necessary in the present state of international relations, but we have tried our best to circumscribe and discipline this evil.

We have tried to circumscribe it by indicating certain well-defined and limited categories in which reservations may be allowed; and we have tried to discipline it by introducing the following rule, which is of great practical importance, and according to which the scope of the reservations must always be submitted to the control of the Permanent Court of International Justice.

The importance of this rule is that in future, in all treaties concluded on the basis of the models which we have drawn up, the application of the reservations will no longer depend on the discretion of States. They will be submitted to the final appreciation of the highest form of international jurisdiction.

We have also desired to define another form of elasticity which we have thought necessary in order to facilitate the acceptance of a general conventional arbitration. Though reservations can limit the scope of the engagements assumed, there remains still another obstacle, which seriously interferes with the progress of arbitration. This obstacle is that countries ready to undertake engagements in regard to certain other countries are not equally disposed to accept obligations in regard to everyone. We have therefore tried to discover whether there is a means of assuring a certain degree of elasticity in this Convention in regard to the choice of States towards which each country may desire to assume obligations.

We have not been able to find a means which could become a provision of the Convention without running the risk of arousing susceptibilities which might be contrary to the good understanding which was our precise object in view when we tried to cause the procedure of arbitration and conciliation to become more widespread. Though, however, we have been unable to find a direct means, we did discover an indirect means, which is furnished by the general principle of the freedom of the Convention. There is nothing to prevent two countries from undertaking to behave mutually as though they were signatories to a general convention—that is to say, there is nothing to prevent them from accepting in their mutual relations the regulations included in such a convention. I call this means indirect because by it it is possible to spread the effect of the convention among States which can remain free to choose with whom to assume obligations, while at the same time they are not compelled to assume them towards everyone.

This indirect means is described in the draft resolution in which we ask that the model Treaties drawn up should be recommended to States. The same procedure applies to Article 36 of the Statute of the Permanent Court of International Justice. A resolution has been proposed which emphasises the extreme elasticity of Article 36, and which points out that States can, in consequence, adhere to the Optional Clause of Article 36 and at the same time make any reservations which they think fit. By means of this same indirect procedure which I spoke of just now, States can, instead of assuming obligations towards everyone in virtue of Article 36, accept all or part of those obligations towards States which they themselves can choose.

So much for arbitration and conciliation.

As far as security is concerned, we have also drawn up three model Conventions, two collective Conventions—one of Mutual Assistance and the other of Non-Aggression—and a special Treaty of Non-Aggression. The most complete of these three models is undoubtedly the first. It puts into definite rules the three principles underlying the Locarno Agreement, which are the principle of non-aggression—that is to say, the prevention in all cases of recourse to force; the principle that all disputes must be submitted to some form of peaceful procedure; and the principle that the contracting States undertake to give each other mutual assistance.

The drafts E and F, also of this category, are based on the same principles except in regard to the last principle. States adopting these two Conventions would accept the principle of non-aggression and the principle of peaceful procedure, but would reject the rule of mutual assistance.

I desire, gentlemen, to show you very rapidly, basing my remarks on the general structure of Convention D, what are the advantages in that Convention and its disadvantages as compared with the Rhineland Treaty of Locarno.

Compared with the Rhineland Treaty of Locarno, our model Collective Treaty for Mutual Assistance shows four principal differences.

First, it does not contain a clause embodying the territorial guarantee. The reason is that we thought that, if we had inserted such a clause, the conclusion of similar treaties might in certain circumstances have been rendered more difficult. We have omitted this clause, and we have done so the more easily as it was recognised during the discussion that this Treaty, based as it is on the Covenant of the League of Nations, leaves Article 10 intact, as well as all the other articles of the Covenant. Article 10, which already gives a territorial guarantee to the Members of the League of Nations, is thus reinforced and confirmed by the engagement which the contracting parties will assume not to resort in any case to force.

The second difference is that our model Collective Treaty for Mutual Assistance does not contain any third State guarantee. It does not contain such a clause because it will not always be possible to ensure the guarantee of the third State coming to uphold the undertakings entered into by the contracting parties. This guarantee of the third State, moreover, is not indispensable in the Treaties of which we are thinking, because the reciprocity of obligations between several members and several States already affords a first guarantee, and the fact which increases the value of this guarantee and constitutes in a way a second guarantee is that, since our Treaties are models framed and recommended by the League of Nations, and since they will be concluded under the auspices of the League of Nations, it can be maintained that the undertakings embodied in them bear, so to speak, a moral endorsement of the League of Nations.
Thirdly, our model Treaty, unlike the Rhineland Locarno Treaty, does not provide for the case of flagrant aggression. It does not provide for this case because, in the situations likely to arise, which will not be very similar to those which were contemplated in the Locarno Treaty, such a clause might have more inconveniences than advantages. I am well aware, however, that, if a regional security treaty were concluded without this clause of mutual assistance, and automatically into operation in the case of flagrant aggression, there might be a disadvantage owing to the fact that there would be a diminution of the security which the Agreement would bring about as between the parties. The remedy for this disadvantage, however, is, in my opinion, the improvement of the system of communications of the League of Nations with the external world, and it is with a view to such an improvement that we have proposed, and that you have accepted at a first reading, a draft resolution the object of which is to render more rapid in cases of urgency and crisis communications between the organs of the League of Nations and the various Governments.

The fourth difference relates to the demilitarised zones. In our model Treaty it is not proposed as a general rule that there should be demilitarised zones between the contracting parties, because that is not always possible and is sometimes impossible. It is therefore advisable to leave the contracting parties full discretion, so that they may establish or not establish a demilitarised zone according to circumstances.

There is a last point which has not been dealt with in the model Treaty and which, according to the solution which it will receive in practice, may constitute a further difference between the model and the Rhineland Locarno Treaty. I am referring to the duration of the Treaty. We have not fixed any period, and we have left blank the article which should have dealt with this matter. We hesitated between several possible systems. The three principal solutions are as follows:

The Locarno solution: this supposes an indefinite duration of the agreement, with the possibility of its denunciation by a decision of the Council taken by a majority of two-thirds. Another solution consists in providing for a duration of ten to twenty years, with a tacit renewal for a similar period if the Treaty is not denounced at least one year before the conclusion of each period. There is a third or mixed solution which stands midway between the two previous solutions. There might be a first period of a fairly short duration—for example, five years—following which the Treaty, if it were not denounced one year before the expiration of that period, would continue indefinitely up to the moment when it was rendered null by a decision of the Council.

The choice between these three systems is extremely difficult. We have not had the necessary time for the thorough study which should be made in order to consider the arguments in favour of each solution. We have confined ourselves to indicating the three systems, and, subject to further advice, it is for the parties themselves to make their choice.

Apart from these differences, the model Collective Treaty for Mutual Assistance is exactly in the spirit of Locarno, and I would like, in addition to the three essential principles which I have just indicated, to emphasise three other points which show the close connection of our work with the Locarno Agreement.

As in the Rhineland Treaty, provisional measures are contemplated in our model D by means of a rule which may be developed according to the suggestions which have been submitted by the German delegation.

The next point which is important is that the model Treaty which we have just framed only covers the case of mutual aggression by the contracting parties. It does not provide for the aggression of a third party. It seemed to us that it was more in conformity with the spirit of the League of Nations only to recommend a model Treaty of this kind. That course seems to be more expedient, since the insertion of a clause providing against the aggression of a third party would become quite useless if, as may be hoped, the neighbouring States, in spite of their diversities of origin, agreed to participate in a general security agreement. It is with a view to facilitating this possibility and of succeeding in the object that we framed a draft resolution referring to the good offices of the Council with a view to the conclusion of such agreements. The part of the Council in such a matter would be extremely delicate, but I do not hesitate to say that it will be quite indispensable, since for the conclusion of such treaties it will often in practice be necessary to arrange for a whole lot of the preparatory political work to be done in advance, and for a closer moral association between the States concerned to be brought about.

There is, finally, a third point in which the connection between our work and the Locarno Agreement is obvious, since in both cases we have to note a serious gap. There is a gap in Article 15, paragraph 7, of the Covenant. You are all aware of that gap. It becomes clear in the case in which the Council, being unable to make a unanimous recommendation to the parties, leaves each of them free to act as it thinks best for the defence of its interests.

In the security agreements—in the Locarno Agreements as in our own—resort to war is doubtless prohibited, so that it may be said that the gap is by that means filled. It is not less true that, when there is a very serious dispute which remains without solution, there may arise a grave danger if the dispute continues to remain thus unsettled over a long period of time. The engagement never to resort to war becomes somewhat precarious. For this reason, we have endeavoured to find a means by which it may be possible to remedy this disadvantage. As I have already had occasion to say very frankly, however, we have not found any such means. We thought that, by endeavouring to strengthen the procedures under Article 15 of the Covenant, we ran the risk of weakening the guarantees given by Article 16 and of losing on one side by making the improvement which we sought more than would have been gained on the other side.
We are convinced—and this is the clear conclusion reached by our discussions—that there is, and always will be, only one real way of filling the gap in Article 15, paragraph 7, namely, by applying compulsory arbitration in all cases, in order that for all disputes there may be a final decision.

So long as this is not the case, so long as States are not disposed to submit their disputes to compulsory arbitration without any distinction or exception, they must needs rest content with the somewhat incomplete system of the Covenant of the League of Nations.

Meanwhile, all that can be hoped is that the extreme cases, in which the best possible organisation of security will always be subject to the risk of breaking down, will become continually more rare in proportion as the bonds of agreements between States are multiplied and in proportion as the credit of the League of Nations increases, in proportion as its pacific procedures are improved and develop among nation the sentiment of co-operation and good understanding.

I am personally convinced that, by the work we have done, we have achieved a considerable step forward in this direction. If the model Treaties which we have framed are successively approved by the Preparatory Commission, by the Council, and finally by the Assembly, they will have sufficient moral authority to give a new stimulus to the progress of arbitration and security. It is unprecedented that texts solemnly prepared and recommended by a great international Assembly should not enjoy an extensive and rapid propagation.

This hope is encouraged by the spirit which has inspired our work. I must frankly confess—and I do so with a lively satisfaction—that many of the points which hitherto seemed insoluble have been discussed in this Committee with the objective calm which is essential in the examination of difficult problems. Very profound differences of opinion have come to the surface. The most various tendencies have appeared on this side or that. Finally, however, as the result of courteous but frank discussion, these differences and various tendencies have gradually been attenuated, in order to give way finally to unanimous agreement.

As I have already had the honour to say at one of our previous meetings, it is possible to see a good augury for the future in the manner in which our work has been carried on. I may venture to hope, from what has happened in this Committee, that the world will realise that, between men of goodwill inspired by the same ideal, it is possible for a good understanding to be achieved and to bring about fruitful results.

I earnestly hope that our procedure may be for the nations an example and encouragement.

The CHAIRMAN. — I do not wish at the end of your work to detain you with a long closing speech. I will confine myself to presenting a few observations.

In opening the first meeting of this session, I informed you of feelings which had been expressed in various quarters concerning your future work. I referred to certain doubts, certain misgivings and certain hopes. Personally, I did not conceal from you that I was hopeful that we should achieve good results. I went even further and said that I was certain of it. I believe I am expressing your own feelings in declaring that the results we have achieved hitherto are extremely satisfactory. We have not yet concluded our task and we shall have to take up on a second reading our resolutions and model Treaties. For the moment, however, I believe that the success of our work is assured.

I would venture to indicate briefly the political importance of our second session. We have adopted a certain number of resolutions, accompanied by texts of model Treaties on Arbitration, Conciliation, Mutual Assistance and Non-Aggression. These decisions will indicate the path to be followed by the Members of the League of Nations in endeavouring to achieve the final consolidation of Europe and in securing pacification and a durable peace. Here we have a kind of general policy of the League of Nations which we have endeavoured to outline. That policy is based on one or two essential principles:

1. It is essential that we should undertake not to make war.
2. It is essential to complete this undertaking with another undertaking to settle all disputes by pacific means.
3. This arrangement can be still further completed by an undertaking of mutual assistance embodied in a treaty which we have called a Treaty of Mutual Assistance and Non-Aggression.
4. We leave to the States which cannot immediately adopt these principles as a whole the option of voluntarily and progressively bringing their policy in accord with these principles by following the evolution which is taking place in the general position and in their special situation.
5. We are asking the Council of the League of Nations in practice to follow this path and to help States to achieve this object, while respecting the wishes and desires of the various Members of the League.

While, however, we absolutely respect the freedom of everyone concerned, it must not be forgotten that the path we have traced is recommended as a possible and the most practical means of achieving our object, and that in all cases States should be governed by the spirit underlying this policy. This policy is bound up with the future work which will be done for the Conference on the Reduction and Limitation of Armaments, and we believe that it will enable that work to be more easily conducted to a successful conclusion.

We have been asked to abandon theoretical considerations and come to practical solutions. I do not yet say that we have succeeded. I do say that we have made a sincere effort and that we are by way of succeeding. In every case, the means by which the security in Europe and
other parts of the world may be increased, and by which the progressive pacification of the public mind and of the nations and of the Governments can be to a certain extent assured, is now indicated as a possible and practical means.

I do not forget that there have been other means and methods by which we have sought to achieve our object, such as the examination of the articles of the Covenant, the question of financial assistance to be afforded to States, the question of communications in time of crisis. All these measures can help us to find new foundations and new supports for the construction of the peace of the world.

One result has been achieved. We have left behind us general and theoretical considerations and we have indicated practical methods.

When all this has been accepted at a second reading, and when the Assembly in September has endorsed our work, the essential task of the League will be concluded. It will then be for the Governments to carry further the work which we have done.

If at that moment a more general political movement becomes evident in Europe, it will be possible to appreciate justly the great scope of the work which we have just undertaken. If this movement leads to practical results and to the conclusion of treaties, it may be said that a new step has been taken towards establishing a more durable peace in Europe. We shall thus have served the cause of peace, and the high and noble ideal of the League of Nations will thereby have been strengthened.

Before closing this meeting, I would thank all those who have helped me in my task of presiding over the Committee, beginning with our Rapporteurs, M. Holsti, M. Politis and M. Rutgers. I would thank the members of the Drafting Committee, the members of the Committee of Three, M. Politis, Sir Cecil Hurst and M. Rolin Jaequemyns, who have dealt with the many tasks entrusted to them by the Drafting Committee and who have done so considerable an amount of work. I would thank the members of the Secretariat, particularly M. Sugimura and his colleagues, for the valuable help which they have given me in directing the work of your Committee. I would also thank all the technical staff, to whom we have been obliged to appeal for a special effort and who have worked night and day.

I would, however, address my very cordial thanks to all you gentlemen who, by your courteous discussions, your cordiality, the sincerity and mutual goodwill which you have shown in exchanging your ideas, by the genuine devotion which you have so largely shown to the work which we had to accomplish, have rendered possible the results which we have achieved. As I have had the honour to say—and I think I may repeat it—we have all worked devotedly for the League of Nations and been faithful to the spirit of the League. I venture to express the hope, on behalf of you all, that the third session may happily complete the present work and also enable us to make of the partial success gained to-day a complete success to-morrow.

Lord CUSHENDUN (British Empire).—Before you finally declare this discussion at an end, Mr. Chairman, there is just one short observation which I feel sure my colleagues on the Committee will have sufficient patience to enable me to make. We have listened to your interesting summary of the work we have done and you concluded with acknowledgments to various organs and individuals who have assisted in our work; but I noticed there was one very serious omission in these thanks which you expressed, and it is in order to make good your omission that I ask leave to say a word.

Your modesty, sir, prevented you from bringing before us the invaluable work which you yourself have contributed to the labours of this Committee. Now, I am well aware there are a great many members of the Committee whom I see around me who have a much better right and much better qualifications than I have to supply this omission. There is only one claim which I can make, and which I feel certain my colleagues will all concede, and that is that I am the tallest man on the Committee. As the tallest man on the Committee, I ask leave to express our warm thanks to you, M. Benes, for the way you have presided over our labours. If those labours prove to have any ultimate value—as I believe they will—I am sure all of us will recognise that our success is very largely due to the businesslike efficiency which you have shown in the Chair and the grasp of the subject which has enabled you to give us your guidance.

To the very great regret of all of us, during the work of the Committee you have not always enjoyed very good health. We hope the conclusion of our work will enable you to take a period of complete rest which will restore you entirely to health and strength, so that when you next come here, or when you next perform your invaluable duties in your own country, you will be able to do so with all your accustomed vigour and efficiency.

The CHAIRMAN. I am deeply touched by the words which have fallen from Lord Cushendun on behalf of you all, and I thank you very cordially. I would ask your indulgence for the fact that, as your Chairman, I have laid some small insistence from time to time on the necessity for hastening your work. That, however, was necessary, and I made those representations from a sense of the importance of our work and the necessity of achieving success. It has been a great honour for me to preside over this Committee, and I hope that our future proceedings will be conducted in the same way and in the same spirit.

The meeting rose at 5.5 p.m. The second session was closed.
Annexes to the Minutes of the Second Session of the Committee on Arbitration and Security.

ANNEX 1.

INTRODUCTION AND THREE MEMORANDA ON ARBITRATION, SECURITY, AND THE ARTICLES OF THE COVENANT.

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1. Introduction to the Three Memoranda on Arbitration, Security and the Articles of the Covenant

Submitted by the Chairman of the Committee in agreement with the Rapporteurs.

1. In accordance with the programme drawn up by the Committee on Arbitration and Security at the end of its first session, the Rapporteurs on the three questions to be studied — namely, M. Holsti for the question of Arbitration Agreements, M. Politis for the question of Security Agreements, and M. Rutgers for the question of the Articles of the Covenant — first prepared individual memoranda with the aid of the documents which the Secretariat had placed at their disposal.

2. The Rapporteurs then held a meeting at Prague, from January 26th to February 1st, 1928, to co-ordinate their work with the assistance of the Chairman of the Committee on Arbitration and Security.

The texts drawn up by the Rapporteurs were revised with the object of shaping them into "an organic whole", as required by the Committee on Arbitration and Security. At the same time, the Chairman and the Rapporteurs endeavoured to avail themselves, as far as possible, of the suggestions given in the Notes sent in by the Governments of Belgium, Germany, Great Britain, Norway and Sweden. The Rapporteurs desire to thank these Governments for the valuable ideas which they put forward. They also gave consideration to the suggestions offered by representatives of other Governments during the previous discussions on arbitration and security.

