When we search the horizon to-day, the one light that we see to guide us towards the goal of peace is our faith in justice. Justice indeed is the primary condition for security both in our private life and in our relations as citizens of the same nation, in the community of men that form a State and in the community of States. Without justice we can have no security.

That is why we must encourage States to resort to arbitration. The evolution of States must be such as to increase the number of those which accept the compulsory jurisdiction of the Permanent Court of International Justice. To do this they must bind themselves by a special declaration in conformity with the motion submitted by the Brazilian delegate, M. Raul Fernandes, to the Third Committee of the 1920 Assembly. That motion had previously been presented by the Swiss delegation at the Hague Conference of 1907.

Brazil has consistently pursued this policy in international affairs.

Having settled the more serious of her frontier disputes by arbitration, Brazil inserted in paragraph 11 of Article 34 of her Constitution a provision by which the Federal Congress can only authorise the Government to declare war in cases where recourse to arbitration would be inadmissible or where the procedure were imperfect so long as its decision could not, in case of need, be carried into effect by the forces placed at the disposal of the law.

Only by this method shall we obtain the security of the law, which is the final aim of the arbitration system.

It is therefore true that arbitration, security and disarmament are the three essentials of peace.

Brazil has signed the optional clause recognising the compulsory jurisdiction of the Court in questions of a juridical nature defined in Article 13 of the Covenant; and the only condition which she attaches to the ratification of the clause is that it shall be approved by at least two of the Powers permanently represented on the Council.

The important statements made by the representatives of the Great Powers during the present debate are proof of the development of this valuable doctrine in the last four years. We may, perhaps, regard these declarations as the beginning of its final transformation into a splendid reality.

Our eminent colleague, the first delegate of Italy, reminded us of the treaty signed at Washington on May 8th, 1871, to settle the serious dispute between the United States and Great Britain with regard to the "Alabama", which was armed in English ports by the Southern Confederacy for service against the North.

The award promulgated here at Geneva on September 14th, 1871, was also signed by a Brazilian, Viscount Itajuba, who was one of the five arbitrators appointed, and the name of Brazil is thus linked with those of the United States, Great Britain, Italy and Switzerland in what is one of the most important documents in the legal history of arbitration.

Brazil was the first American State to ratify the Continental Treaty signed at Santiago de Chile in May 1923, by which eight American nations agreed to submit to the examination, investigation and opinion of a Commission constituted under the Treaty all questions which for any reason might have arisen between two or more of the High Contracting Parties and which had not been solved by diplomatic means or submitted to arbitration.

This Treaty, which was ratified by several other States, including the United States, really renders it needless for American States to fear to sign the Treaty of Mutual Guarantee as a protection against the danger of an act of aggression in that continent on the part of an American country.

Notwithstanding this circumstance, so fortunate for the American continent, Brazil is willing to render every assistance in the preparation of a general formula of mutual assistance and guarantee, and we trust that we are thereby giving proof of our devotion to the League of Nations.

Moreover, we believe that what is most essential is the establishment, either with or without complementary regional treaties, of a treaty of mutual assistance and guarantee between all nations. This is a condition which is vital for disarmament. It is, in fact, not enough that this
assistance and guarantee should be based entirely upon continental systems. They must be based on a world-wide organisation, for the right to security—to that real security which should now be the central object of our endeavour—is the sacred right of all the peoples of the earth. (Loud applause.)

The President:  
Translation: Mr. Dandurand, Minister of State, first delegate of Canada, will address the Assembly.  

(Mr. Dandurand mounted the platform amidst the applause of the Assembly.)

Mr. Dandurand (Canada):  
Translation: Mr. President, ladies and gentlemen—I am not going to discuss to-day the merits of the Treaty of Mutual Assistance. I have listened from the beginning of this debate to the many objections which have been formulated. I feel that a solution of the problem which has been submitted to us will perhaps not be reached speedily. So I am thinking of the present moment and the peril of this hour.  

"What are the guarantees for to-morrow?"

Before the departure of the official representatives, the Prime Ministers of Great Britain and France, it has seemed to me that it would perhaps be well to express an opinion. Although I am a newcomer among you, I may have some qualifications for presenting it. The thought which it contains is not a growth of yesterday—it is of long standing. The sun of the "Entente Cordiale" cleared of great men, acknowledged to be his teachers and mentors by the fourth Assembly, she has not done back peace into men's hearts. So from indifference or from desire to evade her right of all the peoples of the earth.  

How are we to obtain that end? It seems to me that a solution of the problem which has been re-established there. So far as I can see there is no possibility of peace in the minds of men in Europe to-day without the continuance of that friendly understanding.  

Fifteen years or so ago I had the opportunity of hearing a very distinguished Hungarian orator, whom I am glad to see with us to-day, state that war never achieved any final settlement, and that one bloody chapter in the record of history always called for a sequel. Now, ladies and gentlemen, we desire to put a full stop to this barbarian fatalism. Is it not our imperious duty, in the years that are to come, to seek to appease the passions, to bring back peace to men's hearts?

How are we to obtain that end? It seems to me that the great nations face a duty— the duty of setting an example. Misunderstanding between them cannot but postpone and compromise peace; misunderstanding between them must arouse and maintain evil hopes. For three years now, every eye has been turned anxiously toward London and Paris. If a fog appear in the English Channel, immediately we feel a depression of spirit; whom Grotius, with the characteristic modesty of great men, acknowledged to be his teachers and fore-runners.  

It is and always has been recognised that we owe to those Spanish jurists the clear distinction that is made between the spirit of evil which thrives only upon discord. Those Spanish jurists the clear distinction that is made between the spirit of evil which thrives only upon discord. Those Spanish jurists from among these enlightened men who have re-established a good understanding between the two great countries. I believe that I have the right to ask of our two mother-countries, Great Britain and France, that they remain linked together for the well-being of the Canadian family and for the good of all humanity. (Loud applause.)

The President:

Translation: Mr. Quiñones de León, Spanish Ambassador in Paris and first delegate of Spain, will address the Assembly.

(M. Quiñones de León mounted the platform amidst the applause of the Assembly.)

M. Quiñones de León (Spain):

Translation: Mr. President, ladies and gentlemen—If I venture to speak in a debate to which so many distinguished statesmen have lent the weight of their authority, I do so in order to state the views of my country briefly, but with the sincerity and goodwill which Spain has ever shown and will always show in promoting the course of justice and peace.

Though Spain is among those countries which have raised objections to the draft Treaty of Mutual Guarantee communicated to the Governments by the Fourth Assembly, she has not done so from indifference or from desire to evade her international obligations. No one who knows the traditions of my country could credit that for a moment.

There are among us in this hall many masters of international law, all of whom will tell you that the creative conception of international law on which the League of Nations was founded originated from the minds of those Spanish jurists whom Grotius, with the characteristic modesty of great men, acknowledged to be his teachers and fore-runners. It is and always has been recognised that we owe to those Spanish jurists the clear distinction that is made...
between a just war and an unjust war, a distinction which is the chief canon in international life, and is now at last, thanks to the League of Nations, restored to its place among our articles of faith. Spain remains true to the doctrine of her ancient masters, that without this distinction there can be no real peace. For these reasons Spain desires to associate herself with those countries which have declared the only basis for peace to be the Covenant of the League of Nations, a charter which is the fruit of the wisdom and ripe thought of men who combined the highest idealism with tried political experience.

Spain, who of her own free will signed the Covenant, will loyally observe her pledge; she considers that the nations will find that the best guarantees of security consist in a strict application of its principles.

She also believes—and her long historical experience entitles her to speak with authority—that institutions, whether international or national, can only be developed with time.

The letter of the law must be slowly quickened by experience before the spirit can enter into possession.

M. Herriot has hit the mark; we must endeavour to make the Covenant a living thing. Only so can it be made effective.

Arbitration is a policy that commands our entire approval.

Arbitration, that is, broadly speaking, the pacific and equitable settlement of disputes, has long been a rule in the diplomatic relations of my country. We are bound by arbitration treaties with several countries in Europe and America.

The Spanish Government is therefore convinced that we may work in this direction, that with agreements of this nature, in which States pledge themselves to compulsory arbitration, we may pave the way for the brotherhood of man and strengthen the Covenant which is its symbol.

We must, the Spanish Government considers, persevere in the work that has been begun. It offers its wholehearted co-operation in the attainment of the ideal before us, namely, that passions of war must be checked at the outset by united action. This will be the most valuable and the most effective guarantee of peace.

It was with this intention that the Spanish members of the Temporary Mixed Commission, among them my eminent friend the Marquis de Magnoz, suggested, as long ago as June 1923, several amendments to the draft Treaty of Mutual Guarantees between Spain and other States. A translation of these will be published in the near future. The Spanish Government is therefore convinced that the application in this case of the principle of mutual guarantees is not only a safeguard of peace but an important contribution to the strengthening of the League of Nations and to the security of the small States.

At the request of any Member of the League of Nations, the Council... may declare that the political situation between the two States Members is such that precautions with a view to preserving peace are indispensable. The following precautionary measures may be applied:

(a) Both Parties may be asked to withdraw their troops to a certain distance, to be determined by the Council, on both sides of the frontier;

(b) To abstain from flying over a certain neutral zone between the two countries;

(c) To abstain from allowing their navies to enter the territorial waters of the other State.

It is the Spanish Government's intention to associate itself with those countries which have expressed their readiness to enter into such agreements of this nature, in which States pledge themselves to compulsory arbitration. The letter of the law must be slowly quickened by experience before the spirit can enter into possession.

Shall be presumed to be the aggressor:

Any State which has refused to submit to the Permanent Court of International Justice or to the Council of the League of Nations the dispute which is the cause of the state of war;

Any State which has refused to take the precautionary measures stipulated above when the Council has recommended their application."

Accordingly, Spain fully endorses the proposal to strengthen the Covenant by the application of arbitration. The League of Nations can rely on our loyal cooperation in any special work which may be thought desirable for this purpose.

Lying between two countries to which she is bound by age-long ties of friendship and kinship, Spain has no fear of surprise attack or invasion; but this is not the reason why she takes an impartial view of the problems by which Europe is tormented to-day.

Situated on the edge of Europe, facing towards the new continent, Spain will always be prepared to do her share in the work of international collaboration from which the Powers across the Atlantic cannot hold aloof. I allude to the United States and the other American Republics, particularly those whose help we specially appreciate on account of their Spanish origin, not only those which are already Members of the League but also those which, we hope, will join the League ere long.

Spain, need I remind you, has repeatedly responded to your call. In the future, as in the past, I shall always feel inclined to pursue a policy of peace because she has consistently pursued a policy of goodwill.

(Loud applause.)

The President:

Translation: M. Enrique Villegas, former Prime Minister and delegate of Chile, will address the Assembly. (Applause.)

M. Villegas (Chile):

Translation: Ladies and gentlemen—The Chilian delegation has followed with keen interest this important debate in the fifth Assembly. The part taken in it by the distinguished statesmen who are with us to-day has lent lustre to our discussion, but it is of special significance because we all feel that we must reach some conclusions which will hasten the approach of the long-awaited hour when peace shall have a permanent abiding place on the earth.

We all realise that this debate on arbitration, security, disarmament, and mutual assistance in cases of unjust aggression, although, of course, of universal interest, is at the present time of more immediate and urgent concern to Europe.

The Chilian delegation does not therefore propose to discuss the fundamental questions involved, but to restrict itself to the statement that the Government and the people of Chile, conscious of their responsibilities as a Member of the League, will collaborate with faith and good hope in the task of discovering a formula which, while taking into account the legitimate interests and no less legitimate fears of each country, will finally establish the principle of the settlement of disputes by arbitration on the basis that every State shall have a reasonable amount of security and shall effectively disarm, both from a military and from a moral point of view.

As Chile is one of the three countries in South America that possesses both land and sea forces of relative importance, I wish to take this opportunity to reiterate the declarations made by the Chilian delegation at previous Assemblies regarding the reduction of armaments.

This problem, so far as our continent is concerned, differs both in aspect and in urgency from the problem confronting Europe. Statistics show that there is not a single State in South America the strength of whose armaments is disproportionate to the area of its territory, its population and its internal requirements. We, in South America, need agreements for the limitation of armaments.
rather than agreements for the reduction of armaments.

I may remind you in this connection that Chile and Argentina were the first two countries in conflict with each other to sign a treaty of this nature. In 1892 our two Governments signed a treaty concerning the equivalent strength and the limitation of their naval armaments, which was warmly approved by the other South American countries and has been loudly observed by the countries concerned. (Applause.)

The Governments of Brazil and Chile also took part in the special meeting of the Naval Sub-Committee of the Permanent Advisory Commission of the League, which was attended by countries not represented on the Sub-Committee and held at Rome in February of this year. The subject under discussion was the limitation of the naval armaments of these three great countries is not a particularly difficult problem to solve. As representative of Chile I desire to express our ardent hope that an agreement on this question may soon be reached under the auspices of the League of Nations.

Our delegation notes with great satisfaction the declarations concerning arbitration which have been made by the heads of the Governments of the principal European Powers. We fully appreciate their importance. They constitute, we believe, a decisive advance towards that moral disarmament which must necessarily preceed the material disarmament that we all desire.

The explanation which the distinguished delegate of Brazil gave to the Assembly concerning the special position of the South American peoples, both as regards the immense area of their territory and the inadequacy of their military and naval forces to guarantee the execution of treaties of mutual assistance of the kind contemplated for European countries, makes it unnecessary for me to set forth in detail our own view on this question, since our opinions, both on this matter and on the principle of arbitral jurisdiction, are identical with those expressed by my Brazilian colleague.

I would remind you on this important occasion that the most serious problems that have confronted South America in the last forty years have been settled by arbitration. At the beginning of the present century the King of England graciously accepted the position of arbitrator and settled the long-standing and serious frontier dispute between Chile and the Argentine Republic. In 1922 the Governments of Chile and Peru signed a protocol submitting for decision of the principle of compulsory arbitration to be the keystone of international law, enunciated by M. Herriot. This ideal is in all respects in keeping with that of the League of Nations, and no more striking proof of this could be found than the fact that many American States are represented here and are actively and wholeheartedly co-operating in the work of this Assembly, the most important that the League of Nations has yet held, perhaps the most important Assembly that the world has ever seen. (Loud applause.)

The President:

Translation : Before the last speaker on my list addresses you, I should inform the Assembly that the British and French delegations have submitted a draft resolution which might, in their opinion, form a fitting conclusion to the great discussion opened three days ago.

I will read the resolution as soon as the English translation is ready.

M. Urrutia, former Minister for Foreign Affairs, delegate of Colombia, will address the Assembly. (Applause.)

M. Urrutia (Colombia):

Translation : Mr. President, ladies and gentlemen—The discussions held in our recent meetings are of good omen not only to the League but, I venture to think, to the entire world, which has followed our proceedings with the keenest interest and has moment by moment received the solemn words that have been spoken from this platform.

We cannot fail to recognise that the elevation of the principle of compulsory arbitration to be the keystone of international law, enunciated by the Prime Ministers of France and Great Britain—the two great liberal Powers of Europe who have done so much to advance the civilisation of the world—a fact of the first importance, the most important fact, perhaps, in the history of international relations since the League of Nations founded the Permanent Court of International Justice.

As I listened to Mr. MacDonald’s eloquent appeal for compulsory arbitration, I called to mind those memorable days a century ago when Canning, another Prime Minister of Great Britain, opposed the schemes of the Holy Alliance and enunciated the right of American countries to sovereignty and independence (Applause), and prophesied that the group of free nations that had arisen in the New World would one day have the mission of restoring stability in the old.
I called to mind, too, the words which Gladstone spoke in connection with the historic "Alabama" Treaty.

He said that arbitration is the solemn consecration on international ground of that feeling of justice which has made men seek for a better means of settling disputes between States than the ruthless decision of the sword.

When, again, I heard M. Hériot proclaim here the right of the small nations to life and independence on equal terms with the great, my whole heart went out in homage to France and her noble traditions, France who has proclaimed the rights of man, who has consistently and vigorously defended the loftiest principles of right and justice in Assemblies where the nations have met together.

As representative of a country which, ever since the first days of its independence, has made arbitration an article of its creed, I cannot refrain from mentioning the immense satisfaction with which the statements to which we have listened in the last few days will be received by the Colombian people. I venture, too, to believe that the speeches of the delegates of Chile, Brazil and other American countries are the strongest evidence that this sentiment is shared by all the American States, which place implicit reliance upon the principle of arbitration. From the earliest day of our independence to the last Conference of Santiago, where the principle of arbitration was solemnly confirmed, arbitration has been for us Americans not a vague doctrine but a living reality, a reality whereby we have been able to put an end to a number of international disputes, particularly boundary disputes. By arbitration we have settled almost all our disputes; two very important cases have been submitted to arbitration during the last two years, and in this way the moral unity of the continent has been restored and justice, liberty and democracy have become the first canons of our political faith.

Gentlemen, in our Committees we shall be able to discover formulas enabling us to develop the ideas that have been outlined here and to reconcile conflicting views. We shall discover the means of realising our hopes. For the moment, however, we should let nothing diminish those hopes. Let us pay a solemn tribute of gratitude to the statesmen who have come to take part in our proceedings and to share in our responsibilities, thus lending added lustre to the prestige of the League of Nations.

After the speeches we have heard during the last few days, we may take bold to think that those who assert that the work of the League of Nations has failed and those who still hope that it will be a success in the future cannot deny that it has taken a great step forward along the path of international justice. After all the declarations we have heard we may claim to have made a definite advance towards peace and justice, towards the abolition of the use of brute force which has brought misfortune and disgrace on the community of nations and has left an insecurity upon the peoples—and when I say the peoples, I am thinking first and foremost of those who toil and suffer in time of peace and who, when war comes, still toil, still suffer, and give their lives for their country. (Applause.)

