asked that efforts should also be made in this direction. The draft Treaty seemed from this point of view to be insufficient and ill-balanced.

Finally, the articles relating to partial treaties gave rise, as you are aware, to certain objections. Several Governments considered that they would lead to the establishment of groups of Powers animated by hostility towards other Powers or groups of Powers and that they would cause political tension. The absence of the barriers of compulsory arbitration and judicial intervention was evident here as everywhere else.

Thus, by a logical and gradual process, there was elaborated the system at which we have now arrived.

The reduction of armaments required by the Covenant and demanded by the general situation of the world to-day led us to consider the question of security as a necessary complement to disarmament.

The support demanded from different States by other States less favourably situated had placed the former under the obligations of asking for a sort of moral and legal guarantee that the States which have to be supported would act in perfect good faith and would always endeavour to settle their disputes by pacific means.

It became evident, however, with greater clearness and force than ever before, that if the security and effective assistance demanded in the event of aggression was the condition sine qua non of the reduction of armaments, it was at the same time the necessary complement of the pacific settlement of international disputes, since the non-execution of a sentence obtained by pacific methods of settlement would necessarily drive the world back to the system of armed force. Sentences imperatively required sanctions or the whole system would fall to the ground. Arbitration was therefore considered by the Fifth Assembly to be the necessary third factor, the complement of the two others with which it must be combined in order to build up the new system set forth in the Protocol.

Thus, after five years' hard work, we have decided to propose to the Members of the League the present system of arbitration, security and reduction of armaments -- a system which we regard as being complete and sound.

That is the position with which the Fifth Assembly has to deal to-day. The desire to arrive at a successful issue is unanimous. A great number of the decisions adopted in the past years had met with general approval. There was a thoroughly clear appreciation of the undoubted gaps which had to be filled and of the reasonable apprehensions which had to be dissipated. Conditions were therefore favourable for arriving at an agreement.

An agreement has been arrived at on the basis of the draft Protocol which is now submitted to you for consideration.
II

ANALYSIS OF THE SCHEME

1. WORK OF THE FIRST COMMITTEE

(Report by M. Politis)

Draft Protocol for the Pacific Settlement of International Disputes.

Preamble.

The object of the Protocol, which is based upon the resolution of September 6th, 1924, is to facilitate the reduction and limitation of armaments provided for in Article 8 of the Covenant of the League of Nations by guaranteeing the security of States through the development of methods for the pacific settlement of all international disputes and the effective condemnation of aggressive war.

These general ideas are summarised in the preamble of the Protocol.

COMPELLSORY ARBITRATION.

(Articles 1 to 7, 10, 16, 18 and 19 of the Protocol)

I. INTRODUCTION.

Compulsory arbitration is the fundamental basis of the proposed system. It has seemed to be the only means of attaining the ultimate aim pursued by the League of Nations, viz. the establishment of a pacific and legal order in the relations between peoples.

The realisation of this great ideal, to which humanity aspires with a will which has never been more strongly affirmed, pre-supposes, as an indispensable condition, the elimination of war, the extension of the rule of law and the strengthening of the sentiment of justice.

The Covenant of the League of Nations erected a wall of protection around the peace of the world, but it was a first attempt at international organisation and it did not succeed in closing the circle sufficiently thoroughly to leave no opening for war. It reduced the number of possible wars. It did not condemn them all. There were some which it was forced to tolerate. Consequently, there remained, in the system which it established, numerous fissures, which constituted a grave danger to peace.

The new system of the Protocol goes further. It closes the circle drawn by the Covenant; it prohibits all wars of aggression. Henceforth no purely private war between nations will be tolerated.

This result is obtained by strengthening the pacific methods of procedure laid down in the Covenant. The Protocol completes them and extends them to all international disputes without exception, by making arbitration compulsory.

In reality, the word “arbitration” is used here in a somewhat different sense from that which it has generally had up to now. It does not exactly correspond with the definition given by the Hague Conferences which, codifying a century-old custom, saw in it “the settlement of disputes between States by judges of their own choice and on the basis of respect for law” (Article 37 of the Convention of October 18th, 1907, for the Pacific Settlement of International Disputes).

The arbitration which is now contemplated differs from this classic arbitration in various respects:

(a) It is only part of a great machinery of pacific settlement. It is set up under the auspices and direction of the Council of the League of Nations.

(b) It is not only an instrument for the administration of justice. It is, in addition and above all, an instrument of peace. The arbitrators must no doubt seek in the first place to apply the rules and principles of international law. This is the reason why, as will be seen below, they are bound to consult the Permanent Court of International Justice if one of the parties so requests. But if international law furnishes no rule or principle applicable to the particular case, they cannot, like ordinary arbitrators, refuse to give a decision. They are bound to proceed on grounds of equity, for in our system arbitration is always of necessity to lead to a definitive solution of the dispute. This is not to be regretted, for to ensure the respect of law by nations it is necessary first that they should be assured of peace.

(c) It does not rest solely upon the loyalty and good faith of the parties. To the moral and legal force of an ordinary arbitration is added the actual force derived from the international organisation of which the kind of arbitration question forms one of the principal elements; the absence of a sanction which has impeded the development of compulsory arbitration is done away with under our system.
In the system of the Protocol, the obligation to submit disputes to arbitration is sound and practical because it has always a sanction. Thanks to the intervention of the Council, its application is automatically ensured; in no case can it be thrown on one side through the ill-will of one of the disputant States. The awards to which it leads are always accompanied by a sanction, adapted to the circumstances of the case and more or less severe according to the degree of resistance offered to the execution of the sentence.


Article 19.

The rules laid down in the Protocol do not all have the same scope or value for the future. As soon as the Protocol comes into force, its provisions will become compulsory as between the signatory States, and in its dealings with them the Council of the League of Nations will at once be able to exercise all the rights and fulfil all the duties conferred upon it.

As between the States Members of the League of Nations, the Protocol may in the first instance create a dual regime, for, if it is not immediately accepted by them all, the relations between signatories and non-signatories will still be governed by the Covenant alone while the relations between signatories will be governed by the Protocol as well.

But this situation cannot last. Apart from the fact that it may be hoped that all Members of the League will adhere to it, the Protocol is in no sense designed to create among the States which accept it a restricted League susceptible of competing with or opposing in any way the existing League. On the contrary, such of its provisions as relate to articles of the Covenant will, as soon as possible, be made part of the general law by amendment of the Covenant effected in accordance with the procedure for revision laid down in Article 26 thereof. The signatory States which are Members of the League of Nations undertake to make every effort to this end.

When the Covenant has been amended in this way, some parts of the Protocol will lose their value as between the said States; some of them will have enriched the Covenant, while others, being temporary in character, will have lost their object.

The whole Protocol will remain applicable to relations between signatory States which are Members of the League of Nations and signatory States outside the League, or between States coming within the latter category.

It should be added that, as the League realises its aim of universality, the amended Covenant will take the place, as regards all States, of the separate regime of the Protocol.

3. Condemnation of Aggressive War.

Article 2.

The general principle of the Protocol is the prohibition of aggressive war. Under the Covenant, while the old unlimited right of States to make war is restricted, it is not abolished. There are cases in which the exercise of this right is tolerated; some wars are prohibited and others are legitimate.

In future the position will be different. In no case is any State signatory of the Protocol entitled to undertake on its own sole initiative an offensive war against another signatory State or against any non-signatory State which accepts all the obligations assumed by the signatories under the Protocol.

The prohibition affects only aggressive war. It does not, of course, extend to defensive war. The right of legitimate self-defence continues, as it must, to be respected. The State attacked retains complete liberty to resist by all means in its power any acts of aggression of which it may be the victim. Without waiting for the assistance which it is entitled to receive from the international community, it may and should at once defend itself with its own force. Its interests are identified with the general interest. This is a point on which there can be no doubt.

