ANNEXES TO THE SECOND PART.

Annex 6.

DRAFT PROTOCOL.

ARTICLES SUBMITTED BY THE SUB-COMMITTEE ON SEPTEMBER 23RD, 1924.

Preamble.

Article 1.

The signatory States undertake to make every effort to secure the introduction into the Covenant of amendments on the lines of the provisions contained in Articles . . . below.

They agree that, as between themselves, these provisions shall be binding as from the date hereinafter fixed for the entry into force of the present Protocol and that the Council shall thenceforth have power to exercise all the rights and perform all the duties conferred upon it by the said provisions.

Article 2.

The undersigned agree in no case to resort to war either with one another or against a State which, on the occasion arising, accepts all the obligations hereinafter set out, except in the case of resistance to acts of aggression or in the case where they act in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol.

Article 3.

The undersigned agree to recognise as ipso facto applicable the jurisdiction of the Permanent Court of International Justice in the cases dealt with in paragraph 2 of Article 36 of the Statute of the Court, without prejudice always to the right of any State to make reservations compatible with the said clause when adhering to the special protocol contemplated by Article 36 of the Statute of the Court and opened for signature on December 16th, 1920.

Adhesion to this special protocol, opened for signature on December 16th, 1920, must be given within the month following the entry into force of the present Protocol.

States which adhere to the present Protocol after its entry into force must carry out the above obligation within the month following their adhesion.

Article 4.

With a view to rendering more complete the provisions of paragraphs 4, 5, 6 and 7 of Article 15 of the Covenant, the undersigned agree to comply with the following procedure:

1. If the dispute submitted to the Council is not settled by it as provided in paragraph 3 of the said Article 15, the Council shall call upon the parties to submit the dispute to judicial settlement or arbitration.

2. (a) If the parties cannot agree to do so, there shall, at the request of at least one of the parties, be constituted a Committee of Arbitrators. The Committee shall so far as possible be constituted by agreement between the parties.

(b) If within the period fixed by the Council the parties have failed to agree, in whole or in part, upon the number, the names and the powers of the arbitrators and upon the procedure, the Council shall settle the points remaining in suspense. It shall, as a matter of urgency, select the arbitrators and their president, in consultation with the parties, from among persons who, by their nationality, their personal character and their experience, appear to it to furnish the highest guarantees of competence and impartiality.

(c) After the claims of the parties 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.

3. If none of the parties ask for arbitration, the Council shall resume its investigation of the dispute.

The signatory States agree to accept the solutions recommended by the Council, if the Council reaches a report which is unanimously voted by all its members other than the representatives of the parties to the dispute.
4. If the Council fails to reach a report which is concurred in by all its members other than the representatives of the parties to the dispute, it shall submit the dispute to arbitration. It shall itself determine the composition, the powers and the procedure of the Committee of Arbitrators.

5. In no case may a solution upon which there has already been a unanimous recommendation of the Council be again called in question.

6. The signatory States agree that they will carry out in full good faith any arbitral award that may be rendered and that they will comply, as is provided for in paragraph 3 above, with the solutions recommended by the Council.

7. In the event of a State failing to carry out the above undertakings, the Council shall exert all its influence to secure compliance therewith. If it fails therein, it shall propose what steps should be taken to give effect thereto in accordance with the provision contained at the end of Article 13 of the Covenant. Should a State in disregard of the above undertaking resort to war, the sanctions contemplated by Article 16 of the Covenant, interpreted in the manner indicated in the present Protocol, shall immediately become applicable to it.

8. The provisions of the present article shall not apply to settlement of disputes which arise in consequence of measures of war taken by one or more signatory States in agreement with the Council or the Assembly of the League.

Article 5.

If, in the course of an arbitration such as is contemplated by Article 4 above, one of the parties claims that the dispute, or part thereof, arises out of a matter which, by international law, is solely within the domestic jurisdiction of that party, the arbitrators shall on this point take the advice of the Permanent Court of International Justice through the intermediary of the Council of the League. If the Court replies that in fact the dispute does arise out of such a matter, the arbitrators shall confine themselves to so declaring in their award.

Article 6.

(Definition of the aggressor: still under examination by the Sub-Committee 1.)

Article 7.

The signatory States agree that a State or States not belonging to the League and to which accordingly Article 17 of the Covenant applies shall, if the occasion arises, be invited in the circumstances contemplated by the said article to submit to the provisions accepted by the signatories of the present Protocol for the purpose of pacific settlement of any dispute with one or more States signatories of the present Protocol.

Annex 8.

DRAFT PROTOCOL.

PREAMBLE AND ARTICLES AS SUBMITTED BY THE SUB-COMMITTEE ON SEPTEMBER 24TH, 1924.

Preamble.

In order to strengthen the solidarity and to increase the security of the nations of the world by settling by pacific means all disputes which may arise between States; and to realise, as contemplated by Article 8 of the Covenant of the League, the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations;

The undersigned, duly authorised to that effect, agree as follows:

Article 1.

The signatory States undertake to make every effort to secure the introduction into the Covenant of amendments on the lines of the provisions contained in Article ....... below.

1 See Annex 8.
They agree that as between themselves these provisions shall be binding as from the date hereinafter fixed for the entry into force of the present Protocol and that the Council shall thenceforth have power to exercise all the rights and perform all the duties conferred upon it by the said provisions.

Article 2.

The undersigned agree in no case to resort to war either with one another or against a State which, on the occasion arising, accepts all the obligations hereinafter set out, except in the case of resistance to acts of aggression or in the case where they act in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol.

Article 3.

The undersigned agree to recognise as ipso facto applicable the jurisdiction of the Permanent Court of International Justice in the cases dealt with in paragraph 2 of Article 36 of the Statute of the Court, without prejudice always to the right of any State to make reservations compatible with the said clause when adhering to the special protocol contemplated by Article 36 of the Statute of the Court and opened for signature on December 16th, 1920.

Adhesion to this special protocol, opened for signature on December 16th, 1920, must be given within the month following the entry into force of the present Protocol.

States which adhere to the present Protocol after its entry into force must carry out the above obligation within the month following their adhesion.

Article 4.

With a view to rendering more complete the provisions of paragraphs 4, 5, 6 and 7 of Article 15 of the Covenant, the undersigned agree to comply with the following procedure:

(1) If the dispute submitted to the Council is not settled by it as provided in paragraph 3 of the said Article 15, the Council shall call upon the parties to submit the dispute to judicial settlement or arbitration.

(2) (a) If the parties cannot agree to do so, there shall, at the request of at least one of the parties, be constituted a Committee of Arbitrators. The Committee shall so far as possible be constituted by agreement between the parties.

(b) If within the period fixed by the Council the parties have failed to agree, in whole or in part, upon the number, the names and the powers of the arbitrators and upon the procedure, the Council shall settle the points remaining in suspense. It shall, as a matter of urgency, select the arbitrators and their president, in consultation with the parties, from among persons who, by their nationality, their personal character and their experience, appear to it to furnish the highest guarantees of competence and impartiality.

(c) After the claims of the parties 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.

(3) If none of the parties ask for arbitration, the Council shall resume its investigation of the dispute.

The signatory States agree to accept the solutions recommended by the Council, if the Council reaches a report which is unanimously voted by all its members other than the representatives of the parties to the dispute.

(4) If the Council fails to reach a report which is concurred in by all its members other than the representatives of the parties to the dispute, it shall submit the dispute to arbitration. It shall itself determine the composition, the powers and the procedure of the Committee of Arbitrators.

(5) In no case may a solution upon which there has already been a unanimous recommendation of the Council be again called in question.

(6) The signatory States agree that they will carry out in full good faith any arbitral award that may be rendered and that they will comply, as is provided for in paragraph 3 above, with the solutions recommended by the Council.

(7) In the event of a State failing to carry out the above undertakings, the Council shall exert all its influence to secure compliance therewith. If it fails therein, it shall propose what steps should be taken to give effect thereto in accordance with the provision contained at the end of Article 13 of the Covenant. Should a State in disregard of the above undertaking resort to war, the sanctions contemplated by Article 16 of the Covenant, interpreted in the manner indicated in the present Protocol, shall immediately become applicable to it.

(8) The provisions of the present article shall not apply to settlement of disputes which arise in consequence of measures of war taken by one or more signatory States in agreement with the Council or the Assembly of the League.

Article 5.

If, in the course of an arbitration such as is contemplated by Article 4 above, one of the parties claims that the dispute, or part thereof, arises out of a matter which, by international law, is solely within the domestic jurisdiction of that party, the arbitrators shall on this point
take the advice of the Permanent Court of International Justice through the intermediary of the Council of the League. If the Court replies that in fact the dispute does arise out of such a matter, the arbitrators shall confine themselves to so declaring in their award.

**Article 6.**

Every State which resorts to war in violation of the undertakings contained in the Covenant or in 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.

In the event of hostilities having broken out, any State shall be deemed to be an aggressor, unless a decision of the Council, which must be taken unanimously, shall otherwise declare:

1. If it has refused to submit the dispute to the procedure of pacific settlement provided for by Articles 13 and 15 of the Covenant as amplified by the present Protocol, or to comply with a judicial sentence or arbitral award or with a unanimous recommendation of the Council, or has disregarded a unanimous report of the Council, a judicial sentence or an arbitral award recognising that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State;

2. If it has violated provisional measures enjoined by the Council, for the period while the proceedings are in progress, as is contemplated by Article ... of the present Protocol.

Apart from the cases dealt with in paragraphs (1) and (2), if the Council does not succeed in determining the aggressor without undue delay, it shall have the duty of enjoining upon the belligerents an armistice, of which, acting by a two-thirds majority, it shall lay down the terms and supervise the execution. Any belligerent which has refused to accept the armistice or violated its terms shall be deemed an aggressor.

The Council shall call upon the signatory States to apply forthwith against the aggressor State the sanctions provided for by Article ... of the present Protocol.

**Article 7.**

The signatory States agree that a State or States not belonging to the League and to which accordingly Article 17 of the Covenant applies shall, if the occasion arises, be invited in the circumstances contemplated by the said article to submit to the provisions accepted by the signatories of the present Protocol for the purpose of pacific settlement of any dispute with one or more States signatories of the present Protocol.

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**Annex 10.**

**DRAFT PROTOCOL.**

**Amendment to Article 5 proposed by M. Adatci.**

*Add at the end of the article the following paragraph:*

“The above provisions leave unaffected the Council’s duty of endeavouring to conciliate the parties so as to assure the maintenance of peace and of a good understanding between nations.”

**Annex 11.**

**DRAFT PROTOCOL.**

**New text of Article 7 proposed by the Sub-Committee on September 26th, 1924.**

The signatory States agree that in the event of a dispute between one or more of them and one or more States which have not signed the present Protocol and are not Members of the League of Nations, such non-Member States shall be invited, under the conditions stated in article 17 of the Covenant, to submit to the provisions accepted by the signatories of the present protocol for the purpose of a pacific settlement of the dispute.

If the State so invited refusing to accept the said obligations resorts to war against a signatory State, the provisions of Article 16 as defined by the present Protocol shall be applicable to it.
Annex 12.

DRAFT PROTOCOL.

New texts submitted by the sub-committee under date September 26th, 1924.

(1) Preamble.

Animated by the firm desire to ensure the maintenance of general peace and the security of nations whose existence, independence or territories may be threatened;

Recognising the solidarity of the members of the international community;

Asserting that a war of aggression is a violation of this solidarity and an international crime;

Desirous of facilitating the complete application of the system provided in the Covenant for the pacific settlement of disputes between States, and of ensuring the repression of international crimes; and

For the purpose of realising, as contemplated by Article 8 of the Covenant of the League, the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations:

The undersigned, duly authorised to that effect, agree as follows:

(2) Text of Resolution No. 1.

The Assembly:

Having taken note of the reports of the First and Third Committees on the questions referred to them by the Assembly resolution of September 6th, 1924:

Welcomes warmly the draft Protocol on the pacific settlement of international disputes proposed by the two Committees of which the text is annexed to this resolution;

Decides

(1) To recommend to all the Members of the League the acceptance of the said draft Protocol;

(2) To open the said Protocol in the terms proposed for immediate signature by those representatives of Members of the League who are already in a position to sign it, and to hold it open for adhesion by all other States;

(3) To request the Council of the League to convene, in accordance with the provisions which follow, an international conference for the reduction of armaments which shall meet at Geneva as provided by Article ... of the draft Protocol.

In preparation for the convening of the conference, the Council shall draw up, with due regard to the undertakings contained in Articles ... and ... of the present Protocol, a general programme for the reduction and limitation of armaments, which shall be placed at the disposal of the conference and be communicated to the Governments at the earliest possible date, at latest two months before the conference meets.

If by May 1st, 1925, ratifications have not been deposited by at least a majority of the permanent Members of the Council and ten other Members of the League, the Secretary-General of the League shall immediately consult the Council as to whether he shall cancel the invitations or merely adjourn the conference until a sufficient number of ratifications have been deposited.

(3) Text of Resolution No. 2.

The Assembly:

Having taken cognisance of the report of the First Committee upon the terms of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice;

Considering that the study of the said terms shows them to be sufficiently wide to permit States to adhere to the special protocol, opened for signature in virtue of Article 36, paragraph 2, with the reservations which they regard as indispensable;

Convinced that it is in the interest of the progress of international justice, and consistent with the expectations of the public opinion of the world, that the greatest possible number of States should accept to the widest possible extent compulsory jurisdiction by the Court:

Recommends States to adhere at the earliest possible date to the special protocol opened for signature in virtue of Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice.

(4) Article 4 bis.

Where, in accordance with paragraph 9 of Article 15 of the Covenant, a dispute is referred to the Assembly, the latter, for purposes of settlement of the dispute, shall have all the powers conferred upon the Council in regard to the making of endeavours to reconcile the parties

1 Article 6 in the Final Protocol.
as provided in paragraphs 1, 2 and 3 of Article 15 of the Covenant and in the clause numbered 1 of Article 4 above.

In the event of the Assembly's failing to secure an amicable settlement,
If one of the parties asks for arbitration, the Council shall proceed, in accordance with the terms of the clause numbered 2 of Article 4, sub-clauses (a), (b) and (c), to constitute a Committee of Arbitrators.
If no party asks for arbitration, the Assembly shall again take the dispute under consideration and shall have in this connection the same powers as the Council; the solution recommended in a report by the Assembly concurred in as is provided at the end of paragraph 10 of Article 15 of the Covenant shall have the same effect as a solution recommended by a report of the Council adopted as provided in the clause numbered 3 of Article 4 above.
If the required majority cannot be obtained, the dispute shall be submitted to arbitration and the Council shall itself determine the composition and the procedure of the Committee of Arbitrators in the manner provided in the clause numbered 4 of Article 4 above.


DRAFT GENERAL REPORT PRESENTED TO THE FIFTH ASSEMBLY ON BEHALF OF THE FIRST AND THIRD ¹ COMMITTEES ON ARBITRATION, SECURITY AND THE REDUCTION OF ARMAMENTS.

M. Politis, Rapporteur to the First Committee.
M. Benes, Rapporteur to the Third Committee ¹.
(September 27th, 1924.)

INTRODUCTION ².

WORK OF THE FIRST COMMITTEE.

DRAFT PROTOCOL FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Preamble.

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

Compulsory Arbitration.

1. Introduction.

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

The realisation of this great ideal, to which humanity aspires with a will which has never been more strongly affirmed, presupposes as an indispensable condition the elimination of war.