The President:

Translation: The discussion is closed. I will now read to the Assembly the resolution submitted by the French and British delegations. We will then consider how far Rule 17 of the Rules of Procedure applies to this resolution; after that I will call upon the first delegate of Great Britain and the first delegate of France to explain the resolution. I will then ask the Assembly to take a decision regarding it.

The resolution reads as follows:

"The Assembly,

Noting the declarations of the Governments represented here with satisfaction that they contain the basis of an understanding tending to establish a secure peace,

Decides as follows:

With a view to reconciling 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 reservations 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 of 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 League's functions and powers;

(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."

Rule 17 of the Rules of Procedure reads as follows:

"1. Resolutions, amendments and motions must be introduced in writing and handed to the President. The President shall cause copies to be distributed to the representatives.

2. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Assembly unless copies of it have been circulated to all representatives not later than the day preceding the meeting.

3. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, without previous circulation of copies."

We have, therefore, to determine whether the third paragraph of Rule 17 applies to the present case. I think that this can be decided in the affirmative because, though the questions involved are of supreme importance, the resolution proposed really does no more than refer them to certain Committees of the Assembly. The reference to the summoning by the League of an international conference on disarmament is merely a preamble of the resolution. If the Assembly accepts the resolution it will not definitely bind itself to summon a conference.

In these circumstances I think that paragraph 3 of Rule 17 of the Rules of Procedure does apply, and the discussion of the proposed resolution which I have just read is therefore in order.

Accordingly I call upon Mr. Ramsay MacDonald, Prime Minister of Great Britain and first delegate..."
Mr. Ramsay MacDonald (Great Britain): Mr. President, ladies and gentlemen—By agreement between our French friends and ourselves the Assembly has now before it a resolution which we believe will give effect to the debate that has been continued during the last days on the question of disarmament. Briefly, the resolution assumes that a Conference will be summoned by the League of Nations to deal with armaments, that, in preparation for that Conference, the Third Committee will consider all the documents that have been produced through the activities of the League and its various Committees and that the First Committee will be charged with the consideration of the form of that clause regarding arbitration which was embodied in the Statute of the Permanent Court of International Justice. The resolution ends with a prayer that thus might be strengthened the solidarity and the security of the nations of the world by settling by pacific means all disputes which may arise between States.

Mr. President, I am going to add nothing to the discussion. It has been admirable. It has exposed the needs of States in very varying conditions and no agreement by the League of Nations, however good it may be upon paper, however desirable it may be in theory, can be satisfactory unless it relates to the actual facts of the situation in which each State finds itself. (Applause.)

It has been our business to face with courage but with caution recondite problems that have taken the nations of the world generations and generations not to settle but to face honestly, as we at last are doing here.

The question of peace: What are the conditions of peace? The question of national security: What is national security? The question of arbitration: What is the scope of arbitration? The question of disarmament: Under what conditions is disarmament safe?

Sirs, they say that "the mills of God grind slowly": But, sir, this resolution, and the material that may arise between States. The resolution ends with a prayer that thus might be strengthened the solidarity and the security of the nations of the world by settling by pacific means all disputes which may arise between States. (Applause.)

Mr. MacDonald continues. (Applause.)

My friend, M. Herriot, delivered an admirable speech yesterday. M. Herriot and I very often start on the same road, on the same journey, he on one side of the road and I on the other. The road is the same, the end is the same, and as we are good friends we do not go very far before we move together and continue our journey arm in arm in the middle of the road. (Loud applause.)

It is not that the old options have been reconciled; it is that the meaningless difference in distance and in position has been bridged by our common sense and our desire for human companionship.

The French Premier, M. Theunis, M. Benes, M. Van Karnebeek especially, but others also, delivered speeches yesterday characterised by that calm, faithful sagacity which is so essential in councils like this. We dream our dreams. We have our visions. Ah, my friends, that is not enough. We have to discover the way. We have to find how we are going to get through all the forests that lie between us and our destinies, how we are to remove barriers, how we are to destroy obstacles.

I wish to give the assurance to my friends that, so far as the British Government is concerned, it knows nothing of that war which is so obvious dangers in order to indulge in a pleasant gesture—"it desires no traps for the small nations in matters of disarmament, no weakening of their opportunities to live, no sacrificing of the security which I consider to be their best security, namely, their liberty to express themselves, their liberty to be, their liberty to enjoy themselves in possession of their historical traditions which they are glorifying and beautifying by the contributions which they are now making to those traditions.

We have just the fear—and I express it quite sincerely—we have just the fear that we may slip back. Let me explain. You find upon old roads, unused for generations and generations, the forests that lie between us and our destinies, how we go back.

The world expects much from us. Let us have the courage to give it that much by adopting this resolution, by carrying on the work, by seeing to it that we do not sleep until we have discovered the way to secure peace. We shall then be writing the name of this Assembly in letters of gold for the history of mankind. (Loud applause.)

The President:

Translation: M. Herriot, first delegate of France, will address the Assembly.

(M. Herriot mounted the platform amidst the loud applause of the Assembly.)

M. Herriot (France):

Translation: Mr. President, ladies and gentlemen,—I shall not detain you long. The best of all speeches is action; and it is an action that I wish to perform in following my dear friend, Mr. Ramsay MacDonald, upon this platform.

We both arrived here only a few days ago with a deep sense of our responsibilities and a keen anxiety to know whether we could be useful or not to the great cause of peace of which we, like all of —46—
you here, are the devoted servants. We have both spoken freely. We have explained our ideas, our fears, our methods and our conceptions of the way in which your work should be carried out. But, while we explained our ideas, we were both actuated by the desire, I would even say the determination, not to leave this Assembly without having achieved complete unity of understanding, without setting the example of two men with heavy responsibilities joining hands in an effort to effect an agreement which will prove of value to all. This agreement is contained in the resolution we have submitted to you.

I could wish that we might have had time for fuller and longer consultation. All that I have been able to do myself is to ensure the concurrence of my very dear friends from Belgium, who authorised me to speak on their behalf, and of no less dear friends from Italy, who have been so good as to grant me the same permission.

But, my dear colleagues, my words are addressed to all of you, and I am sure that in a short while you will one and all respond to our President's appeal.

It would indeed have been—I will no longer say it would be—deplorable if the great debate which has lasted here for three days had been nothing more than an academic discussion. It would have been, as it was termed just now, a disgrace. At the very least, it would have been a matter for keen regret.

We have heard, in turn, the broad views of Lord Parmoor, inspired by a lofty and wide philosophy, the recommendations so eloquently put forward by some of the highest authorities in Europe, or the world—you will excuse me if I only mention a few of them—M. Van Karnebeek, M. Benes, M. Theunis, M. Saldandra, M. Politis, who spoke this morning, and many others whose cogent pleas we shall certainly not forget.

We must now come to a conclusion. The conclusion is the joint note which we have the honour to submit to you. I believe that we have chosen the right way. It would have been deplorable if four years of endeavour had had no result. Once you have adopted our text, the Committees of the Assembly will be in a position to continue the work and to embark on those arduous enquiries which my friend MacDonald described just now in vivid terms, on the problems of assistance and which my friend MacDonald spoke of just now.

As we know, it is the duty of the League of Nations to conform to the laws which govern all organic standing up. To tell you yesterday that we must in our work the motion should signify their approval by a vote, I could wish that we might have had time for a fuller and longer consultation. All that I have been able to do myself is to ensure the concurrence of my whole faith.

I could wish that we might have had time for fuller and longer consultation. All that I have been able to do myself is to ensure the concurrence of my very dear friends from Belgium, who authorised me to speak on their behalf, and of no less dear friends from Italy, who have been so good as to grant me the same permission.

The result of the voting was as follows:

For 46
Against 0

The Assembly rose at 6.15 p.m.
Second Part.

EXTRACTS FROM THE MINUTES
OF THE
FIRST COMMITTEE
(CONSTITUTIONAL QUESTIONS)
SECOND PART.

Extracts from the Minutes of the First Committee

(Constitutional Questions)

LIST OF MEMBERS OF THE FIRST COMMITTEE

Chairman: The Hon. Sir Littleton E. Groom (Australia).
Vice-Chairman: Dr. J. Limburg (Netherlands).

Members:

**Abyssinia:** Count Robert Linant de Bellefonds.
M. Ato Sahle Sedalou (Substitute).

**Albania:** M. Benoît Blinishti.

**Australia:** The Hon. Sir Littleton Groom, K.C.M.G., K.C., M.P.

**Austria:** His Excellency Count Albert Mensdorff-Pouilly-Dietrichstein.

**Belgium:** M. Henri Rolin.
M. van Leynseele (Substitute).

**Brazil:** His Excellency M. Raul Fernandes.
His Excellency M. Frederico de Castello Branco-Clark (Substitute)

**British Empire:** Sir Cecil J. B. Hurst, K.C.B.

**Bulgaria:** His Excellency M. Danaïlow.
M. Poménow (Substitute).

**Canada:** The Hon. Raoul Dandurand, C.R., LL.D.
Mr. O. D. Skelton, M.A., Ph.D.

**Chile:** His Excellency M. Armando Quezada.

**China:** His Excellency M. Chao-Hsin-Chu.
M. Wang Tseng-Sze (Substitute).

**Colombia:** His Excellency Dr. Urrutia.

**Costa Rica:** His Excellency M. de Peralta.

**Cuba:** His Excellency M. Cosme de la Torriente.
His Excellency M. de Blanck (Substitute).

**Czechoslovakia:** His Excellency Dr. Osuský.
Dr. Jan Krčmář (Substitute).

**Denmark:** M. Holger Andersen.

**Esthonia:** M. Ado Anderkopp.

**Finland:** His Excellency M. Erich.

**France:** His Excellency M. Aristide Briand.
M. René Cassin (Substitute).

**Greece:** His Excellency M. Politis.
M. St. Seferiades (Substitute).

**Guatemala:** M. Adrien Recinos.
M. Rafael Pinedo de Mont (Substitute).
Haiti: His Excellency M. Bonamy.

Hungary: His Excellency Count Albert Apponyi, Count Khuen-Héderváry, and M. Gajzágó (Substitutes).

India: Sir Muhammad Rafique.

Irish Free State: Mr. J. O'Byrne.

Italy: His Excellency M. Vittorio Scialoja, M. Massimo Pilotti (Substitute).

Japan: His Excellency M. Adatchi, M. N. Ito (Substitute).

Latvia: M. Cielens, M. Jules Feldmans (Substitute).

Libia: M. Nicolas Ooms.

Lithuania: His Excellency M. Sidzikauskas.

Luxembourg: M. Lefort.

Netherlands: Dr. Limburg.

New Zealand: Colonel the Hon. Sir James Allen, Mr. C. Knowles (Substitute).

Norway: Dr. Mikael H. Lie.

Panama: His Excellency M. Burgos.

Paraguay: Dr. Ramon V. Caballero.


Poland: M. Babinski.

Portugal: His Excellency M. João Chagas, M. Antonio Gomes d'Almendra (Substitute).

Roumania: His Excellency M. Nicolas Petresco Comnène, His Excellency M. Nicolas Titulesco, M. Nicolas Raicovicianú (Substitute).

Salvador: His Excellency Dr. J. Gustavo Guerrero.

Kingdom of the Serbs, Croats and Slovenes: Dr. Ladislav Politch, Dr. Novakovitch (Substitute).

Siam: His Highness Prince Charoon.

South Africa: Sir E. H. Walton, K.C.M.G., The Hon. G. R. Hofmeyr, C.M.G.

Spain: His Excellency M. Emilio de Palacios, M. C. Botella (Substitute).

Sweden: M. J. E. Loefgren, Mme. Bugge-Wicksell and M. Oester Undén (Substitutes).

Switzerland: Professor W. Burckhardt, Dr. Paul Ruegger (Substitute).

Uruguay: His Excellency M. Alberto Guani, His Excellency M. Enrique Buero (Substitute).

Venezuela: His Excellency M. Escalante.
FIRST COMMITTEE.

(Constitutional Questions.)

EXTRACT FROM THE AGENDA.

4. Questions referred to the Committee by the Assembly concerning:
   (a) The Articles in the Covenant relating to the Settlement of Disputes;
   (b) Article 36, paragraph 2, of the Statute establishing the Permanent Court of International Justice.

SECOND MEETING

Held on Tuesday, September 9th, 1924, at 3.30 p.m.

Sir Littleton E. Groom in the Chair.

11. — Consideration of Questions relating to the Article of the Covenant: Appointment of a Sub-Committee.

The Chairman said that there were several questions to be considered in connection with Item 4 of the agenda, the first being whether there should be a general discussion and whether a sub-committee should be appointed immediately. As regarded the expert examination of 4 (b), he personally was in favour of the latter procedure.

M. Titulesco (Roumania) thought that a sub-committee might be appointed immediately and the general discussion reserved for later. The sub-committee would be guided in its work by the general discussion.

M. Leon Babinski (Poland) asked what ground the general discussion would cover, and thought that it should first deal with the coming into force of the amendment. This was a formal question, which would be better dealt with by the sub-committee. He therefore asked that the general discussion should provisionally make way for this interlocutory question.

M. Limburg (Netherlands) was not in favour of the two parts of the resolution being divided between two sub-committees, because the two parts were so closely bound up with one another.

He therefore proposed the appointment of a sub-committee containing more members than the former sub-committees. This sub-committee would in the first instance draw up a questionnaire. He was also in favour of a preliminary general discussion.
The CHAIRMAN said that it was proposed to have a general discussion, and also to appoint a sub-committee to sit immediately and take note of the issues arising out of the general discussion.

This proposal was put to the vote. *The Committee decided*, by 16 votes to 15, in favour of a preliminary general discussion.

The Committee appointed a Sub-Committee composed of the following:
- M. ADATCI (Japan)
- Count APPONYI (Hungary)
- M. BRIAND or M. LOUCHEUR (France)
- MM. POLITIS (Greece)
- M. BRIAND or M. LOUCHEUR (France)
- ROLIN (Belgium)
- SCIAROLA (Italy)
- TITULESCO (Roumania)
- Sir Cecil Hurst (British Empire)
- MM. ERICH (Finland)
- SCIALOJA (Italy)
- FERNANDES (Brazil)
- DE LA TORRIENTE (Cuba)
- TITULESCO (Roumania)
- Sir Cecil Hurst (British Empire)

*The Committee decided* that this Sub-Committee should get into touch with the Third Committee.

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**THIRD MEETING**

*Held on Thursday, September 11th, 1924, at 3.30 p.m.*

Sir Littleton E. Groom in the Chair.

13. — General Discussion on the Questions referred to the Committee concerning: *(a) The Articles in the Covenant relating to the Settlement of Disputes; (b) Article 36, Paragraph 2, of the Statute of the Permanent Court of International Justice.*

M. FERNANDES (Brazil) said that before the general discussion began he would like, in order to define the scope of the debate, to read once more the actual terms of the proposal submitted to the Committee.

The First Committee was instructed by the Assembly:

"(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 security of the nations of the world by settling by pacific means all disputes which may arise between States."

This resolution virtually embodied an agreement in principle between the French and British Governments for the peaceful settlement of international differences; and before proceeding with the discussion he wished to offer his cordial thanks to the two great Powers in question for the decisive step which they had taken in the direction of peace and the equality of nations in international law.

Four years previously, the announcement that an international court of justice was being set up had given the Assembly great satisfaction; but he himself had felt bound to cast a shadow over the rejoicings by expressing from the platform of the Assembly his deep regret at seeing the great nations of the world miss an exceptional opportunity of giving a valuable pledge for the peace of the civilised world.

He had emphasised his disappointment in a lecture given the year following at the Royal Academy of Jurisprudence at Madrid, when he had expressed the hope that not only England but also France and Italy would change their attitude under pressure from their Universities and from the liberal opinion in those countries.

To-day he was glad to see that the desires of small States had been acceded to much sooner than he had expected, and he welcomed the decision of the great Powers to place themselves on an equal footing with other countries under international law, when they might have resorted to force.

The Assembly had left the Committee quite free — perhaps too free — to undertake the consideration of such a thorny question. If they had said to the Committee: "We have agreed to settle our disputes on such-and-such a principle, and you must work out the technical formula for it", that would have been quite difficult enough for the Committee. But besides this difficulty there was another, which was almost impossible to solve — that of extracting the political factors involved in the problem.

All that had been said to the Committee was: "We want to settle all our differences by peaceful means, and you must tell us how to do it". It was essential, therefore, that they should begin their debates by sounding the delegates, particularly those of Great Britain and
France, who had originated the idea and should know best to what points the technical work should be directed.

Everybody was entitled to his own opinion as to the best method of achieving success; but it was useless to draw up a scheme. What they had to do was to find a universally acceptable text.

The Assembly resolution referred to arbitration absolutely and exclusively, but there was a preliminary question before the delegations. Obviously it had not been the idea of the French and British delegations to do away with the judicial functions of the Court of International Justice. The resolution referred only to arbitration; but as arbitration and justice were two entirely different things, that must be regarded merely as a piece of vagueness and they must assume that the Court of Justice would remain, with its present organisation and its present jurisdiction.

There was a second question. If disputes which might lead to international conflicts were to be settled by arbitration, he thought that the primary intention of the Governments which had made the proposal was to abolish the distinctions which had been drawn in the Covenant between legal disputes in general and certain disputes which, although they were on legal points, no country had ever consented to submit to the decision of a third party.

Preserving a restriction which was traditional in the international policy of the great Powers, Article 13 of the Covenant contained an unfortunate adverb:

"The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration."

This general principle was followed by an exception:

"Disputes as to the interpretation of a Treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration."