The same applies when a country employs force with the consent of the Council or the Assembly of the League of Nations under the provisions of the Covenant and the Protocol. This eventuality may arise in two classes of cases: either a State may take part in the collective measures of force decided upon by the League of Nations in aid of one of its Members which is the victim of aggression; or a State may employ force with the authorisation of the Council or the Assembly in order to enforce a decision given in its favour. In the former case, the assistance given to the victim of aggression is indirectly an act of legitimate self-defence. In the latter, force is used in the service of the general interest, which would be threatened if decisions reached by a pacific procedure could be violated with impunity. In all these cases the country resorting to war is not acting on its private initiative but is in a sense the agent and the organ of the community.

It is for this reason that we have not hesitated to speak of the exceptional authorisation of war. It has been proposed that the word "force" should be used in order to avoid any mention of "war"—in order to spare the public that disappointment which it might feel when it found that, notwithstanding the solemn condemnation of war, war was still authorised in exceptional cases.

We preferred, however, to recognise the position frankly by retaining the expression "resort to war" which is used in the Covenant. If we said "force" instead of "war", we should not be
altering the facts in any way. Moreover, the confusion that war is still possible in specific cases has a certain value, because the term describes a definite and well-understood situation, whereas the expression "resort to force" would be liable to be misunderstood, and also because it emphasises the value of the sanctions at the disposal of the community of States bound by the Protocol.

So far such compulsory jurisdiction has only been accepted by a small number of countries. Most States, more particularly the Great Powers, have abstained because they did not see their way to accept compulsory jurisdiction by the Court in certain cases falling within one or another of the classes of disputes enumerated above, and because they were not sure whether, in accepting, they could make reservations to that effect.

It was for this reason that the Assembly in its resolution of September 6th, requested the First Committee to render more precise the terms of Article 36, paragraph 2, in order to facilitate its acceptance.

Careful consideration of the Article has shown that it is sufficiently elastic to allow of all kinds of reservations. Since it is open to the States to accept compulsory jurisdiction by the Court in respect of certain of the classes of disputes mentioned and not to accept it in respect of the rest, it is also open to them only to accept it in respect of a portion of one of those classes; if the maximum is optional so is the minimum. In giving the undertaking in question, therefore, they are free to state that it will not be regarded as operative in those cases in which they consider it to be inadmissible.

We can imagine possible and therefore legitimate reservations either in connection with a certain class of dispute or, generally speaking, in regard to the precise stage at which the dispute may be laid before the Court. While we cannot here enumerate all the conceivable reservations, it may be worth while to mention merely as examples those to which we referred in the course of our discussions.

From the class of disputes relating to "the interpretation of a treaty" there may be excluded, for example, disputes as to the interpretation of certain specified classes of treaty such as political treaties, peace treaties, etc.

From the class of disputes relating to "any point of international law" there may be excluded, for example, disputes as to the application of a political treaty, a peace treaty, etc., or as to any specified question or disputes which might arise as the outcome of hostilities initiated by one of the signatory States with the consent of the Council or the Assembly of the League of Nations.

Again, there are many possible reservations as to the precise stage at which a dispute may be laid before the Court. The most far-reaching of these would be to make the resort to the Court in connection with every dispute in respect of which its compulsory jurisdiction is recognised contingent upon the establishment of an agreement for submission of the case which, failing agreement between the parties, would be drawn up by the Court itself, the analogy of the provisions of the Hague Convention of 1907 dealing with the Permanent Court of Arbitration being thus followed.

It might also be stated that the recognition of the compulsory jurisdiction of the Court does not prevent the parties to the dispute from agreeing to resort to a preliminary conciliation procedure before the Council of the League of Nations or any other body selected by them, or to submit their disputes to arbitration in preference to going before the Court.

A State might also, while accepting compulsory jurisdiction by the Court, reserve the right of laying disputes before the Council of the League with a view to conciliation in accordance with paragraphs i-3 of Article 15 of the Covenant, with the proviso that neither party might, during the proceedings before the Council, take proceedings against the other in the Court.

It will be seen, therefore, that there is a very wide range of reservations which may be made in connection with the undertaking referred to in Article 36, paragraph 2. It is possible that apprehensions may arise lest the right to make reservations should destroy the practical value of the undertaking. There seems, however, to be no justification for such misgivings. In the first place, it is to be hoped that every Government will confine its reservations to what is absolutely essential. Secondly, it must be recognised that, however restrictive the scope of the undertaking may be, it will always be better than no undertaking at all.

The fact that the signatory States undertake to accede, even though it be with reservations, to paragraph 2 of Article 36 may therefore be held to constitute a great advance.

4. COMPULSORY JURISDICTION OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

Article 3.

The general principle of the Protocol could not be accepted unless the pacific settlement of all international disputes without distinction were made possible.

This solution has been found, in the first place, in the extension of the compulsory jurisdiction of the Permanent Court of International Justice.

According to its Statute, the jurisdiction of the Court is, in principle, optional. On the other hand, Article 36, paragraph 2, of the Statute, offers States the opportunity of making the jurisdiction compulsory in respect of all or any of the classes of legal disputes effecting: (a) the interpretation of a Treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. States have only to declare their intention through the special Protocol annexed to the Statute. The undertaking then holds good in respect of any other State which assumes the same obligation. It may be given either unconditionally or on condition of reciprocity on the part of several or certain other States; either permanently or for a fixed period.

It will be seen, therefore, that there is a very wide range of reservations which may be made in
Such accession must take place at latest within the month following upon the coming into force or subsequent acceptance of the Protocol.

It goes without saying that such accession in no way restricts the liberty which States possess, under the ordinary law, of concluding special agreements for arbitration. It is entirely open to any two countries signatory of the Protocol which have acceded to paragraph 2 of Article 36 to extend still further, as between themselves, the compulsory jurisdiction of the Court, or to stipulate that before having recourse to its jurisdiction they will submit their disputes to a special procedure of conciliation or even to lay down that, whether prior to or subsequent to the opening of the case, it shall be brought before a special tribunal of arbitrators or before the Council of the League of Nations rather than to the Court.

It is also certain that, up to the time of the coming into force or acceptance of the Protocol, accession to paragraph 2 of Article 36, which will thenceforth become compulsory, will still remain optional, and that if such accession has already taken place it will continue to be valid in accordance with the terms under which it was made.

The only point which may cause difficulty is the question what is the effect of accessions given to the Protocol if the latter becomes null and void. It may be asked whether such accessions are to be regarded as so intimately bound up with the Protocol that they must disappear with it. The reply must be in the negative. The sound rule of interpretation of international treaties is that, unless there is express provision to the contrary, effects already produced survive the act from which they sprang.

The natural corollary is that any State which wishes to make the duration of its accession to Article 36 dependent on the duration of the Protocol must make an express stipulation to this effect. As Article 36 permits acceptance of the engagement in question for a specified term only, a State may, when acceding, stipulate that it only undertakes to be bound during such time as the Protocol shall remain in force.

5. STRENGTHENING OF PACIFIC METHODS OF PROCEDURE.

Article 4.

We have, in the second place, succeeded in making possible the pacific settlement of all disputes by strengthening the procedure laid down in the Covenant.

Article 4, paragraph 1.

Action by the Council with a view to reconciliation. If a dispute does not come within the compulsory jurisdiction of the Permanent Court of International Justice and if the Parties have been unable to come to an agreement to refer it to the Court or to submit it to arbitration, it should, under the terms of Article 15 of the Covenant, be submitted to the Council, which will endeavour to secure a settlement by reconciling the parties. If the Council's efforts are successful it must, so far as it considers it advisable, make public a statement giving such facts and explanations regarding the dispute and the terms of settlement thereof as it may deem appropriate.

In this connection no change has been made in the procedure laid down by the Covenant. It appeared unnecessary to specify what particular procedure should be followed. The Council is given the utmost latitude in choosing the means most appropriate for the reconciliation of the parties. It may take advice in various quarters; it may hear expert opinions; it may proceed to investigations or expert enquiries, whether by itself or through the intermediary of experts chosen by it; it may even, upon application by one of the parties, constitute a special conciliation committee. The essential point is to secure, if possible, a friendly settlement of the dispute; the actual methods to be employed are of small importance. It is imperative that nothing should in any way hamper the Council's work in the interests of peace. It is for the Council to examine the question whether it would be expedient to draw up for its own use and bring to the notice of the Governments of the signatory States general regulations of procedure applicable to cases brought before it and designed to test the goodwill of the parties with a view to persuading them more easily to reach a settlement under its auspices.