¹ For this section of the report see the full text as adopted (Annex 16).
The Covenant of the League of Nations erected a wall of protection around the peace of the world, but it was a first attempt at international organisation and it did not succeed in closing the circle sufficiently thoroughly to leave no opening for war. It reduced the number of possible wars. It did not condemn them all. There were some which it was forced to tolerate. Consequently there remained, in the system which it established, numerous fissures, which constituted a grave danger to peace.

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

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

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

The arbitration which is now contemplated differs from this classic arbitration mainly from the following two points of view:

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

(b) It is more an instrument of peace than an instrument of justice. Arbitration has always had these two functions. But whereas, in the historical development of arbitration, the second tends to be more important than the first, here it is the first which is predominant. According to the system of the Protocol, the arbitrators are conciliators rather than judges. They are called upon to give proof of statesmanship rather than to show knowledge of legal science. This is not a matter for regret. It is an illusion to imagine that justice can kill war. It is the contrary which is true: the reign of justice presupposes peace. Consequently, in order to guarantee to the nations the reign of law, you must first guarantee to them peace. Arbitration will only succeed in being truly the instrument of justice after it has functioned to general satisfaction as the instrument of peace.

It may be hoped that such will be the case in the new system, for it does away with the obstacle which has hitherto prevented the development of compulsory arbitration, viz., the absence of sanctions.

In the system of the Protocol, the obligation to submit disputes to arbitration is sound and practical because it has always a sanction. Thanks to the intervention of the Council, its application is automatically ensured; in no case can it be thrown on one side through the ill-will of one of the disputant States. The awards to which it leads are always accompanied and controlled by the Council of the League of Nations, and in its dealings with them the Council of the League of Nations will at once be able to exercise all the rights and fulfil all the duties conferred upon it.

As between the States Members of the League of Nations the Protocol may in the first place create a dual regime, for, if it is not immediately accepted by them all, the relations between signatories and non-signatories will still be governed by the Covenant alone while the relations between signatories will be governed by the Protocol as well. But this situation cannot last. Apart from the fact that it may be hoped that all the States Members of the League will adhere to it, the Protocol is in no sense designed to create among the States which accept it a restricted League capable of competing with or opposing in any way the existing League. On the contrary, such of its provisions as relate to articles of the Covenant will, as soon as possible, be made part of the general law by amendment of the Covenant effected in accordance with the procedure for revision laid down in Article 26 thereof. The signatory States which are Members of the League of Nations undertake to make every effort to this end.

When the Covenant has been amended in this way, the Protocol will lose its value as between the said States: certain of its provisions will have enriched the Covenant, while others, being temporary in character, will have lost their object.

The Protocol will then only subsist in the relations between signatory States which are Members of the League of Nations and signatory States outside the League, or between States coming within the latter category.

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

3. Condemnation of Aggressive War.

Article 2. — The general principle of the Protocol is the prohibition of aggressive war.

Under the Covenant, while the old unlimited right of States to make war is restricted, it is not abolished. There are a fair number of cases in which the exercise of this right is tolerated, some wars are prohibited and others are legitimate.
In future the position will be different. In no case is any State signatory of the Protocol entitled to undertake on its own sole initiative an offensive war against another signatory State or against any non-signatory State which accepts all the obligations assumed by the signatories under the Protocol.

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

The same applies when a country employs force with the consent of the Council or the Assembly of the League of Nations under the provisions of the Covenant and the Protocol. This eventuality may arise in two classes of cases: either a State may take part in the collective measures of force decided upon by the League of Nations in aid of one of its Members which is the victim of aggression; or a State may employ force with the authorisation of the Council or the Assembly, in order to enforce a decision given in its favour. In the former case the assistance given to the victim of aggression is indirectly an act of legitimate self-defence.

In the latter, force is used in the service of the general interest which would be threatened if decisions reached by a pacific procedure could be violated with impunity. In all these cases the country resorting to war is not acting on its private initiative, but is in a sense the agent and the organ of the community.

It is for this reason that we have not hesitated to speak of the exceptional authorisation of war. It has been proposed that the word "force" should be used in order to avoid any mention of "war" — in order to spare the public that disappointment which it might feel when it found that, notwithstanding the solemn condemnation of war, war was still authorised in exceptional cases. We preferred, however, to recognise the position frankly by retaining the expression "resort to war" which is used in the Covenant. If we said "force" instead of "war", we should not be altering the facts in any way. Moreover, the confession that war is still possible in specific cases has a certain value, because the term describes a definite and well-understood situation, whereas the expression "resort to force" would be liable to be misunderstood, and also because it emphasises the value of the sanctions at the disposal of the community of States bound by the Protocol.

4. Compulsory Jurisdiction of the Permanent Court of International Justice.

Article 3. The general principle of the Protocol could not be accepted unless the pacific settlement of all international disputes without distinction were made possible.

The permanent settlement, in the first place, in the extension of the compulsory jurisdiction of the Permanent Court of International Justice.

According to its Statute, the jurisdiction of the Court is, in principle, optional. On the other hand, Article 36, paragraph 2, of the Statute offers States the opportunity of making the jurisdiction compulsory in respect of all or any of the classes of legal dispute affecting:

(a) the interpretation of a Treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. States have only to declare their intention through the special Protocol annexed to the Statute. The undertaking then holds good in respect of any other State which assumes the same obligation. It may be given either unconditionally or on condition of reciprocity on the part of several or certain other States; either permanently or for a fixed period.

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

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

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

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

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

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

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

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

A State might go even further and might, while accepting compulsory jurisdiction by the Court, reserve the right of laying disputes before the Council of the League with a view to conciliation in accordance with paragraphs 1-3 of Article 15 of the Covenant, with the proviso that neither party might, during the proceedings before the Council, take proceedings against the other in the Court.

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

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

Such accession must take place at latest within the month following upon the coming into force or subsequent acceptance of the Protocol.

It goes without saying that such accession in no way restricts the liberty, which States possess under the ordinary law, of concluding special agreements for arbitration. It is entirely open to any two countries signatory of the Protocol which have acceded to paragraph 2 of Article 36 to extend still further, as between themselves, the compulsory jurisdiction of the Court, or to stipulate that, before having recourse to its jurisdiction, they will submit their disputes to a special procedure of conciliation or even to stipulate, either before or after a dispute has arisen, that it shall be brought before a special tribunal of arbitrators or before the Court of Arbitration being thus followed.

It might also be stated that the recognition of the compulsory jurisdiction of the Court, to paragraph 2 of Article 36, which will henceforth become compulsory, will remain optional, and that if such accession has already taken place it will continue to be valid in accordance with the terms under which it was made.

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

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


Article 4. — We have, in the second place, succeeded in making possible the pacific settlement of all disputes by strengthening the procedure laid down in the Covenant.

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

In this connection, no change has been made in the procedure laid down by the Covenant. It appeared unnecessary to specify what particular procedure should be followed. The Council is given the utmost latitude in choosing the means most appropriate for the reconciliation of the parties. It may take advice in various quarters; it may hear expert opinions; it may proceed to investigations or expert enquiries, whether by itself or through the intermediary of experts chosen by it; it may even, upon application hereto by the signatory States, constitute a special conciliation committee. The essential point is to secure, if possible, a friendly settlement of the dispute; the actual methods to be employed are of small importance. It is imperative that nothing should in any way hamper the Council’s work in the interests of peace. It is for the Council to examine the question whether it would be expedient to draw up for its own use and bring to the notice of the Governments of the signatory States general regulations of
The new procedure set up by the Protocol will be applicable only in the event of the Council's failing in its efforts at reconciliation and of the parties failing to come to an understanding in regard to the method of settlement to be adopted.

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

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

- Compulsory arbitration at the request of one of the parties;
- A unanimous decision by the Council;
- Compulsory arbitration enjoined by the Council.

Appropriate methods are laid down for all three cases.

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

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

Full liberty is left to the parties themselves to constitute this Committee of Arbitrators. They may agree between themselves in regard to the number, names and powers of the arbitrators and the procedure.

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

It also appeared inexpedient to define precisely the powers which should be conferred upon the arbitrators. This is a matter which depends on circumstance, although, in a general way, the arbitration in question will have a special character distinguishing it from the ordinary type of arbitration. It is to be presumed that, when a dispute is brought before the Council and the parties fail to agree to submit it to judicial settlement, the dispute will in the majority of cases be of a definitely political character. Hence, the rôle of the arbitrators cannot be merely that of judges giving sentence in accordance with principles of law. Their rôle will rather be that of friendly mediators able to take into account considerations of equity, and even of expediency.

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

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

The extension which, in the new system of pacific settlement of disputes, has been given to the advisory procedure of the Court has suggested the idea that it might be desirable to examine whether, even in such cases, it might not be well to adopt the system of adding national judges, which at present only obtains in litigious proceedings, and also that of applying to the advisory procedure the provisions of Article 24 of the Statute of the Court relating to withdrawal of judges.

If the parties have not been able to come to an understanding on all or on some of the points necessary to enable the arbitration to be carried out, it lies with the Council to take the necessary action.

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

The first rule is that the Council shall, before proceeding to the selection of arbitrators, have regard to the wishes of the parties. It was suggested that this idea should be developed by conferring on the parties the right to indicate their preferences and to challenge a certain number of the arbitrators proposed by the Council.
This proposal was set aside on account of the difficulty of laying down detailed regulations for the exercise of this double right. But it is understood that the Council will have no motive for failing to accept the candidates proposed to it by the different parties nor for imposing upon them arbitrators whom they might wish to reject, nor, finally, for failing to take into account any other suggestion which the parties might wish to make. It is indeed evident that the Council will always be desirous of acting in the manner best calculated to increase to the utmost degree the confidence which the Committee of Arbitrators should inspire in the parties.

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

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

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

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

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

**Effect of and Sanction enforcing Decisions.** — Failing a friendly arrangement, we are, thanks to the system adopted, in all cases certain of arriving at a final solution of a dispute, whether in the form of a decree of the Permanent Court of International Justice, or in the form of an arbitral award, or, lastly, in the form of a unanimous decision of the Council.

To this solution the parties are compelled to submit. They must put it into execution or conform to it in good faith.

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

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

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

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

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

A few exceptions to the rule have also had to be made in order to preserve the elasticity of the system.

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

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

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

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

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

6. *Rôle of the Assembly under the System set up by the Protocol.*

**Article 4 bis.** — The new procedure should be adapted to the old one, which gave the Assembly the same powers as the Council when a dispute is brought before it, either by the Council itself, or at the request of one of the parties.

The question has arisen whether the system of maintaining in the new procedure this equality of powers between the two organs of the League of Nations is a practical one. Some were of opinion that it would be better to exclude intervention by the Assembly. Finally, however, the opposite opinion prevailed; an appeal to the Assembly may indeed have an important influence from the point of view of public opinion. Without going so far as to assign to the Assembly the same rôle as to the Council, it has been decided to adopt a mixed system by which the Assembly is, in principle, substituted for the Council in order that, when a dispute is referred to it in conformity with paragraph 9 of Article 15 of the Covenant, it may undertake, in the place of the Council, the various duties provided for in Article 4 of the present Protocol, with the exception of purely executive acts which will always devolve upon the Council.

For example, the organisation and management of compulsory arbitration, or the transmission of a question to the Permanent Court of International Justice, must always be entrusted to the Council, because, in practice, the latter is the only body competent for such purposes.

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

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

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

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

7. Domestic Jurisdiction of States.

**Article 5.** — The present Protocol in no way derogates from the rule of Article 15, paragraph 8, of the Covenant, which protects national sovereignty.

In order that there might be no doubt on this point it appeared advisable to say so expressly.

Before the Council, whatever be the stage in the procedure set up by the Protocol at which the Council intervenes, the provision referred to applies without any modification.

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

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

The compulsory character of the Court’s opinion, in this case, increases the importance of the double question referred to above, in connection with Article 4, relating to the calling-in

\(^1\) Article 6 in the Final Protocol.
8. Determination of the Aggressor.

Article 6. — In order that the procedure of pacific settlement may be accompanied by the necessary sanctions, it has been necessary to provide for determining exactly the State guilty of aggression to which sanctions are to be applied.

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

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

The definition of aggression is a relatively easy matter, for it is sufficient to say that any State is the aggressor which resorts in any shape or form to force in violation of the engagement contracted by it either under the Covenant (if, for instance, being a Member of the League of Nations, it has not respected the territorial integrity or political independence of another Member of the League) or under the present Protocol (if, for instance, being a signatory of the Protocol, it has refused to conform to an arbitral award or to a unanimous decision of the Council). This is the effect of Article 6, which also adds that the violation of the rules laid down for a demilitarised zone is to be regarded as equivalent to resort to war. The text refers to resort to war, but it was understood during the discussion that, while mention was made of the most serious and striking instance, it was in accordance with the spirit of the Protocol that acts of violence and force, which possibly may not constitute an actual state of war, should nevertheless be taken into consideration by the Council.

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

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

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

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

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

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

By a refusal to accept the procedure of pacific settlement or to submit to the decision resulting therefrom;

Or by violation of provisional measures enjoined by the Council as contemplated by Article 10 in the Final Protocol.

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

Apart from the above cases, there exists no presumption which can make it possible automatically to determine who is the aggressor. But this fact must be determined, and if on other solution can be found, the decision must be left to the Council.

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

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

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

1 Article 10 in the Final Protocol.
Where there is no presumption, the Council has to declare the fact of aggression; a decision is necessary and must be taken unanimously. If unanimity is not obtained, the Council is bound to enjoin an armistice, and for this purpose no decision, properly speaking, has to be taken; there exists an obligation which the Council must fulfil; it is only the fixing of the terms of the armistice which necessitates a decision and for this purpose a two-thirds majority suffices.

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

9. Disputes between States signatory and States non-signatory of the Protocol.

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

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

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

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

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

Annex 14.

DRAFT PROTOCOL: NEW DRAFTS OF ARTICLES 5 AND 6 PROPOSED BY THE SUB-COMMITTEE ON SEPTEMBER 30TH, 1924.

(a) ON THE QUESTION OF DOMESTIC JURISDICTION.

Article 5.

(b) ON DETERMINATION OF THE AGGRESSOR.

Article 6.

(The proposed new changes are in italics.)

(a) Question of Domestic Jurisdiction (Article 5).

The provisions of paragraph 8 of Article 15 of the Covenant shall continue to apply in proceedings before the Council.
If, in the course of an arbitration such as is contemplated by Article 4 of the present Protocol, one of the parties claims that the dispute, or part thereof, arises out of a matter which by international law is solely within the domestic jurisdiction of that party, the arbitrators shall on this point take the advice of the Permanent Court of International Justice through the medium of the Council of the League. 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.

If the question is held by the Court or by the Council to be a matter solely within the domestic jurisdiction of the State, the decision shall not prevent consideration of the situation by the Council or by the Assembly under Article 11 of the Covenant.

(b) Determination of the Aggressor (Article 61).

Every State which resorts to war in violation of the undertakings contained in the Covenant or in the present Protocol is an aggressor. Violation of the rules laid down for a demilitarised zone is to be held to be equivalent to resort to war.