3. The memoranda in their present form are none the less the individual work of the Rapporteurs, who assume full responsibility for them, not as delegates of their Governments, but in their personal capacity and they emphasise the fact that they only desire to offer suggestions. Nevertheless, after examining these memoranda at their meeting at Prague, the Chairman and the Rapporteurs were unanimous in submitting them to the Committee on Arbitration and Security as a comprehensive study, containing suggestions which might form a useful basis for discussion at the second session of the Committee.

4. The Chairman and the Rapporteurs desire to add that, in the course of their studies, they were led to certain conclusions which they think it might be useful to submit as a kind of introduction to the three memoranda.

5. In the first place, both the report on the application of Article 11, which was approved by the Council and by the Assembly of 1927, and the memorandum on the Articles of the Covenant which is now submitted to the Committee, bring out the fact that the Covenant creates a measure of security which needs to be appreciated at its full value. The Articles of the Covenant are capable of being applied in such a way that, in the majority of cases, they can prevent war. The Council has shown during the last few years that it has power to arrest a conflict. The responsible representatives of the States Members of the Council are equipped by the terms of the Covenant with extensive powers for the preservation of international peace. Their common will for peace can be exercised effectively within the framework of the Covenant — all the more effectively because that instrument does not provide any rigid code of procedure for the settlement of international crises.

It is, indeed, beyond question that, in addition to the means which the Council has already had under consideration when dealing with disputes submitted to it, or in the course of the studies of its own procedure which it has made or promoted, there are other measures within its reach for preserving international peace which circumstances might suggest. The memorandum submitted to the Committee on Arbitration and Security, like those which preceded them, illustrate the present impossibility, we might almost say the inexpediency, of attempting to draw up a complete list of such measures in advance; nevertheless, in the light of the experience gained even in a comparatively short period, it appears evident that international disputes are becoming more and more engaged in a network of preventive measures, and that there is a constant evolution towards improvements in the methods employed by the Council within the ambit of the Covenant; and that, in consequence, a situation has arisen which is fundamentally different from that which existed before the League of Nations was instituted, so that a resort to war, without the responsibility for such a step being manifest to the whole world, becomes more and more difficult to imagine.

6. It may truly be said that, before the existence of the League of Nations, the national points of view were practically the only ones of which public opinion had any cognisance in times of international crisis. The effect of the Council's debates being held in public will be, not only that the opponent's point of view is likely to become better known in the other country, but also — more important still — that the official recommendations given by the Council to the parties will furnish the public in all countries with the means of forming a judgment; this factor could only help to turn governing circles in the different countries concerned towards a pacific settlement.

1 The programme and the resolution of the Assembly are annexed.
2 The texts of the observations presented by these five Governments are also annexed.
It is difficult to believe that the Government of any of these countries would refuse to give full publicity to the official recommendations of the Council. Indeed, such a refusal would be taken, not only by foreigners but by the people of the country itself, as very significant evidence of the real intentions of the Government. It would be a matter of vital importance to any Government to avoid incurring such discredit.

7. Moreover, in proportion as the authority of the Council increases in the eyes of public opinion, the effectiveness of its action is correspondingly increased, and in this connection it should be observed that, by attending its sessions at Geneva in person during the last few years, the Foreign Ministers of several countries have greatly enhanced the authority of the Council and the efficacy of its action.

8. It is true that paragraph 7 of Article 15 of the Covenant allows for the possibility of the Council failing to reach a report which is unanimously agreed to by the Members, other than the representatives of the parties to the dispute. But it seems probable, in view of the terms of the Covenant, that, before acknowledging their failure to agree, the Council would seek to avail itself of the safeguards which the Covenant places so abundantly at its disposal. It is not improbable, for instance, that the Council would have already suggested the submission of the dispute to arbitration, or that it would have asked the parties to the dispute to accept such measures as in its view were best fitted to prevent a resort to violence. Before abandoning the attempt to produce a unanimous report, thus creating a de facto situation which would authorise the Members of the League, by the terms of the paragraph of the Covenant referred to, to "take such action as they shall consider necessary for the maintenance of right and justice", the Council would have made so many efforts to obtain a settlement that the Members of the League would be in large measure enlightened as to the real incidence of the responsibility in case of a failure of its efforts.

9. Accordingly, although paragraph 7 of Article 15 contains a gap from a legal point of view, nevertheless, from a political standpoint, there is a latent influence for peace in this freedom of action which it thus threatens to restore to the Members of the League in circumstances on which the public opinion of the whole world would be in a position to pass judgment. The Council would certainly be able to take advantage of the situation thus created to make further efforts on behalf of peace.

10. If, in addition, one considers the engagements undertaken by the States in virtue of Article 16 and which form the subject of one of the studies presented to the Committee, one is forced to the conclusion that the Covenant provides the Members of the League of Nations with a measure of security which it is their duty to develop still further by co-operating resolutely and loyally for the establishment of international peace.

11. This duty has, indeed, been observed during the last few years by a great number of States which have concluded special or collective treaties of arbitration and security. This method of special or collective treaties appears at the present moment to be the only practical means which can be recommended to States in search of more effective guarantees of security.

12. Those nations which consider that the general measure of security afforded by the Covenant is inadequate for their needs, and which, more particularly in view of their geographical situation, feel themselves more liable than others to be drawn into a war in case of a failure of all the machinery designed to prevent armed conflicts, must at the present moment regard the conclusion of security pacts with other States in the same geographical area as the only practical or possible form of supplementary guarantee. Even if the other Members of the League of Nations cannot give their effective guarantee to such treaties they can at least accord them their moral support and do everything in their power to facilitate their conclusion, provided always that such treaties are conceived in the spirit of the Covenant of the League and are co-ordinated within its provisions.

13. In the memoranda which now follow, the Rapporteurs have endeavoured to avail themselves of the lessons of experience, at the same time taking into account the possibilities of the present moment. They realise that the Committee expects from them neither precise opinions nor a complete set of solutions, but solely indications and suggestions which may serve to direct and help its future work. They have been careful to avoid the use of general and too rigid formulae. They have sought material for a solution of these problems exclusively within the framework of the Covenant of the League of Nations and in harmony with its spirit, without proposing any alteration of the text; finally, they recognise that, in order to attain the object in view, the work which is contemplated will need to be undertaken with an earnest desire to increase confidence between peoples and to render the organs of the League of Nations better able to discharge their duties and obligations.

14. The Rapporteurs have thought it desirable to recapitulate the results of their studies in the form of certain suggestions which will be found at the end of each memorandum under the title "Conclusions".

15. In submitting all these practical measures which they feel may help to increase the guarantees of security arising from the Covenant, the Rapporteurs believe that they have carried out the work with which they were entrusted.

In submitting their memoranda, they therefore consider that their duties are ended.

16. The Rapporteurs desire to take this opportunity of thanking the Committee on Arbitration and Security for the trust which it has reposed in them, and the Secretariat for the valuable assistance which it has furnished them in discharging their mission.
2. Memorandum on Arbitration and Conciliation

Submitted by M. Holsti, Rapporteur.

I. Present Position with regard to Arbitration and Conciliation.

17. This enquiry, undertaken in conformity with the decision reached by the Committee on Arbitration and Security on December 2nd, 1927, concerns the measures which would make it possible for the League of Nations to promote, generalise and coordinate special or collective agreements on arbitration or conciliation. The term "arbitration", of course, includes the decision of disputes by the Permanent Court of International Justice, described in the Covenant as "judicial settlement".

18. The Assembly resolution of September 26th, 1927, in virtue of which the above question is being considered by the Committee on Arbitration and Security, recommended the progressive extension of arbitration by means of special or collective agreements, including agreements between States Members and non-Members of the League of Nations, as a means of extending to all countries the mutual confidence essential to the complete success of the Conference on the Limitation and Reduction of Armaments, and this resolution defines the special task of the Committee on Arbitration and Security, which is to consider the measures capable of giving all States the guarantees of arbitration and security necessary to enable them to fix the level of their armaments at the lowest possible figures, in an international agreement for the reduction and limitation of armaments. The purpose of the enquiry to be undertaken is therefore not scientific or theoretical, but practical; its aim is to initiate measures which will constitute a positive contribution towards the creation of a feeling of greater security between the various States and towards facilitating thereby the ultimate solution of the disarmament problem.

19. Arbitration has, from the outset, formed an essential element in the system established by the Covenant, which lays down the principle that Members of the League are to refer to arbitration or judicial settlement those disputes which they recognise to be suitable for such treatment. The system also defines certain categories of disputes as among those which are generally suitable for such treatment; it emphasises the obligation of States parties to an arbitration procedure to carry out in full good faith any award or decision that may be rendered, and empowers the Council to propose what steps should be taken to give effect to such an award or decision in the event of failure to carry it out. Furthermore, by providing for the creation of the Permanent Court of International Justice, Article 14 of the Covenant enabled immense progress to be made in arbitral procedure, as it led to the setting-up of a permanent judicial tribunal which offers the highest guarantees of competence and acceptability to the various States.

20. The procedure of conciliation is not mentioned in the Covenant, but it has been fully recognised as being not merely consistent with the Covenant, but as a desirable reinforcement of the methods of pacific settlement of disputes expressly provided for in the Covenant. In 1922, the Assembly recommended to the Members of the League the conclusion of conciliation treaties, and drew up a model set of articles which might be taken as a basis for the conclusion of such treaties.

21. In accordance with the Assembly resolution of September 25th, 1926, dealing with arbitration, security and the pacific settlement of international disputes, the Council was invited to offer its assistance, if necessary, for the conclusion of agreements of this kind. Up to the present, the Council has not had occasion to help nor has any State applied to it for assistance. It would be desirable to consider whether this procedure could not be made more effective and its application facilitated.

22. Simultaneously with the measures which have been taken within the framework of the League, there has, since the world war, been a very remarkable increase in the number of treaties for the pacific settlement of disputes which have been concluded between pairs or small groups of States, and the development has been equally remarkable as regards both the methods of procedure and the number of the questions considered suitable for treatment by arbitration or conciliation.

23. The total number of agreements of this kind (arbitration treaties, conciliation treaties, and arbitration and conciliation treaties) which has been registered with the Secretariat of the League is eighty-five 1; these include only a small number of renewals of pre-existing treaties. The number of States which are parties to the optional clause of the Protocol of Signature of the Statute of the Permanent Court of International Justice is at present fourteen. To obtain an accurate idea of the development which methods of pacific settlement have attained, it is, however, necessary to remember that there are in existence a number of arbitration treaties dating from before the world war, which, owing to their date, are not registered with the Secretariat. Moreover, several treaties have been signed but have not yet been ratified.

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1 This figure indicates the number of treaties registered on February 1st, 1928. For details, see the 2nd edition of "Systematic Survey of Arbitration and Security Treaties" (Document C 693 M. 216 1927 V).
24. It should, of course, be pointed out that statistics concerning the number of arbitration treaties in existence are not an accurate measure of the extent to which possible international difficulties containing elements of danger have been brought within the scope of pacific settlement, because the value of an arbitration treaty, from the point of view of general security, necessarily depends upon the importance of the States bound by it and the extent to which the relations between them are liable to endanger the peace of the world.

25. Again, it is perhaps also of interest to note that the absence of special arrangements for the pacific settlement of disputes between particular States is not of importance from the point of view of security if those States are so situated that a dispute between them is hardly capable of producing grave consequences. The smaller States are perhaps always so situated with regard to distant countries. It follows that the degree of security obtained by the development of arbitration and conciliation agreements is not measurable by mere comparison of the number of existing treaties with the number of treaties which would be necessary to cover the relations between all the States of the world.

26. The main development in the provisions of treaties for the pacific settlement of disputes is a greater readiness to accept arbitration or conciliation — if not for all possible disputes at least for all those of a juridical nature — and the tendency to abandon traditional reservations or to restrict their scope. At the same time, methods of procedure have been improved; the procedure of conciliation in particular is, in its present development, largely a post-war creation.

II. CONCERNING THE DEVELOPMENT OF ARBITRATION.

27. There can be little doubt that the progress of arbitration and conciliation has been in no small measure due, not merely to the influence of the Covenant and the positive measures which the organs of the League have been able to take, but also to the active discussion of these subjects which has been pursued within the organs of the League, particularly in the Assembly, even where no positive proposals have been adopted. Probably the mere continuance of such discussions will still exert an influence in the same direction, especially in so far as it makes the experience of particular States more readily available to other States and results in the formation of a general consensus of opinion concerning the desirability of particular methods of procedure. As regards more positive steps which could be taken through the organs of the League, there are three possible suggestions:

(a) A recommendation directing the attention of Governments to one or more types of treaty suitable for adoption between two States or limited groups of States;

(b) The possible extension of these treaties to other States with the consent of the Contracting Parties;

(c) The third suggestion is a more ambitious programme, including the negotiation of a general treaty which would be open to signature by all Members of the League or generally by all States.

28. This third suggestion is, in fact, a direct attempt to attain the object indicated in the Assembly resolution; it would be a striking expression of the League's desire to see methods of peaceful settlement adopted throughout the world. In seeking this solution it will be prudent to take into account the main difficulties which are, under present conditions, felt to stand in the way of a system which aims at the final settlement of all disputes by some pre-established form of procedure.

29. The first difficulty appears to lie in the generally recognised impossibility of treating all disputes as if they stood on the same legal basis. A distinction must be made between the disputes of a juridical nature defined in the Treaties of Locarno as those "with regard to which the parties are in conflict as to their respective rights", and disputes of a non-juridical nature, which may be roughly defined as those due to a divergence of view between the political interests and aspirations of the parties.

30. Recognition of this distinction leads to the conclusion that proposals for the obligatory settlement of all disputes whatsoever by arbitration do in fact involve two different kinds of arbitral settlement.

31. In the case of juridical disputes, the task of the arbitrator or of the Permanent Court is to ascertain and apply the appropriate rule of law. In the case of non-juridical disputes, the arbitrator's task goes beyond such a purely judicial function and becomes political, and even possibly legislative in character. The arbitrators must be authorised to decide ex-aequo et bono; and possibly they may have to be invested with quite special powers not covered even by this formula.

32. Although, therefore, there are a certain number of instances of treaties providing simply for compulsory arbitration in all disputes and empowering the arbitrators or the Permanent Court to decide ex-aequo et bono in the absence of an applicable legal rule, it is thought to be unlikely that a general treaty of this kind would under present conditions secure the approval of a large number of Powers.
33. A second difficulty in the way of the compulsory settlement of all disputes by some form of previously prescribed procedure is held to be that the acceptance of arbitration as between any two States is to a large extent a question of mutual confidence. Assuming that States in general are not at present prepared to pledge their resources to ensure the general enforcement of arbitration awards, the execution of these awards depends on the good faith of the parties. Certain Governments therefore find it difficult to accept general obligations involving the settlement by arbitration of disputes with all other States. A State which takes this view hesitates to become a party to an arbitration treaty open to the world at large, because it thereby runs the risk of finding itself bound to settle by arbitration disputes with other States with which it does not in fact consider that disputes can in all cases be satisfactorily arbitrated.

34. Finally, certain Governments have held that, even within the category of juridical disputes, there may arise differences which, owing to the imperfections or uncertainty of international law, or the serious nature of the dispute itself, cannot be effectively settled by a purely legal decision. It is argued that States act prudently in not accepting obligations which may result in their being legally bound to do something that may prove to be materially impossible. This consideration explains the traditional reservations which appear in arbitration treaties.

35. It may therefore be held that under present conditions any general treaty for the compulsory settlement of disputes by arbitration which might be negotiated through the League would, in order to attain the degree of flexibility which the Assembly held to be a necessary condition for universal acceptance, require either to be restricted to disputes of a juridical nature or to contain provisions concerning the rules to be applied by arbitrators when dealing with particular non-juridical disputes.

36. It may be considered that the latter necessity exists even if, as has been suggested, the provisions for the arbitration of non-juridical disputes were to take the form of an optional clause which need not be accepted when accepting the treaty as a whole. It may further be argued that, as with the optional clause of the Protocol of Signature of the Statute of the Permanent Court, there should, even as regards juridical disputes, be a possibility of accepting arbitration for certain categories of disputes only, or of making reservations excluding certain categories of disputes. There would remain the difficulty mentioned above, namely, that the universality of the treaty constitutes an objection from the point of view of States which consider that it is not possible to arbitrate with all other members of the international community. This objection could be met by permitting reservations under which a contracting party would state that the convention did not apply to its relations with some other country or countries. It might perhaps be well to consider at the same time the system of entering into direct undertakings with a greater or lesser number of States. An idea worth mentioning is that of supplementing the tables in the list of treaties published by the Secretariat, by placing opposite the treaties of conciliation and arbitration and the names of the parties a description of the disputes which are in general subject therein to arbitration.

37. In addition to the above reasons for doubting whether a general arbitration treaty would in fact secure general acceptance, there is an increasing tendency to conclude treaties of arbitration as between pairs of States or limited groups of States. The diversity of the provisions of these treaties, both as regards their scope and the procedure and choice of the tribunal, undoubtedly corresponds to the diversity of the circumstances which govern the relations of these groups inter se. At the present time, it would seem to be difficult to reduce this varying practice to one common type.

III. Concerning the Forms of Arbitration.

38. In spite of the difficulties which at present stand in the way of a general treaty of arbitration and conciliation, the system should not be rejected outright. In practice, it is possible to conceive of various types of treaties which might take the form of either general treaties or special treaties.

39. Should the Committee on Arbitration and Security consider it desirable to prepare a model general treaty of arbitration, it would perhaps be well to follow the system of the Locarno Treaties, that is to say, to provide for obligatory arbitration only in the case of juridical disputes, leaving other disputes to be settled by a procedure of conciliation. The Swedish draft, which is founded on this principle, might be adopted as a basis for discussion. It will perhaps be thought necessary to allow a certain latitude in the matter of reservations, withdrawing certain categories of juridical disputes from the effects of the arbitration provisions. Were this not done, the treaty would in fact possess less elasticity than the optional clause of the Permanent Court, which is already an instrument for the acceptance of that Court’s jurisdiction in all or some of the categories of juridical disputes specified in the Covenant. It might be desirable to insert a provision making the treaty applicable only to disputes the elements of which arise after the State in question has become a party to it, or to permit reservations on this point. Finally, it appears to be almost universally admitted that any general treaty should be considered as supplementing already existing treaties or special treaties concluded between two or more of the parties to it.
and should not apply to disputes covered by such treaties. It would be necessary to consider whether, and if so how, these treaties, concluded by a certain number of States, could be opened for accession by other States.