The first proposal which the Sub-Committee could make to the Committee and to the Assembly would, of course, be to strike out the work "generally" in Article 13. This amendment would also affect Article 12, by which:

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

If Article 13 had been modified as the speaker suggested, the preceding article would evidently have to be modified also, since a war could no longer be spoken of after the expiration of the time-limit following on the award of the arbitrators. It would only be necessary to say that it was desirable to generalise penalties in order to give executive force to the award of the arbitrators.

The speaker laid stress on the fact that the resolution went further when it asked the Committee to produce or outline a system for the purpose of effecting a peaceful settlement of all differences that might arise between States.

There was a whole category of disputes, and perhaps those were not the most uncommon or the least serious in regard to which it was not known whether the Governments of France and England were in favour of their being submitted to a Court of Arbitrators or to the Court of International Justice. These disputes, which were more or less political in character, bore on questions of an economic or demographic order, or on Customs matters, and such differences only assumed an international character when they arose between two Powers and produced a dangerous state of mind or brought about such strained relations as might lead to a rupture. However, the legal element in such differences was always an element of internal law. An arbitrator or a Court of Justice that had to deal with a case of that sort would be very embarrassed because no ruling of international law would be applicable. Perhaps some day they would see an evolution of international law as comparable with the evolution of national law.

Internal law was becoming more and more social, to the detriment of the individualistic principle. The right of property, for example, was no longer the jus utendi et abutendi of the Romans, and the German Civil Code had even gone so far as to prohibit the abuse of private rights. It was by these means that the Western world had endeavoured to safeguard social peace. He thought that international law would evolve in the same manner, since the interests of the community of peoples would limit more and more the field reserved for the sovereignty of States. Was the proposal put forward by the French and British delegations a step in this direction? He thought not.

But such was not the case at present. They could not speak of arbitration or of a Court of Justice for settling differences that were not subject to any ruling of international law. And then Article 19 had to be borne in mind:

"The Assembly may, from time to time, advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

He did not think that the Assembly could undertake a fresh examination of treaties which had become inapplicable. The Assembly could only invite States to adopt a certain
course of action. But it would be very difficult from a moral point of view for a State to refuse to state publicly its reasons for maintaining a treaty which the other party alleged to have become impossible of application. No State could refuse to put forward its point of view at Geneva without the greatest prudence.

If a procedure of conciliation were to be set up forthwith, to act, if need be, without any other power than that of summoning the States concerned and requesting them to explain their point of view, and of then trying to bring about an amicable settlement, very essential progress would have been made, perhaps the only possible progress as the question stood at present.

After this explanation of his ideas concerning the articles of the Covenant covered by the resolution, M. Fernandes referred to Article 36 of the Statute of the Court of Justice. He was in great doubt here also: he was uncertain if the British and French Governments were in favour of elucidating or amending the text, and he did not think that complete satisfaction could be given to the views which he supposed were entertained by these two Governments by re-drafting the text. Moreover, by modifying the text they might prejudice the interests of other States which were satisfied with the existing text, and which had undertaken to settle their differences amicably through juridical channels.

The existing text was sufficiently elastic to satisfy everybody. A change in it would accordingly not be advisable, in the first instance, because some States had already accepted it and approved of it, and these States would have to consider afresh the undertakings they had entered into if the text were altered, and secondly, because it would involve further ratifications. The Secretary-General knew how difficult it was to collect the necessary ratifications in the requisite time for an amendment being adopted. Furthermore, doubt would be cast on the competence of the Court pending the ratification of the new text, and in the interval, which might be considerable, fresh difficulties might arise. Consequently, the remedy was not to be found in Article 36, but possibly in Article 38. He thought that they were not so much concerned with the difficulties regarding the category of legal differences that could be settled by the Court as with the rules of law which were applicable for settling these differences.

The view of the British delegation had already been explained in reference to one part of the resolution, namely, that part instructing the First Committee to consider how the terms of the proposed

M. Fernandes recalled that at The Hague this text had been the cause of very serious differences between the representative of the United States, Mr. Elihu Root, and Baron Deschamps, the Chairman of the Committee. The former had proposed that the only rules the Court should recognise should be based either on treaty law or on custom. Had this idea been accepted, a whole category — and perhaps the most important category — of international questions capable of legal settlement would have remained outside the jurisdiction of the Court.

M. Fernandes recalled that at The Hague he had proposed — but his suggestion had not been followed — that, in the absence of treaty or customary law, the Court should apply the general principles of international law, as recognised by civilised nations and not repudiated, prior to the dispute, by the legal tradition of one of the litigant States. Such a formula gave the States the assurance that their disputes would not be settled by the Court in a manner opposed to their national traditions, as stated prior to the dispute. There was a considerable difference, as everyone knew, between the view of international law prevailing among different nations. How could they compel such nations to agree? Perhaps a solution might have been found by allowing them to adhere to the Court without their sovereignty being infringed.

He concluded by saying that he did not claim to have done more than throw out suggestions and take soundings, because the position was very vague. He would, therefore, be pleased to hear the declarations of the other nations’ delegates, and particularly of the representatives of the French and British Governments.

Sir Cecil Hurst (British Empire) thanked M. Fernandes for the gratitude he had expressed towards the French and British delegations, who had reached an agreement last Saturday by the resolution unanimously adopted by the Assembly. When certain nations agreed, such agreement was very gratifying to the whole League of Nations.

He recalled the speech made by M. Fernandes four years previously at Madrid. Apparently the latter was more hopeful of the great Powers now than at that time.

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Article 38 said:

"The Court shall apply:

(1) International Conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
(2) International custom, as evidence of a general practice accepted as law;
(3) The general principles of law recognised by civilised nations;
(4) Subject to the provisions of Article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

This text had not satisfied everybody. There might be principles of law which were recognised by certain civilised nations, while they were disputed by others, and then how would the Court decide regarding the application of these laws?

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of Article 36, paragraph 2, of the Statute of the Permanent Court of Justice could be more clearly defined, with a view to facilitating its more general acceptance.

The speaker recalled the words spoken on the previous Saturday by Mr. MacDonald at the Assembly, particularly when he proclaimed the need for determining what arbitration cases should be submitted to the Permanent Court of Justice, and his wish to see the competence of this body clearly defined. The British Government, Mr. MacDonald had said, wished to sign a clause of this kind, subject to its being clearly drafted; and, in spite of the short time still at the disposal of the Assembly, they must hope that this enquiry would be carried as far as possible.

The British delegate outlined the reasons why his country could not put its signature to the compulsory reference to the Court. He recalled what M. Paul-Boncour had said at the Third Committee, when he declared that the French delegation wished to lay all its cards on the table and not to pursue the old method of negotiations, holding something in reserve to bargain with at the end.

The British delegation was inspired by the same spirit.

The great problem consisted in replacing force by law. The object of the International Court of Justice was to settle disputes by international law. But for certain problems no law was applicable. For that reason Great Britain had great difficulty in accepting the compulsory jurisdiction of the Hague Court. Without being a professor of international law, one knew that there were two schools in these matters - the Anglo-Saxon and the Continental; consequently, if the subject of discussion between two States did not come under any rule of international law, to which of these two schools would the Court of Justice resort for its decision? That was a problem which would necessarily place the Court in a position of embarrassment and the litigant parties in considerable doubt. There was no field of international relations where a possible dispute resulting from that particular situation was more true than in questions of naval warfare. The Assembly was faced with the great problem of organizing security and peace. For that purpose the Members of the League were to be invited, if necessity arose, to throw into the scale, in order to support the provisions of the Covenant, all the forces at their disposal.

What might happen if a satisfactory solution were found of this great problem? It was more than likely that the principle would be adopted that a nation which possessed great sea forces might be asked to throw those forces into the scale for the support of the Covenant, and it might find itself, at the request of other Members of the League, obliged to take action which was certain to bring it into sharp conflict with the other nations of the world. War on land usually did not bring the warring nation to any great extent in conflict with the nationals of other Powers. War on sea, on the other hand, was almost certain to bring a belligerent into sharp conflict with the nationals of foreign Powers carrying on trade with the enemy State. What would be the position if Great Britain were forced in support of the Covenant to enter upon warfare at sea, and accepted this system of compulsory jurisdiction of the Court? It might find itself compelled to support before the Hague Court the legality of the action which it took at the direct request of the League itself, and at the request of other Members which had perhaps joined in similar engagements. Clearly the Government which accepted that obligation would be placed in a very difficult situation, and the problem which he was instructed to invite the Sub-Committee to explore was whether it would be possible, either by an amendment of the text of Article 36 or by the admission of a reservation (which would be regarded as a reservation not only within the terms of the actual clause M. Fernandes had read, but as one which was reasonable in itself and satisfactory to other Members), to exclude from the acceptance of that clause disputes which arose in the future out of action taken either in accordance with the Covenant or at the request or with the sanction of the Council of the League. He was not asking the Committee to take what he was saying as the final or considered expression of what it was that Great Britain wanted, but only as an indication of one of the difficulties which the British Government felt with regard to this question, in order that the whole subject might be explored with a perfectly free hand by the Sub-Committee. This was not some Machiavellian subterfuge on the part of Great Britain.

In times past there had been an idea that Great Britain was a tyrant of the seas. But what his delegation was seeking to do was to discover some method by which the great cause of organised peace and security could be advanced and to do this upon terms which should ensure that general progress was made. He had placed in the forefront the particular difficulty of sea warfare, but it must not be thought that even the acceptance of the compulsory jurisdiction of the Court for peace-time disputes would not be an enormous advance.

What, after all, was the object of the League? It was not to arrive at arrangements which should have the effect of controlling war, but rather to eliminate war altogether. If it was possible to arrange the optional clause so as to enable them to come in all peace-time disputes, it would be a contribution of great value to the matters of supreme importance which the fifth Assembly had in hand.

M. Fernandes had suggested that the method of compulsory arbitration might be effected, not by any change of the wording of the optional clause, but merely by the suppression of the provision in Article 13 which stated that these categories of disputes were generally to be submitted to arbitration. The word "generally" if cut out would lay upon all Powers the absolute obligation to arbitrate. That was, at first sight, a very attractive scheme, but in reality it might be better to proceed by amendment of that clause or by accepting the possibility of a new form of reservation rather than by any alteration of the Covenant. There was a very valuable provision at the end of Article 36 which, under the proposal of M. Fernandes, would...
be lost — namely, the provision that the Permanent Court was to be the judge of whether or not a particular case came within the clause.

He felt that he ought to say a word upon another question mentioned by M. Fernandes. M. Fernandes had said that surely it was better to proceed by way of reservation than by any alteration of the wording of the optional clause, and that many Powers had already accepted the optional clause, and their position must be safeguarded. This was profoundly true. But there was another consideration which he hoped the Sub-Committee would bear in mind. If the particular point that he (Sir Cecil Hurst) had mentioned in the earlier part of his speech was true — that it would be unreasonable to ask a Power to support before the Court the validity of action which it was taking on behalf of the League as a whole — was a sound principle that ought to be adopted, it was not inconceivable that those who had already accepted the optional clause might wish to make a similar reservation themselves. If there should be a general expression of opinion in favour of some modification of this optional clause, he hoped that the possibility of considering this matter would not be overlooked by the Sub-Committee.

In Great Britain they were perhaps more anxious than many people realised to make such contribution as they could towards the great task that the fifth Assembly had in hand, and if the Sub-Committee could help them to explore the difficulties he had indicated, he could not help thinking that within the short period which still remained for the fifth Assembly to do its work there might be an opportunity of making considerable progress on more than one important point.

M. LOUCHEUR (France) wished first of all to congratulate M. Fernandes on his speech and to express appreciation of the gratitude to France which he had voiced. He also wished to re-assure him. In drafting the resolution on arbitration, which had been unanimously adopted by the Assembly, it had been in no way the intention of the Governments of France and Great Britain to exclude the other means of peaceful settlement which were to be found in the Covenant.

The word "arbitration" had been much abused; it would be well to return to a more exact conception of its meaning. What the world demanded was that it should be rid of war. It was the duty of the First Committee to discover remedies. Such remedies were already to be found in Art. 36 of the Statute of the Permanent Court, but they were insufficient; the Committee must seek other means and submit them to the Assembly.

As had been stated by M. Paul-Boncour, the idea of arbitration was, for France, intimately bound up with the idea of security and disarmament.

Sir Cecil Hurst had made some clear remarks on Art. 36. He had advanced cogent arguments. Certain nations were frightened by some of the provisions of this article. Sir Cecil Hurst had shown what would be the task of the British Fleet, in the event of war or during the general intervention of the League of Nations, in relation to a nation which wished to go to war. He had added that it would have to do not only with Allied nations but with neutrals.

The French delegation had no cause for complaint if Great Britain were, as had been said by Sir Cecil Hurst, the "tyrant of the sea" seeing that, from 1914 to 1918, France had experienced the benefits conferred by this benevolent tyrant.

He would, like Sir Cecil Hurst, be only too glad if Article 36 could be made applicable both to peace-time and to war-time conflicts, for, if it could be made applicable to all conflicts of a juridical character, a great step forward would have been made. As for himself, he would recommend the French Government to accept Sir Cecil Hurst's suggestion, for, while seriously bearing in mind what would happen in the actual case of war, the Committee should direct its main efforts towards establishing the absolute necessity for avoiding it.

It would be preferable for Article 36 to retain its present form, but, if it was possible to lay down that the award of the Permanent Court of The Hague should be made in cases of threat of war, the Committee would have made a great step forward in the matter.

The Covenant already contained articles which provided for preventive remedies; namely, Articles 10 and 12. He was surprised that, in the course of a general discussion in the Assembly, greater stress had not been laid on Article 12. The world was under the impression that, at the present moment, there was no compulsion to have recourse to a court of law. Article 12 was extremely definite in the opposite sense.

He was not therefore one of those who proposed to abandon this procedure. In many cases it would be very important either to resort to arbitration or to go before the Council of the League of Nations, which was composed of intelligent statesmen. He would reserve the right of examining, later on, the general conditions of the procedure of examination by the Council.

Article 13 laid down the conditions in which Article 12 was to come into operation.

M. Fernandes had drawn the Assembly's attention to the importance of the word "generally". Like Sir Cecil Hurst, M. Loucheur was of opinion that it would be better to retain it, at the same time giving an interpretation of Article 36, in view of the fact that, if the Article were deleted, the process of obtaining the consent of all the nations to such deletion would entail much loss of time.

At the close of Article 13 there was an ambiguous phrase:

"In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

M. Loucheur thought that this wording was insufficient. The Sub-Committee should define more exactly the conditions under which the steps in question were to be taken.
Article 15 was one of the most important which the Committee would have to discuss. It provided for the case in which a dispute was not submitted to friendly arbitration or brought before the Hague Court. In that case, if any Member of the League notified the Secretary-General of the dispute, all the necessary arrangements would be made for a full investigation and consideration. But if the Council were not unanimous in its decision, there would be no solution, and, in many cases, the result would be war. This, M. Loucheur pointed out, was the first important omission in the Covenant. It was important that they should endeavour to remedy it. Although the question was a difficult one, there was no reason why it should not be courageously faced. As Sir Cecil Hurst had said, they should place their cards upon the table. Was it the intention of the Commission to perpetuate the position by which the Council, should one of their Members be opposed to a peaceful settlement of an important dispute, would be prevented from finding a peaceful solution such as was desired by the whole world?

He also desired to draw the attention of the Committee to the eighth paragraph of Article 15, which was worded as follows:

"If the dispute between the parties is claimed by one of them and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

There again the Council was unable to take action and had to declare that it had no jurisdiction.

M. Fernandes had suggested an ingenious solution which might again be considered, followed up and supplemented, for it was an attempt at a settlement of the problem and made it possible to get away from a situation which would lead to war if no solution were discovered. The Sub-Committee ought to consider whether paragraph 8 could not be drawn up in a less elastic form and whether it would not be possible to discover a method of friendly conciliation which might not perhaps be acceptable. M. Fernandes did not think that everything could be solved by the word "obligation", and, like him, the speaker held that all the parties ought always to come together round a table; many conflicts had been settled in that way, although the possibility of a peaceful solution had not been foreseen at the start. To get men together and bring them face to face was in itself a great step towards peace.

M. Fernandes had made soundings; and he himself had frankly stated what was in his own mind. He did not pretend to be able to propose a definite solution at present; the Covenant had been framed by very intelligent men who had devoted long sittings to it. It would be more than rash to replace the solutions adopted in the Covenant by other solutions improvised in a few minutes.

At the beginning there had been a large number of gaps. Only a few remained; if the First Committee could fill one or two of them, it would have done good work for the cause of Peace.

M. Limburg (Netherlands) said that the two speeches made on the previous Saturday by M. Herriot and Mr. MacDonald constituted favourable omens and were an encouragement to all the members of the Committee to do their share in the common work of improving the condition of human society.

The First Committee’s task was twofold: it related both to the Covenant and to Article 36, paragraph 2, of the Statute for the Permanent Court of International Justice.

As he had already said at a previous meeting, one must first of all, in order to find out whether the Covenant ought to be altered, know what objections could be brought against Article 36, paragraph 2, of the Statute, which made it possible for the Permanent Court to deal with four cases; in reply to any objections which might have been made already or which might be made in future, he would say two things.

In the first place, a State Member of the League could never argue that, as it had not adhered either to Article 36 or to any arbitration treaty, it was free to make war if occasion arose. The Covenant had made provisions for settlement in the whole domain of disputes, and, in the absence of arbitration, mediation was made possible by Articles 12 and 15 of the Covenant. The more Members restricted the disputes which were susceptible of arbitration, the more they would necessarily resort to the mediation of the Council. In any event a country which went to war was violating the Covenant.

In the second place, a clause which was wider in its scope than Article 36 had been accepted in 1907 in respect of the competence of the Prize Court. It could not be argued that the Draft Convention of the Prize Court had been opposed by Great Britain because the opposition was due to other causes and not to the formula in regard to competence.