Experience alone can show whether it will be necessary to develop the rules laid down in the first three paragraphs of Article 15 of the Covenant.

For the moment it would appear to be expedient to make no addition and to have full confidence in the wisdom of the Council, it being understood that, whether at the moment in question or at any other stage of the procedure it will be open to the parties to come to an agreement for some different method of settlement: by way of direct understanding, constitution of a special committee of mediators or conciliators, appeal to arbitration or to the Permanent Court of International Justice.

The new procedure set up by the Protocol will be applicable only in the event of the Council's failing in its efforts at reconciliation and of the parties failing to come to an understanding in regard to the method of settlement to be adopted.

In such case, before going further, the Council must call upon the parties to submit their dispute to judicial settlement or to arbitration.

It is only in the case where this appeal — which the Council will make in the manner which appears to it most likely to secure a favourable hearing—is not listened to that the procedure will acquire the compulsory character which is necessary to make certain the final settlement of all disputes.

There are three alternatives:
(a) Compulsory arbitration at the request of one of the parties;
(b) A unanimous decision by the Council;
(c) Compulsory arbitration enjoined by the Council.

Appropriate methods are laid down for all three cases.
Article 4, paragraph 2.

First case of Compulsory Arbitration. — If the parties, being called upon by the Council to submit their dispute to a judicial or arbitral settlement, do not succeed in coming to an agreement on the subject, there is no question of optional arbitration, but if a single party desires arbitration, arbitration immediately becomes compulsory.

The dispute is then ipso facto referred to a Committee of Arbitrators, which must be constituted within such time limit as the Council shall fix.

Full liberty is left to the parties themselves to constitute this Committee of Arbitrators. They may agree between themselves in regard to the number, names and powers of the arbitrators and the procedure. It is to be understood that the word “powers” is to be taken in the widest sense, including, inter alia, the question to be put.

It was not considered desirable to develop this idea further. It appeared to be sufficient to state that any result which could be obtained by means of an agreement between the parties was preferable to any other solution.

It also appeared inexpedient to define precisely the powers which should be conferred upon the arbitrators. This is a matter which depends upon the circumstances of each particular case. According to the case, the arbitrators, as is said above, may fill the rôle of judges giving decisions of pure law or may have the function of arranging an amicable settlement with power to take account of considerations of equity.

It has not been thought necessary to lay this down in the form of a rule. It has appeared preferable to leave it in each case to the parties to agree between themselves to decide the matter according to the circumstances of the case.

Nevertheless, consideration has been given to the possibility that the arbitrators need not necessarily be jurists. It has therefore been decided that, when called upon to deal with points of law, they shall, if one of the parties so desires, request, through the medium of the Council, the advisory opinion of the Permanent Court of International Justice, which must, in such a case, meet with the utmost possible despatch. The opinion of the Court is obtained for the assistance of the arbitrators; it is not legally binding upon them, although its scientific authority must, in all cases, exercise a strong influence upon their judgment. With a view to obviating too-frequent abuse of consultations of this kind, it is understood that the opinion of the Court in regard to disputed points of law can only be asked by a single arbitrator in the course of each case.

In cases where the selection of arbitrators thus falls upon the Council, it has appeared necessary — however much confidence may be felt in the Council’s wisdom — to lay down for the selection of the arbitrators certain rules calculated to give the arbitration the necessary moral authority to ensure that it will in practice be respected.

The first rule is that the Council shall, before proceeding to the selection of arbitrators, have regard to the wishes of the parties. It was suggested that this idea should be developed by conferring on the parties the right to indicate their preferences and to challenge a certain number of the arbitrators proposed by the Council.

This proposal was set aside on account of the difficulty of laying down detailed regulations for the exercise of this double right. But it is understood that the Council will have no motive for failing to accept the candidates proposed to it by the different parties nor for imposing upon them arbitrators whom they might wish to reject, nor, finally, for failing to take into account any other suggestion which the parties might wish to make. It is indeed evident that the Council will always be desirous of acting in the manner best calculated to increase to the utmost degree the confidence which the Committee of Arbitrators should inspire in the parties.

The second rule is based on the same point of view. It lays down the right of the Council to select the arbitrators and their president from among persons who, by their nationality, their personal character and their experience, appear to furnish the highest guarantees of competence and impartiality.

Here, too, experience will show whether it would be well for the Council to draw up general regulations for the composition and functioning of the compulsory arbitration now in question and of that above referred to, and for the conciliation procedure in the Council itself, regulations which would be made for the Council’s own use but would be communicated to the Governments of the signatory States.

Article 4, paragraph 3.

Unanimous decision by the Council. If arbitration is refused by both parties, the case will be referred back to the Council, but this time it will acquire a special character. Refusal of arbitration implies the consent of both parties to a final settlement of the dispute by the Council. It implies recognition of an exceptional jurisdiction of the Council. It denotes that the parties prefer the Council’s decision to an arbitral award.

Resuming the examination of the question, the Council has not only the latitude which it customarily possesses. It is armed with full powers to settle the question finally and irrevocably.
if it is unanimous. Its decision, given unanimously by all the Members other than those representing parties to the dispute, is imposed upon the parties with the same weight and the same force as the arbitration award which it replaces.

**Article 4, paragraph 4.**

Second case of Compulsory Arbitration. If the Council does not arrive at a unanimous decision, it has to submit the dispute to the judgment of a Committee of Arbitrators, but this time, owing to the parties being deemed to have handed their case over to the Council, the organisation of the arbitration procedure is taken entirely out of their hands. It will be for the Council to settle all the details, the composition, the powers and the procedure of the Committee of Arbitrators. The Council is of course at liberty to hear the parties and even to invite suggestions from them, but it is under no obligation to do so. The only regulation with which it must comply is that, in the choice of arbitrators, it must bear in mind the guarantees of competence and impartiality which, by their nationality, their personal character and their experience, these arbitrators must always furnish.

**Article 4, paragraph 5.**

Effect of, and Sanction enforcing, Decisions. Failing a friendly arrangement, we are, thanks to the system adopted, in all cases certain of arriving at a final solution of a dispute, whether in the form of a decree of the Permanent Court of International Justice or in the form of an arbitral award or, lastly, in the form of a unanimous decision of the Council. To this solution the parties are compelled to submit. They must put it into execution or conform to it in good faith.

If they do not do so, they are breaking an engagement entered into towards the other signatories of the Protocol, and this breach involves consequences and sanctions according to the degree of gravity of the case.

If the recalcitrant party confines itself to offering passive resistance to the solution arrived at, it will first be the object of pacific pressure from the Council, which must exercise all its influence to persuade it to respect its engagements. If the Council is unsuccessful, it must propose measures calculated to ensure effect being given to the decision.

On this point the Protocol has been guided solely by the regulation contained at the end of Article 13 of the Covenant. The Council may thus institute against the recalcitrant party collective sanctions of an economic and financial order. It is to be supposed that such sanctions will prove sufficient. It has not appeared possible to go further and to employ force against a State which is not itself resorting to force. The party in favour of which the decision has been given might, however, employ force against the recalcitrant party if authorised to do so by the Council.

But if the State against which the decision has been given takes up arms in resistance thereto, thereby becoming an aggressor against the combined signatories, it deserves even the severe sanctions provided in Article 16 of the Covenant, interpreted in the manner indicated in the present Protocol.

**Sphere of Application of Methods of Pacific Procedure.** Necessary as the system which we have laid down is for the purpose of ensuring settlement of all disputes, in applying it, the pacific aim which underlies it must be the only guide. It must not be diverted to other purposes and used as an occasion for chicanery and tendentious proceedings by which the cause of peace would lose rather than gain.