40. It would be useful if the Committee on Arbitration and Security were to prepare one or more models of special arbitration treaties. The materials for drawing up such standard treaties exist in abundance in treaty law.

41. The Assembly, at its last ordinary session, recognised the desirability of examining how it would be possible to encourage acceptance of the optional clause of the Protocol of Signature of the Statute of the Permanent Court of International Justice. The discussions on this point did not, however, lead to any practical proposal. It is difficult to see what can be done by the organs of the League in this matter, beyond recognising, as they already do recognise, that the development of the Court's jurisdiction under the optional clause, as between States which feel able to accept this clause, constitutes an important application of the principle of arbitration. The optional clause is not, however, the only instrument under which compulsory jurisdiction can be conferred on the Permanent Court. The Court can obtain such jurisdiction both under arbitration clauses in general treaties of every kind and under special arbitration treaties. A suggestion on these lines is made in the British memorandum. It is also held that a recommendation might be made, to the effect that general treaties of all kinds should, wherever possible, contain an article giving the Permanent Court jurisdiction over disputes as to their interpretation and application, and that special treaties of arbitration should refer juridical disputes to the Permanent Court rather than to other forms of arbitral tribunal. A suggestion to this effect is also contained in the British Government's memorandum. Not merely is the Permanent Court specially qualified to deal with juridical disputes, but every extension of its jurisdiction strengthens its position, and, at the same time, helps to promote uniformity in international law, as it is gradually formulated by successive decisions. In the matter of non-juridical disputes, efforts might be made to determine, in the light of practical experience, how a tribunal acceptable to the parties could be set up.

42. The treatment of the question of conciliation depends to some extent on whether an endeavour is to be made to draft a general arbitration treaty. If so, there can be little doubt that provisions concerning the conciliation of disputes should be inserted therein, as in the Locarno precedents and in the Swedish draft. It may also be said that if an attempt is made to prepare one or more standard arbitration treaties, these drafts, or one of them, should contain provisions for conciliation.

IV. CONCERNING CONCILIATION.

43. Even if the Committee should not consider it necessary to recommend a general arbitration treaty, a general conciliation treaty might still be considered. The difficulties arising from the universality of the treaty are similar, but they are probably less serious than in the case of arbitration. On the other hand, the universal acceptance of conciliation obligations would mean that disputes which were neither settled by diplomacy nor referred to arbitration would, before they came to be dealt with by the Council or the Assembly under the Covenant, have been the subject of full examination with the assistance of neutral conciliators. The following ideas might be taken as the basis of a system of conciliation:

1. Conciliation would be provided for all disputes, except those for which another procedure of pacific settlement is provided in other treaties;
2. The Conciliation Commission should be permanent. It should consist of five members, three of whom would be neutrals jointly designated by the parties;
3. The Conciliation Commission would be notified of a dispute by a request from either party. It would be bound to finish its work within six months. It would draw up a report, concerning which the parties would have to give an opinion within a definite period;
4. While the proceedings are in progress the parties should undertake to refrain from any action which might aggravate the dispute and the Commission of Conciliation might indicate to the parties the provisional measures which it would be desirable to adopt;
5. The procedure of conciliation should not affect the rights and obligations of the Members of the League to lay certain questions before the Council under the terms of the Covenant. In this case it would be for the Council to decide whether it preferred to await the termination of the conciliation proceedings or to examine the case forthwith.

Lastly, it might also be useful, in accordance with the suggestion put forward in the German Government's memorandum, to consider how the force and authority of the recommendations and proposals resulting from the procedure of conciliation could perhaps be strengthened.
V. Concerning the Co-ordination of Treaties of Conciliation with Article 15 of the Covenant.

44. At this point attention should be directed to the question of co-ordinating the application of Article 15 of the Covenant with that of a general treaty of conciliation. Unless this question is foreseen in the treaty, there might arise some rivalry of jurisdiction between the Council, acting under Article 15 of the Covenant, and the Commission of Conciliation, acting under the treaty. Under the terms of Article 15, any dispute likely to lead to rupture which is not submitted to arbitration or judicial settlement must be submitted to the Council; the article does not exclude the disputes covered by a treaty of conciliation or which form the subject of conciliation proceedings in progress. This does not necessarily mean that in such circumstances the Council would adhere to Article 15 and would not hold that the parties are bound to comply with the terms of their conciliation treaty. Further, if conciliation proceedings were in progress, the Council might agree with the principle laid down in the reply to Question 2 given in the report of the Special Committee of Jurists appointed by the Council resolution of September 28th, 1923. It may perhaps be useful to give this reply in full:

"Where, contrary to the terms of Article 15, paragraph 1, a dispute is submitted to the Council on the application of one of the parties, where such a dispute already forms the subject of arbitration or of judicial proceedings, the Council must refuse to consider the application.

"If the matter in dispute, by an agreement between the parties, has already been submitted to other jurisdiction, before which it is being regularly proceeded with, or is being dealt with in the same manner in another channel, it is in conformity with the general principles of law that it should be possible for a reference back to such jurisdiction to be asked for and ordered."

45. Most of the conciliation agreements registered by the Secretariat (43 treaties out of 52) do not mention the application of Article 15. If special provisions on this subject are to be inserted in the draft treaty, two solutions are possible; the request to the Council under Article 15 must be deferred until the conciliation proceedings provided for in the treaty have been terminated. A precedent for this will be found in the Treaty between Chile and Spain, dated March 26th, 1920 (registered as No. 111). Under this treaty the parties cannot at present have recourse to Article 15, although the Council could probably, under Article 11 of the Covenant, consider the situation existing between these two States. Whether this would be desirable in all cases, and whether it would be quite in keeping with the system set up by the Covenant, is a problem which would require very careful consideration. It is to be noted further that seven other treaties, including the Locarno group, stipulate that disputes shall be laid before the Council at the request of one of the parties, if the parties do not reach an agreement within one month after the termination of the work of the Conciliation Commission; they do not contain any clause expressly forbidding the submission of requests to the Council before that date.

46. The other solution would be to include provisions expressly recognising the fact that the Council and the Conciliation Commission had parallel jurisdiction, but making an effort to co-ordinate these two jurisdictions. This principle might be followed, the Council being left entirely free to decide whether, in any particular case, it should itself immediately take cognisance of the dispute to the exclusion of all other conciliation procedure.

47. Doubtless under such an arrangement it would be permissible for each party to the dispute to insist that the Council should immediately take cognisance of the matter, thus excluding, retarding or suspending the conciliation procedure, if that party held that the serious-ness of the situation or special circumstances justified its action. But this stipulation could not serve as a pretext to enable one of the parties to resist conciliation procedure arbitrarily and to the bitter end, nor could it be interpreted as allowing the arbitral powers of the Council to interfere with this procedure. The Council would have to determine whether it would act on the request for the immediate consideration of the dispute — action which might, for instance, be justifiable when the procedure before the Conciliation Commission was not only likely to be abortive but the source of dangerous delay, or when it might decrease the possibilities of satisfactory settlement. We are considering the question from the point of view of an agreement destined to become universal and to apply to all disputes without distinction; an agreement, therefore, under which conciliation will, prima facie, be compulsory in all disputes likely to be of immediate danger to world peace. It would not be wise to draft an agreement of this kind in such a way as to exclude in all cases the possibility of submitting a question to the Council under Article 15 before the conciliation procedure has been terminated. In certain cases it may be desirable for the Council to consider a question under Article 15, before any request for an enquiry has been addressed to another organ, when the enquiry itself appears destined to be long and its success is by no means certain.

VI.

48. Finally, it should be noted that the subject which has just been examined forms only part of the larger question of the development of security by measures tending to prevent war. Provisions for the arbitration or conciliation of disputes are, therefore, a natural and necessary
part of any form of security agreement, whether the agreement be made between a small or a
large number of States. Great as their value in themselves may be, arbitration and concili-
ation attain their highest importance from the point of view of security when, as in the case
of the Locarno Treaties, they form the central element of a security pact.

VII. Conclusions.

49. With a view to developing pacific procedures for the settlement of disputes, it is
suggested:

(1) That means be sought to facilitate and make more effective the procedure already
contemplated in an Assembly resolution whereby the Council should lend its good offices
with a view to the conclusion of arbitration and conciliation conventions. (§ No. 21.)

(2) That the Governments be recommended to study one or more types of arbitra-
tion and conciliation treaties which might be adapted to the situations of the different
States. (§ No. 27.)

(3) That means be sought to obtain, with the consent of the original parties, the
accession of new States to treaties already concluded. (§ No. 27.)

(4) That the possibility of general arbitration treaties be studied. (§ No. 27.)

(5) That consideration be given to the distinction between juridical and non-
juridical disputes, with a view to the framing of special rules in regard to procedure and
decisions, so as to facilitate the acceptance of arbitration for non-juridical disputes.
(§§ Nos. 31 and 35.)

(6) That, should the idea of a general arbitration treaty be accepted, means be
studied which would enable States to enter into undertakings at their discretion with a
greater or lesser number of other States. (§ No. 36.)

At the same time efforts would be made, by the judicious permission of reservations
in regard to disputes, to make the Convention sufficiently elastic to admit of its being
adapted to the special conditions of the different States. (§ No. 39.)

(7) That special attention be paid to conciliation, and that the framing of a general
conciliation treaty be contemplated, even if the idea of a general arbitration treaty should
not be accepted. (§ No. 43.)

(8) That measures be taken to co-ordinate the conciliation procedure laid down
in the separate treaties and the procedure for mediation by the Council in virtue of the
various articles of the Covenant, so that, if action by the Council became necessary, this
should ensue without obstacle, and that at the same time it should be impossible for the
conciliation procedure to be arbitrarily evaded. (§ No. 44.)


DIFFERENT TYPES OF TREATIES.

I. Arbitration and Conciliation.

All disputes are to be submitted to arbitration.

1. Arbitration
   A. Juridical disputes; to the Permanent Court of International Justice, or
      to the Permanent Court of International Justice in all cases, or to a
      Tribunal of the Hague type.
   B. Other disputes; to a Tribunal of the Hague type.

2. Conciliation
   A. Juridical disputes; conciliation optional (or compulsory)
   B. Other disputes; previous conciliation, compulsory.

Reservations.

II. Arbitration and Conciliation.

Certain disputes are to be arbitrated.

1. Arbitration
   A. Juridical disputes or only certain juridical disputes.
   To the Permanent Court of International Justice or to a Tribunal of the
   Hague type.

2. Conciliation
   B. Other disputes.
   Council of the League of Nations
   Conciliation Commission
   Possible reference to Arbitration Committee

Reservations.

\footnote{The parties may decide that, should the Council fail to arrive at unanimity, it shall refer the question to
an Arbitration Committee. The result is that, when agreement between the parties is not attained, a solution
binding upon them is nevertheless ultimately reached.}
III. Conciliation.

Conciliation Council of the All disputes Reservations.

2. Territorial status.
3. Questions governed by internal legislation.
4. Prior events.

51. The above table, which is based upon an examination of the practice actually followed, is designed to give a comprehensive survey of the characteristics of treaties relating to arbitration and conciliation. The treaties in question may be reduced to three principal types, each admitting of variants.

Of these pacific procedures, only two essential elements have been retained: disputes and the organ of jurisdiction.

Convention Type No. I is represented by thirty treaties registered with the Secretariat. All disputes are to be arbitrated. As a rule, two tribunals are mentioned: the Permanent Court of International Justice for juridical disputes, and a tribunal of the Hague type (that is, an ad hoc tribunal composed of members appointed by the parties) for other disputes.

Some treaties adopt the Permanent Court of International Justice or a tribunal of the Hague type for all cases. Conciliation is generally compulsory for non-juridical disputes and optional juridical disputes. Certain treaties make it compulsory in all cases. If it is abolished in all cases, there is simply an arbitration convention.

Convention Type No. II is represented by the Locarno arbitration and conciliation treaties. Juridical disputes are arbitrated, while others are submitted to conciliation.

If conciliation is abolished, there is simply an arbitration system confined to juridical disputes. This is the system laid down in Article 36 of the Statute of the Permanent Court of International Justice.

There is the possibility of arbitration being confined to certain juridical disputes, the latter, instead of coming under one comprehensive head, being specified in detail: States would accept arbitration for this or that category of juridical disputes. This system was discussed at the Second Hague Conference in 1907.

Convention Type No. III refers only to conciliation. It is represented by a number of treaties, concluded chiefly by Switzerland and the Scandinavian States.

Reservations. Reservations may apply to obligations under any one of the three types of Convention.

In the treaties registered with the Secretariat, nine kinds of reservations are found. Apart, however, from reservations which appear to have fallen into disuse (such as "honour", "interest of third States") and very special reservations (such as questions relating to the war of 1914, constitutional questions), the number of reservations may be reduced to the four fairly wide heads mentioned at the end of the table.

3. Memorandum on Security Questions

Submitted by M. Politis, Rapporteur.

52. In this initial stage of the Committee's work the task of its Rapporteur must necessarily be strictly limited.

First, we have to take a general view of the question, to examine the various treaties and agreements concluded by the States Members of the League, both between themselves and with non-member States, on the subject of security, for the purpose of diagnosing the situation as accurately as possible and obtaining some idea of the present position as regards security. Secondly, having gained our idea of the present position, we have to devise "practical measures" by which constructive work can be done at the present juncture on the lines indicated in the last Assembly's resolution.

I. Present Position in regard to Security.

53. According to the view now taken by most countries, security consists in two main guarantees: (1) that they will not be attacked by any other State; (2) that if, nevertheless, they were so attacked, they would receive prompt and effective aid and assistance from other countries.
This is the conception embodied in the Covenant of the League. The two guarantees mentioned are to be found, more particularly, the one in Article 10 and the other in Article 16 of the Covenant.

54. The degree of security thus provided, however, is not generally regarded as adequate, because the guarantees on which it rests are left indefinite in their principle and uncertain in their application. Moreover, to diminish still further the degree of security provided under the Covenant, there is the unanimity rule, which controls the Council in setting the guarantees in motion; for if unanimity is not secured, force may still lawfully be resorted to.

Thus security under the Covenant is subject to too many elements of uncertainty for States which feel themselves threatened to be able to decide, in the present situation, to diminish to any considerable extent the guarantees which they find in their armaments.

55. As a remedy for this, a supplementary general agreement has been suggested to fill up the gaps in the Covenant and enhance the efficacy of its provisions. Two attempts have been made to establish such an agreement. They were, however, unsuccessful, because it was felt that the scope and the uniformity of the guarantees were not suited to the present variety of conditions and the fluctuating nature of international relations.

56. At the same time, the investigations and discussions that took place on these occasions throw a fuller light on the complexity of the problem, and enable everybody to realise the nature of the bonds by which security is linked to disarmament on the one hand, and on the other to arbitration in its widest sense of procedures for pacific settlement. It is now regarded as a twofold axiom that: (1) there can be no disarmament without security, and (2) there can be no security without arbitration.

It is more and more clearly recognised that the relation between disarmament and security is not one of subordination, but of co-ordination; neither is less important than the other, and their progress must be equal and simultaneous.

The same applies to security and arbitration. Arbitration is an essential factor in security, and is parallel to it in the same way as security is parallel to disarmament. Thus every advance in arbitration is an increase in security, and in the possibility of limiting and reducing armaments.

57. Failing a general agreement, which was for the time being impossible, an endeavour was made to find additional guarantees of security in separate agreements, so linked together as to form a coherent whole consonant with the spirit of the Covenant of the League and operating in harmony with the organisation which the Covenant sets in motion.

58. In this direction rapid progress has been made.

There are now in force 83 treaties of conciliation or arbitration, or conciliation and arbitration combined, which are registered with the League, and most of which embody the ideas advocated by the League. Among these there is one collective treaty binding four States. These treaties engage 38 countries, 24 of which are in Europe. Moreover, 14 States (12 in Europe) are bound by the optional clause concerning the compulsory jurisdiction of the Permanent Court of International Justice.

There are 12 separate treaties of non-aggression, three agreements embodying unilateral guarantees, and three agreements regarding unilateral respect for the political independence and territorial integrity of certain countries; most of these treaties are collective.

There are 15 treaties of political co-operation not amounting to alliances or guarantees; there are three agreements establishing neutral zones; and there are 15 separate treaties of guarantee in the form of alliances, military agreements, or pacts of friendship and co-operation, and one collective treaty of non-aggression and guarantee among five States.

The great store of information collected by the Secretariat, with a diligence and zeal for which we are greatly indebted, gives some idea of the nature, the scope, and the practical value of the engagements entered into by the various countries concerned in this immense network of treaties.

It would be interesting to see these engagements represented, particularly on a map of Europe, by lines of various shapes and thicknesses joining the capitals of the contracting States. Such a map would present, in regard to arbitration and security treaties, a picture similar to that which Europe offered at the beginning of the development of railway and telegraph systems.

It should here be observed that the increase of security in Europe carries with it a like increase in other parts of the world.

59. Most of these agreements, being due to the impulse given by the League in the matter of arbitration and security, follow certain common lines. Some of them, however, make no suggestion as to the co-ordination of their systems of mutual assistance with the procedure under the Covenant, and more particularly with the action of the Council in an emergency. This is not true of the Locarno Agreements and those which follow the same lines.

60. The treaties now in force form a system which is too involved, too complex, and in some respects too uneven, for the supplementary guarantees of security which they add to those provided by the Covenant to be measured with tolerable accuracy.

In order of importance, they fall into eight main classes:

(1) Regional collective agreements for non-aggression, pacific settlement and mutual assistance;

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61. This figure indicates the number of treaties registered on February 1st, 1928. For details, see the 2nd edition of "Systematic Survey of Arbitration and Security Treaties" (document C.653.M.216.1927.V).
61. In each of these classes the practical value of the agreement varies with the nature of the contracting parties. Its value is greater if the relations between the parties are such that disputes capable of causing a rupture might be anticipated, than if their relations have long been friendly and are unlikely to be seriously disturbed.

62. The value of any agreement, however comprehensive and however important as regards the nature of the parties, is essentially relative, for the efficacy of the security which it appears to give to the parties will, in actual fact, depend largely on the position, as regards security, of other countries linked with them by ties of "solidarity of a geographical or other nature". The security of the former varies as the security of the latter. Consequently, the security of both can only be guaranteed in practice — failing a general agreement — by a series of regional pacts completing each other and forming a harmonious whole within the framework of the League of Nations, whose system of protection would thus be amplified and reinforced.