Consequently, to abstain from signing the optional clause of Article 36 of the Statute did not result in discharging a country from all obligation but in subjected it to the mediation of the Council.

In the discussions which had taken place in the Assembly, the alpha and omega of all the speeches had been compulsory arbitration. Apart from the amendments admitted to be necessary in Article 36 of the Statute of the Court, it was necessary to make any amendments in the Covenant in order to arrive at compulsory arbitration.

Moreover, the word "arbitration" had been used in a very general sense as implying the idea of conciliation or of mediation; but compulsory arbitration in the legal sense meant the jurisdiction of the Permanent Court of International Justice, or of the Permanent Arbitration Court, or finally of a special arbitration tribunal. If it were desired to have compulsory arbitration for legal disputes and to change the optional clause of Article 36 of the Statute of the Court into a compulsory clause, Article 13 of the Covenant would have to be amended by
deleting not the word "generally" but the words "which they recognise" (to be suitable for submission to arbitration).

If these words were eliminated, the Members of the League would be forced to have recourse to arbitration for the four classes of disputes enumerated in Article 13 of the Covenant and repeated in Article 36 of the Statute.

But, it would be said, must a State Member have recourse to arbitration in respect of any dispute which it considers to be aggressive? But it was the Permanent Court and the Special Tribunal, which was to prevail? It was true that, under the terms of the last paragraph of Article 36 of the Statute, the Court itself decided whether it was competent, but, in order to meet the objection, would it not be best to repeat in Article 13 the idea contained in paragraph 8 of Article 15 of the Covenant?

In the end, the Court would always decide the matter, but Members would be protected from legal aggression of too speculative a character.

It was by means of amendments of this kind that compulsory arbitration could be brought within the provisions of the Covenant. There were, however, still certain observations to make.

In the first place, if the Sub-Committee put forward proposals of this kind, it would also have to advise the Committee as to certain questions of transitional law: what would be the relations between existing arbitration treaties and the future system of compulsory arbitration? That question must be raised, because Article 1 of the Statute of the Court left existing arbitration treaties untouched. As between the Court of Arbitration, the Permanent Court and the Special Tribunal, which was to prevail? Was it necessary to consider whether the special arbitration was the designated court in an optional or in an imperative manner? That question was not purely academic: there were cases in which an arbitration treaty gave an enumeration of disputes to be submitted to the arbitrators which was less wide than the enumeration contained in Article 13 of the Covenant and Article 36 of the Statute.

Secondly, he would draw the Committee's attention to Lord Parmoor's speech on the previous day in the Third Committee. The British representative had distinguished between three kinds of disputes. He himself did not clearly appreciate the difference between the first and second categories, but he thought it would be desirable for the Sub-Committee to get into touch with the Third Committee.

Contact would also be desirable from another point of view: according to what Mr. Mac-Donald had said, the party who refused to accept arbitration was the aggressor; that was what might legally be called "constructive aggression".

But was the development of that idea compatible with the more or less legal war which Article 15 of the Covenant appeared not to prohibit in cases in which a dispute, after being submitted to the Council, had led to the adoption of a report by a majority vote only?

It would be a noble aspiration to try to eliminate from the Covenant itself this so-called legal war. When that aim had been achieved, it could be stated in the Covenant in all sincerity that a war of aggression was an international crime, and no modification, such as the Committee of Jurists' amendment to Article 1 of the Treaty of Mutual Assistance, would be necessary.

But that was a matter for the Third Committee, inasmuch as to rid the Covenant of legal warfare in those cases — it was to be hoped exceptional — provided for in paragraph 7 of Article 15 was to remove an obstacle in the way of the reduction of armaments.

In conclusion, he said that the reason why he had risen was to give proof of the friendly and sincere intention of the Netherlands delegation to collaborate in a great and common task. Recalling the words of Alfred de Musset: "Projet de bonheur, vous êtes peut-être le seul bonheur véritable ici-bas", he said that the Committee could prove that the great poet, even if he was right in speaking of individuals, was wrong in speaking of peoples. The destiny of peoples was in the hands of the League of Nations, and the League could contribute to their happiness. If it succeeded, history would record that at the fifth Assembly of the League of Nations the conscience of mankind had made itself felt.

M. Rolin (Belgium) called attention to the peculiar circumstances which had given rise to the discussion and recalled the fact that it was at the moment when Governments had come to discuss the Draft Treaty of Mutual Assistance that it had been pointed out with emphasis how vague was the definition of war of aggression contained in the first article of the Draft Treaty. This definition had given rise to two kinds of criticism: one in military circles, which endeavoured to do away in practice with the distinction between acts of aggression and threats of aggression.

M. Rolin said that he was unable to agree with the memorandum containing this view put forward by the Permanent Advisory Commission which, by authorising a State which had only been threatened to take the initiative in any military action, would upset the system laid down by the Covenant. Further, the Jurists Committee, of which he had been a member, had pointed out on its side that the moral element in aggression appeared to be quite undefinable, and had therefore recommended a return to the Covenant.

In point of fact, the great movement which became obvious during the course of the general discussion advocating that a war of aggression should be defined as a war carried on by a State which refused arbitration was already to a great extent given satisfaction by the terms of the Covenant. What was being discovered was, therefore, America — the America of President Wilson, the America of the Covenant. At the moment two reforms were nevertheless proposed, the first consisted in making compulsory the jurisdiction of the Permanent Court or of another judicial body in the case of all disputes of a legal nature.

M. Rolin joyfully welcomed this progress. It was sufficient to recall the proposal of the First Committee of Jurists and the efforts made by M. de Lapradelle and M. Fernandes towards
obtaining their adoption in order to realise how much this progress, which was almost revo-
lutionary in character, would be appreciated in legal circles throughout the world.

The observations made by Sir Cecil Hurst were of two kinds: one of a special, the other
of a general, character. Sir Cecil Hurst had laid before the Committee, with complete
frankness, the difficulty in which the British Empire found itself. He had taken as an example a case in
which the British Empire would have to undertake military action and to commit acts of sea-
warfare on behalf of the League of Nations.

M. Rolin did not think that acceptance of the compulsory jurisdiction of the Court in this
case would give rise to so many difficulties. In cases involving another Member of the League
which had accepted the compulsory jurisdiction of the Permanent Court of International Justice,
that jurisdiction would not cause any difficulties to arise from the point of view of the extent
of efficacy of any military action undertaken by the League of Nations.

On the other hand, in cases involving other Powers which had not adhered to the
compulsory jurisdiction clause, the condition laid down by the British Empire that reciprocity must
accompany its adhesion would guarantee it, in his view, against any unfair interpretation which
might be given to that adhesion.

Without wishing to lay emphasis on this point he recalled the fact that Sir Cecil Hurst
had put forward in support of his first argument a general observation concerning the impossibil-
ity of adhering to the Court to pronounce judgment in certain cases, in view of the absence of any
universally recognised legal rules. This last objection seemed to him to extend somewhat the
scope of the disputes which provisionally would seem to be of such a nature as to be withdrawn
from the jurisdiction of the Permanent Court of International Justice.

The observations made by Sir Cecil Hurst were, on the one hand, written law, and, on the other hand, law
which was described in textbooks as positive law but which was not a written law but a tradi-
tional law variously interpreted.

He said that each time he had been consulted by his Government as to whether it should
accept the compulsory jurisdiction of the Permanent Court of International Justice, while
he had with all the force in his power pressed for the adoption of paragraphs (a), (c) and
(d) of Article 36—that was to say, for the paragraphs concerning the interpretation of the
written treaties of international law, the existence of breach of international obligations and the
assessment of reparations to be made—he had, on the other hand, always been on his guard
against the difficulty which would arise if any dispute concerning any point of international
law were submitted to the Permanent Court of International Justice for the reason that the
bona fide conception that a State might have of unwritten international law might be broader
or narrower than the conception of another State with which it was engaged in a dispute.

In the question of maritime seizures mentioned by Sir Cecil Hurst, the Committee was
not faced with a written law accepted by the Powers in the form of a treaty, and in these cir-
cumstances, if the British Empire came to the same conclusion as the Belgian Government in
regard to excluding paragraph (b) from its acceptance of the jurisdiction of the Permanent Court
of International Justice, it would have disposed of the very difficulty which might have caused
it to hesitate. This restriction would lose in importance year by year. The field of international
regime treaty law was continually broadening.

A sub-committee had indeed again agreed upon the broad lines of a proposal the very
object of which was to extend, in the form of agreements, the codification in writing of all
that was still entrusted, in the vast province of international law, to tradition and juridical
science.

The efforts of the League of Nations might be directed along parallel lines to this constant
progress of written law and also to upholding the jurisdiction of the Permanent Court of Inter-
national Justice in all matters concerning written law.

He thought, however, that it would be going too far to follow the proposal of the lawyers
who had drawn up statutes with a view to extending the competence of the Court even to
unwritten law.

As regarded procedure, it would, for the same practical reason, be preferable to urge the
signature of the protocol rather than amendments to the Covenant.

The protocol, for the drafting of which all credit was due to M. Fernandes, was remarkable
for its elasticity, since it made it possible for all States to select any class of disputes which
seemed to them ripe to form the subject of international jurisdiction.

This very elastic instrument must be preserved if it was hoped to obtain results which
could only come from the adherence of many of the States Members of the League.

In the case of an amendment to the Covenant, however large the number of those ratify-
ing it, there would be a risk of one Member of the Council indefinitely postponing ratification
and thereby delaying the entry into force of a reform regarded as essential.

For these two reasons, he was strongly in favour of retaining the Protocol, and he requested
his British colleagues to consider whether, in this form, their Government could not adhere to
the Statute of the Permanent Court of International Justice, on the understanding that, as
the Belgian Prime Minister had declared, the ratification by the Belgian Government would
follow without delay.

The question raised by M. Loucheur was infinitely more difficult to settle. It was a
question of mediation, which was treated in the Covenant with a certain caution. It provided
for a sanction in one case, and that was in the event of the Council being unanimous, and yet
this sanction consisted only in Members of the League undertaking not to resort to war
against a party which conformed to the conclusions of the report. That was a negative
sanction, and not that positive sanction met with in Article 13 and which M. Loucheur found
already inadequate, at least in its existing form.

A double omission had occurred and was certainly regrettable.
It was proposed to go still further, and he did not wish to discourage that effort. He was not sure, however, if States would at present be in favour of allowing the Council to decide by a majority vote; for that was the only way in which it would be sure of reaching an agreement.

In some quarters, as he knew, it was supposed that, if the Council did not reach a unanimous decision, it would refer the question to another body — an arbitration tribunal or the Court of Justice.

In that case, however, another difficulty would arise. Above the Council, which was a political body, there would be another body competent to settle the question or to attempt to find a solution for disputes which could have no solution in positive law, but for which a solution must be found for the sake of world peace. Such a body would be lacking, it appeared, both in competence and power.

In conclusion, he hoped that he had explained the difficulties of the question, which were very serious. His object in doing so was to give his colleagues food for reflection, and he hoped that some of them would be able to produce an acceptable solution at one of their next meetings.

M. Unden (Sweden) said he merely wished to make a few remarks on Article 36 of the Statute of the Permanent Court.

He agreed with M. Rolin as to the necessity of securing the "precision" mentioned in the Assembly resolution.

The drafting of the optional clause of Article 36 was not perfect, but there would be serious difficulties in amending the Covenant. The procedure for amendment was complicated, particularly as many States had already adhered to the optional clause in its present form and had undertaken to submit to the ruling of the Court in regard to the disputes mentioned in Article 36.

Moreover, that article was in harmony with Article 13 of the Covenant, and it was desirable that this connection between the Statute and the Covenant should be preserved.

In any case, the object of the resolution could be secured without any amendment. As M. Rolin had said, the clause in Article 36 was very elastic. Every country could make it, therefore, as precise as it wished without actually changing the form of the clause.

Thus, the Netherlands Government, when it adhered to the clause, had limited its application to any future disputes for which no form of peaceful settlement was provided.

Furthermore, any two States which had signed the optional clause could, nevertheless, agree upon another tribunal.

The jurisdiction of the Court of Justice must not be too restricted. On this point, therefore, he agreed with M. Limburg.

With reference to Sir Cecil Hurst's objections, it was doubtful whether they were decisive. Sir Cecil had quoted the case of a State Member of the League of Nations resorting to war at the request of the Council. That would be a war in which, according to the Covenant, no Member of the League could be neutral. In such a case the question of the rights of neutrals did not arise as affecting the other Members of League, but only as affecting States which were not Members.

The difficulty might, therefore, be removed by adhesion to the optional clause, such adhesion to apply only in relation to the States Members of the League.

If there was any doubt as to the interpretation of Article 36, the Sub-Committee could make an interpretative statement to remove that doubt. If, however, the sole difficulties consisted in the position in which certain States were placed, he thought there was no need to make Article 36 more precise; what was wanted was to find a formula for declarations of adhesion.

The Chairman declared the discussion closed.

On his proposal, the Committee decided to appoint M. Limburg and M. Unden as additional members of the Sub-Committee dealing with the article of the Covenant and the Statute of the Court.

M. Loucheur was appointed to the Sub-Committee for amending the rules of procedure of the Assembly.
FIFTH MEETING

Held on Tuesday, September 23rd, 1924, at 3.30 p.m.

Sir Littleton E. Groom in the Chair.

17. — Arbitration (Draft Protocol) : Discussion of the Fifth Sub-Committee's Report.

The CHAIRMAN invited M. Adatci, Chairman of the Fifth Sub-Committee, and M. Politis, Rapporteur, to take their places as members on the Bureau of the Committee.

M. ADATCI (Chairman of the Sub-Committee) stated that, in the course of eleven arduous meetings, the Fifth Sub-Committee had examined the programme with which it had been entrusted, with the desire to establish a general system of arbitration. He regretted that, in consequence of his numerous duties, he had not himself been able to present the Sub-Committee's report, which had been entrusted to M. Politis.

Moreover, in consequence of difficulties of communication between Japan and Europe, he had received no instructions from his Government in regard to the Arbitration Protocol, and he was, accordingly, obliged to make reservations on all the parts of the draft. If he had often expressed his views on the Sub-Committee, he had accordingly done so in all cases in his private capacity. If he was called upon to speak in the course of the discussion, it would again be in a private capacity. He much regretted to have to do so, but he would devote all his efforts to prepare a draft which might be accepted by all Governments.

M. POLITIS (Greece) on behalf of the Fifth Sub-Committee, gave an account of its work. Its instructions had been laid down in the Assembly resolution of September 6th — namely, first, to consider, with a view to possible amendments, the articles in the Covenant relating to the pacific settlement of disputes, thus strengthening the solidarity and the security of the nations, and, secondly, to examine within what limits the terms of Article 36, paragraph 2, of the Statute establishing the Court of Justice might be rendered more precise and thereby facilitate the adhesion of the States to the Optional Protocol.

These two questions formed the first part of the extensive programme arising out of the speeches of the Prime Ministers before the Assembly — that was to say, arbitration, security and disarmament. The first subject — arbitration — covering the two questions defined in the resolution, came more specially within the scope of the First Committee's work, and had been referred to the Fifth Sub-Committee, but as the three terms represented one indivisible problem, and as the last two — security and disarmament — had been referred to the Third Committee for examination, these two Committees of the Assembly had got into touch. With a view to arranging the work, a delegation of the Fifth Sub-Committee had met together with a delegation of the competent Sub-Committee of the Third Committee.

The Sub-Committee was, therefore, only submitting to-day a portion of the whole work, and was submitting, moreover, certain texts only, the remainder not having yet been drafted. In the document which had just been circulated (Annex 6) there were seven articles, of which the penultimate one was left blank, since the definitive text had not yet been completed. In addition to these seven articles, others were to be drafted, notably the preamble to the Protocol and the resolutions which would be submitted to the Assembly in regard to the application of the Protocol.

Finally, there remained for revision, in agreement with the Third Committee, an Article 16 in regard to the entry into force of the Protocol, which had a legal aspect in addition to its political importance.

It should be noted that the texts submitted to the Committee were of a strictly provisional character. They were preliminary drafts, which would not become definitive until they were approved by the Assembly. Public opinion must make no mistake in the matter.

As regards the character of the system adopted by the Fifth Sub-Committee, its general features might be summarised as follows: it was the task of the Sub-Committee to draft texts for the emendation, within the meaning of the resolution of September 6th, of certain Articles of the Covenant, and, further, to define more precisely the terms of Article 36, paragraph 2, of the Statute of the Court of Justice, so as to facilitate its acceptance by the States.

The object was to close the circle which the Covenant had already drawn around the peace of the world, in such a way that there might be no opening for war. The Covenant did not completely close the circle. Limits had no doubt been set to the hitherto unrestricted right of a State to make war, but there remained many cases in which war was permitted, or at least tolerated.

The Sub-Committee's duty was to prevent, in future, all offensive wars undertaken by a single State in its own interests; such was the fundamental principle laid down at the beginning of the draft Protocol. Article 2 formulated this principle. It declared that no war was henceforward possible as between States adhering to the Protocol. The draft did not, however, go so far as to abolish the right of legitimate defence, nor did it prevent the normal action of the institutions of the League of Nations — namely, the employment of force in the name of the League or in agreement with the organs of the League.
But this general principle of the prohibition of offensive war could only be admitted if the pacific procedure by means of which it was hoped to arrive at a settlement of all disputes were enforced without distinction. This was the principle embodied in Article 4.