A few exceptions to the rule have also had to be made in order to preserve the elasticity of the system. These are cases in which the claimant must be non-suited, the claim being one which has to be rejected in limine by the Council, the Permanent Court of International Justice or the arbitrators, as the case may be.

The disputes to which the system will not apply are of three kinds:

**Article 4, paragraph 6.**

1. The first concerns disputes relating to questions which, at some time prior to the entry into force of the Protocol, have been the subject of a unanimous recommendation by the Council accepted by one of the parties concerned. It is essential to international order and to the prestige of the Council that its unanimous recommendations, which confer a right upon the State accepting them, shall not be called into question again by means of a procedure based upon compulsory arbitration. Failing a friendly arrangement, the only way which lies open for the settlement of disputes to which these recommendations may give rise is recourse to the Council in accordance with the procedure at present laid down in the Covenant.

**Article 4, paragraph 7.**

2. The same applies to disputes which arise as the result of measures of war taken by one or more signatory States in agreement with the Council or the Assembly of the League of Nations. It would certainly not be admissible that compulsory arbitration should become a weapon in the hands of an enemy to the community to be used against the freedom of action of those who, in the general interest, seek to impose upon that enemy respect for his engagements.

In order to avoid all difficulty of interpretation, these first two classes of exceptions have been formally stated in the Protocol.

3. There is a third class of disputes to which the new system of pacific settlement can also not be applied. These are disputes which aim at revising treaties and international acts in force, or which seek to jeopardise the existing territorial integrity of signatory States. The proposal was made to include these exceptions in the Protocol, but the two Committees were
unanimous in considering that, both from the legal and from the political point of view, the impossibility of applying compulsory arbitration to such cases was so obvious that it was quite superfluous to make them the subject of a special provision. It was thought sufficient to mention them in this report.

6. ROLE OF THE ASSEMBLY UNDER THE SYSTEM SET UP BY THE PROTOCOL.

Article 6.

The new procedure should be adapted to the old one, which gives the Assembly the same powers as the Council when a dispute is brought before it, either by the Council itself or at the request of one of the parties.

The question has arisen whether the system of maintaining in the new procedure this equality of powers between the two organisations of the League of Nations is a practical one. Some were of opinion that it would be better to exclude intervention by the Assembly. Finally, however, the opposite opinion prevailed; an appeal to the Assembly may, indeed, have an important influence from the point of view of public opinion. Without going so far as to assign to the Assembly the same rôle as to the Council, it has been decided to adopt a mixed system by which the Assembly is, in principle, substituted for the Council in order that, when a dispute is referred to it in conformity with paragraph 9 of Article 15 of the Covenant, it may undertake, in the place of the Council, the various duties provided for in Article 4 of the present Protocol with the exception of purely executive acts which will always devolve upon the Council. For example, the organisation and management of compulsory arbitration, or the transmission of a question to the Permanent Court of International Justice, must always be entrusted to the Council, because, in practice, the latter is the only body competent for such purposes.

The possible intervention of the Assembly does not affect in any way the final result of the new procedure. If the Assembly does not succeed in conciliating the parties and if one of them so requests, compulsory arbitration will be arranged by the Council in accordance with the rules laid down beforehand.

If none of the parties asks for arbitration, the matter is referred back to the Assembly, and if the solution recommended by the Assembly obtains the majority required under paragraph 10 of Article 15 of the Covenant, it has the same value as a unanimous decision of the Council.

Lastly, if the necessary majority is not obtained, the dispute is submitted to a compulsory arbitration organised by the Council.

In any event, as in the case where the Council alone intervenes, a definitive and binding solution of the dispute is reached.

7. DOMESTIC JURISDICTION OF STATES.

Article 5.

The present Protocol in no way derogates from the rule of Article 15, paragraph 8, of the Covenant, which protects national sovereignty.

In order that there might be no doubt on this point, it appeared advisable to say so expressly. Before the Council, whatever be the stage in the procedure set up by the Protocol at which the Council intervenes, the provision referred to applies without any modification.

The rule is applied also to both cases of compulsory arbitration. If one of the States parties to the dispute claims that the dispute or part thereof arises out of a matter which by international law is solely within its jurisdiction, the arbitrators must on this point take the advice of the Permanent Court of International Justice through the medium of the Council, for the question thus put in issue is a legal question upon which a judicial opinion should be obtained.

The Court will thus have to give a decision as to whether the question in dispute is governed by international law or whether it falls within the domestic jurisdiction of the State concerned. Its functions will be limited to this point and the question will in any event be referred back to the arbitrators. But, unlike other opinions requested of the Court in the course of a compulsory arbitration—opinions which for the arbitrators are purely advisory—in the present case the opinion of the Court is compulsory in the sense that, if the Court has recognised that the question in dispute falls entirely within the domestic jurisdiction of the State concerned, the arbitrators will simply have to register this conclusion in their award. 'It is only if the Court holds that the question in dispute is governed by international law that the arbitrators will again take the case under consideration in order to give a decision upon its substance.

The compulsory character of the Court's opinion, in this case, increases the importance of the double question referred to above, in connection with Article 4, relating to the calling-in of national judges, and the application of Article 24 of the Statute of the Court in matters of advisory procedure.

While the principle of Article 15, paragraph 8, of the Covenant is maintained, it has been necessary, in order to make its application more flexible, to call in aid the rule contained in Article 11 of the Covenant, which makes it the duty of the League of Nations, in the event of war or a threat of war, to "take any action that may be deemed wise and effective to safeguard the peace of nations", and obliges the Secretary-General to summon forthwith a meeting of the Council on the request of any Member of the League. It is in this way understood that when it has been recognised that a dispute arises out of a matter which is solely within the domestic jurisdiction of one of the parties, that party or its opponent will be fully entitled to call upon the Council or the Assembly to act,
There is nothing new in this simple reference to Article 11. It leaves unimpaired the right of the Council to take such action as it may deem wise and effectual to safeguard the peace of nations. It does not confer new powers or functions on either the Council or the Assembly. Both these organs of the League simply retain the powers now conferred upon them by the Covenant.

In order to dispel any doubt which may arise from the parallel which has been drawn between Article 15, paragraph 8, and Article 11 of the Covenant, a very clear explanation was given in the course of the discussion in the First Committee.

Where a dispute is submitted to the Council under Article 15 and it is claimed by one party that the dispute arises out of a matter left exclusively within its domestic jurisdiction by international law, paragraph 8 prevents the Council from making any recommendations upon the subject if it holds that the contention raised by the party is correct and that the dispute does in fact arise out of a matter exclusively within that State's jurisdiction.

The effect of this paragraph is that the Council cannot make any recommendation in the technical sense in which that term is used in Article 15, that is to say, it cannot make, even by unanimous report, recommendations which become binding on the parties in virtue of paragraph 6.

Unanimity for the purpose of Article 15 implies a report concurred in by all the Members of the Council other than the parties to the dispute. Given the measure of support indicated, a report is one which the parties to the dispute are bound to observe, in the sense that, if they resort to war with any party which complies with the recommendations, it will constitute a breach of Article 16 of the Covenant and will set in play the sanctions which are there referred to.

On the other hand, Article 11 is of different scope: first, it operates only in time of war or threat of war; secondly, it confers no right on the Council or on the Assembly to impose any solution of a dispute without the consent of the parties. Action taken by the Council or the Assembly under this article cannot become binding on the parties in the sense in which recommendations under Article 15 become binding, unless they have themselves concurred in it.

One last point should be made clear. The reference which has been made to Article 11 of the Covenant holds good only in the eventuality contemplated in Article 15, paragraph 8, of the Covenant. It is obvious that when a unanimous decision of the Council or an arbitral award has been given upon the substance of a dispute, that dispute is finally settled and cannot again be brought either directly or indirectly under discussion. Article 11 of the Covenant does not deal with situations which are covered by rules of law capable of application by a judge. It applies only to cases which are not yet regulated by international law. Consequently, it demonstrates the existence of loop-holes in the law.