Until such a position has been secured, the security of certain States will remain too precarious for them to be able to consent to any appreciable reduction of their armaments.

63. Though the regional and separate agreements at present in force may not give the States which have concluded them all the security they desire, it cannot be denied that they do add certain guarantees to those provided by the Covenant of the League. To realise this it will suffice to compare the situation they have brought about with the situation scarcely six years ago, at the time when by its famous Resolution XIV the Third Assembly made absolutely clear the interdependence of disarmament and security. Each one of the numerous arbitration and security agreements which have been concluded since that time has placed in the path of war an obstacle which, slight, even imperceptible, as it may be, is nevertheless of some value for the consolidation of world peace.

64. But to provide a picture of the present situation in regard to security the facts already stated are not sufficient. A psychological factor must also to some extent be taken into account. Security consists in the absence of any danger of aggression; but there are two ways of judging of this absence of danger. It may be regarded from the objective point of view of the reality or unreality of the danger, or from the subjective point of view of the feeling of the country concerned that it is or is not secure. Now it is not sufficient for third parties to realise that or unreality of the danger, or from the subjective point of view of the feeling of the country concerned that it is or is not secure. Now it is not sufficient for third parties to realise that confidence without which nothing can be done. Arbitration and security agreements are a step in this direction, and their conclusion should therefore be encouraged and their scope enlarged.

II. PRACTICAL MEASURES FOR INCREASING THE GUARANTEES OF SECURITY.

65. There is only one possible way of endeavouring to increase the guarantees of security, and that way consists in the conclusion of separate agreements or regional pacts of non-aggression, of pacific settlement of disputes and mutual assistance, or of non-aggression only. The more logical and the speedier method — the conclusion of a general treaty binding on all States Members of the League — must, for the time being, be excluded. After the two unsuccessful attempts made in 1923 and 1924, it would be not merely useless from the practical point of view, but dangerous to the prestige of the League, to make a third attempt; for the objections raised to the earlier attempts still exist.

As between separate agreements and regional pacts, the latter appear in every respect preferable. They can be better and more easily brought into line with the Covenant system, and, consequently, they help more to increase the guarantees of security.

It is essential to add that this increase in the guarantees would benefit not merely the contracting parties, but indirectly, in varying degrees, every country in the world.

66. The task of the Rapporteur was primarily to consider the problem of security from the point of view of the application of regional pacts. He must, however, stress the point that these pacts are necessarily based on mutual confidence and the sincere desire of all contracting parties to develop mutual co-operation. It is not for the Rapporteur to make suggestions regarding the preparatory work in the political field, and for the promotion of a better understanding between the peoples which would have to be undertaken to this end, nevertheless this appears to him to be an essential part of the work of pacification.

67. The best method of encouraging the conclusion of as many regional security pacts as possible would seem to be to bring light into the minds of peoples and Governments by
demonstrating the benefits which would accrue to their national interests, and to give them every inducement, by offering them models which they could adopt wholly or in part, and which they could combine and adapt as required to the peculiar circumstances affecting the countries in any given area.

No obligation would thereby necessarily be assumed by the States Members of the League. The sole aim of their co-operation would be to establish model treaties which each of them would then be free to take as a basis in any negotiations with its neighbours.

68. It would seem desirable that these models should be made as flexible as possible, alternative formulae with one or more variants being proposed for most of their clauses. The question of security is, after all, essentially plastic; its aspects vary in different places, and its guarantees in different circumstances.

It will be natural, however, to give primary consideration to Europe; for it is in Europe that the benefit will first be felt from the suggested system. It is there that the need of greater security is now most keenly felt; and it is European countries that offer the most recent experience in treaty-making, which will have to be taken as a guide.

69. In this respect, the Committee will base its work on that already done by the League. Its results will have to be adjusted to the new needs which came to light during the sittings of the Preparatory Commission. The draft Treaty of Mutual Assistance of 1923, the Protocol of 1924, the Rhine Pact of 1925, and the later agreements based upon them, will furnish the general framework for the model treaties of security.

70. In these model treaties, provision has to be made for the best possible settlement of the various questions whose solution may help to assure the countries in any particular area of the highest degree of security at present conceivable.

Among these questions there are three which are so essential that they should always be dealt with in a regional security pact, if it is to achieve its object. These questions are: (1) the exclusion of recourse to war; (2) the organisation of pacific procedures for the settlement of all disputes; and (3) the establishment of a system of mutual assistance, linked with the functions of the Council of the League.

To each of these questions there are attached certain complementary questions, in particular: to the first, the question of demilitarised zones; to the second, that of the refusal to accept a pacific settlement or to carry out the decision arrived at; to the third, that of the organisation of economic, financial and military assistance.

Four other subsidiary questions deserve study with a view to enhancing the practical value of the models contemplated. They are: (1) the connection between regional pacts and the reduction of the armaments of the contracting countries; (2) the accession of third States and their possible guarantees; (3) the co-ordination of each regional pact with the others and with the Covenant of the League; and (4) the guaranteeing of the territorial integrity of the contracting parties.

On each of these ten questions — which do not, of course, exhaust the subject — the following suggestions are submitted for the Committee's consideration:

71. Exclusion of resort to war. — The condemnation of aggressive war, already implied in the Covenant (Article 10), and considered by the Assembly on various occasions in 1923 and 1924, was publicly proclaimed in the Assembly resolution of September 24th, 1927, as tending "to create an atmosphere of general confidence calculated to facilitate the progress of the work undertaken with a view to disarmament".

It will therefore be essential to set down this condemnation at the head of every regional security pact, and to deduce the corollary that the contracting parties "mutually undertake that they will in no case attack or invade each other or resort to war against each other".

This is the formula employed in the Rhine Pact and in various separate agreements based upon it. It might well be suggested as a model to be followed in future regional pacts, for it is very comprehensive and perfectly clear. If it were desired to express the same idea more briefly, use might be made of the formula of the Geneva Protocol (Article 2): "the signatory States agree in no case to resort to war".

In any event, however, it will be essential to make it quite plain that the condemnation relates only to aggressive war, by specifying that force may still be resorted to for purposes of legitimate defence, in the application of Article 16 of the Covenant, in execution of a decision of the Assembly or Council of the League, or when action is undertaken, in virtue of Article 15, paragraph 7, of the Covenant, against a State guilty of aggression. The formula employed in this connection by the Rhine Pact (Article 2) and the separate agreements modelled upon it is to be recommended, for it could hardly be further condensed. The formula of the Geneva Protocol would be unsuitable to a regional pact, because it does not mention the hypothesis of Article 15, paragraph 7, which was necessarily excluded from the system of the Protocol.

In a regional pact, the clause embodied in Article 15, paragraph 7, might, it is true, as we shall see later, be waived in disputes between the contracting parties. It would, however, necessarily have to be applied in disputes between one of them and a third party, in which it would continue to operate. In such a dispute, if the Council is not unanimous, the contracting party involved in the dispute has the right to take such action against its adversary "as it shall consider necessary for the maintenance of right and justice". It is important that each of the other contracting parties should be able to reserve the right to make use of the same latitude in accordance with its interests.

72. Demilitarised zones. — The establishment of demilitarised zones between the territories of the States parties to a regional security pact, or some of them, might in principle be
recommended as a measure calculated to prevent aggression and to facilitate the determination of the aggressor, should this become necessary.

In view, however, of the variety of conditions, no rigid rules should be proposed; the greatest elasticity is necessary in this matter. Account should be taken of the configuration of the various frontiers, the relative size of the countries concerned, and the lessons to be drawn from the customs of the neighbouring countries. There may be cases in which the establishment of a demilitarised zone is impossible in practice.

There should be the same elasticity in the regulation of any demilitarised zones that the States concerned might desire to establish, particularly in regard to the temporary or permanent supervision which the contracting parties might ask the Council of the League to organise.

Violation of a demilitarised zone should not in all cases be treated as equivalent to a resort to war. Its degree of gravity depends on circumstances. It would be for the Council to judge, and to prescribe the measures to be taken in order to ensure the observance of the engagements given.

III. ORGANISATION OF PACIFIC PROCEDURES.

73. The exclusion of the resort to war as a means of settling disputes necessarily implies an undertaking to settle them by pacific means. That is the rule established by the Rhine Pact and the separate agreements based upon it. It is also the corollary drawn by the Assembly resolution of September 24th, 1927, from the condemnation of wars of aggression. In every regional security pact, therefore, pacific procedures, to be followed in the event of a dispute, must be arranged for.

In this matter various systems are established in practice. There is the system which, by making arbitration compulsory without any restriction, enables a final settlement of the dispute to be reached in every case; and there is the system which, combining arbitration (limited to certain classes of dispute) with conciliation and mediation by the Council, leaves the dispute unsettled if the Council cannot attain unanimity.

74. In order that the model regional security pacts may be as flexible as possible, it would be better not to lay down that the acceptance of a more or less comprehensive obligation to arbitrate is indispensable. Such a provision might be difficult to carry out if the number of States contemplating the conclusion of a regional pact were fairly large; the relations of each of them with the others might not in all cases be the same, and consequently a uniform rule would be ill adapted to their diversity. This should not form an obstacle to the conclusion of the pact. It would be sufficient to stipulate that all disputes between the contracting parties should necessarily be settled by some form of pacific procedure — conciliation, arbitration, judicial proceedings, or, if necessary, mediation by the Council — without specifying the respective spheres in which each of these procedures should be applied. The necessary details might be given in special conventions already concluded, or others which each of the contracting States would be free to conclude collectively or separately with all the others or with only some of them. The essential point is that the security pact should be capable of operating, even in the absence of any such convention. All that would be specifically provided would be that any dispute, of whatever nature, which might arise between two or more contracting parties would be dealt with by conciliation or arbitration, in accordance with the previous engagements of the parties or the rules which they might agree upon in each case, and that, in the absence of any previous engagements or special agreement, or failing any award or arrangement as the result of conciliation proceedings, the question would necessarily be laid by one of the parties before the Council of the League.

It would then be understood that, if all other pacific procedures failed, the parties should submit their dispute to the Council. It would remain for them to indicate in the regional pact the details of these procedures and, in particular, the time-limit after which, failing any resort to arbitration or conciliation, the question would have to be laid before the Council.

On the other hand, it may be worth considering whether it would not be expedient to ensure that this undertaking to settle all disputes by pacific means should be made as effective as possible in practice.

75. The question which arises is this: If there were no provision for resort to the Council except under Article 15 of the Covenant, there would be a risk of the dispute being left unsettled if the Council were not unanimous. This is the position under the Locarno system. In practice, however, the risk is not serious, owing to the guarantee by third Powers. In future regional pacts, in which there would not necessarily be any such guarantee, the case would be different; the undertaking not to resort to war might become precarious if a serious dispute were left long unsettled. It might, therefore, be wise to take steps to obviate this contingency.

At first sight, it might be thought reasonable to recommend that the contracting States should stipulate that, in the event of a resort to the Council, they undertake to hold the latter's decision as final and binding in their mutual relations, even if the decision were only reached by a simple majority or a specified majority.

A precedent for this system is to be found in the Convention of October 20th, 1921, regarding the neutralisation of the Aland Islands, which, after maintaining the principle of unanimity in the case of the Council's being called upon to pronounce as to the violation of its provisions, adds (Article 7): "If unanimity cannot be obtained, each of the High Contracting Parties shall be entitled to take any measures which the Council, by a two-thirds majority, recommends".
This solution seems, however, open to a serious objection. Majority decisions of the Council, even if accepted by the parties as binding, would still, under the Covenant, have no legal effect on the other States Members of the League. Consequently, a war undertaken in contempt of such a decision would be lawful in their eyes under Article 15, paragraph 7, and would not be covered by the provisions of Article 16.

Another solution should therefore be found which, while ensuring that a final decision should be reached in every dispute, would not form an obstacle to the application of Article 16. Without expressly recommending their adoption, one of the following suggestions might serve as a basis:

(1) It might be agreed that the Council should take a decision by a bare majority or a specified majority, but in the capacity or arbitrator. This decision, being equivalent to an arbitral award, would be covered by Article 13, and hence by Article 16, of the Covenant.

A precedent for this would be provided to some extent by the Treaty of Lausanne in the Mosul affair.

(2) It might be provided that when, in the absence of any organised system of arbitration between the parties, their dispute came before the Council, the latter should first proceed to act, in virtue of Article 15, the parties undertaking to accept its unanimous decision as final and binding upon them. Should the Council fail to reach unanimity, it would refer the dispute to a body of arbitrators, having first determined by a bare majority or a specified majority the constitution, procedure and powers of such body. In every case, therefore, in virtue either of Article 15 or of Article 13 of the Covenant, there would be a final decision, any violation of which accompanied by resort to war would undoubtedly come under the provisions of Article 16.

76. Refusal to follow pacific procedures or to execute a decision reached. — This contingency must be provided for, in order to ensure that the undertaking referred to in the preceding paragraph shall be effective. It must be assumed, in this case, that the recalcitrant State continues nevertheless to maintain a pacific attitude, since if it resorts to force it will at the same time be violating its obligation in regard to non-aggression, thus creating the hypothesis which will be examined in due course.

Passive resistance should involve a sanction proportionate to its degree of gravity. As in the Geneva Protocol (Article 4, paragraph 6), followed by the Rhineland Pact (Article 5), so here it would be expedient, in conformity with the spirit of the Covenant, to adhere to the rule laid down at the end of Article 13: the question will be brought before the Council by the other party to the dispute. The Council will begin by exercising all its moral influence to persuade the recalcitrant State to respect its undertaking. Should it prove unsuccessful, it will propose what steps should be taken. The high contracting parties would be bound to conform to such proposals.

77. Domestic jurisdiction. — It is important to consider what provision should be made in the model security treaties for the rule laid down in Article 15, paragraph 8. In the absence of any stipulation, it is certain that if the assertion of domestic jurisdiction were submitted either to the Council or to international judges, and were recognised to be well founded, the dispute would remain unsolved. This would mean a gap — at first sight serious. It would not really constitute a direct menace, since resort to force would still be prohibited: a State which was unsuccessful in obtaining a material settlement of its claim through its adversary's domestic jurisdiction having been recognised would nevertheless be obliged to maintain a pacific attitude. It would have to content itself with the general resources provided by the other articles of the Covenant of the League, in the hope of arriving in time at a settlement. If its growing impatience drove it to acts of violence, it would have to expect legitimate defence on the part of the other contracting States.

It is certainly not in the interests of peace to strain the patience of States who consider themselves victimised by the pressing of their rivals' rights; it is therefore desirable that, in the relations between countries bound by a regional security pact, it should always be possible in case of dispute to obtain a decision on the substance of the question. But it has to be admitted that in the present state of international law and international morality the complete renunciation of the rule laid down in Article 15, paragraph 8, would be attended by more drawbacks than advantages. Prudence, therefore, recommends that it be maintained. In order to give it greater elasticity in application, however, reference might be made, as in the Geneva Protocol (Article 5), to the rule prescribed in Article 11 of the Covenant. It would thus be understood that when, on examination, a dispute is recognised as coming within the domestic jurisdiction of one of the parties, those concerned should be fully entitled if necessary to demand that action be taken by the Council or the Assembly.

If, however, some of the States contemplating the conclusion of a regional security pact should desire in their relations with one or other of their co-contractors to renounce wholly or in part, with or without conditions, the protection afforded them by the rule of domestic jurisdiction, it should be legitimate for them to do so in special arbitration or conciliation conventions, if they undertake not to plead the said rule in specific contingencies either before the judge or before the Council.

78. Establishment of a system of mutual assistance. — The undertaking to refrain from aggression and to adopt pacific procedures in every case requires, in the interests of security, that the contracting parties shall be bound to offer one another guarantees against the violation of the undertakings entered into. The possible extent of this obligation in the event of refusal to follow pacific procedures or to execute a decision has already been explained in paragraph 75.
The question now calling for consideration is that of assistance in the case of a resort to force. By assistance should be understood immediate and unstinted help offered by the contracting parties to any one of their number who may be the victim of unprovoked aggression, so as to enable that State to vanquish the aggressor and to safeguard its political independence and territorial integrity.

Two main questions call for examination: (a) the determination of unprovoked aggression; (b) the nature and extent of the assistance due to the victim of such aggression.

79. Determination of unprovoked aggression. — The studies pursued for the past six years by the League of Nations have demonstrated the extreme complexity of the question, which must be viewed in two aspects: unprovoked aggression must first be defined; it must then be established.

Considered from a general standpoint, the definition of unprovoked aggression presents real difficulties, as indicated in the memorandum on Article 10 of the Covenant submitted to the Committee on Arbitration and Security.

For the purposes of a regional security pact, however, it would appear to be relatively simple. It is sufficient to say that the term “aggressor” shall be applicable to any contracting State that resorts to force in violation of the undertakings entered into by it in the regional pact; for example, if it offers armed resistance to a final decision.

To establish unprovoked aggression is, however, very difficult, since once hostilities have begun it is not always easy to say with certainty which of the belligerents first resorted to force.

Two systems have been recommended: the first — unanimous decision by the Council, exclusive of the representatives of the belligerent parties — was proposed in 1925 and adopted at Locarno; the second — the automatic designation of the aggressor on the basis of presumptive evidence remaining valid until discounted by unanimous decision of the Council — formed the basis of the Geneva Protocol (Article 10).

Both are open to grave objections, which are so familiar that there is no need to recall them here.

As a way out of the difficulty, serious consideration should be given to an idea which was mentioned subsidiarily in the Geneva Protocol (Article 10) and was brought up again by the French delegation in the memorandum submitted by it in 1926 to the Preparatory Disarmament Commission.

The solution suggested was to empower the Council, should it not reach unanimity as regards the determination of the aggressor, to order the belligerents to observe an armistice, the conditions of which it was to fix by a two-thirds majority, and to agree that any belligerent refusing to consent to such armistice or violating it should definitively be regarded as the aggressor.

This system might in principle be incorporated in a regional security pact, but the question as to whether the Council could decide in all cases by a majority vote calls for the closest consideration, as it is essential that that decision should be in perfect agreement with the spirit and mechanism of the Covenant.

80. Flagrant aggression. — It has to be considered whether this rule should not, like the Rhineland Pact, admit of exception in the case of a flagrant violation of the mutual undertaking in no circumstances to resort to war. Under the Locarno system, the guarantee becomes binding and operative directly aggression has been established by the Council, when the latter is applied to by one of the contracting parties. It is, on the other hand, optional in the case of flagrant violation of undertakings entered into before intervention by the Council, in the sense that the guarantors reserve the right themselves to judge of the genuineness of the provocation and the urgency of intervention on their part.