Article 4 completed a certain number of the paragraphs of Article 15 of the Covenant; under the terms of Articles 12 and 13 of the Covenant there was a general obligation to submit to arbitration when the dispute was suitable for such a course. But if the dispute could not be referred to an agreement, or were not obliged to submit to arbitration or to the Court of International Justice, they were obliged to bring the question before the Council. The Council would then examine the matter and endeavour to reconcile the parties. If the Council failed to do so, it would draw up a report which, if adopted unanimously, would have a certain value. But if it did not secure unanimity, the problem would remain unsettled. This was the chief gap in Article 15.

The system proposed by the Sub-Committee represented a step forward in compulsory arbitration. Under the terms of Article 3 of the draft, the States would undertake, within the month following the entry into force of the Protocol, to subscribe to the obligation laid down in Article 36 of the Statute of the Court.

Its terms were sufficiently elastic to allow of every State adhering with such reservations as it might consider necessary for safeguarding its material interests. Such was the idea embodied in Article 3.

If the cases were not one in which the judicial obligations were applicable, or if the parties were not in agreement with regard to resorting compulsorily to arbitration, the case would, under the terms of Article 15 of the Covenant, come before the Council, which would endeavour to reconcile the parties. In this respect no change in the texts had been made. But if the Council's efforts failed, if no reconciliation were effected, then recourse would be had to a procedure which might, at first sight, appear complicated, but which was in accordance with the strictest principles of logic, and conceived in the most practical spirit.

Under Article 4 of the draft, the Council might make a final appeal to the common sense and goodwill of the parties. It would call upon them once more to submit to arbitration. If the parties accepted this invitation, and came to an agreement in regard to the choice of arbitrators, the matter would develop along absolutely peaceful lines, and there would be no further occasion to be concerned with it.

But if the parties did not agree, or if only one of them desired arbitration, the Council would then have the right to constitute an arbitration committee, which would have compulsory jurisdiction in this dispute.

How should the Council constitute this Committee? The question was an extremely delicate one. On the one hand, assurances must be given to the States concerned, and, on the other hand, there must not be too much hampering of the action of the Council, in which confidence should be placed. Certain precautions had been taken and certain general indications given. But in the spirit of the proposed text, the Council should draw up detailed regulations for putting into effect the first system — namely, that of compulsory arbitration at the request of one only of the parties.

If arbitration were to follow these lines, the case, once more, would be settled in a peaceful manner by a definitive award with binding force.

But, if none of the parties asked for arbitration, the Council, in order to find a way out of the difficulty, would take the matter into its hands. It would endeavour to find a solution, and, if it were unanimous, it would embody that solution in a report which would become binding upon the parties.

This represented a slight innovation in the system established by the Covenant. In view of the preliminary procedure, the Sub-Committee had given a compulsory character to a unanimous decision by the Council. If the parties, having been called upon by the Council to submit to arbitration, had refused to do so, they would be assumed thereby to have consented to bringing the dispute before the Council for definitive settlement. Refusal of arbitration by the parties would imply their anticipated acceptance of the Council's decision.

If the Council arrived at a unanimous solution, this would be binding, and the dispute would be at an end. But if the decision were not unanimous, a further difficulty would have to be faced. In order to be of any value, it was decided that an obligation should be placed on the Council to arrange for compulsory arbitration. It would have the widest latitude in this respect, for it would be assumed that the parties had full confidence in its decision. The Council, being bound by no definite regulations in organising this final appeal court of arbitration, could constitute a committee of arbitrators, and would thus easily reach a decision.

Whether, therefore, it were by means of a free choice by the parties, or by virtue of an undertaking to which the parties had bound themselves in adhering to Article 36, or through arbitration at the request of a single one of the parties, or in virtue of a unanimous decision of the Council, or by means of compulsory arbitration, there would in all cases, whatever might be the nature or the gravity of the dispute, be a decision with binding force.

Penalties were necessarily attached to the idea of an executory decision binding upon both parties. It was well known that the principal objection to compulsory arbitration was the fear that the losing party would not carry out the award. With a view to obviating this danger, a whole series of penalties had been laid down. Provision had been made for the case of resistance by the party which was condemned and which did not carry out the decision. That was the case of passive resistance — i.e. when the party merely did not comply with the terms of the award but did not have recourse to any act of violence. In the draft it was proposed that in such a case the Council should exert all the methods of peaceful persuasion which were at its disposal, with a view to securing the compliance of the recalcitrant party, and that it should bear in mind that, if these methods were not sufficient, the provisions at the end of
Article 13 of the Covenant gave it power to take certain steps to ensure respect for the decision which had been given.

The draft was, therefore, in entire conformity with the terms of the Covenant.

If the losing party, instead of offering passive resistance, assumed a defiant attitude, openly resisted, took up arms and declared war, that would be precisely the case provided for in Article 16 of the Covenant, and the sanctions specified in that article would immediately come into play.

There, in a few words, was the system. If it were to be practicable, if it were to have the elasticity necessary to render it adaptable to the requirements of everyday life, if it were not to stir up war in its efforts to maintain peace, it was bound to take account of certain exceptions.

In the first place, the decision taken previously by a unanimous vote of the Council could not be called in question. There would, indeed, never be any feeling of security if decisions once taken could be reversed.

The second exception was provided for in paragraph 7 of Article 4, which referred to the case of a dispute arising in consequence of measures of war taken by any country in agreement with the Council or the Assembly. In that case, it was inadmissible that the freedom of action of any such country a Member of the League of Nations and a signatory of the Protocol should be hampered by insisting on its complying with the procedure previously described.

Other exceptions had also been mentioned, as, for instance, a dispute bearing upon the revision of a treaty in force. But it had been stated in the reply that, in that event, no text was needed authorising the foregoing procedure, for the case came within the scope of Article 19 of the Covenant. When the execution of a treaty was causing grave uneasiness in the international community, it was the Assembly, and the Assembly alone, which was competent to invite the parties concerned to consider how far it might be advisable to revise the treaty. That was not a dispute of the same nature as those they had in view, and it was clear that the procedure just described could not be applied in that case.

A reservation of a different nature was necessary; it was a matter of course, but it had been specified in order to draw a kind of parallel between this reservation and an article of the Covenant.

If a dispute brought before the Council was claimed by one of the parties, and was found by the Council, to arise out of a matter which was solely within the domestic jurisdiction of that party, then, by virtue of paragraph 8 of Article 15 of the Covenant, the matter went no further. It was considered that the other party would be violating its international engagements if it resorted to war in order to compel its opponent to renounce its claims to domestic jurisdiction.

It was fully realised that arbitrators might find themselves in a similar situation in one of the many applications of the principle of arbitration, and it was perfectly natural to introduce into the domain of arbitration the provisions of Article 15, paragraph 8, which were applicable in the case of proceedings before the Council. Accordingly, if, in the course of arbitration proceedings, one of the parties claimed that the question was exclusively within its competence, the arbitrators would merely have to record that fact, and their award would represent for the successful party a finding which the other party would be forbidden to oppose. But, as the legal question thus raised might be so delicate that it would have to be investigated by a recognised court, there had been provided that application might be made to the Permanent Court of International Justice for an opinion.

Those were all the exceptions and reservations which went to complete the system, but there was, however, a final matter which had to be taken into account.

Article 17 of the Covenant provided for the case of a dispute arising between a Member of the League and a State which was not a Member of the League. The same case would have to be considered if a dispute arose between a State which had signed the Protocol and another State outside the League and not adhering to the Protocol. What would be the position ?

It had seemed quite reasonable and logical to transfer to the new procedure the ways and means specified in Article 17: the non-signatory State would be invited to accept the procedure described in Article 4 of the draft. If it signified its acceptance, the procedure would be carried through as if that State were a contracting party and a signatory of the Protocol. If, on the other hand, the non-signatory State was unwilling to accept the procedure and made a declaration of war, then, in accordance with Article 17, sanctions would be applied as provided in Article 16 of the Covenant.

In accordance with the recommendation of the Assembly in its resolution dated September 6th, those various texts, with the exception of that providing for compulsory adhesion within a certain period after coming into force of the Protocol to Article 36 of the Statute of the Court, must ultimately be converted into amendments of the relevant articles of the Covenant.

The first article of the draft declared that the States signing the Protocol would undertake to make every effort to secure the introduction into the Covenant of amendments on the lines of the provisions analysed above. It had provided that, in a resolution to be submitted to the Assembly, the Council would be requested to form a committee of experts, whose task it would be to determine, for submission to a subsequent Assembly for consideration and approval, the exact wording of the amendments to be drafted in accordance with the provisions previously described.

Such was the character of the texts submitted to the Committee. They contained practical and effective solutions fulfilling the purpose referred to in the resolution of September 6th, and, therefore, they deserved the approval of the Committee and the acceptance of the Assembly.
M. LOUCHEUR (France) pointed out the difficulties of the work submitted to the Sub-Committee; he expressed his gratitude to the Chairman, M. Adatci, and to the Rapporteur, M. Politis, for their success in finding a solution for such a difficult problem.

He requested the Committee to be indulgent in regard to the texts submitted to it and asked them, when making their criticisms, not to forget it was easier to destroy than to build up. There was room for criticism, for example, in the composition of the committee of arbitrators. But they should bear in mind that the Sub-Committee had investigated one after the other the numerous proposals made to it and they must consider at the same time that, though that text established compulsory arbitration, the logical outcome would be that in future there would be few instances of compulsory arbitration; in point of fact, nations, knowing that there was compulsory arbitration in the last resort, would almost always rely on the wisdom of the Council or on friendly arbitration.

The work in which France, in agreement with Great Britain, had asked the Members to join was the greatest work that had ever been accomplished; there was no example comparable to it in history, and he therefore hoped that the Committee would approve the work done by the Sub-Committee in the same way as he himself approved it on behalf of his delegation.

M. SCIALOJA (Italy) praised the work of the Sub-Committee. There might, he said, be faults in the Protocol, but it would ensure peace at the present juncture. He brought out its psychological value, which would make the Protocol a means of educating not only the signatories but also the whole world, because by it the spirit and soul of the nations were prepared for peace and the love of humanity. They could not disguise the fact that the world was not governed by law alone; there were standards set up by history and humanity in the past that ranked higher than the law itself. Now that the League of Nations had taken this great step forward it should also concern itself seriously with those social, and even physical, forces that might give rise to great movements that would alter law itself. He referred to the great democratic and economic needs, to the great problems of emigration and raw material that might change the existing state of affairs. In the Covenant there were provisions showing that its authors, of which he was proud to be one, had, even as far back as 1919, seriously concerned themselves with the existence of these great historical forces, but the Covenant did not furnish them with the information that was essential if they were to understand the historical evolution of the institutions of the League of Nations. If the League adopted the proposal that was submitted to it, a great step forward would have been taken. It was only a first step, but its significance should be pondered over; it was of great importance.

Sir Cecil Hurst (British Empire) wished to associate himself fully with the words of gratitude that M. Loucheur had addressed to the Chairman and the Rapporteur of the Sub-Committee for the work done. If the text submitted was not yet complete, it was because it was easier for great statesmen to make speeches and lay down general principles than for lawyers sitting at a round table to hit upon the exact text that would give expression to those general principles. He therefore hoped that the very arduous task of the Sub-Committee would have the support of all the members of the Committee.

The CHAIRMAN said he was sure he spoke for all the members of the Committee in expressing thanks to M. Adatci and M. Politis and to the members of the Sub-Committee for the great spirit of conciliation they had shown and the services they had rendered.

Sir James Allen (New Zealand) reminded the Committee that, as a delegate of the League of Nations since its foundation, he could bear witness that no sub-committee had ever had such an important task to carry out in such difficult circumstances. He wished to associate himself very specially with the thanks expressed to M. Adatci and M. Politis.

The text drafted on the lines of the discussions of the Sub-Committee would certainly be very carefully considered; the question of procedure should be examined again and perhaps some amendments introduced. The definition of the aggressor was a very difficult problem that should be solved in a manner which he hoped would be acceptable to everyone.

SIXTH MEETING

Held on Wednesday, September 24th, 1924, at 3.30 p.m.

Sir Littleton E. Groom in the Chair.


The CHAIRMAN proposed that, as Sir Edgar Walton had suggested, the draft should be discussed article by article, the debate on the draft as a whole being postponed to another meeting.

This proposal was adopted.
M. POLITIS (Greece) (Rapporteur) said that the Sub-Committee was able to submit the following new texts to the Committee: Article 6 dealing with aggression; a preliminary draft of the Preamble to the Protocol; and a draft resolution for submission to the Assembly.

The Sub-Committee's first idea had been that the Council, as the body best qualified for the purpose, should be left to decide whether aggression had taken place and which State was the aggressor. Then, however, an apparently almost insurmountable difficulty had at once arisen. If the Council was to decide whether aggression had taken place, by what procedure was it to decide? Was unanimity to be required or would a majority vote be sufficient? When closely scrutinised, both these solutions were inadequate.

The rule of unanimity was unacceptable for the country attacked, which would expect the promised protection but might see the guarantees to which it was entitled vanish away if one member of the Council refused, out of hesitation, or even treacherously, to allow that unanimity to be obtained which was essential for the purpose of deciding whether aggression had taken place.

On the other hand, the majority system was equally unacceptable to countries called upon to assist in the taking of collective sanctions by the League if they were not themselves certain that that country, which other countries proposed to call the aggressor, actually was so.

Faced by this dilemma, the Sub-Committee could do nothing but attempt to find an automatic system whereby it would be possible in the majority of cases, including the most serious, to decide which State was the aggressor without the necessity of seeking a pronounce-

The Sub-Committee thought that it had found a solution in the idea — which was perfectly simple but had taken a good deal of finding — that in certain cases there was a presumption of aggression, and that this presumption was so strong that it must hold good until proof to the contrary was forthcoming in a decision of the Council.

1 Article 10 of the Final Protocol.
There were two kinds of cases in which this presumption might arise: first, when the State which resorted to war had refused to accept arbitration or the decision following upon the peaceful procedure; and, secondly, when it had violated the provisional measures enjoined by the Council during or immediately before a peaceful procedure. That was how it was put in the Third Committee's text: immediately before a peaceful procedure when the threat of war was already in sight.

In these two classes of case, though there was no absolute certainty that the State which had resorted to war was the aggressor, there was a very strong probability which could be taken as virtually equivalent to certainty.

It must be taken as equivalent to certainty until the contrary had been proved by an unanimous decision of the Council. Thus the terms of the problem were transposed: the presumption preceded the Council's decision and furnished the automatic solution which the Sub-Committee had reached after protracted and laborious meetings.

When the case was not one in which the presumption arose, consideration and decision by the Council was the best that could be done. If the Council were unanimous, there was no difficulty. If not, however, a fresh difficulty arose. The Sub-Committee had outflanked it by suggesting that in this case the Council should impose an armistice on the belligerents. Any belligerent which violated the measure thus prescribed by the Council would automatically be deemed to be the aggressor.

The system accordingly was complete. It was as automatic as it could be. Once aggression was established presumptively, or by the unanimous decision of the Council, or by the violation of the armistice or suspension of hostilities prescribed by the Council, all that would have to be done would be to bring the sanctions into operation. The obligations of the guarantor States would come into play, and the Council's only remaining duty would be to remind the States of these obligations, viz: that they should as far as possible, and by the methods indicated in the other articles of the Protocol, assist in the application of the sanctions which they had all accepted.

In reminding the States of the obligations, the Council would only be performing an act of formal procedure and it could decide by a majority vote. The Sub-Committee's draft, whereby the Council would enjoin the parties to suspend hostilities, also required no more than a majority, but it was a special majority—a two-thirds majority.

Such was the mechanism of Article 6, which was the outcome of protracted discussion and much cogitation. If approved by the Committee, it would become an effective instrument which would be the best sanction and the best guarantee for the Covenant and the Protocol.

The CHAIRMAN put to the vote a proposal that the discussion on the preamble to the draft should be postponed.

The proposal was adopted.

The CHAIRMAN said that the Committee would now proceed to discuss each article separately.

**Article 1.**

M. Osusky (Czechoslovakia) said that he did not see the point of paragraph 1 of the first article. He thought that the paragraph in question was likely to raise various difficulties. By declaring that States pledged themselves to amend the Covenant, it appeared to subordinate the Covenant to the Protocol—a very dangerous procedure.

M. Politis (Greece) replied that the Sub-Committee had sought to conform to the Assembly's instructions. By the resolution of September 6th, the First Committee had been instructed to draft texts which were ultimately to become amendments to the Covenant. There were therefore to be two phases: first, the texts would become binding upon States which signed and ratified the Protocol; secondly, they would supply material for amendments to the Covenant which would subsequently, in accordance with Article 26 of the Covenant, be examined and adopted by the Assembly and then submitted to the States for final approval. That being so, there need be no fear of any divergence between the Protocol and the Covenant.

Sir James Allen (New Zealand) stated that he would not vote for Article 1, because he could not accept an article which contained allusions to other articles not yet dealt with by the Committee.

The CHAIRMAN pointed out that a final vote would be taken on the Protocol as a whole and that the delegate of New Zealand might then reconsider his present vote.

M. de Palacios (Spain) was also of the opinion that as that particular article was to be voted subject to the possibility of a general rearrangement, it would be better to begin by examining the following articles.

M. Burckhardt (Switzerland) shared the fears expressed by the New Zealand and Spanish delegates. He therefore suggested that no vote should be taken on the first article until the other articles had been discussed.
He pointed out at the same time that a number of articles in the Protocol would have to be embodied in the Covenant, and he wished to know whether the Protocol would lapse when these articles had been embodied in the Covenant.

M. Politis (Greece) replied that these articles would be deleted from the Protocol but that the Protocol itself would remain.

The Chairman suggested that, in view of the objections raised, the first article should be held over.

This proposal was adopted.

Article 2.

M. Limburg (Netherlands) moved the following amendment to Article 2. For the words “to resort to war” in line 2, he wished to substitute the words “to resort to force”.