In the event of hostilities having broken out, any State shall be presumed to be an aggressor unless a decision of the Council, which must be taken unanimously, shall otherwise declare:

(1) If it has refused to submit the dispute to the procedure of pacific settlement provided by Articles 13 and 15 of the Covenant as amplified by the present Protocol, or to comply with a judicial sentence or arbitral award or with a unanimous recommendation of the Council, or has disregarded a unanimous report of the Council, a judicial sentence or an arbitral award, recognising that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State; nevertheless, in the last case the State shall only be presumed to be an aggressor if it has not previously submitted the question to the Council or the Assembly under Article 11 of the Covenant.

(2) If it has violated provisional measures enjoined by the Council for the period while the proceedings are in progress as contemplated by Article ... of the present Protocol;

Apart from the cases dealt with in paragraphs (1) and (2), if the Council does not succeed very rapidly in determining the aggressor, it shall be bound to enjoin upon the belligerents an armistice, and shall fix the terms, acting, if need be, by a two-thirds majority and shall supervise its execution.

Any belligerent which has refused to accept the armistice or has violated its terms shall be deemed an aggressor.

The Council shall call upon the signatory States to apply forthwith against the aggressor the sanctions provided by Article 10 of the present Protocol, and any signatory State thus called upon shall thereupon be entitled to exercise the rights of a belligerent.

Annex 15.

DRAFT PROTOCOL.

NEW ARTICLE PROPOSED BY THE SUB-COMMITTEE ON SEPTEMBER 30TH, 1924.

Whenever mention is made in Article 61, or in any other provision of the present Protocol, of a decision of the Council, this shall be understood in the sense of Article 15 of the Covenant, namely, that the votes of the representatives of the parties to the dispute are not to be counted when reckoning unanimity or the necessary majority.

Annex 16.

DRAFT PROTOCOL: GENERAL REPORT SUBMITTED TO THE FIFTH ASSEMBLY ON BEHALF OF THE FIRST AND THIRD COMMITTEES.

(For text, see the Fourth Part, Annex 1, pages 345 to 363.)
Annex 17.

DRAFT PROTOCOL: RESOLUTIONS ADOPTED BY THE FIFTH ASSEMBLY ON OCTOBER 2ND, 1924.

(For text, see the Fourth Part, twenty-eighth plenary meeting of the Fifth Assembly, page 343.)

Annex 18.

PROTOCOL FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

(For text, see Fourth Part, Annex 2, pages 363 to 367.)
Third Part.

EXTRACTS FROM THE MINUTES
OF THE
THIRD COMMITTEE
(REDUCTION OF ARMAMENTS)
THIRD PART

Extracts from the Minutes of the Third Committee

(Reduction of Armaments)

LIST OF MEMBERS

Chairman:  His Excellency M. Jean G. Duca (Roumania).
Vice-Chairman: His Excellency M. Nicolas Politis (Greece).

Albania:  M. Mehmed Konitza.
Australia:  The Hon. Sir Littleton E. Groom, K.C.M.G., K.C., M.P.
Austria:  His Excellency M. Emeric Pflügl.
Belgium:  His Excellency M. Prosper Pouillet.
           Substitute: His Excellency M. Paul Hymans.
Brasil:  His Excellency M. Frederico de Castello Branco-Clark.
           Substitutes: Rear-Admiral A. C. de Souza e Silva.
           Major E. Leitao de Carvalho.
British Empire:  The Right Hon. Lord Parmoor, P.C., K.C.V.O.
               Substitutes: The Right Hon. Arthur Henderson, P.C., M.P.
               Mr. Charles Roden Buxton.
Bulgaria:  His Excellency M. Christo Kalfoff.
           Substitute: M. Svetoslav Pomenov.
Canada:  The Hon. E. M. MacDonald, K.C.
           Substitute: Mr. O. D. Skelton, M.A. Ph.D.
Chile:  His Excellency M. Enrique Villegas.
China:  His Excellency M. Tai Tch'enne Linne.
           Substitute: M. William Hsieh.
Colombia:  His Excellency Dr. José Urrutia.
Costa Rica:  His Excellency M. Manuel de Peralta.
Cuba:  His Excellency M. C. de la Torriente.
           Substitute: M. Guillermo de Blanck.
Czechoslovakia:  His Excellency Dr. Eduard Benes.
               Substitute: M. Rudolf Kunzl-Jizersky.
Denmark:  His Excellency M. H. Zahle.
           Substitute: M. Peter Munch.
Esthonia:  General Jaan Laidoner.
           Substitute: His Excellency M. C. R. Pusta.
Ethiopia:  Count R. Linant de Bellefonds.
           Substitute: M. Ato Sahle Sedalon.
Finland:  His Excellency M. Eino Rudolf Holsti.
France: His Excellency M. Paul-Boncour.
Substitute: M. Henry de Jouvenel.
M. Leon Jouhaux.

Greece: His Excellency M. Nicolas Politis.

Haiti: General Gabriel Tanczos.
Substitute: Colonel Geza Siegler.


Irish Free State: Mr. Desmond Fitzgerald.
Substitute: Mr. James McNeill.

Italy: His Excellency M. Carlo Schanzier.
Substitute: Brigadier-General A. de Marinis Stendardo di Rigigliano

Japan: His Excellency M. M. Matsuda.
Substitute: M. I. Togugawa.

Latvia: His Excellency M. Louis Seya.
Substitute: M. Vilis Schumans.

Liberia: His Excellency Baron Rodolphe Auguste Lehmann.

Lithuania: His Excellency M. Ernest Galvanauskas.

Luxembourg: M. Ch. Vermaire.

Netherlands: His Excellency Jonkheer J. Loudon.

New Zealand: Col. the Hon. Sir James Allen, K.C.B.

Norway: Dr. Christian L. Lange.

Panama: His Excellency M. Antonio Burgos.

Paraguay: Dr. Ramon Caballero.

Persia: His Highness Prince Arfa-od-Dovleh.
Substitute: Dr. Edmond Privat.

Poland: His Excellency M. Aleksander Skrzynski.

Portugal: His Excellency Dr. Augusto de Vasconcellos.
Substitutes: His Excellency M. Bartholomeu Ferreira.
His Excellency General A. Freire d'Andrade.

Roumania: His Excellency M. Nicolas Titulesco.
Substitute: M. AngeleSCO.

Salvador: His Excellency Dr. Gustavo Guerrero.

Kingdom of the Serbs, Croats and Slovenes: His Excellency Dr. Voislav Marinkovitch.
Substitute: His Excellency Dr. Kosta Koumanoudi.

Siam: His Highness Prince Charoon.

South Africa: The Hon. Sir Edgar Walton, K.C.M.G.

Spain: His Excellency M. Emilio de Palacios.
Substitute: His Excellency M. Eduardo Cobian.

Sweden: His Excellency M. Hjalmar Branting.
Substitute: M. Oesten Unden.

Switzerland: Dr. Robert Forrer.
Substitute: Colonel Henri Bolli.

Uruguay: His Excellency M. Alberto Guani.
Substitute: His Excellency M. Enrique Buero.

Venezuela: His Excellency M. Caracciolo Parra-Perez.
Substitute: His Excellency M. Diogenes Escalante.
THIRD COMMITTEE  
(REDUCTION OF ARMAMENTS)  

EXTRACT FROM THE AGENDA  


5. Regional Agreements.  

6. Treaty of Mutual Assistance and Resolution relating to Arbitration, Security and Reduction of Armaments adopted by the Assembly at its Meeting of September 6th, 1924.  

7. Limitation of Expenditure on Armaments.  

9. Limitation of Naval Armaments.  

SECOND MEETING  
held on September 8th, 1924, at 3.30 p.m.  

M. Duca (Roumania) in the Chair.  

3. Appointment of Sub-Committees.  

The Chairman read the Committee's agenda:  

1. Control of the international trade in arms, munitions and implements of war.  
2. Private manufacture of arms, munitions and implements of war.  
4. Chemical warfare.  
5. Regional agreements.  
6. Treaty of Mutual Assistance and resolution relating to arbitration, security and reduction of armaments, adopted by the Assembly at its meeting of September 6th, 1924.  
7. Limitation of expenditure on armaments.  
9. Limitation of naval armaments.  

The Chairman thought their chief task was the examination of the Draft Treaty of Mutual Assistance, as had been indicated by the debates of the last few days in the Assembly, and that they should begin by discussing this question.  

He therefore suggested that they should begin by appointing two Sub-Committees, which would be instructed to prepare reports, the first Sub-Committee dealing with items 1, 2, 3, 4, 7, 8, and the second with item 9, which concerned naval armaments.  

M. Schanzer (Italy) agreed with the Chairman. He observed, however, that the task assigned to one of the Committees would be somewhat arduous, and he suggested appointing a third Sub-Committee to which items 1 and 2 could be specially referred.
M. Lange (Norway) was surprised that Item 5 (regional agreements) did not appear among the items referred to the Committees. Regional agreements did not mean, in this connection, questions affecting guarantees or the security of States but simply agreements between States as to a method for the reduction of armaments. He suggested that the question of agreements for the reduction of armaments should also be referred to the Committee dealing with the limitation of expenditure on armaments.

M. Hymans (Belgium) thought that the regional agreements were very closely connected with the general problem of security and that this question should not be dealt with apart from the whole problem; but the Norwegian representative had referred to regional agreements dealing solely with the reduction of armaments. That was a special question which could be dealt with in the course of the debate, apart from the general discussion; but he was certainly in favour of having the question of regional agreements discussed in conjunction with the problem of mutual assistance and guarantee, as had been indicated by the debates in the Assembly.

Lord Parmoor (British Empire) thought it had been quite accurately stated that the question of regional agreements, which no doubt had to do with the special reduction of armaments in special cases, as pointed out on page 30 of the Report of the Temporary Mixed Commission (Annex i), was really quite distinct from that of regional agreements under any such form of arrangement as the Draft Treaty of Mutual Assistance. He thought the two questions were obviously and totally distinct.

He wished to ask the Chairman another question: Was the Committee deciding now how it was to deal with item 6 of the agenda, or was that to be dealt with after the other matter had been settled?

M. Lange (Norway) agreed with the British representative but desired to emphasise the distinction between regional agreements for the reduction of armaments and partial supplementary agreements for mutual assistance.

M. Paul-Boncour (France) saw no objection to the question of regional agreements for the reduction of armaments being referred to a Committee, provided it was considered as part of the general question of partial treaties; but if the fact of its being referred to a Committee was interpreted as implying that partial treaties could be examined and discussed as a district question and not as forming part of the general plan of mutual assistance, he thought that the Committee would agree that such a position could not be taken up. The speaker thought that the question of partial treaties was closely bound up with the Treaty of Mutual Assistance, and that it might perhaps pave the way to some compromise between opposing points of view and thus enable the Committee to produce something positive as a result of its debates.

M. Hymans (Belgium) supported this view and was in favour of the question of regional agreements for the purposes of security being dealt with in the general discussion.

The Chairman, summing up the discussion, announced that the question of regional agreements would be discussed at the same time as the Draft Treaty of Mutual Assistance; anything in these agreements which was of an exclusively military character referring to the reduction of armaments would be referred to the second Sub-Committee.

On the proposal of M. Schanz (Italy), the Committee requested the Chairman to submit the names of the delegates who would serve on the three Sub-Committees.

The Chairman made up the Sub-Committees as follows:

1st Sub-Committee: Items 1 and 2 of the Agenda:
(Chairman) General de Marinis (Italy).
M. Poullet (Belgium).
Mr. Henderson (British Empire).
M. Enckell (Finland).
M. Jouhaux (France).
The Maharajah of Bikaner (India).
Prince Arfa-Ed-Dowleh (Persia).

2nd Sub-Committee: Items 3, 4, 5, 7, 8 of the Agenda:
(Chairman) M. Skrzynski (Poland).
Mr. Buxton (British Empire).
M. Villegas (Chili).
M. Paul-Boncour (France).
General Tanczos (Hungary).
M. Lange (Norway).
M. de Vasconcellos (Portugal).
M. Koumanoudi (Kingdom of the Serbs, Croats and Slovenes).
M. Unden (Sweden).

3rd Sub-Committee:
(Chairman) Jonkheer Loudon (Netherlands).
M. de Castello Branco-Clark (Brazil).
Mr. Buxton (British Empire).
M. de Jouvenel (France).
M. Schanz (Italy).
M. Matsuda (Japan).
M. Corian (Spain).

The Chairman, prior to the discussion of item 6 of the agenda, reminded the meeting of the terms of the Assembly's resolution (Annex 2).

M. Schanzer (Italy) thought that the discussion of item 6 of the agenda should be preceded by a general discussion.

Lord Parmoor (British Empire) agreed with M. Schanzer that it would be advisable to have a general discussion; but on the question of procedure he pointed out that the Third Committee had to deal with extremely important and difficult political questions, the technical questions being relegated, and properly relegated, to the First Committee. It was therefore extremely important that the Third Committee should adopt the course which would be most likely to bring those important and difficult political questions to a successful issue. He suggested first of all that the heading "Draft Treaty of Mutual Assistance" was quite inapplicable to the discussion, having regard to the resolutions which had been submitted to them by the Assembly. Those words dealt with the matter as it stood before the resolution had been adopted by the Assembly. The Assembly resolution did not deal with the Treaty of Mutual Assistance, but it asked the Third Committee to have regard to the observations of the Governments on the project of the Treaty of Mutual Assistance, which was quite a different thing from taking the Treaty as the basis of its discussions. But beyond that, having regard to the terms of the resolution and the speeches which were made by Mr. Ramsay MacDonald and M. Herriot, the primary matter that they had to discuss and consider was arbitration or the settlement of disputes, and it was only after they had considered the question of arbitration that they could approach the other questions which were dependent upon it.

The order in which the questions were taken did not seem to him to be very important, but he suggested that they should take them in the order in which they were laid down by M. Herriot, namely, arbitration, security and disarmament. He did not think they could possibly discuss security or disarmament until they had thoroughly discussed arbitration. How could they talk about security or disarmament until they had dealt with arbitration?

At the end of the resolution it said that they had to arrive at a means of settling by pacific means all disputes arising between States. If that was considered, they would be in a position to see if they could develop a general arbitration code and how they could introduce the principles both of security and disarmament. He did not think they could have a discussion on the Draft Treaty of Mutual Assistance, because it was really non-existent for the moment, as that was not relegated to the Third Committee by the Assembly. What they had to consider, in connection with arbitration, security and disarmament, were the answers which the Governments had given when the Draft Treaty was submitted to them.

He therefore hoped that the fruitful method of procedure would be considered to be that indicated by Mr. Ramsay MacDonald and M. Herriot in their speeches to the Assembly. The keynote was arbitration, and then they could consider the other two questions afterwards.

M. Politis (Greece) also emphasised the fact that the resolution passed by the Assembly covered two points: first, the observations and replies of the Governments on the subject of the Draft Treaty, and consideration of the various schemes submitted to the Secretariat; and, secondly, an examination of the articles of the Covenant in order to find at least the germ of a guarantee which might be developed by an enquiry directed to the question of arbitration as well as to that of the reduction of armaments. It was plain from the very wording of the resolution that their first task should be to examine the questions referring to the Draft Treaty of Mutual Assistance; and after that they could study the clauses of the Covenant that related to arbitration or to the reduction of armaments. It mattered little what sequence they adopted, but the study to be undertaken was a complex one. To save time it would be advisable for a small sub-committee to prepare a kind of synoptic schedule summarising:

1. The provisions of the Draft Treaty of Mutual Assistance;
2. The objections presented by the Governments;
3. The reservations made by countries which had accepted the Draft Treaty in principle;
4. The new or similar systems which had been proposed.