This system, which is quite appropriate to a situation such as the Rhineland Pact had in view, might be adopted in pacts relating to areas where the situation is analogous.

81. Organisation of economic, financial and military assistance. — In addition to the adaptation to regional pacts of the rules at present contemplated for financial assistance and the measures that might be taken in virtue of Article 16, the regional agreements might, so far as concerns military assistance, enable the final paragraph of the resolution adopted by the 1927 Assembly to be put into effect.

This paragraph refers to “an invitation from the Council to the several States to inform it of the measures which they would be prepared to take, irrespective of their obligations under the Covenant, to support the Council’s decisions or recommendations in the event of a conflict breaking out in a given region, each State indicating that, in a particular case, either all its forces, or a certain part of its military, naval or air forces could forthwith intervene in the conflict to support the Council’s decisions or recommendations.”

As the British Government has observed, “it seems probable that States may well hesitate to indicate precisely what measures they would be prepared to take in hypothetical contingencies; nor, for fear of increasing tension, or of creating it where none exists, are they likely to be willing, except in mutual agreement, to describe the contingencies in which they would be ready immediately to bring part or whole of their forces to the support of the Council’s decision or recommendations. The most effective way of establishing such mutual agreement, and of placing it on record, is by the negotiation of a formal treaty.”

In this connection the British Government recalled that “His Majesty’s Government in Great Britain have adopted this method in the Treaty of Locarno, by which they have engaged to bring the whole of the forces of the country to the support of the League’s judgment in certain definite contingencies.”

82. Aggression by third States. — The question of aggression has hitherto been considered simply when one of the contracting parties is the victim of another contracting party. It
would perhaps be expedient, in order to increase the value of regional pacts from the point of view of security, to provide for the case of aggression against a contracting party by a third State, whether a Member of the League or not. This extension of the mutual guarantee might perhaps give rise to such objections as may be deduced from the observations made in the German and British Governments' memoranda. But it might be proposed as a useful variant to States which are prepared to accept it and could make provision for it, with a view to such a contingency, on the basis of Articles 15 and 16 of the Covenant, in the case of a third party, Member of the League, and Article 17 in that of a non-Member third party.

In any case, failing an extension of the mutual guarantee, in the event of aggression by a third State, it should be clearly specified in the regional pact that the contracting parties are bound towards any one of their number who may be attacked by a third State in no circumstances to assist the aggressor.

83. Re-establishment of peace after aggression. — It would be expedient, in regional pacts, to include a reservation as to the Council's right of examination in regard to the cessation of active mutual assistance and the re-establishment of normal relations, and also to the reparation due by the aggressor.

84. Connection between regional pacts and disarmament. — The idea of such a connection has formed the basis of the League's work on security. It is to be found in the Draft Treaty of Mutual Assistance of 1923 (Article 2) and in the Geneva Protocol (Articles 7, 8 and 21, paras. 5-8). It might be well to consider whether it should not be taken up again in the model security treaties, which are designed for the very purpose of facilitating and preparing for a general agreement on the reduction and limitation of armaments.

Provision might be made in them for three series of stipulations:

(a) A contracting party which was the victim of unprovoked aggression would be entitled to the promised assistance only on condition that it had conformed to the general plan framed by the League of Nations for the reduction of armaments.

(b) On the lines of Article 7 of the Geneva Protocol, in the event of conflict between two or more contracting parties, any increase in armaments or effective measures that might modify the position laid down in the plan of reduction and also measures of mobilisation and, generally speaking, any act calculated to aggravate or extend the dispute, might be prohibited.

(c) It might be added that any violation of the above-mentioned undertakings could be brought by any one of the contracting parties before the Council, which would have to examine it and, if necessary, to order the enquiries and investigations to be held, and, should an offence be established, to take appropriate measures for the removal of the cause and the safeguarding of peace.

85. Accession of third States. — It is in keeping with the spirit of the League of Nations that regional treaties, considered in relation to the Covenant as supplementary agreements, should be open to accession by third parties. The Draft Treaty of 1923 (Article 7, paragraph 4) and the Geneva Protocol (Article 13, paragraph 3) both contained this principle. But whereas the second admitted free accession by any State Member of the League, the first restricted it to the contracting parties to the Treaty of Assistance and made it conditional on the consent of the States signatories to the special agreement.

As regards possible regional security pacts, the question arises whether: (1) they should in principle be left open, (2) accession should be open to all third States without distinction, to third States Members of the League of Nations, or only to adjacent third States Members or non-Members of the League, and (3) accession should be free or subject to certain conditions.

As regards the first point there would appear to be no possible doubt: the object in view will be more successfully achieved by open than by limited pacts. With reference to the second point, the same reason seems to militate in favour of the admission of all third States Members or non-Members of the League.

With regard to the third point, accession without the consent of the contracting parties could hardly be admitted since reciprocity in the matter of undertakings necessarily presupposes in the States affected a certain degree of confidence which may possibly not exist as between a third party desirous of acceding and all the contracting parties.

At most it might be admitted that, in order to preclude arbitrary refusal of the necessary consent, the Council should exercise a certain moral control in the matter. It might be possible to provide that the application for accession should only reach the contracting parties through the Council, which, taking all the circumstances into account, could, if it thought fit, attach its recommendation when forwarding the application to the States.

86. Guarantee by third States. — It is conceivable that third States, while unwilling to accept reciprocity in the matter of undertakings, might wish for various reasons to strengthen the efficacy of a regional pact by offering the contracting parties their guarantee, in accordance with the Locarno precedent. Their offer might be made before or after the conclusion of the regional pact. In either case it acceptance must depend upon the consent of all the parties concerned. In view, however, of the undoubted utility of third party guarantees in consolidating peace, it would be well to facilitate their acceptance by providing some procedure which would ensure that such guarantees did in fact consolidate peace.

It would accordingly seem expedient to provide that the third guarantor would have to accept in its entirety the system of assistance agreed upon between the contracting parties.
87. Guaranteeing of the territorial integrity of the contracting parties. — It may perhaps be questioned whether in regional security pacts the reciprocal undertaking in regard to non-aggression should be accompanied, as in the Rhineland Pact, by an individual and collective guarantee to maintain the territorial status quo represented by the existing frontiers between the contracting States.

This is desirable but not essential. There might be cases when to require a guarantee in regard to territorial integrity would constitute an obstacle to the conclusion of the regional pact, for any State belonging to the area in question might mistakenly see in this guarantee a crystallisation of the existing frontiers which it was not prepared to accept.

It would appear expedient, therefore, not to make this guarantee an essential condition of the regional pact.

In order to create between the contracting parties the confidence which should colour their relations, it would be sufficient to incorporate in the regional pact the ideas to be found in the Preamble to the Arbitration Treaty between Germany and Poland signed in 1925 at Locarno, namely, that sincere observance of pacific procedures permits of resolving any conflicts that might arise, that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals, and that the rights of a State cannot be modified save with its consent. This would emphasise the spirit of legality which the parties would promise to observe in their reciprocal relations, avoiding all moral or political subterfuge or pressure.

88. Co-ordination or regional pacts inter se and with the Covenant of the League of Nations. — The need for this double co-ordination is manifest. If regional pacts, following on one another in the various parts of the world and more particularly of Europe, are to constitute the elements of a general system of security and hence promote the consolidation of peace, it is essential that they should be linked up with one another and bear a coherent and unbroken relationship to a comprehensive scheme in effective harmony with the Covenant, which represents the common law of Members of the League.

In addition to its many advantages, is attended by one serious drawback which requires to be remedied. This is the regrettable possibility that the contracting States, now enjoying greater security vis-à-vis third States, may be less inclined to conclude arbitration treaties with those States.

There is one way of remedying this situation and at the same time of strengthening the force of regional pacts in relation to general peace.

This is, first, that the contracting parties should undertake to conclude pacts of non-aggression with third parties upon their borders. The Protocol annexed to the Franco-Roumanian Treaty of Friendship of June 10th, 1926, furnishes a precedent.

Such an undertaking would lighten the obligation in regard to mutual assistance assumed under the regional pact.

Secondly, the contracting parties should undertake to offer to conclude treaties of conciliation and arbitration with such third parties, their neighbours, and to give their favourable consideration to any proposals of this nature coming from those third parties.

This would involve a duty similar to, but more emphatic than, that laid down in Article 48 of the Hague Convention of October 18th, 1907, for the pacific settlement of international disputes.

This undertaking would signify that each of the contracting parties agreed to accept the good offices of the others with a view to concluding treaties of conciliation and arbitration with its neighbours.

It would further have the immense advantage that public opinion would be made the judge of the peaceful intentions of the contracting parties towards third parties on their borders.
89. Conclusion of regional pacts. — In determining the practical means whereby the League of Nations might promote regional pacts of security, attention might be paid to the provisions of Article 6, paragraph 2, of the Draft Treaty of Mutual Assistance of 1923, which lays down that “such agreements may, if the High Contracting Parties interested so desire, be negotiated and concluded under the auspices of the League of Nations”.

But it would be possible to go even further, and the next Assembly might proclaim that if, in any specific area, two or more States desired to conclude a security pact with the other States belonging to that same area, they might apply to the Council requesting its good offices for this purpose.

If such a resolution were passed and the Council informed all the States Members of the League that it would be prepared to accept this duty, there is good reason to hope that the appeal would be answered in more than one part of Europe.

90. As regards agreements between States Members and non-Members of the League, whether security pacts or simply pacts of non-aggression, the Council might, if circumstances permitted, accept the duties already referred to, or even advise or suggest to the applicant party that it should employ the good offices of a third Power. The conclusion of agreements of this nature is desirable as a means of creating confidence alike between Members and non-Members of the League and between non-Members and the League itself.

IV. CONCLUSIONS.

91. It is impossible at present to contemplate the conclusion of a general agreement — adding to the obligations assumed under the Covenant — with a view to giving the nations greater security.

92. States which require wider guarantees of security should seek them in the form of separate or collective agreements for non-aggression, arbitration and mutual assistance, or simply for non-aggression.

93. Regional pacts comprising non-aggression, arbitration and mutual assistance represent the complete type of security agreement, and the one which can most easily be brought into harmony with the system of the Covenant. Such pacts should always include the following provisions:

(a) A prohibition to resort to force;
(b) The organisation of pacific procedures for the settlement of all disputes;
(c) The establishment of a system of mutual assistance, to operate in conjunction with the duties of the League Council.

94. The establishment of demilitarised zones, wherever practicable, may play an important part, from a general standpoint, in consolidating and enforcing the provisions of a regional pact.

95. With a view to the pacific settlement of all disputes that may arise between them, the States contracting a regional pact might consider provisions which would bind them more closely than those of the Covenant, in the matter of arbitral procedure, so as to make good the legal deficiencies in paragraphs 7 and 8 of Article 15 of the Covenant.

96. Similarly, the parties might facilitate the designation of the aggressor by the Council, should one or more of them resort to war in violation of the undertakings entered into under the regional pact, by empowering the Council, for example, to order the belligerents to observe an armistice, the conditions of which it would determine as might be necessary.

97. The provisions of the Locarno Rhineland Pact concerning flagrant aggression might be adopted in regional pacts wherever the situation was analogous.

98. In the absence of a mutual guarantee covering the case of aggression by a third party, the regional pacts should at all events contain a clause requiring the parties in no circumstances to lend assistance to the third party guilty of aggression.

99. Apart from the adaptation to regional pacts of the rules now proposed for financial assistance and any measures which might be taken under Article 16 of the Covenant, it would be possible to insert special clauses in these pacts, embodying the suggestion made in regard to offers of military assistance in the final paragraph of the last Assembly’s resolution.

100. The progress of disarmament must keep pace with that of security so that the conclusion of security pacts should facilitate and prepare for a general agreement for the reduction and limitation of armaments. The regional pacts might contain suitable clauses postulating the connection between security and disarmament.

101. The adhesion of third-party States to regional pacts is desirable. It must depend upon the consent of the contracting parties. Application for accession by a third State might be submitted through the Council, which would decide whether or not to support it.

102. It is desirable but not essential to have the guarantee of a third State; this would be possible, if it were accepted by all the parties and if the third guaranteeing State itself agreed to accept in its entirety the system of assistance agreed upon between the parties.
103. In order that greater confidence may be created between the States contracting a regional pact, it is desirable that they should append to their reciprocal undertaking to refrain from aggression an individual and collective guarantee to maintain their territorial integrity. Such a guarantee, however, is not essential. It would be sufficient if the parties agreed to submit all their disputes to pacific procedure, and to recognise that respect for the rights established by treaty or resulting from the law of nations is obligatory for international tribunals, and that the rights of a State cannot be modified save with its consent.

104. It is essential that security pacts should form part of a coherent and comprehensive scheme, and should be brought into harmony with the Covenant. The Council of the League might act in this matter as a regulating organ.

105. The feeling of security enjoyed by the parties as the result of the conclusion of a regional pact should not make them less disposed to conclude treaties of non-aggression or arbitration with third parties upon their borders. Such treaties are eminently desirable, in that they would enhance the value of regional pacts as instruments of peace and would at the same time lighten the undertaking assumed in regard to mutual assistance.

106. With a view to promoting the conclusion of regional pacts it might be expedient to consider a resolution by the next Assembly inviting the Council to study the possibility of lending its good offices to States which may desire to conclude security pacts with other States.

107. Should States desire to conclude agreements with non-member States, the Council might deem it preferable to suggest that they should request the good offices of a third Power.

4. Memorandum on Articles 10, 11, and 16 of the Covenant

Submitted by M. Rutgers, Rapporteur.

I. PREFACE.

108. The programme adopted by the Committee on Arbitration and Security at its first session comprised, as a second group of questions to be studied, the "systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various Articles of the Covenant". This group of questions relates to the fifth sub-paragraph of paragraph 3 of Resolution V, adopted by the Assembly at its last ordinary session on the proposal of the Third Committee.

109. It is contemplated in this programme that — without limiting the Committee’s future field of action — a study should immediately be begun of Articles 10, 11 and 16 of the Covenant and of the scheme of financial assistance to be given to States threatened with aggression:

Article 10. Study of the criteria by which aggression may be presumed.

Article 11. Study of this article, taking into account the work already done or at present in hand.

Article 16. Study of Article 16 under conditions similar to those applied to the study of Article 11;

Study of the scheme of financial assistance to be given to States threatened with aggression;

Study of the above-mentioned scheme and particularly of the preliminary points raised by the Financial Committee.

(a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter;

(b) Right of participation by States (the question of States not Members of the League).

110. It was agreed during the debates at the last ordinary session of the Assembly that the object of this study of the articles of the Covenant was to explore the possibilities which that instrument offers, without in any way enlarging or abridging the obligations incumbent upon Members of the League, and without making any attempt to interpret the Covenant.

II. Article 10 of the Covenant: Study of the Criteria by which Aggression may be Presumed.

Preliminary Observations.

111. Article 10 of the Covenant is worded as follows:

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members
of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.”

The Committee on Arbitration and Security is called upon to study Article 10, as also Articles 11 and 16, from the point of view of “systematic preparation of the machinery to be employed by the organs of the League of Nations with a view to enabling the Members of the League to perform their obligations under the various articles of the Covenant”. The Rapporteur has been asked to examine Article 10 from the point of view of the criteria by the aid of which aggression may be presumed.

112. The Rapporteur has made a careful examination of the discussions on the scope of Article 10 which followed the Canadian Government’s proposal to suppress the article, as well as of the opinion bearing on the interpretation of the article which was expressed by the Committee of Jurists appointed under the Council’s resolution of September 28th, 1923, and of the observations on that opinion made by a number of Members of the League.

For the Rapporteur’s present task, however, it does not seem necessary to consider the various points so raised. The discussions showed the extreme difficulty of obtaining unanimous agreement in advance as to what might be the full scope of the obligations under Article 10.

113. The Rapporteur does not, moreover, feel called upon to offer a precise definition of the criteria by which aggression may be presumed, but considers that it would be more practical to enumerate some of the facts which, according to circumstances, may serve as evidence that aggression has taken place. Moreover, the question of acts which are evidence of aggression has already been the subject of the most exhaustive and careful study by the League of Nations and by many of its Members. These studies have led to different conclusions, and we are constrained to believe that any attempt to lay down rigid or absolute criteria in advance for determining an aggressor would be unlikely in existing circumstances to lead to any practical result.

114. In the present connection, however, we have a valuable precedent in the report of the Committee of the Council on Article 11. That report is based on the idea that it is neither possible nor desirable to draw up a complete or exclusive statement of the measures to be taken under Article 11, or to lay down in advance any hard-and-fast rules as to their application; but that it is of practical use, in the light of past experience and the studies and discussions on the subject, to keep in view a certain number of measures which might be employed in the future.

The Rapporteur proposes to follow the same method. He is not blind to the difficulties which must be encountered. So far, it has fortunately never been necessary for the Council to determine which of two enemy States was the aggressor, and there is nothing to be drawn from actual experience in the matter. This omission, however, is to some extent balanced by the fact that certain treaties contain stipulations which constitute a practical contribution to the study of the problem.

115. In approaching this enquiry, it must be recognised that the results which it will obtain cannot be regarded as complete or as applicable to every case. A particular act may be deemed to raise, or not to raise, a presumption of aggression, having regard to the circumstances under which it was committed.

Criteria for determining Aggression.

116. Some useful material in regard to criteria for determining aggression is to be found in certain treaties and in the proceedings of the Assembly and the Council of the League of Nations.

117. First among these sources of information are the results of the investigations carried out by the Permanent Advisory Commission and the Special Committee of the Temporary Mixed Commission when drawing up the Treaty of Mutual Assistance. The reports of these bodies show that certain acts would in many cases constitute acts of aggression; for instance:

(1) The invasion of the territory of one State by the troops of another State;
(2) An attack on a considerable scale launched by one State on the frontiers of another State;
(3) A surprise attack by aircraft carried out by one State over the territory of another State, with the aid of poisonous gases.

The reports in question add that other cases may arise in which the problem would be simplified owing to some act committed by one of the parties to the dispute affording unmistakable proof that the party in question was the real aggressor.