He brought forward three arguments in favour of this change. The first involved psychological considerations. The French and British Prime Ministers had come to the platform of the Assembly to declare for the outlawry of war. That being so, it should not be stated in the article that war was prohibited except in certain cases, for then some nations, taking the text too literally, might imagine that in certain cases war was permissible. If there was to be no more war, it must be eliminated completely.

Secondly, M. Louis Renault, in 1907, had introduced that wording “resort to force” in the text of the first article of the scheme for the settlement of international disputes which had been submitted at the Second Peace Conference. That was a precedent which the Committee might well follow.

Lastly, in the first paragraph of Article 6, there was a reference to a State resorting to war, and, in its second paragraph, there was a mention of the opening of hostilities. The combination of these two expressions gave rise to a difficulty which would be eliminated if the Committee adopted his amendment.

The Netherlands delegate concluded his remarks by strongly urging the adoption of his amendment, which was entirely in keeping with the spirit and the letter of the Protocol.

M. Adatci (Japan) pointed out that, for reasons which he had stated at the previous meeting, he could not deputise for M. Politis, who had to take the chair at a meeting of the Third Committee. He proposed that M. Loucheur should be authorised to perform the duties of Rapporteur.

The proposal was adopted.

M. Loucheur (Rapporteur), replying to M. Limburg, said that the Sub-Committee had used the words “to resort to war” because they were the actual terms of the Covenant in Articles 13, 15 and 16. Moreover, a State might well declare war without resorting to force, and that would represent a further contingency which deserved careful consideration.

M. Chagas (Portugal) submitted an amendment on the same lines as that proposed by M. Limburg. He saw the significance of M. Loucheur’s reply, but at the same time he appreciated the value of the objections raised by the delegate of the Netherlands.

The principle laid down in the first part of Article 2 was so important that it deserved a phrase to itself. He suggested the following wording:

“The undersigned agree in no case to resort to war either with one another or against a State which, on the occasion arising, accepts any of the obligations hereinafter set out.”

The second part of Article 2 should then read:

“They will be authorised to resort to force in the case . . . . . . . .” etc.

That would mean the retention of the word “war” in Article 2 and at the same time the introduction of the word “force” in its appropriate place.

M. Loefgren (Sweden) supported M. Limburg’s amendment. In any case, he would like the report to specify the case of a State taking violent action against another State which offered no resistance. He reminded the Committee that a proposal of that kind had been submitted to the Third Committee.

M. Fernandes (Brazil) considered that it would be dangerous to make any reference to force, because then the whole article containing the definition of the aggressor would have to be reworded. That would be going too far, and States Members of the League might then think twice before signing the Protocol, for force was sometimes justified for legitimate defence.

The Committee could not claim to be able to solve in a few minutes problems of international law which were well worthy of prolonged discussion. It was true that the question arose whether the right of reprisals and sequestration should be abolished. The States represented on the Committee were not prepared to settle such grave questions.

He would only quote one example to show that difficulties would be caused by the adoption of M. Limburg’s amendment. Suppose a State, in order to protect itself against an epidemic in some particular country, were to close its harbours to the ships of that country, and then a warship disregarded this prohibition and was fired upon. That would surely be an act of force against the State to which the warship belonged. But the State which committed that act could hardly await an arbitral decision without exposing its nationals, in the meantime, to the dangers of infection.

Accordingly, in Article 2 it was actually a case of providing for the prohibition of “war”. 
M. Loucheur (France) (Rapporteur) stated that the Sub-Committee had taken great care not to depart from the wording of the Covenant. If M. Limburg's amendment were adopted, there would be an appreciable difference of wording. After all, the authors of the Covenant had surely considered the question, particularly with regard to Article 16.

Many States which had accepted the obligations of the Covenant might hesitate to ratify the Protocol if it were modified according to the suggestions of the Netherlands delegate. M. Chagas' amendment was inconvenient in that it would establish in the article in question two different terms for one idea.

Finally, M. Loucheur insisted that it was necessary to state quite definitely that States should not be permitted "to resort to war".

M. Limburg (Netherlands) took exception to M. Loucheur's last words, which might seem to imply that the Netherlands delegation cared less for peace than the other delegations. On the contrary, they were giving proof of a determination, even greater than that of the Sub-Committee, to obviate every possibility of war, since the amendment which they suggested provided for two contingencies which did not come within the scope of the text submitted to the Committee.

The argument that the adoption of such an amendment would entail a modification of the Covenant was quite illusory. It would be sufficient to substitute the word "force" for the word "war" wherever it occurred.

Besides, a State might resort to force without declaring war.

The speaker mentioned the fact that at the Hague Conference of 1907 he had agreed with M. Renault that the words "resort to force" should be adopted.

M. Fernandes (Brazil) pointed out that the Conference had led to no result.

M. Limburg (Netherlands) went on to say that the Hague Conference in 1907 adopted his proposal regarding the use of the words "resort to force" without any reference to the questions raised by M. Fernandes concerning the right of reprisals and sequestration.

He could not support M. Chagas' amendment, which was by no means a compromise between his own suggestion and the proposal of the Committee. The arguments against the amendment of the Netherlands delegation applied equally to M. Chagas' amendment.

M. Chagas (Portugal) agreed with the Sub-Committee that the word "war" should be kept in the text. To facilitate discussion, he was quite ready to withdraw his amendment.

The Chairman called attention to the fact that M. Limburg's amendment was bound to have important consequences.

M. Limburg (Netherlands) stated that he would not withdraw his amendment.

The amendment was put to the vote and rejected by 19 votes to 6.

M. de Palacios (Spain) considered that the reservation contained in the first part of Article 2 was of no value. The Protocol would only be binding on States which had signed it, and, in view of the fact that all nations condemned offensive warfare as a crime, it would be preferable not to reserve expressly the right to wage it.

M. Loucheur (France) urged that the Sub-Committee's text should be retained. It was necessary that there should be reciprocity as between the parties. By the terms of Article 15 of the Covenant, the Members of the League reserved to themselves the right to take such action as they should consider necessary if the Council were not unanimous. As the States signatories were renouncing this right, inasmuch as they were undertaking to submit to arbitration, it would be unjust that they should sign such an undertaking without reciprocity in relation to Members which had not accepted the Protocol.

M. de Palacios (Spain) remarked that the text would seem to imply that the right to offensive war still existed if such war were undertaken against a non-signatory to the Protocol.

M. Loucheur (France) replied that if all the nations adhered to the Protocol this objection would disappear.

M. Urrutia (Colombia) pointed out that there would be a different position in law as between the States signatories to the Protocol and those which had refused to sign it. It was none the less certain that the obligations of the Covenant would still be binding on the States Members of the League which had not ratified the Protocol. The Covenant itself prohibited all wars of aggression.

He further asked that the preamble should adopt the terms of the Hague Convention, of which M. Limburg had spoken.

M. Loucheur (France) said that it was clear that the States signatories to the Protocol would in no way be able to diminish their present obligations in regard to the other Members of the League, whether they were or were not signatories to the Protocol.

He informed the Spanish delegate that Article 7 made it binding upon the States which were not Members of the League to submit to the conditions accepted by the signatories to the present Protocol in regard to the pacific settlement of disputes.

As regarded M. Urrutia's remarks concerning the preamble, he reserved the right to reply when it came up for discussion.

Article 2 was adopted.
Article 3.

M. DE PALACIOS (Spain) remarked that, by the terms of the first paragraph, a State adhering to the special protocol of Article 36 of the Statute of the International Court of Justice would retain the right to "make reservations compatible with the said clause". Who would be the judge as to whether the reservations in question were compatible with the said clause? Would it not be well to insert a clause providing that the Court itself should be the judge?

M. LOEFGREN (Sweden) thought that acceptance of the Protocol and adhesion to Article 36 should not be held to prevent the Signatories to the Protocol from concluding conventions with other States in regard to arbitration and the legal settlement of certain questions, even if they had adhered to Article 36 of the Statute of the Court. Since this right to conclude special conventions had been disputed, he asked that it should be confirmed categorically.

M. SCIALOJA (Italy) stated, in reply to M. de Palacios, that he did not consider it necessary to insert the proposed clause in the Protocol, since, under the special protocol of the Court, the latter was always competent to judge its own competence. As, therefore, the question as to whether a special reservation were compatible with the general clause of the Protocol was necessarily a question of competence, the problem was ipsa facto settled.

He then replied to the Swedish delegate that it was a general principle of the common law of nations that when there was a general jurisdiction the parties had always the right to arrange between themselves for a special system of jurisdiction. If the latter were to fail, the general jurisdiction would assume its former position.

To take a concrete example, in the recent Treaty between Italy and Switzerland it was laid down that, prior to coming before the International Court of Justice, the parties should follow the procedure for conciliation laid down by the Treaty. If, before this procedure had been completed, one of the parties were to call the other before the Court, the Court would not be competent.

M. LOUCHEUR (France) affirmed that the discussion on Article 36 was absolutely necessary.

Sub-clauses (a), (b), (c) and (d) of Article 36 dealt with four categories of disputes coming under the jurisdiction, which was optional now but might be compulsory shortly, of the Court of Justice. The Court had decided that such reservation was wholly compatible with the first three paragraphs of Article 15, and that those of M. Scialoja should be entered in the minutes.

M. DE PALACIOS (Spain) asked that M. Loucheur's remarks should be inserted in the report and that those of M. Scialoja should be entered in the minutes.

This proposal was adopted.

M. OSUSKY (Czechoslovakia) failed to see the use of clauses 2 and 3 of the article, in view of the terms of the first clause.

He wondered whether, in the first clause, the words "paragraph 2" and the word "clause" referred to the same text.

Finally, as regarded the reservations provided for in this article, he declared that they ought not to be of a nature to invalidate the substance of Article 36 of the Statute of the Court.

M. LOUCHEUR (France) replied that adhesion to the Protocol of the Statute of the Court was a special act, independent of adhesion to the present Protocol. Furthermore, it would be this act of adhesion that would contain those reservations relating to each State which could not appear in a general protocol. Clause 2 was therefore of great utility.

As regarded Clause 3, it had been inserted in order to provide for the case of States adhering to the present Protocol after its entry into force.

The words "paragraph 2" referred to the nature of the questions submitted to the Court. As regarded the word "clause", it had been inserted because the right to make reservations did not appear in paragraph 2 of Article 36 of the Statute but in other paragraphs of that article.

In reply to M. Osusky, he said that, in actual fact, a State might adhere to the Statute of the Court while making what amounted to almost complete reservations. But it appeared to him impossible to believe that, in practice, such a situation would arise, having regard to the fact that States would have the utmost interest in weighing the importance of their reservations.
The Sub-Committee had thought of introducing a provision by which if, within a month of the entry into force, a State had not adhered to the special Protocol, its adhesion would be deemed to have been made ipso facto and without reservation. The British delegate had, however, pointed out they were concerned with States which would not treat the question lightly, and the Sub-Committee had therefore abandoned its proposal.

**Article 3 was adopted.**

**Article 4.**

M. SIDZIKAUSKAS (Lithuania) made an observation regarding the fifth paragraph of this article. He thought that a distinction should be drawn between unanimous recommendations of the Council accepted by interested parties and put into force, and those which were not accepted by the parties. In the second case, the way to arbitration ought to be left open for the settlement of disputes, as was laid down in the first paragraph of the article.

If it were desired to extend the exception laid down in paragraph 5 of Article 4 to cases in which the Council, having been unable to induce the parties to accept a settlement, had unanimously adopted a recommendation which itself had not been accepted by the interested parties, the Lithuanian delegate pointed out that in that case it would be necessary to apply the provisions of the Covenant to the solution about which a recommendation had already been made by the Council and unanimously adopted but which had not been accepted by either party to the dispute.

This was all the more necessary because the provisions of the second sub-paragraph of the third paragraph, which made binding on the parties in special cases unanimous decisions of the Council, could not apply to those recommendations of the Council which he had just mentioned. In accordance, however, with the terms of Article 12 of the Covenant, the parties were free to have recourse to war after the expiration of three months. The object of the scheme under discussion, however, was finally to remove all possibility of war. M. Sidzikauskas proposed, therefore, to add, at the end of paragraph 5 of Article 4, the words “and accepted by one of the interested parties”.

M. BURCKHARDT (Switzerland) proposed that, under letter (a), the words “if the parties cannot agree to do so” should read “if the parties do not consent to do so”.

As regarded the substance, it should be pointed out, first of all, in respect of clause 1, that any judicial or arbitral settlement would follow the rules of law and would thus make the decision binding.

In regard to Clause 2, he remarked that it was also a question of an arbitral settlement, and he wondered whether it was intended that the same rule as the one aforementioned should be applied.

In Clause 6, the word “sentences” (“award” in English) was used. The delegate of Switzerland wished to ask this question: “Was it a question of a judgment or of an amicable settlement according to the rules of custom, equity, etc.?”

M. LOUCHEUR (France) said, in reply, “According to the rules of law”.

M. BURCKHARDT (Switzerland) wondered whether in that case it would not be better to confer on the Permanent Court of International Justice the right of appointing the arbitrators. Such a provision would reassure certain States.

With regard to sub-clause (c), it would be the duty of the Permanent Court of International Justice to give an advisory opinion on a point of law to a Committee of Arbitrators which would decide the question and perhaps not conform to the Court’s opinion. It appeared to him that it was a difficult matter to expose the Permanent Court of International Justice—that was to say, the highest court of appeal in existence—to the danger of seeing its opinion disregarded by a committee of arbitrators. He thought that it was necessary to add a provision that the opinion of the Court should be binding on the committee of arbitrators.

As regarded Clause 6, M. Burckhardt proposed that the word “judiciaires” should be added after the word “sentences”.

M. LOUCHEUR (France), Rapporteur, in reply to the Lithuanian delegate, said that he accepted the insertion of the words “and accepted by one of the parties concerned” in Clause 5.

With reference to M. Burckhardt’s observations, he would suggest in the first place that it might be left to the Sub-Committee to make any textual alterations desired.

As regards the appointment of arbitrators, he pointed out that this question had been the subject of prolonged discussion. It had first been proposed to ask each party to appoint a certain number of arbitrators. It had then been suggested that certain of the arbitrators might be appointed by the Permanent Court of International Justice. Some questions, however, were not wholly of a legal character, being rather of a political character, and the Court of Justice at The Hague was not perhaps entirely qualified, in such cases, to designate the arbitrators. Moreover, the fact that the Court of Justice was not permanently in session also constituted a difficulty.

The Sub-Committee had therefore come to the conclusion that it would be better to leave to the Council the task of appointing these arbitrators. The Council ought, however, to take certain precautions. It ought, in drawing up its general list, to pay most careful consideration to any nominations which might have already been put forward by the various States. That would meet the point raised in the Sub-Committee by Count Apponyi.

Nor had the Sub-Committee agreed, for practical reasons, to the suggestion that in cases in which the Council had taken its decision by a majority vote it should apply to the Permanent Court of Justice for the appointment of the arbitrators.

He agreed to the insertion in paragraph 6 of the word “judicial” (“judiciaires”).
Finally, it had been urged that a binding decision of the Court should be obtained if any question of law were raised in the courses of the arbitration proceedings. Indeed, in a subsequent article, concerning the competence of the arbitrators in matters of domestic jurisdiction or international law, the binding character of such opinion was indicated. But in the case they were now considering the questions submitted to the arbitrators were complex questions of a political order, and points of law might arise in connection therewith. In order, therefore, to obtain a clearer insight into such questions, the Court at The Hague would be consulted. Had the points at issue been solely juridical in nature, the opinion of the Court would have been made not merely advisory but binding.

This showed how anxious they had been, in drawing up the protocol, to respect the prerogatives of the Permanent Court of International Justice.

He hoped therefore that they would maintain the Sub-Committee's text, which had been most carefully considered and discussed.

The CHAIRMAN put to the vote the amendment presented by the Lithuanian delegation, and accepted by the Sub-Committee, to the effect that the following words should be added after "Council" in paragraph 5: "accepted by one of the parties concerned".

The amendment was adopted.

M. LOUCHEUR (France), Rapporteur, proposed that the words "judicial or" should be inserted before "arbitral award" in paragraph 6.

The CHAIRMAN drew the attention of the Committee to the importance of this addition and proposed that they should withhold their decision until M. Loucheur had consulted the Sub-Committee.

M. LOUCHEUR (France), Rapporteur, said that he would be glad to do so but that he thought that all that the proposed addition did was to make it clear that the reference was to the "judicial settlement" mentioned in paragraph 1.

Sir Cecil Hurst (British Empire) pointed out that the judicial settlement or arbitration referred to in paragraph 1 concerned the methods of procedure contemplated in the Hague Convention of 1907, Article 13 of the Covenant, and the Statute of the Permanent Court of International Justice, whereas paragraph 6 was designed solely to render arbitral awards binding.

The CHAIRMAN asked the Committee to come to a decision regarding the proposal that M. Loucheur should consult the Sub-Committee with reference to the question raised by M. Burckhardt.

The proposal was adopted.

M. LOEFGREN (Sweden) thought that the Committee of Arbitrators chosen by the Council of the League of Nations must be regarded as an emanation of the latter.

That Committee would not always have to settle questions of law, in the strict sense of the term; it would also have to determine questions of fact ex aequo et bono. It would thus be led to make recommendations similar to those which the Covenant invited the Council to make in certain cases.

He would not move an amendment, but he would ask that the report should insist on the desirability of drawing up rules containing general directions as to the choice of the arbitrators.

Finally, he thought that the procedure contemplated in paragraph 2 (b), with regard to the selection of the arbitrators, should also apply, together with the prescribed guarantees, to the cases referred to at the end of paragraph 4.