M. Politis explained why he suggested that this work should not be exclusively undertaken by the secretariat of the Committee. It was not merely a mechanical task, for political considerations would to a certain extent influence the drawing-up of this schedule.

M. Schanzer said that he was entirely of M. Politis' opinion and regretted that he was unable to agree with Lord Parmoor. He in no way under-estimated the great importance of the question of arbitration, but if there was one thing that was clearly brought out in the discussions that had taken place at the Assembly when the Prime Ministers took part in the debate, it was the fact that these three questions were inseparable: the settlement of international disputes, security and disarmament. He thought a general discussion was indispensable with a view to defining the views of the different delegations.

Personally he could not speak of arbitration without referring to security and disarmament, and he could not discuss the question of security without introducing the question of disarmament. They were three questions so closely connected that it seemed impossible to separate them.

Moreover, as M. Politis had clearly explained, the first part of the resolution adopted by the Assembly entitled them to open the general discussion on all these subjects, since it stated that:

"The Third Committee is requested to consider the material dealing with security and the reduction of armaments, particularly the observations of the Governments on the Draft Treaty of Mutual Assistance prepared in pursuance of Resolution XIV of the Third Assembly, and other plans prepared and presented to the Secretary-General."
The Committee thus had a definite mandate from the Assembly. On the other hand, when Lord Parmoor admitted that they were to discuss the replies of the Governments on the Draft Treaty of Mutual Assistance he confessed that he could not discuss those replies unless he were also free to speak on the Treaty. He would add that some delegations — the Italian, for instance — felt that they required a certain amount of liberty at the opening of this debate in order to define their position. They could not make full use of this liberty if they were debarred from speaking on all the great questions covered by the Assembly's resolution.

He would therefore ask Lord Parmoor not to press his *a priori* objection but to allow them to proceed to the general discussion which they considered desirable.

Lord Parmoor (British Empire) said he had stated at the commencement that he was in favour of a general discussion. In that he entirely agreed with M. Schanzer. He felt that during the general discussion the question of the best way of dealing with the other points might and must be discussed. It would be available for consideration by the Committee.

He did not father at all. He merely wanted to know whether, if it was now submitted to the Secretariat, it would be available for consideration by the Committee. He did not know if there was any limitation of time as to when those proposals might be received, and he desired to know whether any other proposals which might be submitted would be received by the Committee, because a countryman of his had submitted to him a proposal (which he did not father at all). He merely wanted to know whether, if it was now submitted to the Secretariat, it would be available for consideration by the Committee.

M. van Karnebeek (Netherlands) believed that, in regard to the real issue, one might agree with both M. Schanzer and Lord Parmoor. M. Schanzer had urged the desirability of a general discussion. Lord Parmoor, on the other hand, said that whatever form the discussion might take it could not be based solely on the Treaty of Mutual Assistance. This Treaty had been examined by the Governments, and several Governments had declared themselves opposed to it. It was evident that the Draft Treaty could not serve as a basis for discussion.

If he remembered correctly, the Chairman had said, when this debate was opened, "We shall now open the discussion on the Draft Treaty of Mutual Assistance".

The Chairman said that he had expressed himself badly. When he said "mutual assistance", he intended to refer to the whole question.

M. van Karnebeek (Netherlands) did not think that the first sub-paragraph of the resolution adopted the previous Saturday by the Assembly was likely to create great difficulties. He admitted that the sequence which it indicated was logical, though he would not go as far as M. Politis, who appeared to attach considerable importance to this order.

They were dealing with a Draft Treaty of Mutual Assistance, and a certain number of Powers had declared themselves opposed to it. It was evident that this Draft Treaty could not, in the present form, serve as a basis for the discussion, but there was a very considerable amount of documentary material connected with it, and the resolution of the Assembly had intended to include this material in the items referred to the Committee — at least that was how he understood the first part of the first sub-paragraph of the Assembly's resolution.

Next, the debate in the Assembly had brought out a fresh point, by raising the question of what exactly the Covenant provided in regard to security and disarmament. It was quite natural that this new point should have been placed second, not because it was a subsidiary point, but as he understood M. Politis to have said, but in the natural order of things.

He had therefore come to the following conclusion: If a general discussion was not wanted, he thought the Committee should be free to follow the natural sequence; and the first question would accordingly be the preliminary one of deciding what the Covenant already provided in connection with security. They could then discuss the second point, viz. whether the security provided was sufficient, or if something else was required.

If, on the other hand, they desired a general discussion, that question would be a subsidiary one.

M. de Palacios (Spain) thought that the Committee would all agree that a general discussion should be opened. There was only one resolution of the Assembly, the examination of which had been entrusted to them, and their examination ought to include all the questions covered by the resolution.
Apart from the general discussion, they should come to a decision concerning the very sound proposal put forward by M. Politis. If the Committee decided to appoint a small Committee for the work recommended by M. Politis, he thought they would naturally desire that M. Politis should preside over this small Committee.

The Chairman summed up the discussion that had just taken place as follows: They were agreed to proceed, in the first place, to a general discussion and, at the same time, to ask a Committee of three to draw up, with the assistance of the Secretariat, the synoptic table of which M. Politis had spoken, it being understood that this synoptic table would also include all the proposals made, as had been suggested by Sir James Allen.

The Committee adopted this procedure.

5. Appointment of the Committee instructed to study the Replies on the Subject of the Treaty of Mutual Assistance. (Annex 3.)

The Chairman appointed the following members to serve on the Committee:

M. Politis (as Chairman of the Committee); M. Poulet; M. Loudon.

6. General Discussion of Item 6 of the Agenda.

On the proposal of M. Benes, the Committee decided to proceed to the general discussion.

The Chairman announced that the general discussion was opened.

M. Schanzzer (Italy) said that the Assembly had instructed its competent Committees to examine the problems of the pacific settlement of international disputes, the security of nations and disarmament, considering them as a whole and taking due account of the points established in the course of the debate. The task entrusted to the Committees was of great difficulty, and he thought it desirable at the opening of the discussion to state some of the basic elements of the problem in order to make clear the standpoint of the Italian Delegation.

In the first place, he desired to remind them of the attitude which the Italian Delegation had hitherto observed towards the question before them. The idea that reduction of armaments and the security of nations were interdependent was already expressed, as they were aware, in the first paragraph of Article 8 of the Covenant itself. This idea was subsequently elaborated and more closely defined by the XIVth Resolution of the Third Assembly. That resolution was the origin of the work which the Temporary Mixed Commission had undertaken, starting from the schemes for mutual assistance submitted by Lord Cecil and Colonel Requin. During the protracted and laborious discussions which had been held in that Commission during 1923 in regard to these two schemes, the Italian Delegates had raised a certain number of objections and presented various amendments. Nevertheless, being extremely desirous of co-operating for the realisation of the common aim, they had finally accepted certain provisions in respect of which they had made criticisms and expressed misgivings. But they had felt bound to maintain their opposition to one of the fundamental principles of the final draft of the Treaty of Mutual Assistance — a combination of the schemes of Lord Cecil and Colonel Requin — i.e., to the principle of partial agreements regarded as a means of making the general assistance provided under the Treaty immediate and effective, and to the procedure by which it was proposed to apply that principle.

The draft Treaty was laid before the Fourth Assembly. The discussions in the Third Committee of that Assembly revealed the same divergencies between two schools of thought as had been brought out in the Temporary Mixed Commission, one school being in favour of, and the other opposed to, partial agreements as a means of giving effect to the guarantee. Nevertheless, the Third Committee in 1923 adopted, with a few modifications, the draft of its distinguished Rapporteur, M. Benes, and submitted it to the Assembly, pointing out very judiciously that though it was impossible to recommend the text for immediate adoption by the Governments, having regard to actual circumstances, it nevertheless represented a step forward along the difficult road to a reduction of armaments.

In pursuance of a resolution adopted by the Fourth Assembly, the Draft Treaty was submitted to the Governments for their consideration, and a large number of replies from those Governments were now to hand; those replies were most valuable, necessary, and, indeed, essential contribution to the discussion. The Italian Government, while welcoming any action which might tend directly or indirectly to a reduction of armaments, and being consequently favourably disposed to the conclusion of a Treaty of Mutual Guarantee, provided it was of a general character, had maintained its reservation in regard to partial agreements. It had also pointed out the difficulty which would arise in determining the aggressor, and it expressed the view that, in order to attain the lofty and humanitarian aims of the Treaty, it would be essential to secure the adherence of States in a larger measure than was contemplated by Article 18 of the Draft.

At the meeting of the present Assembly on September 6th, M. Salandra, head of the Italian Delegation, had pointed out certain inherent difficulties in the draft Treaty of Mutual Assistance, in particular, the disadvantage of entrusting the Council of the League of Nations with an illimitable task which would be beyond its capacity, and the danger lest partial agreements might serve to foment rivalries between groups of States, and thus result in an increase instead of reduction of armaments. Next, turning to the question of arbitration, the chief
Italian Delegate had observed that it would be necessary to consider up to what limits and in what form obligatory arbitration could be accepted and that means must certainly be found of providing executive sanctions for the award of the arbitrators. Finally, he declared that if any great international conferences were to be convened in the future with a view to the simultaneous reduction of armaments, Italy would participate in them and would do her utmost to co-operate actively and loyally for the attainment of such an object. So far as regards the attitude of Italy.

As regards the present situation, the representatives of Italy in that Committee considered that, in view of the new elements—such as the replies of the Governments (many of which were definitely opposed to the Treaty of Mutual Assistance), the memorable debate which had just taken place in the Assembly, and the submission of Mr. MacDonald’s proposals for compulsory arbitration and the American scheme for outlawing aggressive war—it was quite legitimate, and certainly expedient, to re-open the whole discussion on the means for securing the pacific settlement of international disputes in relation to the security of nations and to disarmament. The intimate connection between these three terms, these three aspects of the problem of the maintenance of peace, might henceforward be regarded as an accepted and incontrovertible principle.

They were all agreed in regard to this premise. The reduction of armaments would not prove practicable unless, on the one hand, they made it possible for the nations to obtain justice by means other than the employment of military force, and unless, on the other hand, some way was found of giving the nations security against aggression and of constraining recalcitrant States to comply with awards given by the organs of international justice. There would be divergences in regard to the means to be employed for these objects. Certain methods might be theoretically perfect, but if they would not work in practice when the need arose, or if they were repugnant to the legal traditions of the nations, or to their conception of the State, its rights and its sovereignty, they would prove ineffective and illusory. They must consider, therefore, whether they wished to seek perfection in theoretical schemes—with the possibility of seeing them fail when applied in practice—or whether it would not be wiser to put their trust in principles which were already recognised, even if their application in the present stage were imperfect and defective, and in the possibility of improving them; whether they would not do well to trust in the inevitable evolution—an evolution which might be hastened—of those principles, which had the great advantage of being accepted by all the nations which had assented to and formally sanctioned them.

Having thus stated his premises he would add that the Italian Delegation did not propose to contribute barren or destructive criticisms; on the contrary, it was animated by a real desire to co-operate in the achievement of the noble and lofty enterprise on which they had all embarked with the same ardour. He would therefore summarise briefly the main observations which, in their view, were called for by the Treaty of Mutual Assistance.

In the first place it was important to note that the scheme did not provide for simultaneity in the establishment of the guarantees of security and the actual reduction of armaments. The Treaty constructed a complex mechanism of mutual guarantees; it conferred novel and formidable powers on the Council of the League of Nations; it invited the States to assume new and serious obligations and to renounce a portion of their national sovereignty without informing them whether any reduction of armaments would in fact be effected or what would be the extent of that reduction, which was represented as the counterpart of the increased obligations and fresh responsibilities.

Why was it not arranged that the acceptance of all the clauses of the Treaty of Assistance should only be demanded when the Governments had agreed on a scale for the reduction of armaments? Was not everybody agreed as to the intimate connection between the two terms of the problem, guarantees and reduction of armaments? Why, then, did Article 11 of the Draft leave everything to the future, to the good-will of the Governments, which were to inform the Council of the reduction or limitation of armaments which they believed to be possible? It was only then that the Council was to proceed to draw up a general plan for the reduction of armaments, and the plan had next, as a subsequent stage, to be accepted by all the Governments. Was not that tantamount to leaving the page blank and deferring the effective realisation of the Treaty of Mutual Assistance to the Greek Kalends?

The above remarks, M. Schanzer observed, were merely preliminary. He would now make some observations on the actual method adopted by the draft Treaty to solve the problem of security. This method consisted in using partial treaties as a means of giving immediate effect to the general guarantee.

The Italian Delegation certainly did not dispute the right of nations to conclude partial treaties if they considered them necessary for their security. But they held that the conclusion of agreements of this nature was an exercise of the sovereign powers and responsibilities of the States concerned and did not come within the competence of the League of Nations, which, from its birth, had been given the character of universality and the tendency towards that ideal.

It was beyond question that the very object of the foundation of the League of Nations had been the substitution of a general system of guarantees for the old system of the grouping of States. That had been the governing idea in the formation of the League, and it was an idea to which the draft Treaty of Mutual Assistance seemed to pay insufficient regard.

It had been argued, indeed, that, since it was impossible to prevent the conclusion of partial agreements, it was wiser to place them under the control of the League of Nations than to leave them to the arbitrary judgment of the Contracting States or perhaps even to remain entirely unaware of their existence. But it might be argued with equal force, on the other side, that by
adopting the provisions of this Treaty the League of Nations would be made to assume responsibilities which in their view ought not to be placed upon it.

But the reason which above all others had prevented the Italian Delegate in the Temporary Mixed Commission from accepting the provisions of the draft Treaty concerning partial agreements was that those provisions would produce inequality and would give a preferential position to States which were parties to agreements of this kind as compared with States which were not parties. States in the latter category were to be precluded from resorting to war against an aggressor State until the Council of the League of Nations had pronounced its decision, whereas the States which were bound by partial agreements were to be allowed to judge for themselves whether, in any given circumstances, one of the cases of aggression contemplated by their treaties and recognised in advance by the Council had actually arisen. These States might in consequence go to war "automatically", without waiting for any action on the part of the Council. It was true that, under Article 8 of the draft Treaty, they would have to inform the Council without delay of the measures which they had taken, but the intervention of the Council, after war had once broken out, would be without practical effect, since nobody could believe — as was pointed out by the Italian Delegates in the Temporary Commission — that States which were already at war would suspend hostilities on a simple injunction from the Council; it was to be feared that, if such a situation arose, the prestige of the Council would suffer and that the authority of the League of Nations would in consequence be gravely prejudiced.

At this point it might be objected that the new idea contained in the American scheme, namely, to define aggression by regarding a State which did not submit its case to arbitration before resorting to war, or which failed to execute an arbitral award, as the aggressor, would eliminate the objections raised against the scheme on the grounds of the difficulty, or indeed the impossibility, of deciding at short notice which State was the aggressor and which was the victim of the aggression, and would also dissipate any fears in regard to the possibility of an arbitrary resort to war by States which were contracting parties to partial Treaties.

It might indeed be argued that the fact that a State had submitted, or refused to submit, a dispute to arbitration, or that it had executed, or failed to execute, an arbitral award, offered a criterion apparently so clear and precise as to leave no further margin for arbitrary judgment.