There are also certain factors which may serve as a basis in determining the aggressor:

(a) Actual industrial and economic mobilisation carried out by a State either in its own territory or by persons or societies on foreign territory.
(b) Secret military mobilisation by the formation and employment of irregular troops or by a declaration of a state of danger of war which would serve as a pretext for commencing hostilities.
(c) Air, chemical or naval attack carried out by one party against another.
118. The list of factors furnished by the Special Committee of the Temporary Mixed Commission might be supplemented by including the violation of certain undertakings; for instance, refusal to submit a dispute for pacific settlement by the methods agreed upon, or failure to observe restrictions of a military nature which have been accepted.

119. As regards military restrictions, mention must be made, *inter alia*, of the following treaties, the relevant passages of which are given in the Sub-Annex.

(a) The “Rush-Bagot Agreement” between Great Britain and the United States, concerning naval force on the Great Lakes, signed April 28th-29th, 1817.

(b) The Convention between Great Britain and China, giving effect to Article III of the Convention of July 24th, 1886, relative to Burma and Tibet, signed March 1st, 1894.

(c) The Convention between Norway and Sweden, concerning the establishment of a neutral zone, the dismantling of fortifications, etc., signed October 26th, 1905.

(d) The Treaty of Versailles.

(e) The Convention relating to the non-fortification and neutralisation of the Aland Islands, signed on October 20th, 1920.

(f) The Treaty of Lausanne between the British Empire, France, Italy, Japan, Greece, Roumania, the Kingdom of the Serbs, Croats and Slovenes and Turkey, signed July 24th, 1923.

(g) The Treaty between Germany and Belgium, France, Great Britain and Italy, signed at Locarno on October 16th, 1925.

120. The treaties provide for the total or partial demilitarisation of certain zones. It is clear that a violation of these zones would in many circumstances — in the absence of any express stipulation — raise a presumption of aggression. The value of these demilitarised zones as aids in determining the aggressor has already been recognised in the draft Treaty of Mutual Assistance, which states in Article 9:

“In order to facilitate the application of the present Treaty, any High Contracting Party may negotiate, through the agency of the Council, with one or more neighbouring countries for the establishment of demilitarised zones.”

Paragraph 1 of Article 9 of the Protocol of Geneva contains the following provision:

“The existence of demilitarised zones being calculated to prevent aggression and to facilitate a definite finding of the nature provided for in Article 10 below, the establishment of such zones between States mutually consenting thereto is recommended as a means of avoiding violations of the present Protocol.”

121. Special importance was given to the demilitarised zone in the Rhine Pact. This Treaty declares that resistance offered to a violation of the Rhineland Demilitarised Zone shall be deemed to be the exercise of a legitimate right of defence, in derogation from the mutual undertaking to refrain from aggression, when such violation constitutes an unprovoked act of aggression and when, by reason of the assembly of armed forces in the demilitarised zone, immediate action is necessary. This Treaty further provides that, in case of a flagrant violation of the Demilitarised Rhineland Zone, the guarantor powers shall immediately come to the help of the party against whom such a violation or breach has been directed as soon as they have been able to satisfy themselves that this violation constitutes an unprovoked act of aggression, and that, by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarised zone, immediate action is necessary. Nevertheless, the Council of the League of Nations, which will be seized of the question if one of the contracting parties considers that the zone has been violated, will issue its findings. The contracting parties undertake in such a case to act in accordance with the recommendations of the Council, provided that they are concurred in by all the members other than the representatives of the parties which have engaged in hostilities.

122. In the event of hostilities having broken out, the Protocol of Geneva laid down explicitly that a State might be presumed to be an aggressor in the following circumstances, unless a decision of the Council, which must be taken unanimously, should declare otherwise:

(1) If it has refused to accept the procedure for a pacific settlement or to comply with the decision rendered in pursuance of that procedure.

(2) If it has violated the provisional measures enjoined by the Council to prevent preparations for war being carried on during the proceedings for pacific settlement;

(3) Disregard of a decision recognising that the dispute lies solely within the domestic jurisdiction of the other party, if the State in question has failed or refused previously to submit the question to the Council or to the Assembly.
The Protocol farther declared that a belligerent which refused to accept, or violated, an armistice enjoined by the Council was to be deemed an aggressor. When the Council had called upon the signatory States to apply against the aggressor the sanctions provided by the Protocol, any signatory State thus called upon was thereupon entitled to exercise the rights of a belligerent.

123. The Report of the Committee of the Council on Article 11 of the Covenant points out that the action which the Council has to take in case of a conflict, in virtue of Article 11 and other articles of the Covenant, will provide it with valuable material which will assist it in determining the aggressor, in case war should break out in spite of all the efforts made to prevent hostilities, or to suspend them after they have begun. It is clear that the nature and extent of the co-operation which the parties to the dispute are willing to afford to the Council cannot fail to exercise considerable influence upon the decision of that body.

124. **Sub-Annex to Chapter II.**

**TREATIES INVOLVING CERTAIN UNDERTAKINGS IN REGARD TO MILITARY RESTRICTIONS.**

(a) In 1817, Great Britain and the United States came to an agreement for the demilitarisation of the big lakes forming the frontier between the United States and Canada. This agreement was known as the “Rush-Bagot Agreement”.

(b) Great Britain concluded with China a Convention designed to ensure the maintenance of peace on the Chinese frontiers of her Asiatic possessions. This Convention was ratified in London on August 23rd, 1894. The high contracting parties undertake not to construct or maintain fortifications within a ten-mile zone along the frontier.

(c) On the dissolution of the Union of Norway and Sweden, a Convention was signed at Stockholm in October 1905, establishing a neutral zone between the two countries. This Convention can only be denounced by joint agreement.

(d) Under Article 42 of the Treaty of Versailles, Germany is forbidden to maintain or construct any fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometers to the east of the Rhine. Article 43 provides that “in the area defined above [i.e., in Article 42] the maintenance and the assembly of armed forces, either permanently or temporarily, and military manoeuvres of any kind, as well as the upkeep of all permanent works for mobilisation, are in the same way forbidden”.

(e) On October 20th, 1921, a Convention relating to the non-fortification and neutralisation of the Aland Islands was signed. Under this Convention, Finland undertakes not to fortify that part of the Finnish Archipelago which is called “the Aland Islands”. Article 7 of the Convention provides as follows:

“I. In order to render effective the guarantee provided in the Preamble of the present Convention, the High Contracting Parties shall apply, individually or jointly, to the Council of the League of Nations, asking that body to decide upon the measures to be taken either to assure the observance of the provisions of this Convention or to put a stop to any violation thereof. The High Contracting Parties undertake to assist in the measures which the Council of the League of Nations may decide upon for this purpose.

“When, for the purposes of this undertaking, the Council is called upon to make a decision under the above conditions, it will invite the Powers which are parties to the present Convention, whether Members of the League or not, to sit on the Council. The vote of the representative of the Power accused of having violated the provisions of this Convention shall not be necessary to constitute the unanimity required for the Council’s decision.

“If unanimity cannot be obtained, each of the High Contracting Parties shall be entitled to take any measures which the Council by a two-thirds majority recommends, the vote of the representative of the Power accused of having violated the provisions of this Convention not being counted.

“II. If the neutrality of the zone should be imperilled by a sudden attack either against the Aland Islands or across them against the Finnish mainland, Finland shall take the necessary measures in the zone to check and repulse the aggressor until such time as the High Contracting Parties shall, in conformity with the provisions of this Convention, be in a position to intervene to enforce respect for the neutrality of the islands. Finland shall refer the matter immediately to the Council.”

(f) The Treaty signed at Lausanne on July 24th, 1923, between the British Empire, France, Italy, Japan, Greece, Roumania, the Kingdom of the Serbs, Croats and Slovenes and Turkey includes a Convention relating to the regime of the Straits.

The preamble declares that the signatory Powers are desirous of ensuring in the Straits freedom of transit and navigation between the Mediterranean Sea and the Black Sea for all nations, and that they consider that the maintenance of that freedom is necessary to the general peace and the commerce of the world.

Further, Article 18 contains the following provisions:

“The High Contracting Parties, desiring to secure that the demilitarisation of the Straits and of the contiguous zones shall not constitute an unjustifiable danger to the
military security of Turkey, and that no act of war should imperil the freedom of the
Straits or the safety of the demilitarised zones, agree as follows:

"Should the freedom of navigation of the Straits or the security of the demilitarised
zones be imperilled by a violation of the provisions relating to freedom of passage, or by
a surprise attack or some act of war or threat of war, the High Contracting Parties, and
in any case France, Great Britain, Italy and Japan, acting in conjunction, will meet such
violation, attack, or other act of war or threat of war, by all the means that the Council
of the League of Nations may decide for this purpose.

"So soon as the circumstance which may have necessitated the action provided for
in the preceding paragraph shall have ended, the regime of the Straits as laid down by the
terms of the present Convention shall again be strictly applied.

"The present provision, which forms an integral part of those relating to the demili-
tarisation and to the freedom of the Straits, does not prejudice the rights and obligations
of the High Contracting Parties under the Covenant of the League of Nations."

The Treaty of Lausanne also includes another Convention respecting the Thracian frontier.
This Convention declares that the said Powers, being desirous of ensuring the maintenance
of peace on the frontiers of Thrace, and considering it necessary for this purpose that certain
special reciprocal measures should be taken on both sides of this frontier, have agreed (in
Article 1) that from the Aegean Sea to the Black Sea the territories extending on both sides
of the frontiers separating Turkey from Bulgaria and from Greece shall be demilitarised to a
depth of about 30 kilometers.

According to Article 4, in the event of one of the bordering Powers whose territory forms
the subject of the present Convention having any complaint to make respecting the observance
of the preceding provisions, this complaint shall be brought by that Power before the Council
of the League of Nations.

(g) The Treaty signed at Locarno on October 16th, 1925, between Germany, Belgium,
France, Great Britain and Italy, provides in Article 2 that:

"Germany and Belgium, and also Germany and France, mutually undertake that
they will in no case attack or invade each other or resort to war against each other.

"This stipulation shall not, however, apply in the case of the exercise of the right
of legitimate defence, that is to say, resistance to a violation of the undertaking contained
in the previous paragraph, or to a flagrant breach of Articles 42 or 43 of the said Treaty
of Versailles, if such breach constitutes an unprovoked act of aggression, and, by reason
of the assembly of armed forces in the demilitarised zone, immediate action is necessary."

III. Article 11 of the Covenant: Study of this Article with Reference to Work
Already Done and in Progress.

Introduction.

125. Article 11 covers all cases of armed conflict. In this respect, its scope is wider than
that of Articles 10, 16 and 17 of the Covenant. It may be said that these latter articles deal
with only certain of the armed conflicts covered by Article 11.

126. Under Article 11, the League of Nations has the most extensive competence. The
Council can intervene in any conflict, whether the parties are Members of the League or not.
It is equally competent whether there is resort to war or a threat of war, and it can take action
in time to prevent hostilities or to terminate them if they have already been begun. Its authority
is exercised in any war — not only in a war contrary to Articles 12, 13 and 15, but also in a
war which is not contrary to those articles. If the procedure contemplated in Article 15 has
failed, Article 11 remains applicable, and offers a possibility of renewing efforts to prevent
war. Even if there is no threat of war, but merely circumstances affecting international relations
which threaten to disturb international peace or the good understanding between nations,
the case may be brought to the Council’s attention.

127. The resources at the League’s command are also very extensive. The extremely
general terms of Article 11 — "any action that may be deemed wise and effectual to safeguard
the peace of nations" — allow of all suitable measures being taken. Within the limits of
its powers, and without prejudice to the rights of the Members of the League, on whom Article
11 imposes no special obligation, the Council, in consciousness of its responsibilities under
the Covenant, may choose at its discretion whatever measures it thinks expedient. Moreover,
proceedings under Article 11 do not in any way exclude proceedings under other provisions
of the Covenant.

128. The difference between Articles 10 and 12-16 on the one hand and Article 11 on the
other hand may be expressed as follows:

Article 10 protects the territorial integrity and political independence of every Member
of the League against all external aggression.
Articles 12-16 prescribe the procedure to be followed in the event of disputes, and the rights and obligations thence derived by Members.

Article 11 is the essential expression of the principles of the League, and is designed to protect the interests of all. It does not impose upon Members of the League any obligations which can be rigidly specified; the Council's action under this article is political rather than judicial.

It is in Article 11 that the moral factors and the solidarity of the Members of the League are most clearly brought out.

129. The systematic preparation of the Council's action under Article 11 has two aspects—a technical and a political aspect.

The technical aspect relates to communications of importance to the League at times of emergency. It is studied in a special chapter of this memorandum.

The political aspect has already been dealt with in the Report submitted by the Committee of the Council on point 1 of the French proposal to the Preparatory Commission for the Disarmament Conference (document A. 14. 1927. V, pages 76 ef seq.) (Report approved by the Assembly and the Council). The report may be said to have laid the foundations for the systematic preparation of the Council's action under Article 11. In this study, an attempt will be made to ascertain whether it can be completed.

130. It is important to make it clear at the outset that the systematic preparation of the Council's action under Article 11 can never be a code of procedure.

As was very well pointed out in the report of the Committee of the Council, it is not possible to enumerate all the measures that might be taken; a few of them must be indicated by way of example, without underestimating or questioning the value of those which are not expressly mentioned. The infinite variety of events that may occur in international political life cannot be confined in advance in watertight compartments.

The Council will to a great extent be guided by precedent, and its experience will grow with the progress of its political work.

**How Article 11 comes into Operation.**

131. Any action by the Council in virtue of Article 11 presupposes that the question at issue has been officially laid before the Council. Legally speaking, the Council cannot receive notice of a question except from a Member of the League.

It is not necessary, however, that this Member should be one of the parties to the dispute. Any Member of the League, even if not immediately affected, has the right to bring a dispute before the Council in virtue of Article 11.

132. No special form is prescribed for this purpose. Reference may be made to the dispute between Panama and Costa Rica, when the Council, meeting at Paris, had before it certain reports showing that there was tension between the two countries, and proceeded to discuss the matter.

133. Nevertheless, if, in accordance with paragraph 1 of Article 11, the Secretary-General is to be able to summon a meeting of the Council forthwith, one of the Members of the League must have requested him to do so.

134. In certain cases, Governments may think it more expedient to refer to paragraph 2 of Article 11 than to paragraph 1 of that article. If the question is thought to be sufficiently urgent, the Council can be convened without delay in accordance with the rules of procedure it has itself established. In this eventuality, a request for a meeting of the Council must be addressed to the Secretary-General.

135. It is certainly desirable that a State asking for the application of Article 11 should make reference to that article. The Council, however, in consciousness of its responsibility, will, if necessary, act in virtue of that article, even if no specific reference is made to it.

136. The Council must not interfere in disputes without a serious reason, or as long as there is still some hope of an amicable settlement.

137. In the event of war or a threat of war, the Council can always act under Article 11, paragraph 1, even if another article is invoked or if proceedings have already been entered upon in virtue of another article. This question is considered in the memorandum on arbitration and conciliation.

138. Even if a dispute is submitted to a special tribunal, it is possible in certain cases that such tension may develop between the two States as to amount to a threat of war. The Council can then intervene under Article 11. This is explicitly recognised in the Locarno agreements, where it is stated that nothing in the agreements is to be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

An observation to the same effect has been made in the memorandum on arbitration and conciliation.

139. Experience shows that in certain cases it may be expedient to resort to all possible means of direct conciliation, and to the good offices of third Powers, before bringing a dispute before the Council. Article 11 is sufficiently elastic to allow of this.
M. de Brouckère, delegate of Belgium, in calling the attention of the Third Committee of the last Assembly to this point, raised the question whether the Council ought not at all events to keep in touch with developments in the dispute. This suggestion is worthy of special attention. Nevertheless, if efforts of conciliation are to be successful, it may be essential that the question should be discussed by a very small number of Powers. It would seem that the parties concerned must be left full latitude to decide whether the Council should be kept informed of the developments of the case so long as the question has not actually been submitted to the Council. There have been cases in which Members of the League have thought it desirable to make such communications to the Council. Great Britain did so in the Chinese question (Declaration by the British Government concerning British policy in China, February 8th, 1927); the Albanian and Serb-Croat-Slovene Governments did so in the dispute which arose out of the arrest of the dragoman of the Serb-Croat-Slovene Legation at Tirana. It must also be remembered that the Governments Members of the Council are kept abreast of political developments by their diplomatic agents.

Application of Article 11.

(a) Cases covered by Article 11, Paragraph 2, of the Covenant, and Similar Cases.

140. Even if the threat of war is not an imminent threat, it may be useful, when the situation is liable to grow worse, to call the attention of the parties to the undertakings into which they have entered in virtue of the Covenant, and to urge them to refrain from any act which might increase the tension. The Council has acted in this way on several occasions — in connection with the Aland Islands question between Sweden and Finland, the dispute between Costa Rica and Panama, the frontier disputes between Albania and her neighbours, the Mosul question between Turkey and Iraq, the incursion of armed bands from Bulgaria into neighbouring States, and the Italo-Greek incident at Corfu.

141. The Council may also send a commission to the spot, with the consent of the party to whose territories it is to proceed, to enquire into the situation on the frontier areas of the parties to the dispute; this was done in the dispute between Turkey and Iraq.

142. The Council may also endeavour to hasten the settlement of the question actually at issue; an example of this is the frontier dispute between Albania and her neighbours.

143. If a rupture has taken place, the Council may take steps to mitigate its effects. In the first Polish-Lithuanian dispute, it recommended the parties to re-establish consular relations and free communication, and when these efforts proved unsuccessful it requested them to entrust their interests to friendly Powers.

144. In other cases it may be useful to recommend to the parties measures which, from the military point of view, will furnish pledges of their peaceful intentions towards each other; such measures are the withdrawal of troops from the frontier, reduction of effective, demobilisation, etc.

(b) Cases covered by Article 11, Paragraph 1.

145. The Committee of the Council points out in its report that the Council may indicate to the parties from what movements of troops, mobilisation operations and other measures of the same kind it recommends them to refrain.

146. A fortiori, in the hypothesis put forward in paragraph 1 of Article 11, the Council may recommend to the parties the demobilisation and other measures indicated in the preceding paragraph.

147. Experience shows that it is very often the impression of being exposed to a military threat that nullifies efforts to prevent war. We must here refer to the observations made by Sir Austen Chamberlain at the thirty-third session of the Council to the effect that all the military preparations of a State to deal its adversary a crushing blow immediately on the outbreak of war may already have been made in normal times, and may constitute a very serious threat to the opponent at a time of crisis.