M. FERNANDES (Brazil) pointed out that, although the Court might be displeased if the arbitrators did not take its opinions into consideration, it was impossible to render the latter binding. Some questions could be determined exclusively in accordance with the strict principles of law, but others could not be settled in that way, because certain actual facts were involved.

He therefore proposed the following amendment:

"If the case in question is susceptible of legal decision, the opinion of the Court shall be binding upon the arbitrators. If not, the arbitrators shall take such opinion into account to such extent as may be compatible with the nature of the dispute."

They could not go further without running the risk of making the awards impossible to execute.

The reason why the Hague Court was not to appoint the arbitrators was that it would be too difficult to draw up rules to meet all cases which might arise. It might happen, especially when the parties were numerous, that several of them would have interests apparently opposed to each other, but in reality connected, and that the choice of arbitrators on the strength of appearances would result in giving an unfair majority to such parties.

The system whereby the Council would be entrusted with the task of selecting the arbitrators in consultation with the parties from among persons furnishing the highest guarantees of competence and impartiality was the system which gave the best guarantee to the litigants. The former procedure, which consisted in giving each party the right to appoint an arbitrator, led to the dispute being settled by a single man — the umpire — who was more liable to err than a committee of arbitrators more numerous than and as impartial as the umpire.

If the parties could not agree, and the Council was unable to persuade them to accept a friendly settlement, a committee of arbitrators would be appointed by the Council.
Finally, if the parties did not submit the dispute to “judicial settlement or arbitration”, but left the decision on the point of substance in the hands of the Council, the latter would appoint a committee of arbitrators. It would then exercise a right smaller in extent than the one granted to it by the parties.

M. Löfgren (Sweden) asked whether the rules laid down with regard to the selection of the arbitrators in paragraph 2 (b) ought not also to apply in the cases mentioned in paragraph 4. Was there not some mistake in the drafting?

The Chairman replied that the question would be considered by the Sub-Committee.

M. Burckhardt (Switzerland) agreed with M. Fernandes’ proposal regarding paragraph 2 (c), but differed from him as to the choice of arbitrators.

M. De Palacios (Spain) asked the Rapporteur to confirm his view regarding the last paragraph of Article 4. Were the disputes contemplated in this paragraph still subject to the procedure laid down in the Covenant?

M. Loucheur (France) replied in the affirmative.

The Chairman said that the general discussion on Article 5 was now at an end, but that the amendments submitted by M. Fernandes would be considered later.


Article 4 (continuation of the discussion).

M. Loucheur (France) informed the Committee of the amendments that had been introduced into the text as a result of the various suggestions made during the last discussion.

Article 4 (paragraph 3), at the end of the second sub-paragraph, was worded as follows: “The Signatory States agree to accept the solution recommended by the Council”, and the Sub-Committee proposed to substitute for the words “to accept the solution” the words “to act in conformity with the solution”.

The amendment was adopted.

M. Loucheur (France) said that, in regard to the same article, paragraph 4, his Swedish colleague had suggested adding a few words so as to bring the wording of paragraph 4 into line with paragraph 2 (b) concerning the choice of the arbitrators. The Sub-Committee had accepted the principle of this amendment, and therefore proposed to add at the end of paragraph 4 the following: “and will take into account, in choosing the arbitrators, the guarantees of competence and impartiality mentioned in paragraph 2 (b) above”. This was done so that the Council, in choosing arbitrators to act as umpires in case of non-agreement among the Members of the Council, should obtain the same guarantees as when it imposed arbitrators.

This amendment was adopted.

In the same article, paragraph 5, M. Loucheur proposed adding at the end “agreed to by one of the parties concerned”.

This amendment was adopted.

M. Loucheur (France), in regard to paragraph 6 of the same article, reminded the Committee that M. Burckhardt had proposed putting the words “judicial or” before the word “sentence”. Paragraph 6 would then read as follows:

“The Signatory States agree that they will carry out in full good faith any judicial sentence or arbitral award that may be rendered, and, as stated in paragraph 3 above, to act in conformity with the solutions recommended by the Council.”

The Sub-Committee approved the insertion of these words.

This amendment was adopted.
M. Loucheur (France) next considered the amendments proposed by M. Fernandes. One of these amendments related to Article 4, paragraph 2 (c), the object of which was to provide that the advisory opinion of the Court, as requested by the arbitrators, should be obligatory. The Sub-Committee had not had time to discuss this amendment, and it asked the Committee to do so.

In regard to M. Fernandes' second amendment, this had, in agreement with M. Fernandes, been left over till the discussion on Article 5.

The Chairman declared the discussion open on the first amendment proposed by M. Fernandes. He asked M. Fernandes to submit his amendment to the Committee.

M. Fernandes (Brazil) said that he had agreed with M. Burekhardt on a text that appeared best to express the general view. They should not expose the Court to the risk of giving opinions that the arbitrators might reject, because this would injure the prestige of the Court as well as that of arbitral awards. On the other hand, it could not definitely be laid down that the arbitrators should act in conformity with the opinion of the Court, because there were cases where the direct application of the law did not settle disputes. The text submitted by M. Burekhardt and agreed to by himself very well expressed his own opinion also.

It said: "On all points of law the opinion of the Court is binding on the arbitrators".

That was to say that the committee of arbitrators had to consider any case from the juridical point of view. The opinion of the Court would bind them.

The Chairman said that M. Fernandes' proposal therefore consisted in adding to Article 4, sub-paragraph 2 (c), the following sentence: "On points of law the opinion of the Court is binding on the arbitrators".

M. Scialoja (Italy) said that in legal judgments several points had to be taken into consideration. There might be doubts on a point of law, on the interpretation of a written international law or on deciding what was a custom.

He quite understood that if the arbitrators were in doubt on one of these points they could consult the Permanent Court, but the Court was not particularly fond of these questions of legal theory. However, it would have to give an answer, and the arbitrators would then be bound by the award of the Court, which would replace the article of the Treaty or the ambiguity of the point of law at issue. There might be other reasons for their entertaining doubts as to the application of a point of law to a given case or circumstance, because in the case of a dispute submitted to arbitration, it was not only a question of law but of several interconnected questions each bearing on the other. The legal settlement of any one of these questions was not enough, because the award should be based on the settlement of all the questions taken as a whole, and hence the decision of the arbitrators might—applying equity and combining the different solutions—not be based on any of them in the final award, but might find an equitable mean between them. There might be a settlement in favour of a belligerent State A and another settlement in favour of a belligerent State B. In order to make an equitable award from the practical point of view, the question might perhaps be decided by not applying integrally either the solution in favour of State A or of State B, but by combining two solutions, in which case it might be theoretically claimed that the award of the Permanent Court was being followed and was accepted as binding. However, as the final result did not fully coincide with this award, it was difficult to determine to what extent the decision would be binding and how far the award of the Permanent Court would have been followed.

He therefore proposed to reduce M. Fernandes' amendment to the following terms: If the arbitrators were asked to determine a point of law or an interpretation of international law, the award would then be binding on the arbitrators, because it would be a legal decision which they would have to follow. Apart from that, it was preferable to retain the former text, viz.: that the solution given by way of an advisory opinion would be of the utmost importance for the arbitrators, who would to a certain extent feel legally bound thereby, while at the same time bearing in mind the complexity of the case in order to arrive at an equitable award.

M. Limburg (Netherlands) was not in favour of this amendment. They all agreed that the opinion of the Court as given to the arbitrators would have the greatest influence. Nine times out of ten the arbitrators would feel themselves bound by the advisory opinion of the Court; the amendment would therefore only operate one time in ten.

Secondly, Article 14 of the Covenant accorded the Council the right to apply for the advisory opinion of the Court. This article had a far more official character than the award of the arbitrators in a dispute between two States.

On the other hand, the arbitrators were not required to act as friendly mediators, and such a method of procedure was not compatible with the obligation to be bound by the advisory opinion of the Court. There were cases when the arbitrators would say, and would be right in saying: "Yes, that is the strict law, but there are arguments of equity that are weightier".

This would be impossible if the amendment were accepted.

There was a last argument against this amendment, and, in his opinion, it was the principal one. Supposing a dispute arose between two States. This dispute was taken to the arbitrators, who asked the Court to give an advisory opinion on the matter. The parties to the dispute would not fail to oppose the arbitrators' award and claim that it was null and void, because it had taken as a legal point, in the opinion of the Court, a part of it that was not a legal point. Rightly or wrongly, the arbitrators' award would be challenged, it being claimed that the advisory opinion had not been properly interpreted by the arbitrators. There would be disputes and possibly interminable proceedings. They should not therefore accept this amendment.
M. Fernandes (Brazil) said that it was self-evident that the arbitrators would always give great weight to the opinion of the Court. That was not what they chiefly wanted. The first version had said that arbitrators judged the thing, where possible, from the legal standpoint, and when this was so the opinion of the Court would be asked. If this were not possible, their duties would be those of friendly mediators. The present text did not say so, because it was abbreviated, but that was actually what would happen.

It was when awards had to be given in pursuance of the law that the opinion of the Court had its full value; in these cases the parties to the dispute were safeguarded. The arbitrators did not always act as friendly mediators, as M. Limburg supposed. They would frequently act as real judges, but this would occur not only in cases specially calling for them to act in that capacity but in many other cases outside the competence of the Court, by reason of the limited recognition that the States would give to the competence of the Court of Justice.

M. Limburg was afraid that, if this clause were introduced, arbitral awards might be challenged as contravening the obligations imposed upon the arbitrators, but that could not happen. It was impossible to challenge a decision of the Arbitral Court, because there was no appeal. Moreover, all they were doing was to add one more condition to others in accordance with which the arbitrators would take their decision. There would be rules or conditions concerning their powers and the procedure to be followed. Those were the rules which might be broken by the arbitrators. A challenge, therefore, to the legality of the arbitrators' decision could not be avoided by disregarding this supplementary condition, which was of great importance to the parties concerned and safeguarded their interests. Such a challenge could not be formally made, and it was already substantially possible under the regulations that had just been drawn up.

M. Loucheur (France) said that he had been greatly struck by M. Scialoja's remarks and that he had put himself for a moment in the position of the arbitrators. He thought that in many cases they might perhaps find it difficult to make a clear separation between points of law and attendant circumstances. In criticising M. Fernandes' amendment, M. Scialoja had said that he was afraid it would compel the Court to render judgment without being acquainted with the facts, merely giving its decision on legal points. M. Fernandes had repudiated the last argument put forward by M. Limburg, but this argument was, nevertheless, a strong one. He had insisted on this point in order that words should not be introduced into the text which might later be used as a basis for opposition, either political or legal, and this was of great importance.

If, he added, he had to apply the new text, he would find it very difficult.

M. Limburg (Netherlands) pointed out that M. Fernandes had said that the arbitrators would not always act as friendly mediators. That was true; but it ought to be known in advance in which cases they should act as friendly mediators and when they could adhere to the law. There would be disputes in which an advisory opinion of the Court would be taken or an award given.

M. Fernandes' second argument was the one which he used in regard to the danger of invalidating the arbitrators' award. M. Fernandes replied that arbitral awards could not be invalidated. He himself said, however, that the method of procedure was determined beforehand, and, in the proceedings before the arbitrators, cases of revision or invalidation would always be mentioned. Cases of revision and invalidation would always imply an abuse of power. Attempts would be made to revise or invalidate arbitral awards as an abuse of power when the opinion of the Court had been exceeded.

Sir Cecil Hurst (British Empire) said he was perturbed by M. Limburg's claim that, despite the fact of an advisory opinion having been given by the Court on a given point of law, the arbitrators would still be entitled not to take this decision into consideration. It was certain that those responsible for the text had not taken that view but had thought, on the contrary, that the opinion of the Court would have to prevail. Sub-section (c) of sub-paragraph 2 of Article 4 said: "After the claims of the party have been formulated, the committee of arbitrators, on the request of any party, shall, through the intermediary of the Council, request an advisory opinion upon any points of law in dispute from the Permanent Court of International Justice, which in such case shall meet as a matter of urgency."

He felt therefore that, as soon as the advisory opinion of the Court was asked, the parties would have already formulated certain legal points. He was of opinion that when the question of their application arose, the advisory opinion of the Court would have to be followed. He proposed that M. Fernandes should substitute for his second text the following: "In applying the points of law submitted to the Court...".

M. Fernandes (Brazil) agreed to this amendment.

The Chairman asked if the Committee agreed to the amendment to M. Fernandes' text proposed by Sir Cecil Hurst.

M. de Palacios (Spain) thought that the advisory opinions of the Court should retain their original character — that of advisory opinions. The arbitrators should have the same power as arbitral committees had always had. If it was the Committee's wish to pay a tribute to the great value of advisory opinions, it would be sufficient to say: "the arbitrators will bear in mind, in judging the case as a whole, the advisory opinion of the Court". It should not be forgotten that the most highly qualified and impartial arbitrators would be chosen. The competence of the arbitrators affected every side of the question.

M. Burckhardt (Switzerland) said that, if there was a legal means, the judgment of the arbitrators could be challenged, because, if the arbitrators were in a position to disregard a
point of law or a legal opinion of the highest jurisdiction in existence, the party that lost its
case would protest. With a view to overcoming that difficulty, M. Fernandes' amendment
should be adopted.

M. Scialoja (Italy) thought that, if sub-section (c) of Article 4 had to be retained, it would
be advisable to insert M. Fernandes' amendment as modified by Sir Cecil Hurst.

He was not, however, sure if sub-section (c) should be retained. Possibly a more radical
method should be adopted, and the arbitrators should not be authorised to consult the Per-
manent Court. There was the very serious difficulty of a contradiction between the opinion
of the Court and the award of the arbitrators.

This contradiction would assume very small proportions if the amendment were adopted.
The award of the arbitrators could not be challenged, but they were not dealing here with ordi-
nary rules of procedure, as in private law. When two States became engaged in a dispute and
feelings were so strained that there was danger of war, an award opposed to the opinion of the
supreme authority of international law would have little force, and the party submitting to
the award could claim that it was unjust, since a different opinion had been given.

Could they be satisfied if such feelings were entertained by the parties to the dispute? No.
There should be a court that could not be challenged by bringing forward a contra-
dictory opinion. It would, therefore, be best to delete sub-section (c) altogether.

M. Adatcî (Japan) thought that, on the contrary, it would be better to retain the Sub-
Committee's original text; when put into practice it would satisfy everyone.

M. Rolin (Belgium) said that he personally was satisfied with the present text and would
prefer its retention. Alternatively he would support M. Fernandes' proposal in its unmodi-
fied form, and he gave the following reasons for so doing:

Supposing that, of the two States parties to the dispute, one had unreservedly ad-
hered to the jurisdiction of the Permanent Court of International Justice and the other had ad-
hered with numerous reservations. The dispute in question did not come within the compulsory
competence of the Permanent Court of International Justice as far as these States were con-
cerned.

Any State which preferred the jurisdiction of the Court of Justice would be deprived of
the right to bring a case against the other party before this Court. But the Protocol, on the
other hand, gave the other party the right to impose upon such State an arbitral jurisdiction
which did not offer the same guarantees, for it was not necessary to recall the fact that the
reason for the institution of the Permanent Court of International Justice was that, in virtue
of its stability and tradition, it gave infinitely greater guarantees. If the arbitrators brought
about a friendly settlement of the case it was because they were forced so to do. A friendly
settlement gave a small share to small States and a big share to big States; the apple was
cut into two, but the portions were not equal.

If a country which had not accepted the compulsory jurisdiction of the Permanent Court
of International Justice refused to appear before this Court or to appoint arbitrators, and
preferred to have a court of arbitrators set up by the Council, they would then have an arbi-
tral tribunal which was bound by no rules and which, from a legal point of view, could prove
to be extremely elastic and accommodating. If Article 36 of the Statute of the Court were
not made compulsory for all parties, then neither directly nor indirectly could the States be
forced to accept such compulsory jurisdiction by means of the Protocol; it was, however, essen-
tial that small countries should still maintain their right to apply to the Court.

The proposal as put forward by Sir Cecil Hurst was to the effect that, in applying the law,
the opinion of the Court should be followed, but it was precisely in regard to the law that insur-
mountable difficulties might often arise, for there were cases in which the law as stated by the
Court might not correspond exactly to the facts. The method, however, proposed by Sir Cecil
Hurst implied the strict application of the law in all cases.

M. Fernandes' proposal was more elastic, as it merely provided for a legal opinion on the
case. But there might be a legal opinion on a case, or an opinion which took into account the
legal point of view but did not regard it as the determining factor. Those who had expe-
rience of private law knew that disputes frequently arose in which the rules of law were so
inconsistent with the facts that the Court refused to give judgment; it insisted, as it were,
upon a settlement but the expectation was that the Permanent Court would give an advisory
opinion, which the parties would have the right to request, and not to entrust the matter to the arbitrators until such opinion had been given. The arbitrators' decision, whatever the considerations in regard to fact, would never be very different from that
of the judicial authority.

The Chairman said that Sir Cecil Hurst had stated that, when this draft Protocol was
adopted, the opinion of the Court must be followed. Was it conceivable, in the judicial or
civil procedure of any country, that the opinion of the highest court of justice in the country
should be sought, and that this opinion in final decisions should be simply disregarded? What
was true for any one State should be true for all States in their international relationships.
If the Court had such authority, and was inspired by such sentiments of impartiality and jus-
tice that all bowed before its decision, it was impossible that a committee of arbitrators should
prevent that decision from being regarded as binding. If the amendment were accepted, that
was what would happen. The arbitrators were free to take into account or to disregard the
advisory opinions given by the Court. It was not sufficient to respect the Court: the Court
must be obeyed. That was how the question should be decided: the arbitrators should be bound
to follow the advisory opinion of the Permanent Court.
M. LOUCHEUR (France) pointed out that three proposals had been laid before the Committee:

1. The proposal of M. Scialoja that paragraph 2 (c) be omitted;
2. The proposed amendments, which had all been combined in one single amendment submitted by M. Fernandes and modified by Sir Cecil Hurst;
3. The proposal of the Sub-Committee to maintain the text as originally submitted.