The reference to Article 11 in two of the articles of the Protocol (Articles 5 and 10) has advantages beyond those to which attention is drawn in the commentary on the text of those articles. It will be an incitement to science to clear the ground for the work which the League of Nations will one day have to undertake with a view to bringing about, through the development of the rules of international law, a closer reconciliation between the individual interests of its Members and the universal interests which it is designed to serve.

8. Determination of the Aggressor.

Article 10.

In order that the procedure of pacific settlement may be accompanied by the necessary sanctions, it has been necessary to provide for determining exactly the State guilty of aggression to which sanctions are to be applied.

This question is a very complex one, and in the earlier work of the League the military experts and jurists who had had to deal with it found it extremely difficult.

There are two aspects to the problem: first, aggression has to be defined, and, secondly, its existence has to be ascertained.

The definition of aggression is a relatively easy matter, for it is sufficient to say that any State is the aggressor which resorts in a general manner to force in violation of the engagements contracted by it either under the Covenant (if, for instance, being a Member of the League of Nations, it has not respected the territorial integrity or political independence of another Member of the League) or under the present Protocol (if, for instance, being a signatory of the Protocol, it has refused to conform to an arbitral award or to a unanimous decision of the Council). This is the effect of Article 10, which also adds that the violation of the rules laid down for a demilitarised zone is to be regarded as equivalent to resort to war. The text refers to resort to war, but it was understood during the discussion that, while mention was made of the most serious and striking instance, it was in accordance with the spirit of the Protocol that acts of violence and force, which possibly may not constitute an actual state of war, should nevertheless be taken into consideration by the Council.

On the contrary, to ascertain the existence of aggression is a very difficult matter, for although the first of the two elements which together constitute aggression, namely, the violation of an engagement, is easy to verify, the second, namely, resort to force, is not an easy matter to ascertain. When one country attacks another, the latter necessarily defends itself, and when hostilities are in progress on both sides, the question arises which party began them.

This is a question of fact concerning which opinions may differ.

The first idea which occurs to the mind is to make it the duty of the Council to determine who is the aggressor. But, immediately, the question arises whether the Council must decide this question unanimously, or whether a majority vote would suffice. There are serious disadvantages in both solutions and they are therefore unacceptable.

To insist upon a unanimous decision of the Council exposes the State attacked to the loss of those definite guarantees to which it is entitled if one single Member of the Council — be it in good
faith or otherwise — insists on adhering to an interpretation of the facts different from that of all his colleagues. It is impossible to admit that the very existence of a nation should be subject to such a hazard. It is not sufficient to point out that the Council would be bound to declare the existence of aggression in an obvious case and that it could not fail to carry out its duty. The duty would be a duty without a sanction and if by any chance the Council were not to do its duty, the State attacked would be deprived of all guarantees.

But it would also be dangerous to rely on a majority vote of the Council. In that case, the danger would be incurred by the State called upon to furnish assistance and to support the heavy burden of common action, if it still entertained some doubt as to the guilt of the country against which it had to take action. Such a country would run the risk of having to conform to a decision with which it did not agree.

The only escape from this dilemma appeared to lie in some automatic procedure which would not necessarily be based on a decision of the Council. After examining the difficulty and discussing it in all its aspects, the First Committee believes that it has found the solution in the idea of a presumption which shall hold good until the contrary has been established by a unanimous decision of the Council.

The Committee is of opinion that this presumption arises in three cases, namely, when a resort to war is accompanied:

- By a refusal to accept the procedure of pacific settlement or to submit to the decision resulting therefrom;
- By violation of provisional measures enjoined by the Council as contemplated by Article 7 of the Protocol;
- Or by disregard of a decision recognising that the dispute arises out of a matter which lies exclusively within the domestic jurisdiction of the other party and by failure or refusal to submit the question first to the Council or the Assembly.

In these cases, even if there is not absolute certainty, there exists at any rate a very strong presumption which should suffice for the application of sanctions unless proof to the contrary has been furnished by a unanimous decision of the Council.

It will be noticed that there is a characteristic difference between the first two cases and the third.

In the first two cases the presumption exists when, in addition to a state of war, the special condition referred to is also fulfilled.

In the third case, however, the presumption is dependent upon three conditions: disobedience to a decision, wilful failure to take advantage of the remedy provided in Article 11 of the Covenant, and the existence of a state of war.

This difference is due to the necessity of taking into account the provisions of Article 5 analysed above, which, by its reference to Article 11 of the Covenant, renders the application of paragraph 8 of Article 15 of the Covenant more flexible. After very careful consideration it appeared that it would be unreasonable and unjust to regard as ipso facto an aggressor a State which, being prevented through the operation of paragraph 8 of Article 15 from urging its claims by pacific methods and being thus left to its own resources, is in despair driven to war.

It was considered to be more in harmony with the requirements of justice and peace to give such a State which has been non-suited on the preliminary question of the domestic jurisdiction of its adversary, a last chance of arriving at an amicable agreement by offering it the final method of conciliation prescribed in Article 11 of the Covenant. It is only if, after rejecting this method, it has recourse to war that it will be presumed to be an aggressor.

This attenuation of the rigid character of paragraph 8 of Article 15 has been accepted, not only because it is just but also because it opens no breach in the barrier set up by the Protocol against international crime to be avenged collectively by the signatories of the Protocol.

When a State whose demands have been met with the plea of the domestic jurisdiction of its adversary, a last chance of arriving at an amicable agreement by offering it the final method of conciliation prescribed in Article 11 of the Covenant. It is only if, after rejecting this method, it has recourse to war that it will be presumed to be an aggressor.

Apart from the above cases, there exists no presumption which can make it possible automatically to determine who is the aggressor. But this fact must be determined, and, if no other solution can be found, the decision must be left to the Council. The same principle applies where one of the parties is a State which is not a signatory of the Protocol and not a Member of the League.

If the Council is unanimous, no difficulty arises. If, however, the Council is not unanimous, the difficulty may be overcome by deciding that the Council must enjoin upon the belligerents an armistice the terms of which it will fix if need be by a two-thirds majority and the party which rejects the armistice or violates it is to be held to be an aggressor.

The system is therefore complete and is as automatic as it can be made.

Where a presumption has arisen and is not rejected by a unanimous decision of the Council, the facts themselves decide who is an aggressor; no further decision by the Council is needed and the question of unanimity or majority does not present itself; the facts once established, the Council is bound to act accordingly.

Where there is no presumption, the Council has to declare the fact of aggression; a decision is necessary and must be taken unanimously. If unanimity is not obtained, the Council is bound to enjoin an armistice, and for this purpose no decision properly speaking has to be taken: there exists an obligation which the Council must fulfil; it is only the fixing of the terms of the armistice which necessitates a decision, and for this purpose a two-thirds majority suffices.
It was proposed to declare that, in cases of extreme urgency, the Council might determine the aggressor, or fix the conditions of an armistice, without waiting for the arrival of the representa-
tive which a party not represented among its members has been invited to send under the terms of paragraph 5 of Article 4 of the Covenant.

It seemed preferable, however, not to lay down any rule on this matter at present but to ask the special Committee which the Council is to appoint for the drafting of amendments to the Covenant on the lines of the Protocol to consider whether such a rule is really necessary.

It may in fact be thought that the Council already possesses all the necessary powers in this matter and that, in cases of extreme urgency, if the State invited to send a representative is too far distant from the seat of the Council, that body may decide that the representative shall be chosen from persons near at hand and shall attend the meeting within a prescribed period, on the expiry of which the matter may be considered in his absence.

The fact of aggression having been established by presumption or by unanimous decision of the Council or by refusal to accept or violation of the armistice, it will only remain to apply the sanctions and bring into play the obligations of the guarantor States. The Council will merely call upon them to fulfil their duty; here, again, there is no decision to be taken but an obligation to be fulfilled, and the question of majority or unanimous vote does not arise.

It is not, indeed, a matter of voting at all.

In order to leave no room for doubt, it has been formally laid down that a State which, at the invitation of the Council, engages in acts of violence against an aggressor is in the legal position of a belligerent and may consequently exercise the rights inherent in that character.