However, in the opinion of the speaker, such an argument would be too ingenious. The question whether an award had or had not been executed might, indeed, leave room for wide differences of opinion. One State might contend that it had executed an arbitral award, while another State might maintain the contrary. Would it then be legitimate for the latter State, supposing it to be a party to a partial agreement, to proceed to war against the former State without waiting for a decision from the Council? Would it not be more equitable for the question whether the award had or had not been executed to be decided by the Council, which might, in such a case, desire to have a fresh arbitral decision on the interpretation of the award?

The simplification which would result from the new standard it was proposed to adopt for the definition of aggression would not suffice to eliminate all danger of the "automatic" outbreak of war as a consequence of the partial agreements; nor was it adequate to enable the Council to exercise with certainty the powers which would be conferred on it under this scheme. Indeed, if one of the groups of objections against the draft Treaty was the execution of an arbitral award, the Council might find itself in its turn confronted with doubts and uncertainties which, in some cases, could only be removed by a fresh arbitral decision.

But that was not all. The Council was also instructed by the Treaty to take steps of grave importance to guard against a mere threat of aggression. Such a case might arise if one State was accused by another of pursuing an aggressive policy or making preparations for war. In such a contingency, in spite of the new simplified criterion, all the objections urged against the Treaty in regard to the difficulty of defining an act of aggression would retain their force. Thus, for example, supposing it to be known that chemical factories existed which could be rapidly converted into factories for the production of poison gas or of explosives capable of destroying a while city in a few minutes, should the erection of a factory of this kind be classed as an act of aggression, or a threat of aggression, even if the factory supplied certain of the peace-time requirements of industry?

The question could not be easily answered, and the example just taken, like many others of the same kind which might be adduced, showed what difficulties and uncertainties still attended the task entrusted to the Council, namely, that of determining the act of aggression which was to furnish grounds for turning against the aggressor the machinery of the measures ordered by the Council and the mutual assistance of the States.

What difficulties in decision, what doubts, what uncertainties! And what would be the result? He believed that the result would be that the decision of the Council would scarcely in any given case possess the moral authority which was indispensable to secure its acceptance, without opposition or hesitation, by all the States which were bound to move against the alleged aggressor. They must not forget that it was a question of going to war, i.e. of taking the gravest decision which a nation could be called upon to adopt; it was therefore open to question, in his opinion, whether the machinery of guarantee and assistance would work, in practice, with the efficacy required if it were put into operation by an order of the Council, instead of being freely accepted by the Governments as the consequence of a legal obligation already in existence.

The last group of objections against the draft Treaty of Mutual Assistance was based on the view that the scheme conferred on the Council of the League of Nations new and very important powers which limited the sovereignty of the States parties to the Treaty. Thus, the Council would be called upon to decide which State was the aggressor, and the High Contracting Parties must bind themselves to accept the decisions of the Council without reservation. Moreover, the
Council would be empowered to put the economic sanctions provided by Article 16 of the Covenant immediately into force against the aggressor, to designate the States whose assistance it would require, to determine the forces which each State furnishing assistance was to place at the disposal of the Council itself, to appoint the commander-in-chief and to decide on the object and nature of his duty, etc.

That implied nothing more or less than the transfer to the Council of a large part of the sovereign powers of the States as regards their right to make war and the control of their military forces.

It was here that the contradiction between the Treaty and the Covenant was most strikingly evident. He was becoming more and more convinced that the Covenant had been drafted with great wisdom, taking due count of the practical possibility of the aims which it had in view, having regard to the present state of development of international law and of international relations, and also to the necessity of advancing gradually by successive stages.

If there was one idea which emerged more clearly than any other from the preparatory discussions on the Covenant—or even from the debates of previous Assemblies—if there was one idea which had been repeated with more emphasis and on more occasions by the most eminent men in the Assembly and in the different Governments, it was that the Covenant was not intended to set up a super-state or a super-government. It was that idea which governed, to quote from numerous examples, the interpretation given by the Second Assembly to Article 16 of the Covenant, and the interpretation adopted almost unanimously by the Fourth Assembly in regard to Article 10. There was no idea which had been more generally accepted by the Members of the League. It amounted in principle to this: that the practical achievement of the objects of the Covenant was not to be sought by the free exercise of sovereignty by the States Members of the League, and to respect for their constitutional systems. And it should be added that it was only the sincere recognition of that principle which held the League of Nations together.

Now, in place of that conception, which so judiciously combined the binding character of the definite engagements entered into by the States Members of the League (namely, the engagement to afford mutual assistance contained in Article 10, and the engagement in Article 16 to participate in economic sanctions against a State which had violated the Covenant) with a certain latitude in regard to the discharge of those obligations, the draft Treaty offered them a rigid system of obligations, the execution of which was entrusted to a sort of super-government.

In that case, they must ask whether it was not in flagrant contradiction not only with the legal traditions of the nations but also with the spirit of the Covenant to construct alongside of the existing League of Nations another League of Nations based on different principles.

He asked the Committee to consider the complications which might arise, from the point of view of international law, by the adoption of the treaty. They might have within the League of Nations States which adhered to the treaty and States which did not adhere and which would not be entitled to the same set of guarantees. And, as the draft treaty also permitted partial and conditional adherence, they would, if the treaty came into force, have four categories of States possessing different juridical status: States which adhered to the Covenant and treaty; States which adhered to the Covenant and in part to the treaty; States adhering only to the Covenant; and States adhering only to the treaty.

Was it really necessary to create such legal complications, and might not these complications threaten the very existence of the League of Nations, seeing that the new and wider powers could not be conferred on the Council without amendments to the Covenant, and that the rejection of the necessary amendments might quite conceivably involve the withdrawal of a certain number of members of the League? Was it really essential to create the new guarantees of security provided by the treaty? That was the vital question, that was the issue which divided them for the moment.

There were certain nations to which they were linked by the sincerest and most cordial ties of friendship, which considered that the provisions of the Covenant were inadequate to give them the degree of security necessary for a reduction of armaments. That was the view which had been given theoretical expression — so it seemed to him — in the admirable speeches of M. Benes and M. Politis in the Assembly. He ventured to say that on that point he did not agree with them.

What did the Covenant say on the matter? Articles 12, 13 and 15 laid down the means for the pacific settlement of disputes; Article 10 contained the territorial guarantees and the undertaking to afford mutual assistance; Article 16 enumerated the economic and military sanctions.

They were told that these articles were insufficient, but they could not forget that they contained precise legal obligations which the States could not disregard without being false to their pledges. They could never accept the theory that treaties were scraps of paper, and in any case it was difficult to understand why those who placed so little confidence in treaties should have more faith in a partial treaty of mutual assistance than in the provisions of the Covenant.

The Covenant already constituted, as M. Saldandra had observed in the Assembly, a treaty of mutual assistance and guarantee; and for his part he was deeply convinced that the security of nations would be established more easily on the basis of the Covenant, by the gradual evolution of the principles on which it was founded, than by a more or less rigid and artificial machinery of partial treaties of guarantee. In that respect he was in agreement with M. Van Karnebeek. He was aware that the gradual evolution of the legal principles of the Covenant depended mainly on the solution of the great problems which were still troubling Europe — the creation of an atmosphere of peace and the widening of the borders of the League of Nations in order to bring it nearer to its ideal of universality.
At the Conference in London an important advance had been made towards the pacification of Europe. If it should prove possible, as of course they all hoped and desired, to continue in this path which led to a closer solidarity between peoples, a new era of more intense activity would open for the League of Nations, its juridical system would be strengthened, and the sanctions which the Covenant provided to ensure the execution of the undertakings entered into by Members of the League would work with increased certainty and efficacy.

At the present time, as practical men, they could not ignore the fact that the replies of many of the Governments showed that those Governments, the authorised representatives of their peoples, preferred to remain on the basis of the Covenant, and not to superpose on the organisation of the League of Nations new organisations which would alter the character of the League.

They must not infer from these observations that the Italian delegation would refuse to co-operate in any further enquiries which it might be proposed to undertake. On the contrary, they had come prepared to examine with all possible diligence and good-will any proposals which might be made with the view to attaining the result which they were all at one in desiring.

He would add a few words on the proposals for obligatory arbitration and on the American draft — subject, of course, in regard to both matters, to a more detailed consideration during the course of their discussions.

As regards the American draft, it was open, like the Treaty of Mutual Assistance, to the a priori objection that it was undesirable in the existing circumstances to construct a new organisation of guarantees alongside the Covenant. One might also repeat, in regard to it, the criticisms which had been made on the system of partial agreements, a system which the American scheme rated at an even higher value than the drafts prepared by the organs of the League of Nations. But, quite apart from these criticisms, he desired to make two preliminary observations on the substance of the American scheme.

The first observation was that the American draft conferred on a judicial body, such as the Permanent Court of International Justice, functions which were not entirely of a legal character, and those powers were taken from the Council of the League of Nations.

They were well aware that in America the Supreme Courts had extraordinarily wide powers, so wide that it had been said that America was a country governed by judges. But he feared that the European mentality would find it difficult to accept the idea of giving judges powers going beyond the strict application of law and encroaching on the domain of politics. For example, the question whether the policy of a certain country was aggressive, or whether its military preparations constituted a menace to peace, would not be to European minds a matter for judicial decision, but rather a political question for the solution of which an organ like the Council of the League of Nations appeared better adapted than a judicial body.

His second observation was that, though the American draft was very courageous in granting the most extensive powers to the Court of Justice, it was much less so in regard to the execution of the Court’s award and the sanctions to be employed against aggressors. Indeed, the American draft in no way modified the latitude which the Covenant allowed to the different sovereign States in regard to action of this sort. It might even be said that the draft weakened rather than strengthened the sanctions, being influenced in this direction by the American view that the creation of a super-State must be avoided at all costs.

But the question then arose whether the proposals of the American draft on this point were really necessary or useful.

As regards the proposals for compulsory arbitration, the chief Italian delegate had stated in the Assembly that they would consider with sympathy, and in accord with the ancient traditions of the Italian doctrine of international law and the resolutions of the Italian parliament, the gradual extension of arbitration as a means for the pacification of conflicts between nations. But here again they must make a reservation similar to that which they had made in regard to the American plan, viz. that though some disputes which might arise between nations could be solved by reference to the provisions of treaties and to international law, there were other disputes which were of a moral or political character and were not suitable for decision by purely legal processes, because in some cases there was no law which could be applied. Moreover, they did not desire that the procedure of recourse to the Council created by the Covenant should be done away with, nor that the competence of the Council in questions under Article 15 of the Covenant should be abolished. He would not, however, proceed further with this argument, as the point had been referred by the Assembly to the consideration of the First Committee.

He begged the indulgence of the Committee for having spoken at such length. He had the most implicit confidence in the Covenant and in its gradual evolution and it was this confidence which had impelled him to utter many of the observations which he had just made.

Summing up those observations, they would see that the Italian delegation believed that the problem of security could be solved upon the basis of the Covenant. Nevertheless, they would participate, calmly and dispassionately, in the debate which was to follow and would not refuse to examine any proposals which might be put forward. Still, in concluding this statement of their views, they desired to declare that, if the introduction of new rules was considered indispensable, they would prefer to see them in the form of interpretations of, or amendments to, the Covenant, rather than in the form of the creation of new organisations of guarantee which might confuse the legal system of the Covenant and shake the stability of the League of Nations instead of strengthening its foundations.

The meeting rose at 6 p.m.
THIRD MEETING

held on September 10th, 1924, at 3.30 p.m.

M. DUCA (Roumania) in the Chair.

7. Continuation of the General Discussion of Item 6 of the Agenda.

The CHAIRMAN called upon M. Marinkovitch, Minister for Foreign Affairs of the Kingdom of the Serbs, Croats and Slovenes, to address the Committee.

M. MARINKOVITCH (Kingdom of the Serbs, Croats and Slovenes) called attention to the resolution which was unanimously voted by the League and to the task it had allotted to the Third Committee. He explained the views of his Government on the Draft Treaty of Mutual Assistance.

In his view the Draft was unacceptable because it did not provide the Kingdom of the Serbs, Croats and Slovenes with guarantees equivalent to those furnished by her armaments. Furthermore, he thought the weak feature of the Draft Treaty was the definition of the aggressor. Failure to find an objective definition of the aggressor would leave the door open to equivocation. An instance of this was the dispute as to who was the aggressor in the war in which the Kingdom of the Serbs, Croats and Slovenes had, in point of fact, been the first victim.

The day had not arrived, although it might not be far off, when States would not require large armed forces to guarantee their independence and territorial integrity. The universal conscience of mankind would one day be sufficient to maintain peace; in the meantime the exigencies of the situation must be faced.

The Kingdom of the Serbs, Croats and Slovenes could not accept a Treaty of Mutual Assistance with her unless it provided guarantees which she would have without such a Treaty.

The views, however, of the Serb-Croat-Slovene Government had been recently modified owing to the fact that an objective criterion had been found which would render the definition of the aggressor to all intents and purposes automatic. Mr. Ramsay MacDonald's views had undergone a similar evolution, to judge by the statements which he had made to the Evening News and which were reproduced in the French newspaper Le Temps.

With this criterion the Draft no longer committed Governments and States to an indefinite engagement. Article 10 of the Covenant was not sufficiently precise; the effect of the Treaty of Mutual Assistance would not to modify the sense of that Article but to give it its full force.

The introduction of compulsory arbitration into the system had also influenced the opinion of the Serb-Croat-Slovene Government and had even succeeded in reconciling antagonistic points of view; a definite agreement now appeared possible. The criticisms made by M. Schanzer at the last meeting of the Committee were of a constructive character. All that remained to be done was to improve the imperfect formulas that had so far been submitted.

Partial treaties had been criticised; it had been suggested that they were incompatible with the proper organisation of the League, and they had been compared with the old pre-war alliances. There was no proof that these alliances had been responsible for the war; on the contrary, they had preserved peace in Europe for more than forty years. The making of alliances could not give rise to uneasiness merely because such alliances had been abused: the whole point was to ascertain in what spirit, under what conditions and with what objects they were concluded.

The Covenant of the League provided for partial agreements and did not condemn them in principle. It was true that they would make the organisation of the League more complex, but from a sociological point of view all improvement involved a more complex organisation.

Geographical factors could not be disregarded; neighbouring countries could furnish assistance more effectively than remote countries. The Treaty of Mutual Assistance could in this way be supplemented by partial agreements provided they were not inconsistent with the spirit of the Covenant.

The League of Nations set up new organisations and assumed new duties every year. They had to resign themselves to this fact. The aim of the general discussion should be to derive from all the available materials the study and examination of which had been recommended by the Assembly, and from the replies of the different Governments and the declarations made prior to the voting of the resolution by the Assembly, any factors which might be used to construct a new scheme of mutual assistance, whether a treaty or a pact. In this way a reduction of armaments would be feasible without entailing a responsibility which no wise-minded Government would ever dare to assume without serious reflection.

Lord PARMOOR (British Empire) said he did not propose to attempt to re-analyse the terms of the Treaty of Mutual Assistance or to reconsider the objections of the British Government.
Those objections were clearly stated in the Note of the British Government and they required no amplification. He wanted to state as definitely as he could the view which the British Government held as to the best form which the subsequent procedure should take and in that way to assist as far as they could the work of the Committee. He agreed with M. Schanzer that the solution was to be found within the terms of the Covenant and the Statute which constituted the International Justice, although, as had been indicated in the reference to the First Committee, a further definition might be required. The obligation which all signatories of the Covenant had undertaken was not to resort to war, and that rendered necessary an alternative remedy for the solution of disputes; that alternative remedy must cover all disputes. Unless it went to that extent, the door to war would still remain open, with the accompanying element of insecurity. There were three classes of disputes, all of which had to be covered:

(1) Such disputes as in the ordinary course could be settled by arbitration. This class would cover a very wide field.