The Chairman proposed the following procedure, laid down in paragraph 6 of Rule 18 of the Rules of Procedure of the Assembly: "If an amendment striking out part of a proposal is moved, the Assembly shall first vote on whether the words in question shall stand part of the proposal. If the decision is in the negative, the amendment shall then be put to the vote." That was the rule to be applied.

He asked for a vote on the deletion of sub-section (c) of paragraph 2 of Article 4, as proposed by M. Scialoja.

The proposal was rejected by 25 votes to 3. Sub-section (c) was retained.

The Chairman then put to the vote the amendment proposed by Sir Cecil Hurst and M. Fernandes, which was drafted as follows: "In the application of the points of law submitted to the Court, the opinion of the Court is binding on the arbitrators."

M. LIMBURG (Netherlands) called for a vote by roll-call. The amendment was rejected by 16 votes to 15.

The Chairman suggested that, in view of the smallness of the majority, this result should be mentioned in the report.

M. ROLIN (Belgium) said that he would also like some reference made in the report to the fact that those members of the Committee who had voted against this amendment did not in any way wish to imply that the authority of the Court was to be diminished or that the arbitrators were not bound to comply with it as far as possible.

M. TITULESCO (Roumania), M. LIMBURG (Netherlands) and M. LOUCHEUR (France) wished to associate themselves with this proposal.

The Chairman then put Article 4 as otherwise amended to the vote. Article 4, thus amended, was adopted.

Article 5.

M. LOUCHEUR (France), Rapporteur, pointed out that Article 5 dealt with questions of internal legislation concerning which, according to paragraph 8 of Article 15 of the Covenant, the Council might take a unanimous decision, in which case the Council need make no recommendation. The Sub-Committee had examined the amendment submitted by M. Fernandes.

Article 5 provided for the case in which, in the course of the arbitral proceedings, the question of law was raised; when, however, the dispute was not submitted to arbitration but remained before the Council, the question of domestic law or international law might also be raised. M. Fernandes had, therefore, thought that it would be expedient to direct attention to the fact that the provisions of paragraph 8 of Article 15 of the Covenant were maintained. The Sub-Committee therefore proposed to add at the beginning of Article 5 the following words: "The provisions of paragraph 8 of Article 15 of the Covenant shall continue to apply to proceedings before the Council". The present text of Article 5 would follow. In reconsidering the text, the Sub-Committee proposed to replace the last sentence: "If the Court replies..." by the sentence: "The opinion of the Court shall be binding upon the arbitrators, who, if the opinion is affirmative, shall confine themselves to so declaring in their award."

It would be necessary, therefore, first to vote on M. Fernandes' amendment, which would form the first sentence of the article, and then on the Sub-Committee's text, which formed the last sentence.

M. ADATCI (Japan) proposed that the following sentence should be added to Article 5: "Without prejudice to the Council's duty of endeavouring to conciliate the parties so as to assure the maintenance of peace and of good understanding between nations."

The First Committee had examined all suggestions, with a view to supplying the omissions in the Covenant, and it was to supply one such omission that he proposed the addition of this sentence. The League of Nations, whose duty it was to maintain peace and good understanding between the nations, would not be fulfilling its constitutional obligations if any omission were tolerated.

M. POLITCH (Kingdom of the Serbs, Croats and Slovenes) asked the Rapporteur whether a plea to the effect that a question should, under international law, be left to the domestic jurisdiction of any party constituted a plea against the jurisdiction of the Court, to be decided by the Court in conformity with the last paragraph of Article 36 of the Statute of the Court, or whether it amounted to demurrer.

M. LOUCHEUR (France), Rapporteur, stated that this provision was not modified. That was why M. Fernandes had thought it advisable to state this fact in the first paragraph of Article 5, which referred to the provision in question. The Sub-Committee, however, had
also had to deal with the case in which the question did not go before the Council, and, after the attempted conciliation laid down in paragraph 3 of Article 15 of the Covenant, the parties decided to submit to arbitration; it had also to foresee the case when the Council imposed arbitration at the request of one of the parties. The same question might arise before these arbitrators as had arisen before the Council in the last stage of its deliberations. The Sub-Committee thought that in this case the question should be submitted to the Permanent Court of International Justice. Therefore in this case, and in this case only, the Sub-Committee had proposed that the decision of the Permanent Court should be binding on the arbitrators. That was a question which it was extremely important to decide. They did not desire that questions concerning the domestic law of a country which had evaded discussion by the Council should be discussed before arbitrators.

That point was a very important one as regarded the reservations to be made in connection with Article 36.

The Chairman stated that the Rapporteur proposed to insert a first paragraph drafted as follows: “The provisions of paragraph 8 of Article 15 of the Covenant shall continue to apply to proceedings before the Council.”

It was further proposed to word the last sentence as follows: “The opinion of the Court shall be binding on the arbitrators, who, if the opinion is affirmative, shall confine themselves to so declaring in their award”.

The question under discussion was that of defining the position which might arise in connection with a dispute bearing upon some matter which, under international law, fell within the exclusive jurisdiction of one of the parties—in other words, a question which did not come within the sphere of international law.

As regards M. Adatci’s proposed amendment, the provision to be inserted in the Protocol would not prevent the Council from making all possible friendly efforts to effect conciliation between the parties and to ensure the peace of the world.

As regarded the question raised by the representative of the Kingdom of the Serbs, Croats and Slovenes, they must consider whether this provision was not somewhat inconsistent with what had been said on the subject of Article 36 of the Statute of the Court. It was true that by the provisions of that article it was possible to except from the compulsory jurisdiction of the Court any point of international law. That did not mean that, in a matter such as the one under consideration and when compulsory jurisdiction was not agreed to, the questions raised could be referred to the Court.

If the Court were asked whether the dispute came under the national laws of a country or under international law and the Court decided in favour of the former, whatever reservations were made to Article 36, the opinion of the Court would be binding on the arbitrators, and the latter would not have to give an award, but would state in their decision that, as this point came within the domestic jurisdiction of the country, they would confine themselves to declaring this fact.

The Chairman thanked M. Loucheur for his assurance that the proposed text would simply confirm the provision contained in the Covenant of the League, by virtue of which, if one of the parties found that a question was exclusively a matter of domestic jurisdiction, the sovereign rights of such State should be respected; he thanked M. Loucheur for explaining that this provision would simply be inserted in the Protocol.

M. Loucheur (France), Rapporteur, proposed to the Chairman that the Committee should adopt Article 5, subject to the subsequent examination of M. Adatci’s amendment.

M. Adatci (Japan) asked to be allowed to explain his vote, as his proposal formed part of the article as amended. He would not vote in favour of the first two paragraphs unless his amendment were added.

In order to explain his position clearly, he would vote in favour of the first two amendments, subject to the adoption of his own amendment.

The Chairman proposed to postpone discussion of Article 5 until the Committee had dealt with Article 7.

This proposal was adopted.

The Sub-Committee’s amendments were put to the vote and unanimously adopted.

Article 6.

M. Adatci (Japan) said that, if his amendment to Article 5 were adopted, he would have no objection to Article 6 as it stood, but if his amendment to Article 5 were rejected, he would have to propose an amendment to the second part of paragraph 1 of Article 6.

M. Limburg (Netherlands) said that the first point dealt with in this article was that a means had been found of defining the aggressor, so that in many cases a party automatically became the aggressor, and in other cases became so by presumption.

But when the aggressor had been determined, the application of the sanctions was not to ensue automatically until after a declaration by the Council; no State which was a Member of the League should be allowed to move its troops before the Council had made its declaration.

The last paragraph of Article 6, which stated: “The Council shall call upon the signatory

1 Article 6 became Article 10 in the Final Protocol.
States to apply forthwith against the aggressor State the penalties provided for by Article... of the present Protocol", would satisfy the speaker, if it were understood, in the first place, that the Council would have to give authority for the application of the sanctions, and, in the second, that the sanctions might not be applied before the Council had made its declaration.

As regarded the second question, this should be raised before the Legal Committee, since it had been raised in the Third Committee. The Third Committee was dealing with an article (Article 7) which provided:

"In the event of a dispute arising between two or more of the signatory States, these States undertake that, both before the dispute is referred to arbitration or conciliation and during the time involved by the procedure of arbitration or conciliation, they will not proceed to any increase of armaments or of effective which might modify the position fixed by the Conference for the reduction of armaments. They undertake equally that during the above-mentioned period they will not proceed to any measures of military, naval, air, industrial or economic mobilisation nor generally to any action of a nature likely to render the dispute more acute or more extensive."

The speaker asked if any party contravening this provision should not be deemed to be the aggressor. Article 6 stated: "Every State which resorts to war, in violation of the undertakings contained in the Covenant, or the present Protocol, is deemed to be an aggressor. Violation of the status of a demilitarised zone is to be held to be equivalent to resort to war".

Any party, therefore, which violated the status of a demilitarised zone was deemed to be an aggressor. It must be recognised that in many cases such violation would be less serious than that provided for in Article 7.

But it was possible to contravene this first paragraph without proceeding to hostilities. A State might increase its armaments or effective and thus modify the situation; measures might be taken for the mobilisation of the forces, without engaging in hostilities.

There was another point, and that was whether a State which resorted to war in violation of Article 6 could benefit by the "laws of war", for, as the Hague Convention stated, there were laws and customs concerning land warfare. The question which would arise immediately after the Protocol was whether such a State should benefit by the laws and customs of war.

M. LOUCHEUR (France), Rapporteur, stated that the First Committee had devoted a great deal of time and trouble to the attempt to find a clear and simple definition of "the aggressor", and other Committees were engaged in the same task. The Sub-Committee had discussed at length the question as to whether the Council, when declaring any State to be an aggressor, should do so unanimously or by a majority vote. Many proposals had been made, and a two-thirds majority had been considered. The article under consideration stated that certain cases of aggression would be obvious and beyond dispute. When the aggression was thus obvious the Council would intervene. It would have to meet. It would, according to the text, call upon the signatory States to apply forthwith the penalties provided for in Article 6. The question was raised elsewhere as to what majority the Council required to decide upon such summons. If any decision were taken elsewhere obliging the Council to reach a unanimous decision, in a such a case France would offer determined objection. It was not a question of the vote of the Council, but a duty of the Council, and no Member of the Council could fail in this duty. There was no question of any vote; the aggression was obvious; it was the duty of the Council to call upon the States forthwith to apply the penalties, and these penalties could not be applied until the Council had so called upon them. The Council should do this at once; it was a duty devolving upon it, and one which it could not refuse to carry out.

With regard to the second point raised, they had not assimilated the case mentioned at the beginning of the Third Committee's Article 7 to an actual definite case of aggression. There would have been no disadvantage in doing so, because it must be held that any threat of aggression might very rapidly become dangerous, and that it was important for measures to be taken as soon as possible. But, again, the Sub-Committee did not desire that the League of Nations should too often become the starting-point, not for war, it is true, but for the application of sanctions which resembled war. It desired that, when hostilities had been commenced for instance, in the case of a nation refusing to comply with the instructions of the Council, the Council should, on its own responsibility, take certain conservative measures, and should discuss the matter according to the provisions of Article 7. To give any extension to the application of the term "aggressor" would be to start along a very dangerous path. To what extent could a party be an aggressor without its having recourse to war? It might be objected that there was one case in which a party might be an aggressor without formally resorting to war, the case in which the status of a demilitarised zone was violated. A number of eminent jurists had held that the violation of the status of a demilitarised zone should be regarded as an act of warfare, but to extend this view to other cases would be to set out along a path open to too much criticism. It had been the desire of the Sub-Committee to reduce cases of obvious aggression to a number of definite points.

Another question which had been raised was whether a State which had been declared the aggressor might enjoy the benefits of international laws and conventions. The fact that a State had been declared an aggressor by the League of Nations could not modify international conventions. They existed, whether the parties wished it or not, because their object was to render war less terrible. Many other questions might still be raised, such as the question of the punishment of guilty persons and the repression of war crimes. Such questions had been taken into consideration by various nations, and had formed the subject of a recommendation by the jurists instructed to draw up the Statute of the Permanent Court of International Justice.
and its decision must be taken unanimously if it decided that no aggression had taken

the Sub-Committee had been careful to disregard a certain number of cases about which dis-

able fact. A country either accepted or refused arbitration, and it was for this reason that

the State had or had not refused arbitration.

it was proposed to lay down that the Council ought to take a decision by vote as to whether

would be considered as equivalent to recourse to war. Then, in the case of manifest aggression,

be necessary, but when the question was one of fixing the conditions of this armistice, such a

the decreeing of an armistice ? For- an armistice to be decreed, a two-thirds majority would

present time, when there was no cloud on the horizon. But as soon as a dispute arose, and as

existed that that State was the aggressor. But the question of competence still arose; it had just

award, etc. " If a State refused to submit the dispute to pacific procedure, the presumption

a dispute to the procedure of pacific settlement provided for by Articles 13 and 15 of the Cove-

these provisions. Paragraph 1 of Article 6 read: " Any State which has refused to submit

is deemed to be an aggressor ". Did that expression also cover the violation of frontiers ?

their Protocol, would there still be any place for a war of the nature of former wars ? No,

legal condition. But in the future, in the new order of things which would be established by

maintaining the word " war " they would be maintaining the former conception that war was a

breaking State. He had raised the question in order to make the following point: by main-

rights and customs of war, it would take far too long to discuss, from a juridical point of view,

question, which was of great importance. It was asked whether the violation of the frontier

organise a system for securing justice to States.

which, when sentence had been pronounced against it, remained in possession of an object

done on paper. Would it not be in the interests of peace to declare as aggressor that State

in possession of the subject of the dispute, what would become of A's rights ? It was useless

was adjudged to another State ? If they wished to organise peace, they must

any increase of armaments or effectives was a far more serious matter than the violation

litarised zone; and yet, although this case was far more serious, they had not stated

than increasing armaments and effectives. If merely one company of soldiers violated a demi-

into action, the various States would have to receive instructions from the Council.

mine that a particular State was the aggressor, and obviously, if the sanctions were to be brought

purpose of determining which State was the aggressor. It was the duty of the Council to deter-

was a noble task.

They had suggested that the Court might be empowered to punish the war crimes. That would

M. Limburg (Netherlands) said that he recognised there was no need to take a vote for the

of determining which State was the aggressor, and obviously, if the sanctions were to be brought

the various States would have to receive instructions from the Council.

In regard to the second question, he still had certain reservations to make, for he had not

altered his opinion that the violation of a demilitarised zone might be a far less serious matter

than increasing armaments and effectives. If merely one company of soldiers violated a demi-

litarised zone, then their country would be declared to be an aggressor. He thought, however,

that an increase of armaments or effectives was a far more serious matter than the violation of

a demilitarised zone ; and yet, although this case was far more serious, they had not stated

that it should constitute an act of aggression. As for the third question, the question of the

the State was the aggressor. That was logical, and he thought that Article 6 implicitly made provision

by main-

discussion.

As regards paragraphs 2 and 3, he would like to know whether he had correctly understood

these provisions. Paragraph 1 of Article 6 read: " Any State which has refused to submit a

dispute to the procedure of pacific settlement provided for by Articles 13 and 15 of the Cove-

nant, and compelling it to comply with the Protocol, or to comply with a judicial sentence or

arbitral

just as,

civil law, there would have to be certain presumptions, but presumptions did not mean that

the facts were presumed. Consequences were presumed in connection with certain facts,

and someone had to determine whether the facts existed. When there was a presumption,

the facts were established, and the consequences of these facts could no longer be open to

discussion.

If a State refused to submit the dispute to pacific procedure, that State was deemed to be

the aggressor. That was logical, and he thought that Article 6 implicitly made provision

for somebody having power to determine whether there was an act of aggression or, rather,

to determine the facts resulting from a refusal.

There were two points to be considered. The Council was bound to instruct the bellige-

rents to conclude an armistice, the terms of which it would fix by a two-thirds majority.

Did this rule of a two-thirds majority apply to the fixing of the terms, or did it also apply to

the decreeing of an armistice ? For an armistice to be decreed, a two-thirds majority would

be necessary, but when the question was one of fixing the conditions of this armistice, such a

majority would not seem to be necessary.

In Article 3 of the draft, provision was made for compulsory jurisdiction. Article 5 laid

down rules for conciliation and arbitration. If a dispute arose between two States, A and B,

and recourse were had either to the Court or to arbitration, and if a decision were given in favour

of A, and A were in possession of the subject of the dispute, the question was settled. But if

B were declared to be in the wrong by decision of the Court or by the arbitrators, and if B were

in possession of the subject of the dispute, what would become of A's rights ? It was useless

to say that the Court and the arbitrators had decided in favour of A ; that was only justice

done on paper. Would it not be in the interests of peace to declare as aggressor that State

which, when sentence had been pronounced against it, remained in possession of an object

which had been adjudged to another State ? If they wished to organise peace, they must

organise a system for securing justice to States.

M. Loucheur (France), Rapporteur, quite understood M. Osusky's reasons for raising the

question, which was of great importance. It was asked whether the violation of the frontier

would be considered as equivalent to recourse to war. Then, in the case of manifest aggression,

it was proposed to lay down that the Council ought to take a decision by vote as to whether

the State had or had not refused arbitration.

This was in no way the opinion of the Rapporteur. A refusal to arbitrate was an incontest-

able fact. A country either accepted or refused arbitration, and it was for this reason that

the Sub-Committee had been careful to disregard a certain number of cases about which dis-

cussion might have arisen. In this case there was a manifest fact. The Council would meet,

and its decision must be taken unanimously if it decided that no aggression had taken