It was pointed out in the course of the discussion that such a State does not possess entire freedom of action. The force employed by it must be proportionate to the object in view and must be exercised within the limits and under the conditions recommended by the Council.

**Article 16.**

Likewise, in order to avoid any misunderstanding, it has been stipulated, in a special Article, that unanimity or the necessary majority in the Council is always calculated according to the rule referred to on several occasions in Article 15 of the Covenant and repeated in Article 16 of the Covenant for the case of expulsion of a Member from the League, viz., without counting the votes of the representatives of the parties to the dispute.

9. **Disputes between States Signatory and States Non-Signatory of the Protocol.**

**Article 16.**

As regards the settlement of disputes arising between a State signatory and one or more States non-signatory and non-Members of the League of Nations, the new system has had to be adapted to the former system.

In order that States signatory might enjoy the essential advantages offered by the Protocol, which forbids all wars of aggression, it has been necessary to bring the rule laid down in Article 17 of the Covenant into harmony with the provisions of the Protocol. It has therefore been decided that States non-signatory and non-Members of the League of Nations in conflict with a State signatory shall be invited to conform to the new procedure of pacific settlement and that, if they refuse to do so and resort to war against a State signatory, they shall be amenable to the sanctions provided by Article 16 of the Covenant as defined by the Protocol.

There is no change in the arrangements laid down in the Covenant for the settlement of disputes arising between States Members of the League of Nations of which one is a signatory of the Protocol and the other is not. The legal nexus established by the Covenant between two such parties do not allow the signatory States to apply as of right the new procedure of pacific settlement to non-signatory but Member States. All that signatory States are entitled to expect as regards such other States is that the Council should provide the latter with an opportunity to follow this procedure and it is to be hoped that they will do so. But such States can only be offered an oppor-
tunity to follow the new procedure; they cannot be obliged to follow it. If they refuse, preferring to adhere to the procedure laid down in the Covenant, no sanctions could possibly be applied to them.

The solution which has been indicated for States non-signatory but Members of the League of Nations appears to be so obvious as to require no special mention in the text. A proposal to make a special mention of the matter was made, but after explanations had been given, the authors withdrew their suggestion, declaring that they would be satisfied with the above reference to the subject.

At first sight the difference in the way it is proposed to treat non-signatories non-Members of the League of Nations and non-signatories Members of the League may cause some surprise, for it would seem that the signatory States impose greater obligations on the first category than on the second. This, however, is only an appearance. In reality, the signatory States impose no obligations on either category. They cannot do so because the present Protocol is *res inter alios acta* for all non-signatory States, whether they are Members of the League of Nations or not. The signatories merely undertake obligations as between themselves as to the manner in which they will behave if one of them becomes involved in a conflict with a third State. But whereas, in possible conflicts with a State non-signatory and non-Member of the League, they are entirely free to take such action as they choose, in conflicts which may arise between them and States non-

signatory but Members, like themselves, of the League of Nations, their freedom of action is to some extent circumscribed because both parties are bound by legal obligations arising under the Covenant.
2. WORK OF THE THIRD COMMITTEE.

(Rapporteur: M. Benes)

SECURITY AND REDUCTION OF ARMAMENTS

(Articles 7 to 21 of the Protocol)

1. INTRODUCTION

The special work of the Third Committee was to deal with the problem of security (sanctions) and the reduction of armaments.

The work required, above all, important political negotiations. While the question of arbitration required simply a political decision of principle, namely, the acceptance of compulsory arbitration, and the remainder was principally a matter of drafting—without question an extremely difficult task—of a scheme for the application of such arbitration, the questions of security and disarmament necessitated long and laborious political negotiations; for they involved fundamental interests, questions of vital importance to the States, engagements so far-reaching as radically to change the general conditions of the various countries.

Although in the work of the First Committee the Assembly had distinctly indicated in its resolution of September 6th that there was a likelihood—indeed, a necessity—of amending the Covenant, the work of the Third Committee as regards questions of security and reduction of armaments had, in pursuance of the debates of the Assembly, to remain within the framework of the Covenant. Above all, it was a question of developing and specifying that which is already laid down in the Covenant. All our discussions, all our labours, were guided by these principles, and a delicate task was thus imposed upon us. But the spirit of conciliation which pervaded all the discussions has permitted us to resolve the two problems which were placed before us. This is, indeed, an important result, and if the solution of the problem of arbitration which has been so happily arrived at by the First Committee be also taken into consideration, we are in the presence of a system the adoption of which may entirely modify our present political life.

This is the real import of the articles of the Protocol concerning the questions of security and reduction of armaments.

2. THREAT OF AGGRESSION: PREVENTIVE MEASURES

Article 7.

The pacific settlement of disputes being provided for in the present Protocol, the signatory States undertake, should any conflict arise between them, not to resort to preparations for the settlement of such dispute by war and, in general, to abstain from any act calculated to aggravate or extend the said dispute. This provision also applies to the period preceding the submission of the dispute to arbitration or conciliation, and to the period in which the case is pending.

This provision is not unaccompanied by sanctions. Any appeal against the violation of the aforesaid undertakings may, in conformity with Article 11 of the Covenant, be brought before the Council. One might say that, in addition to such primary dispute as is or might be submitted to the Council or to some other competent organ, a second dispute arises, caused by the violation of the undertakings provided for in the first paragraph.

The Council, unless it be of opinion that the appeal is not worthy of consideration, will proceed with the necessary enquiries and investigations. Should it be established that an offence has been committed against the provisions of the first paragraph, it shall be the duty of the Council, in virtue of the results of such enquiries and investigations, to call upon the State guilty of the offence to remedy it. Any State refusing so to do will be declared by the Council to be guilty of violation of the Covenant (Article 11) and the Protocol. (By refusal shall be understood either formal refusal or any attitude incompatible with the decision of the Council ordering that the offence be remedied.)

The Council shall, further, take the necessary measures to put an end, as soon as possible, to a situation calculated to threaten the peace of the world. The text does not define the nature of these preventive measures. Its elasticity permits the Council to take such measures as may be appropriate in each concrete case, as, for example, the evacuation of territories.

Any decisions which might be taken by the Council in virtue of this Article shall be taken by a two-thirds majority, except in the case of decisions dealing with questions of procedure which still come under the general rule of Article 5, paragraph 2, of the Covenant. The following decisions, therefore, shall be taken by a two-thirds majority:

- The decision as to whether there has or has not been an offence against the first paragraph;
- The decision calling upon the guilty State to remedy the offence;
- The decision as to whether there has or has not been refusal to remedy the offence;
- Lastly, the decision as to the measures calculated to put an end, as soon as possible, to a situation calculated to threaten the peace of the world.
The original text of Article 7 provided that, in the case of enquiries and investigations, the Council should avail itself of the organisation to be set up by the Conference for the Reduction of Armaments in order to ensure respect for the decisions of that Conference. There is no longer any mention of this organisation, but this omission does not affect any decisions which the Conference may be called upon to take regarding the matter. It will be entirely free to set up an organisation, if it judges this necessary, and the Council’s right to make use of this body for the enquiries and investigations contemplated will, a fortiori, remain intact.

Article 8.

Article 8 must be considered in relation to Article 2. Article 2 establishes the obligation not to resort to war, while Article 8, giving effect to Article 10 of the Covenant, goes further. The signatories undertake to abstain from any act which might constitute a threat of aggression against any other State. Thus, every act which comes within the scope of this idea of a threat of war — and its scope is sufficiently elastic — constitutes a breach of the Protocol, and therefore a dispute with which the Council is competent to deal.

If, for example, one State alleges that another State is engaged in preparations which are nothing less than a particular form of threat of war (such as any kind of secret mobilisation, concentration of troops, formation of armed bodies with the connivance of the Government, etc.), the Council, having established that there is a case for consideration, will follow what may be defined as the procedure of preventive measures; it will arrange for suitable enquiries and investigations, and, in the event of any breach of the provisions of paragraph 1 being established, will take the steps described in Article 7, paragraph 4.


(Article 11, paragraphs 1 and 2, of the Protocol in its relation to Articles 10 and 16 of the Covenant.)