(2) All disputes of a juridical nature which could be brought within the optional clause of the Court after the terms of that clause had been considered by the First Committee.

(3) Matters to be brought before the Council as the central body of the League to be dealt with by them.

For instance, there were questions in which investigation was required in order that a solution might be found before the acute stage of an actual dispute had been reached. The actual framework of a scheme of that kind would, of course, require very careful consideration, and he thought the most suitable way of doing it was by means of a sub-committee. There was provision in the Covenant in respect of all those matters.

The next question of security involved the consideration of the sanctions to be applied. Both M. Herriot and Mr. MacDonald had rightly said that the test of aggression was to be found in a refusal to accept arbitration, using the term in its wider sense, to include the three categories before mentioned, and that anyone who went to war without any one of those methods being resorted to ought ipso facto to be regarded as an aggressor. Again, the actual sanctions to be applied required consideration in detail, beyond the scope of the present discussions in the Committee. But he did not hesitate to say that they should all be of a character intended to safeguard the peace of the world against a particular aggressor, and that they should be of sufficient stringency. In the same way, if the arbitrator or the Court, or the Council found in a particular way, adequate sanctions should be provided for seeing that the award or decision should be carried out. He believed that the sanctions would seldom be required. That proposal met the basic consideration that it was essential to avoid the burden of uncertain obligations at a future date. It was advisable, where possible, that sanctions should come into operation ipso facto without the necessity of further confirmation but that would not be possible in all cases.

On the last question of disarmament, the terms of the Covenant to which all the members had subscribed and by which they were bound ought to be strictly followed. Article 8 of the Covenant provided that the maintenance of peace required the reduction of armaments to the lowest point consistent with national safety and the enforcement, by common action, of international obligations. That linked up the question of disarmament with the question of security. As the sense of security grew, the measures of disarmament could be increased, and it should be noticed that the obligations of the several Governments were to consider the plans formulated. The four treaties with Bulgaria, Austria, Hungary and Germany all contained the provision by which the investigation of disarmament, after a certain date, passed to the Council. Steps were at the present time being taken by the Council to render that policy effective. Whether ultimately a common system of control could be applied in all countries was not an immediate question. The mention of Germany reminded him that no scheme such as they were asked to consider in the Committee could be otherwise than imperfect so long as Germany was not a member of the League. By being a member of the League, Germany would on the one hand come under the common obligation as to arbitration, security and disarmament, and on the other hand she would be entitled to the benefits derivable from membership of the League. He did not know whether Germany could become a member of the League so as to assist the League to formulate their plans during the present session of the Assembly, but he thought it necessary to say that the British Delegation would support in every way, any proposal for the admission of Germany such as had been made by the British Prime Minister.

In conclusion, Lord Parmoor said that when the time came (which was not yet) the British Government would present a specific proposal in regard to arbitration, security and disarmament for the consideration of the Committee.

M. Matsuda (Japan) thought it his duty once more to express the views of the Japanese Government, as he had done the previous year.

His Government was prepared to co-operate wholeheartedly with all nations for the purpose of bringing about security and guaranteeing peace.

The Japanese Delegation had no objection to studying a Draft Treaty of Mutual Assistance if a reduction in armaments could be attained by that method. But the Treaty under discussion had been supplemented by a system of partial complementary agreements. The Japanese Government entertained some apprehension on that account. They sincerely wished, however, to arrive at an agreement that would meet with general satisfaction.

It would be most inadmissible to depart from the firm ground of the Covenant. Peace could best be maintained and security guaranteed to all nations by means of the provisions of the Covenant.
What was essential was to ensure that nothing should detract from the efficacy of these fundamental stipulations. In the present state of the world the wisest thing to do was to adhere as closely as possible to the Covenant, which had been unanimously accepted by all the Members of the League. The Japanese Government agreed to all improvements which might be helpful and profitable, provided, however, they did not involve a fundamental modification of the Covenant. Certain features, however, of the Treaty of Mutual Assistance exceeded the main provisions of the Covenant. These points required very thorough discussion before they could be accepted by the different Governments.

The speaker then dealt with the question of compulsory arbitration in relation to the Treaty of Mutual Assistance. Japan was more anxious than any other Government to bring peace to the world through organised law, but the problem was so vast and so intricate that it could not for the present be examined in detail. Nevertheless, the Japanese delegate was doubtful whether the question of Article 36 should be dealt with at once. If the guarantee was to be infallible, all countries would have to be prepared to accept the exclusive competence of the Court on questions which concerned even vital interests, their independence and their honour. That was a situation which was not likely to be realised at an early date.

The speaker concluded by reminding the meeting that the Assembly had passed a unanimous resolution instructing the Committee to consider:

1. the material dealing with security and the reduction of armaments;
2. other plans prepared and presented to the Secretariat.

As regards the second point, M. Matsuda was so far only acquainted with the American plan, the authors of which he congratulated upon their laudable initiative and the helpful contribution they had made. He had no knowledge of the other plans.

It was desirable that the Secretariat should distribute the documents in question as soon as possible. That would accelerate the work of the Committee to the success of which it was the desire of the Government of Japan to do all in its power to contribute.

M. Paul-Boncour (France) wished, on behalf of the French Government, to define France’s position. France whole-heartedly adhered to a very simple and straightforward idea, namely, that, both in substance and in form, in fact as well as in law, the question of arbitration could not be separated from the question of security or from those special forms of security contemplated by the Treaty of Mutual Assistance which were submitted for examination by the Committee. Whatever material modifications were introduced into the Treaty — and these modifications could already be discerned — there appeared to be a unanimous feeling that it should begin by enunciating the principle of arbitration, which was not at present contained in it.

Subject to these material modifications, the Treaty was still on the agenda of the Third Committee, for, ever since the discussion began, the Committee had confined itself to examining the replies concerning the Treaty received from the different Governments, and, moreover, the resolution unanimously adopted by the Assembly on the previous Saturday took these observations expressly into account.

Finally, the principal reason, at least from the point of view of procedure, was the necessity for a certain continuity in the work of the League, such continuity being the only assurance of the development and success of human institutions.

The continuity of the work of the Assembly was founded upon the Covenant, which was at the basis of all the discussions of the League. He agreed with M. Schanzer and Lord Parmoor in thinking that the Covenant unquestionably contained the principle of guarantees of security.

This, however, could only be the case provided that every clause in the Covenant was regarded as absolutely binding upon the States which had signed it, and that the Covenant was considered in the light of a law drawn up by Parliament, which was sufficient in itself and was binding in itself but could only be enforced in so far as was compatible with the regulations and adaptations enacted concerning it.

The Covenant would suffice, provided that, with the experience which had been acquired, practical regulations and methods of procedure, which would have to be discussed, were adopted, in order to render possible the observance of the Covenant in the event of States being compelled by circumstances to remember the obligations they had assumed towards one another.

It was with the object of devising these practical adaptations that the Third Assembly had decided in Resolution XIV to prepare the ground for a Treaty of Mutual Assistance. The word “treaty” was perhaps too wide and too ambitious, as it gave the impression that something was to be done that was not in the Covenant.

The French delegate did not hesitate to say that if, in the course of the discussion, it appeared that the authors of the Treaty had exceeded the limits of the Covenant and had provided for obligations which were not contained, at least in principle, in the Covenant, the rules of public administration could not override the principle contained in the Covenant, which constituted the final agreement and had been signed by the different nations. In order therefore to ensure the continuity of its work the Committee must consider the Draft Treaties submitted to it as having been prepared in application of Resolution XIV.

There were also reasons of law that weighed still more with the French delegation, and, in stressing them, M. Boncour wished to put forward immediately everything that was in the minds of the French delegation.

He thought it undesirable in a discussion of that kind to employ tactics which consisted in withholding part of their thoughts with a view to securing a bargain by subsequent negotiations.
The Committee was not composed of representatives of States bargaining with one another; it consisted solely of men of good-will putting their heads together in order to devise the best way of averting war.

It was the firm and unalterable intention of the French delegation to associate itself with any modifications which might be proposed with a view to seeking in a friendly spirit for the means of drawing up a text that could best satisfy the desires of each and every delegate, while taking as the basis for that text the principle that arbitration and security were inseparable, and also that arbitration and security should necessarily precede disarmament, which was the final object of the Committee's work.

The speaker reminded the meeting of the way in which the idea of arbitration had first taken shape and how it formed an essential part of the question of security itself. All members had read the replies of the Governments, and the latter could be divided into two categories; a majority in favour of the Treaty of Mutual Assistance and a minority hostile to it. The majority in favour made certain reservations and modifications which corresponded exactly to the objections and criticisms that induced a certain number of other Governments to declare themselves hostile; indeed, in the objections of the one group and the reservations of the other they could already discern the means of arriving at the necessary compromises.

The first of these objections, the one that influenced a large number of unfavourable replies, and particularly that of the British Empire, was that States would be committed to the most serious obligations imaginable in certain cases of aggression, the definition of which appeared so difficult that the French Government itself had proposed to relegate it to an annex to the Treaty. The idea of arbitration was then put forward on the initiative of those Americans who followed the Committee's work with such close and sympathetic attention. This idea was spreading; it responded to a deep-seated desire; it met the fundamental criticism made against the Treaty of Mutual Assistance, because it replaced certain extremely ambiguous definitions and the consequent uncertainty which would bias the Governments against the obligations they were asked to assume by a clear and precise rule: the party refusing arbitration was the aggressor State and the party accepting it was the attacked State.

France immediately supported this idea, which, moreover, harmonised with her own feelings, since she had just proposed it in London, and the revered chief of the French delegation, M. Leon Bourgeois, had preached it many years before at The Hague.

But they must not forget that the idea of arbitration was not sufficient in itself. Resort had been had to arbitration in the past and Lord Parmoor had very rightly pointed out that in the course of the last century there had been a very large number of cases of arbitration. He had even added, as if to warn the Committee against the necessity of sanctions, that there had not been a single instance in which an arbitral award or decision had been disregarded.

M. Boncour held the opinion that, if in these cases arbitration had been so easily accepted, it was because not one of the great conflicts that had cost so many lives to mankind had been submitted to a court of arbitration, and that these courts had only dealt with minor conflicts, in regard to which it had been realised in advance that agreement could be reached. And why had no court of arbitration hitherto been able to avert any of the great conflicts that had drained the blood of the world? The reason was that the arbitral award was not backed by force. They had not had the means of bringing to justice the party who refused to submit to the award.

The final aim of the Committee was to discover the means of filling up this omission. The world expected of the Committee something new, and that new thing was that, by forming themselves into a single league, or a single group, the States should, in the common interest, agree to common rules and even to a limitation of their own independence so as to find the means of placing the whole of their forces at the service of that State which, in the event of a conflict, had right and justice on its side.

The speaker declared that when he made use of the words "the whole of their forces", he had weighed the consequences. He agreed with Lord Parmoor in thinking that security would not be complete and the League would not be really effective until all the nations, including Germany, met together to discuss and draw up a common method of procedure to be adopted by all States which were parties to the Covenant. Only if the arbitral award was backed by the whole of the forces of every nation could arbitration become something more than another magnificent but fruitless appeal to mankind.

By the fact that the whole of the forces of the nations would combine to uphold the award, the State which for evil motives was unwilling to accept that award would realise the material impossibility of not submitting to it because it was only the material impossibility of making war that could put an end to war.

If ever the time came when a State which had a mind to war was convinced that all the nations of the world would unite, in various ways which the Committee would have to determine, to ensure the observance of the award which it repudiated, man would cease to divide the work of the League, and its Members would be easy in their minds and proud of having done their duty.

M. Boncour then dealt with the second objection, or, rather, the second category of objections, made against the Draft Treaty.

He recalled that, apart from the uncertainty and difficulty in determining the aggressor, many States, when disarmament was mooted, were unwilling to assume the obligations which they thought would be imposed on them, or to be compelled to maintain armaments which they did not possess.

The Committee must, therefore — and the Committee existed for that purpose — consider with completely free minds the methods of making the Covenant applicable in practice. They had to organise Europe and the whole world, but Europe was so unwise that the other and younger continents had come to help her in the work.
They must bear in mind the facts of the situation in Europe and realise that not all the nations were in the same geographical, historical or political position. Some, who could not forget the wounds from which they were still bleeding, had reason to apprehend more definite dangers than others. They were prepared if necessary to combine their military forces and to conclude partial agreements.

M. Bodoin concurred in what M. Schanzer and M. Marinkovitch had said on the subject. These partial agreements should be entirely different from the old instruments, the old alliances that had, it was true, ensured peace for 40 years, but an armed peace that was very much like a state of war. The partial agreements should be included within the general framework of the Covenant of the League and should be published and controlled by the League. It would be for the League to see that their object was a purely defensive one. The partial agreements should always be open to any State which wished to sign them, in order to make it clear that they were not concluded for an offensive purpose and that there was no secret policy concealed behind their provisions.

Other States lay remote from the main routes of invasion and the great historical battle-grounds and on account of their geographical situation had been able to satisfy a keen sense of patriotism and at the same time to dispense with armaments like those that were such a heavy burden to so many countries in Europe. Were they to be asked to break with the political traditions that were so dear to them? They had so often heard it said that the recent war was the last war, and that the nations had fought with that end in view, that they had drawn the logical and practical conclusion that they might reduce their armaments.

They therefore had to adapt the Covenant to the facts. Each State should give what it possessed, nothing more than it possessed, but everything it possessed.

Those which could not arm would contribute their whole economic strength in support of the arbitral award; and that strength had a two-fold effect. It had a negative effect, namely, the boycotting of the aggressor, and a positive effect, namely, financial assistance to the party attacked.

Finally, other nations, whose position enabled them to dispense with compulsory service and conscription, but who, for instance, possessed those great fleets the mere sight of which ensured the freedom of the seas, could secure the freedom of land and sea transport, and this would also amount to an extension of the economic sanction.

Each should therefore give to the Covenant what he had, moral forces, economic sanctions, land forces and sea forces; an atmosphere would then be created in which all countries would be able to decide what degree of disarmament was necessary and desirable.

The speaker thought that all the ideas he had outlined when taken together might when put in practice lead to a number of solutions of many different situations, and would enable them to get rid of the existing prejudices that some nations still entertained. Practical work on these lines could surely be commenced as soon as the provisional text had emerged from the present general discussion. They would have to consider the possibility of employing different methods in carrying out the Treaty, but they must have general obligations which would hold good in principle for everyone. They must have arbitration that was backed by the whole forces of the assenting nations — moral forces in the first instance and later economic, naval and military forces. This conception, said the speaker, did not emanate from the brain of any individual member; it was already embodied in Article 16 of the Covenant and it was felt that these provisions, inadequate as they were, were a starting point from which they could proceed in drawing the necessary distinctions.

On this ground, on which the French delegation hoped that all men of good-will could meet another, a successful conclusion might be reached, as they all heartily desired. It would really be a bitter disappointment if no such conclusion were reached. A step forward must, at all costs, be taken, a definite text must be drawn up which might, it was true, require further modification and improvement, but which would nevertheless provide something concrete. If they failed to do so the disappointment felt would be commensurate with the great hopes that had been entertained.