148. Another important point which should be mentioned is that of the localisation of the conflict. All the Council's efforts to prevent hostilities may prove to be vain if other countries besides the parties to the dispute take military action against either of those parties. Even what are called precautionary measures or demonstrations are liable to do irreparable harm. The Council can take the same measures against third States as against the parties.

149. In order to terminate hostilities that have already been engaged, the Council may recommend the parties to conclude an armistice. This was done in the first Polish-Lithuanian dispute.

150. In order to keep abreast of developments during the intervals between sessions, the Council may confer powers according to the case, either on the acting President or on the Rapporteur on the question at issue, or on both jointly. It may also appoint a committee.
of certain of its members. An instance of this is to be found in the first Polish-Lithuanian dispute. Mention may also be made of M. Briand’s intervention in the Greco-Bulgarian dispute.

(c) Special Cases.

151. Article 11 is still applicable when the procedure under Article 15 has been exhausted. The following situations can be imagined as arising in regard to Article 15:

(a) The Council is not able to recommend a solution unanimously.
(b) The Council is unanimous in recommending a solution, but this solution is rejected by one or both of the parties.
(c) The Council recognises that the dispute concerns a question which, under international law, is within the domestic jurisdiction of one of the parties.

152. In these hypotheses the Council may always obtain information as to what the parties propose to do after the expiry of the time-limits provided for in Article 12. It may recommend the parties to extend these time-limits. It may propose measures to prevent the situation from becoming more acute.

153. If there is a unanimous recommendation, the Council may endeavour to induce the party or parties who have rejected its solution to accept any suggestions it may make.

It may be recalled that in the hypothesis covered by Article 15, paragraph 8, the Geneva Protocol provided that, even if the question were held by the Permanent Court or by the Council to be a matter solely within the domestic jurisdiction of one State, this decision should not prevent consideration of the situation by the Council or by the Assembly under Article 11 of the Covenant.

(d) Measures of Conservancy.

154. It is difficult to enumerate all the steps that the Council might take as measures of conservancy under Article 11, but valuable suggestions on this point are to be found in the Locarno agreements.

These agreements provide that, if a question covered by the agreements is laid before the Council, the latter shall ensure that suitable provisional measures are taken; and that the parties undertake to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Council, and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

155. It might be suggested that, in the case of a dispute between Powers which are not signatories of the Locarno arbitration treaties, the Council should recommend the parties to enter into similar undertakings.

Final Observations.

156. The Committee of the Council points out in its report that if, notwithstanding all the measures recommended by the Council in virtue of Article 11, war is resorted to, it is probable that the Council’s action will have made it possible to determine which State is the aggressor.

157. It is not necessarily the State to whose conduct the crisis was originally due which is to be regarded as the aggressor; in certain eventualities it might possibly be the other party which ought to be regarded as the aggressor, if it has deliberately refused to conform to the Council’s recommendations. The prospect of this possibility will strongly influence the parties to the dispute to accept the measures proposed by the Council.

158. There is another factor of very great importance which will set up a further obstacle to prevent nations from being swept into war. As was stated in the Introduction, “it may truly be said that before the existence of the League of Nations the national points of view were the only ones of which public opinion had any cognisance in times of international crisis. The effect of the Council’s debates being held in public will be not only that the opponent’s point of view is likely to become better known in the other country, but also — more important still — that the official recommendations given by the Council to the parties will furnish the public in all countries with the means of forming a judgment; this factor cannot fail to turn governing circles in the different countries concerned towards a pacific settlement.”

“it is difficult to believe that the Government of any of these countries would refuse to give full publicity to the official recommendations of the Council. Indeed, such a refusal would be taken, not only by foreigners but by the people of the country itself, as very significant evidence of the real intentions of the Government. It would be a matter of vital importance to any Government to avoid incurring such discredit.”

IV. ARTICLE 16 OF THE COVENANT: STUDY OF THIS ARTICLE ON THE SAME LINES AS ARTICLE 11.

Introduction.

159. The programme of work approved by the Committee on Arbitration and Security at its first session includes the study of Article 16 on lines similar to those adopted in studying Article 11.
The study of Article 11 followed M. de Brouckère's report to the Committee on Question 1 (b) of the French delegation's proposal to the Preparatory Commission for the Disarmament Conference. M. de Brouckère's report dealt with the two articles (11 and 16).

The French proposal referred to some of the questions contained in the questionnaire which had been submitted by the Council to the Preparatory Commission for the Disarmament Conference, namely:

"Question V (a). On what principles will it be possible to draw up a scale of armaments permissible to the various countries, taking into account particularly:

1. ..................................................
2. The degree of security which in the event of aggression a State could receive under the provisions of the Covenant, or of separate engagements contracted towards that State?

(b) Can the reduction of armaments be promoted by examining possible means for insuring that the mutual assistance, economic and military, contemplated in Article 16 of the Covenant shall be brought quickly into operation as soon as the act of aggression has been committed?"

The French proposal relating to these questions included the following passage:

"With reference to Question V (a), 8, and V (b), the Commission considers that, in order that a State should be able to calculate to what extent it can consent to the reduction or limitation of its armaments, it is essential to determine what method and what machinery are best calculated to give help to that State when attacked.

The Commission therefore proposes to suggest to the Council:

1. That methods or regulations should be investigated which would:

(a) ..................................................

(b) Enable the Council to take such decisions as may be necessary to enforce the obligations of the Covenant as expeditiously as possible."

M. de Brouckère's able report on Question 1 (b) was discussed at the fifth session of the Committee of the Council. The latter decided, on Lord Cecil's proposal, to undertake immediately the study of five concrete proposals made in the report, and of the part of the report dealing with the measures to be taken in virtue of Article 11. The discussion of the part of the report dealing with the general principles of Article 16, and the legal force of the 1921 resolutions was postponed.

The Council, in its resolutions of December 8th, 1926, noted that the Committee of the Council proposed to submit a report on Article 16 at a later date, and, in accordance with the Committee's suggestions, it requested the Secretary-General to collect all the documents which related to the preliminary work carried out by the League in regard to this article. In pursuance of this decision, the Secretary-General obtained all the resolutions adopted by the different organs of the League with regard to Article 16, and added a memorandum summarising the measures taken by the League in this connection (document A.14.1927.V).

The study of Article 11 led to the preparation of the report approved by the Committee of the Council on March 15th, 1927, with regard to the application of Article 16. This report (to which Chapter III of the present memorandum referred) was approved by the Assembly at its last ordinary session.

In the present chapter we propose to continue the study of the application of Article 16.

The Resolutions of 1921.

The Assembly of 1921 adopted a series of amendments to Article 16. It held over the further study of the application of Article 16 for a subsequent Assembly. The latter was to take as a basis the text of Article 16 as it would stand after the ratification and entry into force of the amendments of 1921. The Assembly of 1921, being anxious to provide as far as possible a method by which Article 16 could be applied until the amendments should come into force, adopted a series of nineteen resolutions, the aim of which is indicated in the first resolution:

"1. The resolutions and the proposals for amendments to Article 16 which have been adopted by the Assembly shall, so long as the amendments have not been put into force in the form recommended by the Covenant, constitute rules for guidance which the Assembly recommends, as a provisional measure, to the Council and to the Members of the League in connection with the application of Article 16."

The Assembly thus desired to lay down provisional rules to be acted upon until the amendments adopted were put into force. Provisionally, and pending their ratification, these amendments and the resolutions relating thereto were to serve as guiding principles. It should be noted that more than one of the nineteen resolutions was based, not on the text of Article 16, which was in force in 1921, but on the text resulting from the 1921 amendments. M. de Brouckère's report gives a series of examples which we need not enumerate here.
The 1921 amendments have not come into force. They lack the ratification required of several Members of the Council. Thus the state of affairs to which the first resolution quoted above refers has lasted much longer than was anticipated by the Assembly in 1921.

162. This situation is far from satisfactory. The old text is still in force, notwithstanding the numerous ratifications obtained by the 1921 amendments. The fate of these amendments depends upon the decision of a few Members only. It is desirable that this uncertainty should be put an end to by the ratification of these amendments in the near future or their final abandonment. It is worth recalling here the amendment adopted by the Assembly on October 3rd, 1921, adding to Article 26 of the Covenant a paragraph to be worded as follows: "If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect." This amendment, however, has not yet obtained the necessary number of ratifications.

163. In so far as the 1921 resolutions are not compatible with Article 16 as it stands, they cannot be given force of law. Those which are in conformity with the Covenant retain their value. On the one hand, it must be recognised, as is done in M. de Brouckère's report, that neither the amendments which have not come into force nor those resolutions can impose on a Member any new obligation or release him from obligations which he has already contracted. But it cannot be denied that both the amendments and the resolutions constitute suggestions of the greatest interest. In so far as the resolutions are in agreement with the Covenant, they can be regarded as indicating the view taken by the Council and the Assembly of the scope of Article 16, and as announcing the way in which they intend to apply this article if the need should arise.

Interpretation of Article 16.

164. The study of Article 16 has given rise to more than one controversy on the exact scope of the terms of the article. In order to remedy this, is it necessary to endeavour once again to give a more or less official interpretation? Is it necessary, for example, to define what is meant by the expression "resort to war" in the first line of the article? It must be recognised that it would be extremely desirable to arrive at a generally accepted interpretation which would put an end to many controversies. It is worth recalling here the words of the fourth resolution of 1921:

"4. It is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfilment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their treaty obligations."

This doctrine is generally accepted to-day, and even if it were not the Council could not invoke a text or apply a sanction to oblige a Member to obey a decision of the Council in virtue of Article 16 which that Member did not consider to be well founded. It is the Members themselves who must decide on the performance of their obligations under Article 16. It must therefore be realised that when they are called upon to take this extremely grave decision they will be guided by their own conception of their obligations under Article 16.

165. We may go even further than this. If ever the question of the application of Article 16 arose, the decision of the different countries would not depend on interpretations, however authoritative, or on the deductions of lawyers; the great question would be whether the principle of Article 16 was or was not a living reality. To carry out the grave obligations contained in Article 16, States would have to be inspired by the spirit of responsibility and solidarity which is at the root of Article 16 and of the whole League of Nations.

166. While it appears wise to leave it to the lessons of experience to provide material for defining in future the provisions of Article 16, it must also be recognised that there would be a certain danger in fixing in an immutable form the measures which might be taken in application of these texts. Indeed, an interpretation providing hard-and-fast criteria for deciding whether there is resort to war or not might force the Council and the Members to declare that the conditions of Article 16 were present at a time when there was still room for doubt as to whether there had really been resort to war, and for hope that the mediation of the Council might stop the hostilities which had begun, and prevent the irrevocable operation of Article 16. We may recall the observations made in the chapter on Article 10 concerning the criteria to be taken as a basis in determining the aggressor.

Application of the Article.

167. We now come to the measures which can be taken to prepare the application of Article 16. A distinction must here be made between preparing the application of Articles 11 and 16. The action exercised under Article 11 aims at safeguarding the peace of nations; it is conciliatory and pacifying in its object.

Article 16 is applied at a more advanced stage of the dispute. As M. de Brouckère's report justly says, it lays down terrible measures for the extreme case in which the pacific endeavours of the League finally fail before the criminal determination of a State resolved on war. Thus, to prepare the application of Article 11 is to prepare a pacific action, and to
prepare the application of Article 16 is to prepare to take measures of extreme gravity. To prepare the Council’s action under Article 11 is to prepare an action which it is hoped will be exerted in time and will be successful, while to prepare the execution of Article 16 is to prepare for action which it is hoped will never be required.

168. Preparation of the application of Article 16 may be conceived in two different forms. The preparation might consist in special measures to be applied to given situations. Every eventuality would have to be considered. One might even go as far as to draw up plans of campaign for cases of aggression. On the other hand, preparation might also be general and might aim at creating a situation which would inspire confidence in the effectiveness of the League’s organs and in the readiness of Members to perform their duty if the application of Article 16 became necessary. It is above all in the latter sense that preparations must be made for the application of the article. Unlike the special preparation, the general preparation does not involve the danger of arousing conflicts by imagining their existence.

169. The preparation of the military sanctions provided for in Article 16 does not seem likely to promote mutual confidence between the States Members of the League of Nations, if at the same time pacific procedure suitable for the settlement of all international disputes is not organised, and if there is not also a general agreement on the reduction and limitation of armaments.

170. In making preparations for the application of Article 11, that of Article 16 is also to a great extent prepared. This is easily understood if it is realised that the application of the measures provided for by Article 16 does not take place at the beginning of a dispute but only when it is proved that a serious crisis is no longer capable of a peaceful solution. The question of the application of Article 16 will therefore not come before the Council and the Members without the Council having first to deal with the conflict in virtue of Article 11 and similar articles. The application of the procedure of Article 11 will be for the Council the best preparation for the performance of its duties under Article 16. This procedure will enlighten the Secretary-General that it could not but feel that such a new form of enquiry might cause it as to the attitude of the two parties, and supply it with valuable information which will enable it to give the Members of the League the guidance and the recommendations to which they are entitled.

171. It is not the Council which has the last word on the measures to be taken in execution of Article 16. It is for the Members, bearing constantly in mind their duty, to enforce respect for the Covenant, to decide upon what measures they can take. To deal effectively with the aggressor, co-operation is essential. It is clear that, for this co-operation to succeed, it is most desirable that States should have the guidance, in regard to the general situation, of a weighty and authoritative opinion. As to military action against the aggressor, Article 16 itself instructs the Council to make recommendations to the Members. The provisional injunctions of 1921 added that, if necessary, it would be for the Council to recommend to the Members a plan for joint action co-ordinating the economic, commercial and financial measures to be taken. This is a valuable suggestion going beyond the provisional framework of the 1921 resolutions. The part assigned to the Council is in perfect harmony with the central position given to it by the Covenant.

172. For the recommendations it will have to make, the Council will need very full information on various points. In one of its resolutions of December 8th, 1926, the Council requested the Secretary-General to collect systematically precise information regarding the economic and financial relations of the various States with a view to a possible application of Article 16 of the Covenant, and to carry out this work in accordance with a plan to be submitted to the Council by the Secretary-General after consulting the technical organs of the League, including, if necessary, the Joint Commission. Correspondence has since passed between the Secretary-General and the Economic and Financial Committees of the League with regard to the plan to be drawn up.

In a letter dated October 13th, 1927 (see Sub-Annex I), the Financial Committee informed the Secretary-General that it could not but feel that such a new form of enquiry might cause a misunderstanding of the purpose of the present work of collecting and publishing trade statistics and other economic information, which was undertaken in the general interests of scientific knowledge and practical economic purposes. The Committee thought it of great importance that this work should be continued and developed on its present lines and said that it would greatly regret any action which might restrict it or render it more difficult.

173. At the same time the Committee recognised that, apart from the duties falling upon the several States, the League might have a very important part to play in securing due co-ordination between the measures taken in the different countries, and that it was therefore desirable that, when the occasion arose, the League should have at its disposal both the information and expert advice and assistance which might be required in the circumstances peculiar to any particular crisis. In the Committee’s opinion, these requirements could only be met by securing, as soon as the occasion arose, the expert assistance and information which the Member States were alone in a position to give.

174. In these circumstances, the Committee recommended that, apart from the development and extension of the League’s work of collecting economic information on the present lines and for its present purpose, no new form of enquiry should be instituted. It recommended, however, that Member States should be asked, in addition to carrying out their specific obligations under Article 16, to undertake to place at the disposal of the League, when the need arose, the economic and financial information in their possession which was relevant to the
particular crisis, and the advice and assistance of competent experts in order to help the League to secure due co-ordination between the measures taken by the different Member States.

175. The Economic Committee's opinion, which will be found in its letter to the Secretary-General of December 21st, 1927 (see Sub-Annex 2), is to the same effect. According to the authoritative opinion of these two Committees, the League of Nations should confine itself for the moment to collecting and publishing commercial statistics and other economic particulars which have already been compiled. If it should become necessary to apply Article 16, the Council would obtain the opinion of the economic and financial experts of the countries specially concerned in the sanctions, and would thus obtain the knowledge necessary for drawing up its recommendations.

176. We might now go into the details of the measures to be taken in the case provided for in Article 16. We may quote the first sentence of the tenth resolution of 1921:

"It is not possible to decide beforehand, and in detail, the various measures of an economic, commercial and financial nature to be taken in each case where economic pressure is to be applied."

Indeed, the variety of cases which might arise is such that it is impossible to settle in advance what measures will be possible and expedient. When the time comes, the Council will act with a full knowledge of the facts acquired by the action it will have taken in virtue of the Covenant during the development of the conflict.

There is therefore no question of drawing up a code of procedure for the application of Article 16.

It is possible, however, to formulate in a general manner a series of indications and recommendations capable of guiding the Council and the Members of the League without restricting the freedom of the League's organs to judge at any time the best line of action to take, and without diminishing or increasing the rights and duties of the Members under the Covenant. Indications of this kind will be found summarised in the conclusions at the end of this memorandum.

177. Sub-Annex 1 to Chapter IV.

REPLY OF THE FINANCIAL COMMITTEE ON THE SYSTEMATIC COLLECTION OF INFORMATION.

The Committee considered very carefully the following resolution of the Council:

"The Council requests the Secretary-General:

"(a) To collect systematically precise information regarding the economic and financial relations of the various States, with a view to a possible application of Article 16 of the Covenant. This work will be carried out in accordance with a plan to be submitted to the Council by the Secretary-General after consulting the technical organisations of the League, including, if necessary, the Joint Commission."

The Committee fully realises that it is essential that the provisions of Article 16 as to the severance of economic and financial relations should be enforced by Member States effectively and without delay, as soon as the necessity arises, and appreciates the importance of the part which the League's central organisation may play in securing this result.

The Committee cannot but feel, however, that such a new form of enquiry might cause a misunderstanding of the purposes of the present work of collecting and publishing trade statistics and other economic information which is undertaken in the general interests of scientific knowledge and practical economic purposes. The Committee thinks it of great importance that this work should be continued and developed on its present lines, and would greatly regret any action which might restrict it or render it more difficult.

At the same time the Committee recognises that, apart from the duties falling upon the several States, the League may have a very important part to play in securing due co-ordination between the measures taken in the different countries, and that it is therefore desirable that, when the occasion arises, the League should have at its disposal both the information and expert advice and assistance which may be required in the circumstances peculiar to any particular crisis. These requirements can, in the Committee's opinion, only be met by securing, as soon as the occasion arises, the expert assistance and information which the Member States are alone in a position to give.