According to Article 10 of the Covenant, Members of the League undertake to preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

According to Article 16, should any Member of the League resort to war in disregard of its engagements under Articles 12, 13 or 15, all other Members of the League undertake immediately to apply economic sanctions; furthermore, it shall be the duty of the Council to recommend to the several Governments concerned what effective military, naval or air forces the Members of the League shall severally contribute to the armed forces to be used to protect the engagements of the League.

At the time when they were drafted at the Peace Conference in Paris in 1919, these articles gave rise to keen controversy as to the exact scope of the engagements entered into in these provisions, that is to say, as to the nature and extent of the obligations referred to in Article 10, the exact moment at which such obligations arose, and the juridical consequences of the Council recommendations referred to in Article 16, paragraph 2. This controversy continued, as is well known, in the debates here in Geneva, where the question has been discussed in previous years.

Article II is intended to settle this controversy. The Signatories of the present Protocol accept the obligation to apply against the aggressor the various sanctions laid down in the Covenant, as interpreted in Article II of the Protocol, when an act of aggression has been established and the Council has called upon the signatory States immediately to apply such sanctions [Article 10, last paragraph]. Should they fail so to do, they will not be fulfilling their obligations.

As regards their nature and extent, these obligations are clearly defined in paragraph 2 of Article II. According to this paragraph, the reply to the question whether a signatory to the Protocol has or has not fulfilled its obligation depends on whether it has loyally and effectively co-operated in resisting the act of aggression to an extent consistent with its geographical position and the special conditions of its armaments.

The State remains in control of its forces, and itself, and not the Council, directs them, but paragraph 2 of Article II gives us positive material upon which to form a judgment as to whether or not these obligations have been carried out in any concrete case. This criterion is supplied by the term: loyally and effectively.

In answering the question whether a State has or has not fulfilled its obligations in regard to sanctions, a certain elasticity in the obligations laid down in Article II allows of the possibility of taking into account, from every point of view, the position of each State which is a signatory to the present Protocol. The signatory States are not all in possession of equal facilities for acting when the time comes to apply the sanctions. This depends upon the geographical, economic and social position of the State, the nature of its population, internal institutions, etc.

Indeed, during the discussion as to the system of sanctions, certain delegations declared that their countries were in a special situation, by reason of their geographical position or the state of their armaments. These countries desired to co-operate to the fullest extent of their resources in resistance of every act of aggression, but they drew attention to their special conditions. In order to take account of this situation, an addition has been made to paragraph 2 of Article II pointing out this state of affairs and laying stress on the particular situation of the countries in question. Moreover, Article 13 of the Protocol allows such countries to inform the Council of these matters beforehand.
I would further add that the obligations I refer to are imperfect obligations in the sense that no sanctions are provided for against any party which shall have failed loyally and effectively to co-operate in protecting the Covenant and resisting any act of aggression. It should, however, be emphasised that such a State would have failed in the fulfilment of its duties and would be guilty of a violation of engagements entered into.

In view of the foregoing, the gist of Article 11, paragraphs 1 and 2, might be expressed as follows: Each State is the judge of the manner in which it shall carry out its obligations but not of the existence of those obligations, that is to say, each State remains the judge of what it will do but no longer remains the judge of what it should do.

Now that the present Protocol has defined more precisely the origin, nature and extent of the obligations arising out of the Covenant, the functions of the Council, as provided in Articles 10 and 16, have become clearer and more definite.

Directly the Council has called upon the signatories to the Protocol to apply without delay the sanctions provided in Article 11, it becomes a regulating, or rather an advisory, body, but not an executive body. The nature of the acts of aggression may vary considerably; the means for their suppression will also vary. It would frequently be unnecessary to make use of all the means which, according to paragraphs 1 and 2 of Article 11, are, so to speak, available for resisting an act of aggression. It might even be dangerous if, from fear of failing in their duties, States for their suppression and the practical application of the sanctions would, however, always devolve upon the Governments; the real co-operation would ensue upon their getting into touch, through diplomatic channels — perhaps by conferences — and by direct relations between different General Staffs, as in the last war. The Council would, of course, be aware of all these negotiations, would be consulted and make recommendations.

The difference between the former state of affairs and the new will therefore be as follows: According to the system laid down by the Covenant:

1. The dispute arises.
2. In cases where neither the arbitral procedure nor the judicial settlement provided for in Article 9 of the Covenant is applied, the Council meets and discusses the dispute, attempts to effect conciliation, mediation, etc.
3. If it be unsuccessful and war breaks out, the Council, if unanimous, has to express an opinion as to which party is guilty. The Members of the League then decide for themselves whether this opinion is justified and whether their obligations to apply economic sanctions therefore become operative.
4. If the decision implies that such sanctions as the case requires — economic, financial, military, naval and air — shall be applied forthwith, and without further recommendations or decisions.

We have therefore the following new elements:

(a) The obligation to apply the necessary sanctions of every kind as a direct result of the decision of the Council.
(b) The elimination of the case in which all parties would be practically free to abstain from any action. The introduction of a system of arbitration and of provisional measures which permits of the determination in every case as to who is the aggressor.
(c) No decision is taken as to the strength of the military, naval and air forces, and no details are given as to the measures which are to be adopted in a particular case. None the less, objective criteria are supplied which define the obligation of each signatory; it is being bound, in resistance to an act of aggression, to collaborate loyally and effectively in applying the sanctions in accordance with its geographical situation and the special conditions of its armaments.

That is why I said that the great omission in the Covenant has been made good.

It is true that no burden has been imposed on States beyond the sanctions already provided for in the Covenant. But, at present, a State seeking to elude the obligations of the Covenant can reckon on two means of escape:

(1) The Council’s recommendations might not be followed.
(2) The Council might fail to obtain unanimity, making impossible any declaration of aggression, so that no obligation to apply military sanctions would be imposed and everyone would remain free to act as he chose.

We have abandoned the above system and both these loopholes are now closed.
Paragraph 3 of Article 11 has been drafted with a view to giving greater precision to certain provisions of Article 11, paragraph 3, of the Covenant. Article 16, paragraph 3, refers to mutual support in the application of financial and economic measures. Article 11, paragraph 3, of the present Protocol establishes real economic and financial co-operation between a State which has been attacked and the various States which come to its assistance.

As, under Article 10 of the Protocol, it may happen that both States involved in a dispute are declared to be aggressors, the question arose as to what would be the best method of settling this problem. There were three alternatives: to apply the principle contained in paragraph 1, which is practically equivalent to declaring war on both parties — or to leave the matter to pursue its own course, or, finally, to compel States which might disturb the peace of the world to abandon their acts of war by the employment of means less severe than those indicated in paragraph 1. It is the last method which has been chosen. Only economic measures will be taken against these States, and naturally the States in question will not be entitled to receive the assistance referred to in Article 11, paragraph 3.

Article 12.

Article 16, paragraph 1, of the Covenant provides for the immediate severance of all trade or financial relations with the aggressor State, and paragraph 3 of the same Article provides, inter alia, for economic and financial co-operation between the State attacked and the various States coming to its assistance.

As has already been pointed out, these engagements have been confirmed and made more definite in Article 11 of the Protocol.

But the severance of relations and the co-operation referred to necessarily involve measures so complex that, when the moment arises, doubts may well occur as to what measures are necessary and appropriate to give effect to the obligations assumed under the above provisions. These problems require full consideration in order that States may know beforehand what their attitude should be.

Article 12 defines the conditions of such investigation.

It is not expressly stated that the problem will be examined by the Council in collaboration with the various Governments, but the Council will naturally, if it deems it necessary, invite the respective Governments to furnish such information as it may require for the purpose of carrying out the task entrusted to it under Article 12.

Article 13, paragraph 1.

The statement in Article 11, paragraphs 1 and 2, contains many references to Article 13.