M. Lange (Norway) said that he wished to speak because he regarded the present debate as a continuation of the discussion that had taken place at the Assembly the week before and in which he had not taken part. The task of the Commission, stated in a few words, was to do the preparatory work and draw up the programme for an international conference on the reduction of armaments.

He congratulated the League on the moral courage shown by the Assembly in avowing in its resolution the existence of differences of opinion.

While congratulating M. Politis on his masterly exposition of the problem engaging the attention of the Committee, M. Lange wished, nevertheless, to make some reservations in regard to the conclusions.

In this connection he supported the view expressed by the representative of the Kingdom of the Serbs, Croats and Slovenes; evidently by drawing comparisons between national and international problems they could point to interesting analogies, but these had not the force of arguments. Comparison was not argument. An international body like the League of Nations was composed of a few units, each of which was, so to speak, immortal and sensitive as regards its moral prestige to a far greater extent than would be true of an individual.

Turning to the practical side of the question, M. Lange showed that the problem of international relations, and more particularly the problem of the reduction of armaments, had assumed a new aspect owing to developments of the means by which war was carried on. That was so true
that it was quite possible that all plans for military defence might in the future be proved to be futile and illusory. He had used the term "military defence" advisedly because military or naval organisation would still constitute a threat, and, to put the matter shortly, it was the final decisive argument behind diplomacy.

Could the Covenant be operative, could compulsory arbitration work, so long as States remained armed to the teeth? A powerful State would always be tempted to insist on its own way. That had been proved in numberless cases, but did that mean that sanctions were superfluous? By no means. They were only superfluous in the present situation as between States possessing abundant means of aggression.

The speaker reminded the Committee of M. Politis' argument that sanctions were useless in the case of optional arbitration whereas they were indispensable to support compulsory arbitration, and he endorsed that view. As a fact he felt little anxiety about the carrying-out of arbitral awards which he regarded rather as a theme for erudite essays, or, as the German said, "eine Doctorfrage".

He recalled in this connection the dispute between Virginia and West Virginia. The arbitral award made by the Supreme Court was given against the State of West Virginia, and this State eventually carried it out after an interval of several years. It had no army. Had the two States been well armed it would have meant war. Nevertheless, M. Lange shared M. Politis' opinion that sanctions would certainly be useful to safeguard the resort to arbitration and to ensure that a State carried out in good faith its undertaking to submit its case to the Court provided for the purpose.

Moreover, they had already the first outline of a sanction in Article 36 of the Statutes of the Permanent Court, which provided that in the event of differences of opinion as to the competence of the Court, the Court itself should decide. This provision could be amplified by taking out the word "generally" in Article 13 of the Covenant. In that case the sanctions provided in Article 16, which expressly quoted Article 12, would be enforced if a State endeavoured to shirk its obligations.

M. Lange referred to M. Herriot's declaration that arbitration ought not to be made a snare for States which acted in good faith. He had been surprised by M. Herriot's anxiety on this score. It was quite evident that a State would not disarm unless other States did the same. The new organisation could only succeed on condition that disarmament became general. In the speaker's opinion the system of arbitration and the reduction of armaments should go hand in hand, pari passu. It was an indivisible whole, on which the League of Nations might hope to erect the granite walls of security.

Their task was a formidable one, particularly in view of the fact that the problems could not be dealt with seriatim. They had to be solved as a whole because they were inseparable. Opinions would differ as to the kind of masonry to be used. The speaker only hoped that no explosive substances would enter into its composition. In his opinion armies would certainly be the least stable, possibly the most dangerous, form of building material.

Disarmament alone could put an end to general insecurity. However, they must recognise that many States were still under the influence of recent bitter memories. It was natural that they should seek a refuge in what might be termed traditional means of security without realising the danger this might involve for other nations further removed from the turmoil.

Would economic sanctions be sufficient? The Covenant said that they would not, since it provided a recourse to armed force to be furnished, it was true, as a result of an express decision by the country concerned. In any case M. Lange thought it essential to dwell very lightly on the Treaty of Guarantee and to return to the Assembly Resolution XIV, which stated that, in the present state of affairs, a large number of Governments could not assume the responsibility for a serious reduction of armaments unless they received in exchange a satisfactory guarantee of the safety of their country; but when this resolution spoke of a large number of Governments perhaps it was rather overstating the case. Only 22 or 23 States had given an opinion on the Treaty of Mutual Assistance — that was to say a majority of the States, had refrained from expressing any view.

Norway had opposed this draft Treaty especially because of its unilateral character and because it relied solely on the principle of force and might jeopardise the future and even the existence of the League of Nations. To counteract this danger Norway had endeavoured to obtain modifications in the text by introducing a clause providing for a further development of the legal and moral elements of the Covenant. These proposals had been brushed aside, and they were still faced with the same problem, but, the speaker hoped, with better prospects of success.

In M. Lange's opinion there might be other ways than those of force for creating a feeling of security in countries which felt that they were particularly exposed. For instance, they could, in accordance with the suggestion of the Inter-Parliamentary Conference, provide demilitarised frontier zones, to be established under treaties concluded for that purpose by neighbouring countries.

M. Lange thought that more might be obtained from the system created by the Covenant than had been obtained up to the present.

The essential element in this system was the reduction of armaments. He had therefore welcomed Lord Parmoor's declaration on that matter.

M. Schanzer had rightly pointed out that the defect in the Treaty of Mutual Assistance was that the promise to reduce armaments was not subject to any fixed time-limit nor did it bear a definitive character. For small States like Norway it was an essential condition, for adhesion to any system of mutual assistance, that they should know what they would gain in the way of a reduction of armaments.
For this purpose a technical enquiry was essential and might have been carried out by the Temporary Mixed Commission or the Permanent Advisory Commission, but those bodies had refrained from dealing with the matter.

The speaker handed to the Chairman a scheme emanating from the Inter-Parliamentary Conference and based on the expenditure budgets of the States (see Annex 7). He did not claim to have solved the problem which the League had to unravel, but none the less such a scheme might facilitate enquiries and the exchange of views by showing where the difficulties really lay.

Passing on to the second part of his observations the speaker said they must consider how, when the different views had finally been reconciled they could most usefully prepare the Conference that was contemplated. It would not be sufficient merely to write on the programme: arbitration, security and disarmament. They would have to draw up a detailed agenda showing the precise questions — for instance the extension and conclusion of agreements, the various methods of sanctions to be used in support of arbitration or to enforce arbitral awards, the details of the supplementary arrangements for security, such as the creation of demilitarised zones, and finally the bases and the principles for a reduction of armaments.

M. Lange concluded by saying that the world was passing through a “golden hour”. If they did not do all that lay in their power to take advantage of it they would be disappointing the hopes placed in the League of Nations; this hour might be transitory but it would be a crime for anyone to do less than his utmost to promote a successful issue to their deliberations.


The CHAIRMAN informed the meeting, with reference to what M. Matsuda had said, that there were two plans for mutual assistance and disarmament. One plan emanated from an American group (see Annex 4); the other had been submitted by Sir James Allen, delegate for New Zealand, who had handed the Secretariat a plan prepared by one of his countrymen, Mr. Hyde (see Annex 6).

The meeting rose at 6.15 p.m.

FOURTH MEETING

held on September 12th, 1924, at 3.30 p.m.

M. DUCA (Roumania) in the Chair.


The CHAIRMAN hoped that the general discussion on the draft Treaty for Mutual Assistance might be concluded on the following day. He would then propose the appointment of a Sub-Committee to draft a text on arbitration, security and disarmament, with due reference to the general principles arising out of the discussion. This Sub-Committee would also establish the necessary connection between the work of the First and Third Committees in regard to the question of arbitration.

He informed the Committee that the general table collating the provisions of the draft Treaty of Mutual Assistance, the replies of the Governments, and the plan of the American group (see Annex 4), which had been referred to the Committee of which M. Politis was chairman, be distributed during the course of that meeting (see Annex 5).

The scheme submitted by Sir James Allen had been distributed at the residences of delegates on the previous night (Annex 6).

A scheme for the reduction of armaments submitted at the previous meeting by M. Lange had also been distributed the night before (Annex 7).

10. Continuation of the General Discussion on Item 6 of the Agenda.

M. GUANI (Uruguay) pointed out that, of the 25 replies received in regard to the draft Treaty of Mutual Assistance (Annex 3), 20 were from European States and only five from nations of other Continents. To these must be added Japan, which was not included in the list submitted to the Committee for examination. Only one of the six replies from non-European States was entirely negative; that was the reply of Canada, which supported the views of the British Government. The United States, by reason of their constitution and of the fact that they were not members of the League of Nations, found it impossible to give their adhesion to the Treaty.

China and Japan were in favour of the principle of mutual assistance. Australia was of opinion, as was his own Government, that, in view of the provisions of Article 5 (b) of the Draft, Australia would be under no obligation to offer assistance and would have no guarantee of receiving it. The Uruguayan Government was, further, of opinion that it would be required to furnish such assistance as might be decided by the Council but that it could not depend upon the necessary guarantees in case of danger.
It was clear, therefore, that, except in the case of the European countries, most States had refrained from expressing an opinion. That did not mean that from the point of view of the reduction of armaments and the application of the peaceful principles underlying the Covenant, the Draft Treaty of Mutual Assistance was a matter of indifference to non-European countries and more especially to the smaller Powers. The slowness of the American States in replying to the Council’s request was due to the fact that the Treaty of Mutual Assistance would not be operative or could not be applied in feature in respect of such States. At the same time they recognised that it was a sacred duty for all disinterested peoples to co-operate against the crime of aggression and acts of international bad faith, and to contribute their material, economic, financial and moral forces, so far as they were able, to save mankind from the horrors of war.

The speaker went on to explain his Government’s chief observations on the Treaty. The assistance provided for in Articles 2, 3 and 5 of the Draft could be given expeditiously on the Continent of Europe, where rapid means of communication existed, but the situation was different in the interior of the Southern American Continent; Uruguay, for instance, was further from some of the Southern States of South America than from the majority of the European countries.

If, in accordance with paragraph (b) of Article 5, mutual guarantees in regard to military operations of every kind were to be confined to countries situated in the Continent where a dispute had arisen, or where there was danger of such dispute, a threatened State situated at one extremity of the American Continent might in certain circumstances be unable to count on assistance. Such a country would be responsible for all the obligations arising out of the Treaty but in practice would derive no benefit from the co-operation or military assistance provided for.

In spite of this fundamental objection the Uruguayan Government, in order to co-operate in the application of Article 8 of the Covenant, had given its adhesion to the principle of international assistance in the case of an attack by one State upon another.

While fully appreciating the statements contained in M. Benes’ report regarding the special position of certain States in connection with disarmament, the speaker was of opinion that if the problem did not present the same urgency for Uruguay as for Europe, this was on account of the friendly spirit which prevailed between the countries of the American Continent, who had no desire for territorial expansion; it was due more especially to an international system of legal arbitration, as the result of which the American States had almost always settled international disputes by arbitral procedure.

The Delegates of the American States were certainly of opinion, and this feeling was shared by the American States not represented at the Assembly, that any attempt made in Europe to secure the universal and unreserved application of compulsory international arbitration in order to supplement the provisions of the Covenant would meet with enthusiastic and unanimous support from the American peoples, in view of the fact that the consecration of right by means of justice was one of the most cherished aspirations of all the democracies of the New Continent.

M. DUCA (Roumania) transferred the chair to M. POLITIS (Greece) and briefly explained his Government’s point of view.

Roumania was a pacific country which had no desire for territorial expansion. She had a tragic history and wanted peace in order to make good the time she had lost and to consolidate her position in the future.

The Roumanian Government, however, had been unable to approve the Draft Treaty of Mutual Assistance. It was of opinion that this Treaty did not offer sufficient guarantees of security. Roumania, as her reply had shown, was prepared to cooperate wholeheartedly in any plan which would afford countries willing to disarm adequate guarantees of security.

After the great speeches which had been made at the Assembly during the previous week, the nations found themselves faced by a new situation; ideas had been expressed and explanations had been given in regard to some points.

Roumania had to consider her attitude in regard to this fresh aspect of the matter. She was of opinion that arbitration, security and disarmament should form one indivisible whole. The Roumanian Government was quite ready to accept arbitration but asked that its sphere of application might be more clearly defined. It was for the First Committee to work out the necessary details and definitions.

The speaker reminded the Committee that he had just proposed the appointment of a Sub-committee whose duty it should be, after consultation with the First Committee, to determine the details and methods of application of the principle of compulsory arbitration.

With regard to security, the Roumanian Government considered that arbitration without sanctions would prove ineffective. Sanctions should be not only economic but also military.

The work to be done was of a practical character and it was a question whether in the present state of affairs economic sanctions would prove adequate for such work.

The starting-point of their efforts should be the Covenant. M. de Karnebeek had stated very truly at the Assembly that the Covenant perhaps contained wider provisions than was generally realised. The Covenant must be taken as a basis, and its provisions elaborated in the form of an act, perhaps a protocol, in order to evolve a system of sanctions which would meet with universal acceptance. Roumania asked, moreover, that until such time as military guarantees could be given for security, regional agreements should be allowed to continue.

The speaker stated that, though they did not find in him an enthusiastic supporter, he had to admit that they met an actual need. It must not be forgotten that some States were not Members of the League, and that these non-members constituted factors of the greatest importance. In their eyes, what was done by the League was regarded as res inter alios acta. In certain circles which exercised great influence on international affairs, the League of Nations was described as representing organised
impotence; and, while the Members of the League were co-operating in order to bring about disarmament, certain States were engaged in the establishment of enormous air forces and were building factories for poison gases all over the country. These States had neighbours who asked that, if the League could not help them, they should, at all events, be allowed to help one another.

Moreover, these regional agreements might be concluded under the auspices of the League and within the ambit of the Covenant, and subject at any moment to supervision by the League.

When the League had created a system based on the principle of compulsory arbitration supported by economic and military sanctions, and when regional agreements had been recognised, only as provisional make-shifts, until some satisfactory formula could be arrived at, a great step forward would have been taken. Humanity advanced not by giant strides but by easy stages.

The speaker declared, in conclusion, that the League was still far from its goal; it had not yet entered into the temple of peace, but all were convinced that it was on the threshold. This idea of real universal peace which should ensure the peaceful and beneficient development of mankind was no longer a merely Utopian theory, but for the sneers of cynics, but had already become a practical necessity, justifying the greatest hopes. He was firmly convinced that the delegates would not leave that Assembly before they had laid the foundation of their work. Their efforts would not be in vain.

M. DUCA (Roumania) resumed the chairmanship.

M. MUNCH (Denmark) reminded the Committee that the previous year the Danish Delegation had made certain reservations in regard to the draft Treaty of Mutual Assistance. The Danish Government was still of opinion that this Draft Treaty, in its present form, did not offer guarantees of security sufficient to compensate for the risks it entailed both for the existence of the smaller Powers and for the successful working of the League.

It was most assuredly necessary that States should be given such security as would enable them to live without the perpetual fear of war. For this reason Denmark attached the greatest importance to the development of arbitration, and gladly welcomed the statements of England and France, which justified the hope that the principle of compulsory arbitration would soon be accepted by the Great Powers.

Although additional means must be sought in order to obtain greater security, no system of alliances and agreements which went outside the provisions of the Covenant would appear to offer a proper basis. Security could never be obtained so long as the present enormous armies and navies continued to exist. Experience had shown that, once this machinery was set in motion, nothing would stop it. It constituted a permanent danger of fresh wars, against which any guarantees that the League might provide would remain powerless, and this more especially when the need was greatest. If the delinquent State was very strong, the only possible means of enforcing the League’s decisions would be a world war.