In these circumstances, the Committee recommends that, apart from the development and extension of the League's work of collecting economic information on the present lines and for its present purpose, no new form of enquiry should be instituted. It recommends, however, that Member States should be asked, in addition to carrying out their specific obligations under Article 16, to undertake to place at the disposal of the League, when the need arises, the economic and financial information in their possession, which is relevant to the particular crisis, and the advice and assistance of competent experts in order to help the League to secure due co-ordination between the measures taken by the different Member States.
REPLY OF THE ECONOMIC COMMITTEE ON THE SYSTEMATIC COLLECTION OF INFORMATION.

In response to the request for an opinion as to the most expedient means whereby it may be possible

“...to collect systematically precise information regarding the economic and financial relations of the various States, with a view to a possible application of Article 16 of the Covenant...”

the Economic Committee studied the question with the object of permitting as effective and speedy an application as possible of the provisions of Article 16 of the Covenant, relating to the severance of economic and financial relations.

In so doing it decided that it was necessary to differentiate between information of an international character which would be at the Council’s permanent disposal and the information of a national character to which the Council should be able to call for in the event of the contingency mentioned in Article 16 arising, or for the purposes of preparatory studies or the institution of measures designed to meet such a contingency.

As regards the question of information of an international character, the Economic Committee is of opinion that it would not be expedient to contemplate collecting any information other than that which it already possesses.

With the information at its disposal, the Council will be able to estimate the resources for which any State is dependent on foreign help and those which it possesses within its own territory. It would be useless to attempt to rectify or supplement these data by a study of the plans of each country for remedying its dependence on foreign help or increasing its own resources in the contingency mentioned in Article 16 of the Covenant. As regards these national plans, which may in some cases be of assistance in interpreting international statistics, the Committee possesses no powers of investigation.

The Committee decided accordingly that the general international information, so far as the Committee has access to it, could not be considered of supreme value from the point of view of the contingencies contemplated by Article 16 or the studies connected therewith.

For this purpose, the most valuable source of information is the national material, dealing, on the one hand, with the resources and requirements of each country and the means whereby it proposes to increase the first and supply the second, and, on the other, with the assistance which it hopes to obtain from abroad. The Economic Committee is of opinion therefore that every Government should be able at any moment to supply information of this nature, which might be used in the circumstances mentioned in Article 16 and for the purposes of the joint studies that the League organisations might decide to undertake in view of those circumstances.

The Committee desires to emphasise the fact that the national information should not only be available in writing but should, if necessary, be analysed, explained and substantiated by experts appointed in advance by each Government.

The Committee is convinced that the international statistical work in which it is engaged and the national information which it recommends should be collected, would enable the Secretariat of the League to comply with the obligations imposed on the League by the Covenant.

V. COMMUNICATIONS OF THE LEAGUE IN TIME OF EMERGENCY.

179. In the study of Article 11, in Chapter III, it has already been pointed out that the systematic preparation of the Council’s action under this article has a political as well as a technical side. The latter includes the question of communications affecting the League in time of emergency.

180. The question of League communications in time of emergency is important not only for the application of Article 11, but also for that of other articles of the Covenant, in particular Articles 4, 10, 15, 16 and 17. The effectiveness of the action taken by the Council under these articles depends to a large extent on the rapidity with which the Council can assemble. The sooner the Council can meet the more rapid will be its intervention for the maintenance or restoration of peace. This is an important factor affecting security.

181. The last Assembly again stated categorically on this point that it is incumbent upon the Members of the League to facilitate the meeting of the Council in time of emergency by every available means in their power.

182. The rapid assembling of the Council, however, is not the only important point. Generally speaking, every effort should be made to ensure that the following steps are taken as rapidly as possible:

1. Appeal to the League from a Member of the League;
2. Communication between the Secretary-General and the Members of the Council;
3. Communication between the Secretary-General and the President of the Council;
4. Communication between the President of the Council and the Secretary-General, and the States concerned;
5. The assembling of the members of the Council at Geneva or in any other place;
6. The conveyance to the spot of the special missions despatched by the Council.

183. With the exception of the meeting of the Council and the despatch to the spot of instructions or missions, all these points are dependent on telegraphic or telephonic communications, by wire or wireless.

184. The importance of rapid communications was clearly shown during the frontier incident between Bulgaria and Greece. The Commission of Enquiry into this incident stated in its report that “the saving of a few minutes may prevent a catastrophe. In the present circumstances, which were exceedingly favourable — in that the President of the Council received a telephone message one hour after Bulgaria’s appeal had been received by the Secretary-General — a military operation which might have had the most dangerous results was only just prevented”.

185. The question of communications was also raised by M. Paul-Boncour at the first session of the Preparatory Commission. He said that under certain circumstances rapidity of action was one of the essential conditions for the prevention of war. M. de Brocquere expressed a similar opinion when he said that whatever action was to be taken must be taken more rapidly than an army could be mobilised, an operation which was always carried out with the utmost speed.

186. The first enquiries undertaken, at the request of the Council, by the Advisory Committee on Communications and Transit have already resulted in the framing of definite proposals which have been approved by the Administrations concerned and which will enable the best use to be made of existing means of communication by rail as well as by water, by telegraph and telephone, etc.

187. The Council, however, desired to go a step further. On the Council’s instructions, the Advisory Committee on Communications and Transit is already studying the possibility of establishing for the requirements of the League of Nations, particularly at times of emergency, independent means of communication which would be entirely at its disposal and therefore infinitely less likely to be affected by the disturbances which a crisis is bound to produce in the normal working of communications under the control of Governments.

188. The Transit Committee is therefore considering the possibility of securing for the League of Nations independent means of communication by air as well as the establishment of a radio-telegraphic station belonging to the League, which will enable it to communicate independently with the greatest possible number of its Members.

189. The Committee on Arbitration and Security is bound to concern itself with these questions. Any measures to increase the safety and speed of the communications necessary for the working of the League organs at times of emergency will strengthen general security. In particular, the Committee must, in cases of serious emergency, attach great importance to the possibility of safeguarding the independence of the League’s means of communication.

190. The adoption of the measures contemplated will show in a practical and tangible manner that the Members of the League are determined that the League shall be an effective instrument for action, and will, in the eyes of all, be a striking demonstration of solidarity.

VI. STUDY OF THE SCHEME OF FINANCIAL ASSISTANCE TO BE GIVEN TO STATES THREATENED WITH AGGRESSION.

Introduction.

191. The resolution adopted by the Committee on Arbitration and Security at its first session defines the study which it desires to carry out as follows:

“Study of the scheme of financial assistance to be given to States threatened with aggression, and particularly of the preliminary points raised by the Financial Committee:

(a) Study of the criteria by which aggression may be presumed and the procedure of the Council in this matter;
(b) Right of participation by States (the question of States not Members of the League).”

192. With regard to the scheme of financial assistance to be studied, the Assembly, at its eighth ordinary session, adopted the following resolution:

“The Assembly,
Having taken note of the plan submitted to the Council by the Financial Committee with regard to the Finnish Government’s proposal for ensuring financial aid to any State victim of aggression;
Being convinced of the need for a system of financial aid for contributing to the organisation of security, which is an indispensable preliminary to general disarmament;
requests the Council to continue and complete it with a view to its final adoption either by a Disarmament Conference or by a special Conference to be convened for the purpose.

The Assembly suggests to the Council that it would be advisable to submit the plan referred to, and the documents relating to Article 16 prepared by the Legal Section of the Secretariat, the observations submitted by the several Governments and the Minutes of the discussions in the Third Committee on this subject, to the committee which it proposes should be appointed in pursuance of its resolution relative to arbitration, security and disarmament.

193. The Council, at its forty-seventh session, referred the Assembly resolution through the Preparatory Commission for the Disarmament Conference to our Committee by the following resolution:

The Council,

Notes the Assembly's resolution of September 26th, 1927, concerning financial aid to States victims of aggression;

Forwards this resolution to the Preparatory Commission for communication to the committee which it is to appoint to study questions relating to arbitration and security;

Authorises that committee to consult the Financial Committee whenever it thinks fit and, if necessary, to request the latter to make technical studies of the question;

Requests the Financial Committee to co-operate with the Committee on Arbitration and Security and the Preparatory Commission for the Disarmament Conference for the purposes mentioned above.

194. The scheme proposed by the Financial Committee is in its general outline as follows:

The State which is the victim of aggression would be assisted by the League to obtain a loan on the money market in the ordinary way.

The assistance would take the form of a guarantee for the loan. This guarantee would be given by the States participating in the scheme, perhaps in the same proportions as their contributions to the League. The Convention establishing the scheme would fix a maximum limit for the guarantee. If this maximum were fixed at fifty million pounds, and if all the Members of the League participated, each State would be called upon to guarantee the interest on and amortisation of a sum equal to about fifty times its annual contribution to the League.

The signatories of the Convention would deposit general bonds of guarantee with the Secretary-General or the Trustees (who would be appointed by the Council). When a State which was a party to the Convention was attacked and asked for financial assistance under the terms of the Convention, the Council of the League would, on the advice of the Financial Committee, decide how and to what extent the request should be complied with, and would fix the amount of the loan.

For this purpose the signatories would exchange the general bonds for "specific bonds of guarantee" to the amount required, but not exceeding the total of their guarantees.

The "specific bonds of guarantee" would be drawn up in a form generally corresponding to that of the bonds deposited with the trustees for the Austrian Reconstruction Loan, and the procedure of their operation would be the same.

Should the attacked State default, the "specific bonds" would be presented to their signatories.

The Committee further proposes to strengthen the scheme by establishing a supplementary guarantee whereby a small number of signatories holding a very strong financial position would guarantee the signatories of the specific bonds for the entire amount. If necessary, they would temporarily furnish the funds required for the payments to be made.

Each Government signing the supplementary guarantee would undertake to facilitate the public issue, in its country, of loans floated under the Convention.

195. A detailed technical examination of the Financial Committee's scheme cannot be expected in this memorandum. Such an examination would be valueless without the assistance of the Financial Committee, which has already done work of very considerable practical importance in this matter. The Council has made provision for this co-operation; the Security Committee will have to arrange to inaugurate it, either through a sub-committee or by any other method which seems suitable.

196. It should be remembered that the British representative on the Council stated that his Government approved the scheme outlined by the Financial Committee but could only accept it on two conditions, namely, that the scheme should form part of an adequate measure of general disarmament and that the principal States should also accept a satisfactory allotment of the obligations contained in the guarantee.

197. For the moment it seems sufficient to explain the two main points mentioned in the Committee's programme.

Study of the Criteria by which Aggression may be presumed and the Procedure of the Council in this Matter.

198. Under the Financial Committee's scheme, action on the part of each guarantor State is necessary before the scheme of assistance can operate for the benefit of a country which is the victim of aggression; the general bonds of guarantee must be exchanged for specific bonds of guarantee. This is an important point. The Financial Committee proposes to
make it a matter for the Council to decide whether the financial assistance in contemplation shall be given to an attacked State. Notwithstanding the deposit of the general bonds of guarantee, however, the Council will not have full and free disposal of the guarantee, but will require the concurrence of the States. The question then arises whether it will be possible in practice to introduce, side by side with the system of Article 16, under which each Member of the League is left to decide whether the Covenant has been broken, a different system for financial assistance. There arises at the same time the question whether the criteria of aggression should be studied separately in regard to the application of Article 16 and that of the scheme of financial assistance.

199. It is hardly to be supposed that, having arrived at a decision as to whether aggression within the meaning of Article 16 has taken place and who is the aggressor, any State will cooperate in giving financial assistance to a country which it cannot recognise as having been attacked. No State will lend financial assistance, even if enjoined to do so by the Council, to a State which it regards as the aggressor and against which it is applying economic or military sanctions. Still less can it be imagined that any State will voluntarily give military assistance to one of the belligerents and financial assistance to the other, simply because the criteria of aggression are different. It would seem necessary to establish a relation between the system of financial assistance and the application of Article 16. Whether the financial assistance contemplated in the Financial Committee’s scheme constitutes the fulfilment of an obligation under Article 16 is a question that has already been discussed. As financial assistance under the Financial Committee’s scheme will be governed by a special convention, the question of the relation in law between this assistance and the obligations embodied in Article 16 can be left open. The essential point, however, is that there must be a relation and concordance between the application of Article 16 by any Member and the provision of financial assistance by the same Member in the same conflict.

200. The position would be different if a system of financial assistance were adopted whereby from the outset the Council would have full and free disposal of the funds required to guarantee a loan for an attacked State. In that case, the decision as to the according of a guarantee could be left in the Council’s hands. On the other hand, we may conclude from the Financial Committee’s report that such a system would encounter technical difficulties; and statements which have been made both in the Council and in the Third Committee of the Eighth Assembly suggest that it is doubtful whether all States can be expected to agree to such a scheme.

201. The conclusion is that financial assistance should be so regulated as to ensure definite concordance between decisions taken under Article 16 and decisions regarding financial assistance. This object might be attained by mentioning, in the Convention on financial assistance, the cases in which Article 16 applies.

202. One reservation must, however, be made. Organised financial assistance presupposes the participation of a large number of States and supervision by the Council. Thus, although no State can be obliged to co-operate in assisting financially another State which in its opinion has not been attacked, it must always be remembered that a number of States may be prepared to lend their financial aid to a State which in their opinion has been attacked, and that nevertheless the concerted plan will not come into force, either because a number of other States do not admit that the casus faederis has arisen, or because the Council itself has not taken the necessary decisions for setting in motion the plan for financial assistance.

With regard to the procedure to be followed by the Council, the remark which was made on the subject of criteria for the designation of the aggressor again applies. On this point also, financial assistance must be made to harmonise with the application of sanctions under Article 16.

203. Here, however, it should be pointed out that the Council may avail itself of the plan for financial assistance before Article 16 comes into play. By the time this article has to be applied, the efforts of the Council to maintain peace have failed. It is the preceding period, before the Covenant has been infringed, which is of far greater interest to the League. It is on this period — the fact cannot be stated too often — that the League should concentrate its efforts with a view to avoiding the dreaded event of the entry into operation of Article 16. In this period, too, the plan of financial assistance might already be brought into play and exercise a beneficial influence. Among the means of pressure which the Council might employ when taking action under the various articles of the Covenant, and particularly Article 11, for the prevention of war, not the least effective is the possibility of guaranteeing a loan to a party in case of attack.

204. The holding out of such a possibility, and if circumstances so required the making of actual promises, would be an affirmation of the solidarity on the part of the Members of the League with any State which might be attacked, and it would show beforehand that they were determined to maintain the principles of the Covenant by action if necessary. If a definite plan were prepared, the Council ought to be able to utilise it in this manner when taking action under Article 11.

Right of Countries to participate. (Question of States non-Members of the League.)

205. There is no reason why any Member of the League of Nations should be prevented from participating in the plan, provided it accedes to the Convention within a definite period.

206. The question of the participation of States non-Members of the League does not seem to be of any practical interest. It is hardly likely that a non-Member State would desire to
enter into such close co-operation with the League. A country for which the protection offered by the League holds no particular attraction — possibly because it feels that it will never require such protection — will not desire to participate in the organisation of financial assistance. We do not, however, think that non-Member States should be generally excluded. The Convention might be open to States non-Members who would be admitted by special decision of the parties on a unanimous or a majority vote. It does not seem necessary to go into the details of this question at present.

VII. CONCLUSIONS.

207. It does not seem advisable to draw up a rigid and complete code of procedure for the League in times of emergency, and the present memorandum and its conclusions propose neither to extend nor to curtail the rights and duties of the Members of the League.

It is both feasible and desirable, however, to give some indication of the possibilities offered by the different articles of the Covenant and the way in which they may be applied, without expressing any opinion as to the particular methods which the infinite variety of possible cases may in practice require.

208. To ensure the effectiveness of the League’s action in any eventuality under the articles of the Covenant and, in particular, under Articles 4, 10, 11 and 16, it is vitally important that the technical studies and preparations for improving the communications of the League’s organs should be actively pushed forward.

209. The task of the League of Nations is to maintain peace; to fulfil this task it must, above all, prevent war. The application of repressive measures, which cannot but have serious consequences, will only take place in extreme cases in which the preventive measures have unfortunately failed in their object.

210. With regard to the application of Article 11, the Report of the Committee of the Council, approved by the Assembly at its eighth ordinary session, is a valuable guide, to which the present memorandum adds a few new indications.

211. A hard-and-fast definition of the expressions “aggression” (Article 10), and “resort to war” (Article 16) would not be free from danger, since it might oblige the Council and the Members of the League to pronounce on a breach of the Covenant and apply sanctions at a time when it would still be preferable to refrain for the moment from measures of coercion. There would also be the risk that criteria might be taken which, in unforeseen circumstances, might lead to a State which was not in reality responsible for hostilities being described as an aggressor.

212. The preparation of the military sanctions provided for in Article 16 does not seem likely to promote mutual confidence between the States Members of the League of Nations unless at the same time various forms of pacific procedure suitable for the settlement of all international disputes are organised, and unless there is also a general agreement on the reduction and limitation of armaments.

213. In order to facilitate the application of Article 16 in case of need, it is necessary to make a full and conscientious use of the other articles of the Covenant and especially of Article 11. This article enables the Council to keep in touch with developments in a conflict and so to construct a basis for the decisions which it may be called upon to take under Article 16.

214. It would be desirable to put an end to the uncertainty consequent upon the fact that several amendments to Article 16, the majority dating from 1921, have not yet secured the necessary number of ratifications, either by securing their ratification in the near future or finally abandoning them.

215. It would be well that, in the event of resort to war, the Council should declare whether a breach of the Covenant has or has not taken place, and should state which of the two parties to the dispute has broken the Covenant.

216. In determining the aggressor the Council will find, among other factors helping it to form a judgment, a valuable indication in the extent to which and the manner in which the parties to the dispute have promoted the action previously taken by the Council in application of the articles of the Covenant, and especially of Article 11, to maintain peace.

217. Apart from the recommendations provided for in paragraph 2 of Article 16 concerning participation in military sanctions, it would be desirable for the Council in some cases to make recommendations to the Members regarding the application of the measures of economic pressure mentioned in the first paragraph of Article 16. In this eventuality, the Council could consult economic and financial experts in the countries specially concerned.

218. The study of the question of the financial assistance to be given to a State victim of an aggression should be pursued both from the technical and the political points of view. In carrying out this study, the possibility of providing assistance, even before Article 16 is applied, should be examined.