As I have already pointed out, in case sanctions have to be applied, it is highly important that there should exist some organ required to express an opinion as to the best way in which obligations connected with sanctions could be carried out by the Contracting Parties. As you are aware, this organ, according to the Covenant, is the Council. In order that the Council may effectively fulfil this duty, Article 13 empowers it to receive undertakings on the part of States, determining in advance the military, naval and air forces which they would be able to bring into action immediately in order to ensure the fulfilment of the obligations arising, in this connection, out of the Covenant and the present Protocol.

It is also necessary to emphasise the fact that the means which the States signatories to the present Protocol have at their disposal for the fulfilment of the obligations arising out of Article 11 vary considerably in view of the differences in the geographical, economic, financial, political and social situation of different States. Information as to the means at the disposal of each State is therefore indispensable in order that the Council may in full understanding give its opinion as to the best method by which such obligations may best be carried out.

Finally, as regards the question of the reduction of armaments, which is the final goal to which our efforts are tending, the information thus furnished to the Council may be of very great importance, as every State, knowing what forces will be available for its assistance in case it is attacked, will be able to judge to what extent it may reduce its armaments without compromising its existence as a State, and every State will thus be able to provide the International Conference for the Reduction of Armaments with very valuable data. I should add, moreover, that Article 13, paragraph 1, does not render it compulsory for States to furnish this information. It is desirable that States should furnish the Council with this information, but they are at liberty not to do so.

Article 13, paragraphs 2 and 3.

The provisions of Article 13, paragraphs 2 and 3, refer to special agreements which were discussed at such length last year. In view of the fact that, according to paragraph 2, such agreements can only come into force when the Council has invited the signatory States to apply the sanctions, the nature of these agreements may be defined as follows:

Special agreements must be regarded as the means for the rapid application of sanctions of every kind in a given case of aggression. They are additional guarantees which give weaker States an absolute assurance that the system of sanctions will never fail. They guarantee that there will always be States immediately prepared to carry out the obligations provided for in Article 11 of the Protocol.
In accordance with Article 18 of the Covenant, it is expressly stated that these agreements will be registered and published by the Council, and it has also been decided that they will remain open for signature to any State Member of the League of Nations which may desire to accede to them.

4. RAISING OF SANCTIONS: PUNISHMENT OF THE AGGRESSOR.

Article 14.

Article 14 is in perfect keeping with the last paragraph of Articles 10 and 11. In the paragraph in question, the coming into operation of the sanctions depends upon an injunction by the Council; also it devolves upon the Council to declare that the object for which the sanctions were applied has been attained. Just as the application of the sanctions is a matter for the States, so it rests with them to liquidate the operations undertaken with a view to resisting the act of aggression.

Article 15.

Paragraph 1 is similar to Article 10 of the Draft Treaty of Mutual Assistance drawn up last year.

Paragraph 2 is designed to prevent the sanctions provided for in Article 11 from undergoing any change in character during the process of execution and developing into a war of annexation.

In view of the observations of various delegations regarding the punishment of the aggressor, I should add that it would be incorrect to interpret this article as meaning that the only penalties to be apprehended by the aggressor as the result of his act shall be the burdens referred to in paragraph 1. If necessary, securities against fresh aggression or pledges guaranteeing the fulfilment of the obligations imposed in accordance with paragraph 1 might be required. Only annexation of territory and measures involving the loss of political independence are declared inadmissible.

“Territory” shall be taken to mean the whole territory of a State, no distinction being made between the mother-country and the colonies.

5. REDUCTION OF ARMAMENTS.

Articles 17 and 21.

Although it has not been possible to solve the problem of the reduction of armaments by means of the clauses of the document submitted to the Assembly for approval, our work paves the way to it and makes it possible.

The reduction of armaments will result, in the first place, from the general security created by a diminution of the dangers of war arising from the compulsory pacific settlement of all disputes.

It will also ensue from the certainty which any State attacked will have of obtaining the economic and financial support of all the signatory States, and such support would be especially important should the aggressor be a great Power, capable of carrying on a long war.

Nevertheless, for States which, owing to their geographical position, are especially liable to attack, and for States whose most important centres are adjacent to their frontiers, the dangers of a sudden attack are so great that it will not be possible for them to base any plan for the reduction of their armaments simply upon the political and economic factors referred to above, no matter what the importance of such factors may be.

It has also been repeatedly declared that many States would require to know what military support they could count on, before the convening of the Conference, if they are to submit to the Conference proposals for great reductions of armaments; this might necessitate negotiations between the Governments and with the Council before the meeting of the Conference for the reduction of armaments provided for in Article 17. The undertakings referred to in Article 13 of the Protocol should be interpreted in the light of the above.

In drawing up the general programme of the Conference, it would also be necessary, as stated in paragraph 2 of Article 17, for the Council, apart from other criteria, “to take into account the undertakings mentioned”.

In view of the close interdependence of the three great problems involved, namely, the pacific settlement of disputes, sanctions against those who disturb the peace of the world, and reduction of armaments, the Protocol provides for the convening by the Council of a general Conference for the Reduction of Armaments and for the preparation of the work of such a Conference. Furthermore, the application of the clauses concerning arbitration and sanctions will be conditional on the adoption by the said Conference of a plan for the reduction and limitation of armaments.

Moreover, in order to preserve the connection between the three big problems referred to above, it is provided that the whole Protocol will lapse in the event of the non-execution of the scheme adopted by the Conference. It devolves upon the Council to declare this under conditions to be determined by the Conference itself.

The last paragraph of Article 21 provides for the case of the partial lapsing of the Protocol which has been put into force. Should the plan adopted by the Conference be regarded as having been put into effect, any State which fails to execute it, so far as it is concerned, will not benefit by the provisions of the Protocol.

Article 19.

The present Protocol emphasises and defines certain obligations arising out of the Covenant. Those of which the present Protocol makes no mention are not affected in any manner. They still exist. Examples which might be quoted are those laid down in Article 16, paragraph 3, of the Covenant, namely, the obligation of the States to give one another mutual support in order to minimise the loss and inconvenience resulting from the application of the economic and financial sanctions or the obligation of the States to take the necessary steps to afford passage through their territory to forces which are co-operating to protect the covenants of the League.

Moreover, as the Swiss Delegation suggests, attention should be directed to the fact that the present Protocol does not in any way affect the special position of Switzerland as arising out of the Declaration of the Council of London of February 13th, 1920. As the special position of Switzerland is in accordance with the Covenant, it will also be in accordance with the present Protocol.

III.

CONCLUSION

No further explanations need be added to these comments on the articles. The main principles of the Protocol are clear, as are the detailed provisions.

Our purpose was to make war impossible, to kill it, to annihilate it. To do this, we had to create a system for the pacific settlement of all disputes which might ever arise. In other words, it meant the creation of a system of arbitration from which no international dispute, whether juridical or political, could escape. The plan drawn up leaves no loophole; it prohibits wars of every description and lays down that all disputes shall be settled by pacific means.

But this absolute character which applies to the system of arbitration should also apply to the whole of the scheme, in regard to all questions of principle. If there were one single gap in the system, if the smallest opening were left for any measure of force, the whole system would collapse.

To this end arbitration is provided for every kind of dispute, and aggression is defined in such a way as to give no cause for hesitation when the Council has to take a decision.

These reasons led us to fill in the gaps in the Covenant and to define the sanctions in such a way that no possible means could be found of evading them, and that there should be a sound and definite basis for the feeling of security.

Finally, the Conference for the Reduction of Armaments is indissolubly bound up with this whole system: there can be no arbitration or security without disarmament, nor can there be disarmament without arbitration and security.

The peace of the world is at stake.

The Fifth Assembly has undertaken a work of worldwide political importance which, if it succeeds, is destined profoundly to modify present political conditions. This year great progress in this direction has been made in our work. If we succeed, the League of Nations will have rendered an inestimable service to the whole modern world. Such success depends partly upon the Assembly itself and partly upon individual Governments. We submit to the Assembly the fruit of our labours: a work charged with the highest hopes. We beg the Assembly to examine our proposals with care, and to recommend them to the various Governments for acceptance.

In this spirit and with such hopes do we request the Assembly to vote the draft resolutions 1 and 2 that are presented with this Report.