The primary condition for the creation of real guarantees was general disarmament, a complete transformation of armies and navies so as to convert them into police forces which should ensure respect for law. When this reduction and transformation had been effected, the League would be better able to guarantee respect for treaties, but this it could never really do as long as armies and navies continued to exist in their present form.

Denmark was prepared to discuss proposals with a view to defining the provisions of the Covenant and ensuring the application of the guarantees contained in it. M. Herriot, in his speech at the Assembly, had linked together arbitration, security and disarmament. The Draft Treaty also linked together guarantees and the reduction of armaments, but did not state what was to be the extent of such disarmament or reduction. For example, was it a 10% reduction that was intended? If such were the case, the military forces would retain their present character and the League would remain powerless.

Or again, was it intended that this reduction should be progressive and should continue until the armies and navies had been reduced, say to one-fifth of their present strength? If that were so, it would be possible to ensure adequate control of the military forces and a sufficient degree of security would have been obtained to make it possible for the States to accept obligations which they could not assume, so long as the big armies and fleets existed, accompanied by the insecurity which they involved for every State.

It was for that reason that M. Moltesen had stated the previous year, in the name of the Danish Government, that the only condition on which the Governments could give an opinion concerning the Treaty of Mutual Assistance was that the plan for the general reduction of armaments laid down in the Covenant should be proceeded with.

So far, however, the organs of the League had not approached this task. One plan only had been put forward, and that was Lord Esher’s, which had quickly been dropped. The drawing-up of a plan of this description must form an essential part of the work to be undertaken in fulfilment of the Assembly resolution. If this work were successful, some result might be obtained; if it failed, the other efforts contemplated would probably fail.

It was easy to understand that the organs of the League should have shrunk from a task which presented such difficulties, but this year there had been a great improvement in the European situation. That was the impression of all who had been present at the recent proceedings at the Assembly and the Third Committee.

This same impression had been very strongly felt at the Inter-Parliamentary Conference, where great interest had been shown in the discussion of General Spears’ plan for the establishment of demilitarised zones on those frontiers which presented the greatest difficulties, and this discussion had proved that a new spirit of conciliation existed between the British, French and German parliamentary delegates.
It was to be hoped that this system would be very fully dealt with in the discussions of the Third Committee.

The Inter-Parliamentary Conference had discussed two plans for the general reduction of armaments. The first of these had been submitted to the Third Committee by M. Lange, and the second by the Danish delegate (Annex 8). This second scheme was based on the provisions of the Treaties of Peace in regard to the military forces of Germany, Austria, Hungary and Bulgaria, the object of which was to make it possible to prepare for a general reduction of the armaments of all the nations. The figures of the Treaty of St. Germain were taken as a basis, and the limit was fixed at 5,000 men per million inhabitants, that limit having been laid down in the Treaty for an army whose term of service was 12 years. It was probable, however, that the employment of other systems of recruiting would have to be allowed for since some States would not be prepared to accept the principle of a mercenary army and would prefer a system of volunteers who would do only a few months’ training. An army organised on this basis would obviously be inferior to an army of mercenaries of equal strength. They might, for example, permit the training every year of a number of men sufficient for the mobilisation of an army twice the size of the paid army.

As regards naval forces, the scheme took as a basis the limits laid down for Germany by the Treaty of Versailles, namely, 2,000 tons per million inhabitants. The limits fixed for Germany were relatively stricter than for other countries whose armaments were limited by treaty, and 4,000 tons per million inhabitants might therefore be taken as a basis for the limitation of naval forces. All would agree that certain exceptions might be justified, in view of the dangers to which certain States were exposed by reason of their geographical position. This plan was in no way contrary to M. Lange’s, with which it might eventually be combined, progressive reduction being continued up to the point advocated by M. Lange.

M. Benes had ended his clear report to the Assembly by pointing to three conclusions, one of which was the necessity of setting to work at once to consider how to devise a plan for the reduction of armaments. The Danish Government was of opinion that the preparation of this plan constituted what was perhaps the most important part of the work of the Third Committee.

The discussions which had so far taken place showed clearly that in the Committee, as at the Assembly, in spite of a sincere desire to come to an agreement, there existed two tendencies which it was very difficult to reconcile. Hitherto, an attempt had been made to reconcile these conflicting views by confining discussion to the means of enforcing arbitration and guarantees of security and by leaving the third problem—disarmament—out of the question. But this attempt had not met with success. There would be more likelihood of success if disarmament were dealt with along with the other questions. Disarmament was not only the ultimate aim to be arrived at by means of arbitration and a system of guarantees; it was most assuredly also an essential condition, in fact, the primary condition, for the security which all desired to see established.

Sir Littleton Groom (Australia) said that, as it was the first occasion on which he had the privilege of addressing delegates of the League of Nations, he would like to express his appreciation of the honour of being associated with them in their efforts to secure on a more permanent basis friendly co-operation and peaceful relations among nations.

The position of Australia was somewhat different from that of the older nations. Australia was a young country, who had before her the problems of the development of her resources and the production of goods for the supply of the needs of mankind. Her financial strength was needed for these great objects. She was eager to be free as far as possible to pursue the uplifting and ennobling aims of peace. Any movement that would leave free her financial resources for those objects and enable her to work out her destiny in a friendly relationship to the rest of the world appealed to her people. The Government which he represented earnestly desired in every way to secure the maintenance of the peace of the world, and realised that a general reduction in armaments was essential as a preliminary to that objective.

But, as regards the application of that principle to Australia, he might adopt the words of the Prime Minister of Australia in his reply on the matter of the Treaty of Mutual Assistance when he said that, in the adoption of measures for her defence, Australia, being a young country, had not yet attained the lowest point consistent with national safety; and therefore the obligation relating to reduction or limitation of armaments was without that special significance for them which it had for other and older States.

As regards the Treaty of Mutual Assistance, while regarding its application to all nations, they had, like other nations, to consider it from the point of view of a country with a small population, forming part of the British Empire, and occupying a continent. The Treaty appeared very naturally to have been drafted with European conditions primarily in view, those being the most pressing problems demanding practical solution.

As an illustration he referred to Article 5 (b), which was so framed that no nation signatory to the Treaty would be under the obligation to come to the assistance of Australia if she were attacked, and Australia would not be obliged to render assistance to anybody. For other reasons which he need not mention, the Treaty in its present form was not acceptable to the Government of Australia.

He desired, however, to express gratitude to those who undertook what was always the most difficult task: the first attempt at the constructive solution of a problem.

The draft submitted to the Governments of the nations appeared to have raised fears for the infringement of the sovereignty of nations, the vesting of excessive power in the Council, and the creation of conditions which might reproduce the evil sought to be avoided; it also brought to light other serious criticisms. But the expression of such fears and the realisation of difficulties should, he thought, prove invaluable when the question of security was being constructively considered.
It was his desire that everything possible should be done on constructive lines to evolve just and specific methods for the settlement of international disputes. At the same time he strongly stressed the point that members should not, by their discussions or proposals, do anything which would cast doubts upon the binding nature of the existing obligations of the Covenant. The obligation under Article 10 was very definite on the part of Members. There was the distinct undertaking to respect and preserve as against external aggression the territorial integrity and existing political independence of Members of the League. There was the express agreement under Article 12 to submit to arbitration or enquiry by the Council any dispute likely to lead to a rupture — an obligation not to resort to war until three months after the award by the arbitrators or report by the Council.

There was under Article 13 the definite undertaking to submit to arbitration matters which members recognised to be suitable for submission to arbitration and which could not be satisfactorily settled by diplomacy. The area of disputes declared to be suitable was very wide indeed. Articles 15 and 16 also contained obligations. He strongly favoured arbitration and he attached very great importance to the Permanent Court of International Justice. He would like to see nations adopt more generally the principle of arbitration in the new treaties they might make. He agreed also with the hope that examination of the Statute of the Permanent Court of International Justice might make its jurisdiction more generally acceptable.

He was of the opinion that they ought to develop proposals within the terms of the Covenant and should seek solution: (a) by mediation; (b) by arbitration; (c) by acceptance of the International Court. As, however, these particular questions were the subject of detailed consideration by the First Committee, over which he had the honour to preside, it was not his intention at the present stage to further discuss them. His desire was to indicate generally his attitude in approaching the study of the problems remitted for their investigation by the Assembly, and to express the hope that Australia might be able to be of some assistance in realising the noble objects and high purposes of the Covenant.

M. Branting (Sweden) reminded the Committee that when the question of disarmament was discussed by the League on previous occasions, members had been unanimous in their view that moral disarmament was an essential preliminary to military disarmament. This idea was perfectly true and had found adequate expression in Resolution XVI of the Third Assembly.

If these were now grounds for believing that the time was more favourable for approaching this delicate and difficult problem with greater confidence and for reaching an agreement limiting the armaments of the different countries, it was chiefly due to the good feeling existing between the heads of Governments who, for the last few months, had made sincere and earnest efforts to effect an improvement in the international situation.

The unanimous ovations accorded by the Assembly to Mr. MacDonald and M. Herriot on the occasion of the memorable speeches delivered during those last few days were a spontaneous expression of deep gratitude and, at the same time, an expression of the hope that they would be able to continue their work for peace and the limitation of armaments.

Public opinion was becoming increasingly insistent that a reduction of armaments was essential in the interests of peace. It was true that certain States, owing to their particular position, had been able to effect a considerable reduction in their armaments and were still doing so. But in the case of most countries the problem was not only of a national but an international nature. In certain cases the reduction of armaments might increase instead of diminishing the danger threatening the peace of the world. Most nations, therefore, were equally concerned as to the necessity of a general agreement which should permit of simultaneous measures in every country for the reduction of armaments.

The resolution adopted by the Assembly as the outcome of the intervention of the two Prime Ministers entrusted to the Committee the task of defining and considering how far it would be possible to recognise these somewhat conflicting points of view.

The speaker wished to make a few observations in regard to this problem and to explain the opinion prevailing in his country.

He had several times had occasion to emphasise the fact that the Swedish people did not consider that they ought to accept in advance obligations to afford military assistance to other countries. The Swedish people, who had enjoyed more than 100 years' uninterrupted peace and had not taken part in the Great War, was of opinion that the entry of Sweden into the League of Nations, with all the obligations which this implied and which Sweden had the firm intention of carrying out in letter and in spirit, was, in itself, a decisive and even a daring step which might profoundly influence her traditional policy of neutrality.

A careful study of the provisions of the Covenant, by which a State was obliged in case of war to participate in economic sanctions and to afford passage through its territory to the forces of the belligerants, showed that this obligation was a very serious one, in view of the fact that an economic blockade might actually involve the State in war — for the State against which the blockade was directed might regard such participation as an act of war.

For any individual Power this risk might often be a very serious one. But, after the Great War, Sweden was so firmly convinced of the necessity of creating some adequate organisation to prevent
war that all hesitation, all scruples in regard to these new and heavy obligations had been overcome.

If Sweden, however, were now to sign a treaty of mutual military assistance, such as the Draft submitted to the Governments, a feeling of insecurity would certainly be created in the country, as her people would be afraid of being drawn into a war against their will as the result of a policy pursued by other States — a policy over which they could assert no influence. Adhesion to a treaty of mutual assistance would inspire in the Swedish nation just that feeling of insecurity which the absence of such alliances might create in other nations.

The speaker wished to emphasise the necessity of taking this psychological factor into consideration. The views of any one nation might be as real, as honourable and as fully justified as those of any other nation.

He added that it had been a matter of great satisfaction to him that M. Paul-Boncour, in his admirable speech of two days before, had fully recognised the necessity of taking count of the special position and traditional policy of the different States. He fully agreed with him that the essential point was for every country to contribute to the common action. Sweden was prepared to contribute her share towards the suppression of any war contrary to the Covenant — he preferred to describe it in this way rather than as a war of aggression.

If the principle of arbitration — this word being interpreted in its widest sense — were developed, every war of aggression would become at the same time a war contrary to the Covenant. While, therefore, Sweden did not desire to bind herself beforehand to take part in military sanctions, she was none the less fully aware of her responsibilities as a Member of the League and of the principle of unfailing solidarity which should be the basis of the League. Sweden considered that if the League were strong and if the feeling of solidarity were a live force, the Covenant itself implied a very effective system of guarantees. Should this feeling of solidarity be lacking, undertakings more extensive than those involved by the Covenant would be of very little value.

The Draft Treaty of Mutual Assistance went much further than the Covenant, particularly in regard to two points. In the first place, it contained an obligation to give military assistance against every aggressor. The Covenant, on the other hand, simply involved an obligation to take part in economic sanctions, although, at the same time, it imposed upon the Council the duty of recommending what military forces should be contributed.

The speaker wondered if the difference between the two schemes was very great and was inclined to think that it was not. The Draft provided obligations which were somewhat vague in character; it laid down that there must be a unanimous decision of the Council and that the State called upon for aid was itself entitled to vote. The difference in this respect between the Covenant and the Draft did not appear to be sufficient to warrant the view, on the one hand, that acceptance of the Treaty would offer adequate security for the reduction of armaments, or, on the other hand, that the Covenant must be regarded as wholly inadequate.

The speaker wished to direct attention, in that connection, to a passage in the French Government's reply concerning the Treaty of Mutual Assistance; in this passage the Government agreed that the practical value of the general treaty was, from the military point of view, very slight, but that it might have "an incontestable moral value combined with practical economic and financial efficacy".

Continuing, M. Branting begged to draw the attention of the Committee to a point on which he had already touched. According to the Covenant the obligation to enforce sanctions arose only in the case of a violation of the Covenant, whereas the sanctions provided for in the Draft Treaty were applicable in all cases of aggression. The Covenant, however — and this was a point which he considered of great importance — was so skillfully drafted that a development of the system of arbitration as now contemplated automatically entailed an extension of the sanctions. A State which resorted to war without having brought the dispute before the Council for arbitration or conciliation would become liable to the sanctions provided by the Covenant. The same applied to any State which made war upon another State which had complied with an arbitral award or a recommendation unanimously adopted by the Council.

In proportion as the principle of submitting disputes to the Council for compulsory arbitration or decision was extended, the sanctions provided for in Article 16 would automatically apply to a larger number of cases. This inter-dependence in the Covenant, between arbitration and conciliation on the one hand and sanctions on the other hand, did not appear to the speaker to have received all the attention which it deserved.

He agreed with the opinion of many speakers who held that the arbitral award must be supported by sanctions, and, as he had just shown, this principle had already found expression to a certain extent in the Covenant itself.

As regards the economic weapon, he reminded the Committee that the Second Assembly had adopted a series of resolutions the purpose of which was to strengthen this weapon of the League. The Assembly had therefore already endeavoured, as regards this point, to achieve this "realisation and practical application of the Covenant", which, to quote the reply of one of the Governments, would be instituted under the Draft Treaty. It was possible, and even probable, that the provisions concerning blockade drawn up by the Third Assembly could be improved and made perfect. But the speaker was of opinion that the Assembly's resolutions on this matter might be used as a basis for their subsequent discussions on the efficacy of the sanctions.

After hearing what the Prime Ministers of the two great Western European Powers had to say, and after realising, as did the whole Assembly, their sincere desire to lay the foundations of a true and lasting peace, he was more optimistic than ever as to the future of the League.

He hoped that in the course of the present Assembly a decisive step might be taken in the direction of the common goal.