5. Appendices.

I. RESOLUTION ADOPTED BY THE ASSEMBLY ON SEPTEMBER 26TH, 1927 (MORNING). (On the Proposal of the Third Committee.)

Resolution No. V.

The Assembly,

Noting the progress achieved in the technical sphere by the Preparatory Disarmament Commission and by the Committee of the Council towards enabling the Council to be rapidly convened and to take decisions in case of emergency;

Being anxious to bring about the political conditions calculated to assure the success of the work of disarmament;

Being convinced that the principal condition of this success is that every State should be sure of not having to provide unaided for its security by means of its own armaments and should be able to rely also on the organised collective action of the League of Nations;

Affirming that such action should aim chiefly at forestalling or arresting any resort to war and if need be at effectively protecting any State victim of an aggression;

Being convinced that the burdens which may thereby be imposed on the different States will be the more readily accepted by them in proportion as

(a) They are shared in practice by a greater number of States;
(b) The individual obligations of States have been more clearly defined and limited:

1. Recommends 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, so as to extend to all countries the mutual confidence essential to the complete success of the Conference on the Limitation and Reduction of Armaments;

2. Recalls its resolution of September 24th, 1926, which reads as follows:

"Being desirous that the investigations, in regard to which the Assembly itself took the initiative in its resolution of September 25th, 1925, should be brought to a successful conclusion as soon as possible, it requests the Council to call upon the Preparatory Commission to take steps to hasten the completion of the technical work and thus be able to draw up, at the beginning of next year, the programme for a Conference on the Limitation and Reduction of Armaments corresponding to existing conditions in regard to regional and general security, and it asks the Council to convene this Conference before the eighth ordinary session of the Assembly, unless material difficulties render this impossible";

Accordingly requests the Council to urge the Preparatory Commission to hasten the completion of its technical work and to convene the Conference on the Limitation and Reduction of Armaments immediately this work has been completed;

3. Requests the Council to give the Preparatory Commission, whose task will not be confined to the preparation of an initial Conference on the limitation and reduction of armaments, and whose work must continue until the final goal has been achieved, the necessary instructions for the creation without delay of a Committee consisting of representatives of all the States which have seats on the Commission and are Members of the League of Nations, other States represented on the Commission being invited to sit on it if they so desire.

This Committee would be placed at the Commission's disposal and its duty would be to consider, on the lines indicated by the Commission, 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 disarmament agreement.

The Assembly considers that these measures should be sought:

In action by the League of Nations with a view to promoting, generalising, and coordinating special or collective agreements on arbitration and security;

In 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;

In agreements which the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States;

And, further, in 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.
II. PROPOSALS BY THE BUREAU.

Adopted by the Committee on Arbitration and Security at its Meeting of December 2nd, 1927.

I. PROPOSAL REGARDING THE PROGRAMME OF WORK.

First Group of Questions. — Arbitration and security agreements. — Study of measures enabling the League of Nations to promote, generalise, and co-ordinate special or collective agreements on arbitration and security (Resolution No. V, No. 3, paragraph 4).

A. Treaties of Arbitration.

1. Measures for their Promotion.

Resolution of the 1926 Assembly.

Recommendations by States Members, and offer of the Council's good offices.


Two methods may be indicated:

1. An analytical study of existing treaties for the purpose of extracting the substance common to all of them on which a model convention might be based;

2. A study of the draft optional convention for the obligatory arbitration of disputes, submitted to the Third Committee by Dr. Nansen on behalf of the Norwegian delegation, taking into account the following recommendations of the First Committee of the Assembly:

   (a) Means should be sought for encouraging and promoting the acceptance of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice and the conclusion of special treaties for judicial settlement, arbitration and conciliation.

   (b) In any investigation into the methods of pacific settlement of disputes between States, special attention should be paid to the procedure of conciliation, which is of the utmost importance.

   (c) Very special attention should also be given to the question of the relations between the Council's and the Assembly's mediatory action and the procedures of arbitration and conciliation.

   (d) In studying a general convention for compulsory arbitration, enquiry should be made as to how the convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to their particular circumstances.

B. Security Agreements.

1. Measures for their Promotion.

Resolution of the 1926 Assembly:

Recommendations to States Members and offer of the Council's good offices.

2. Suitable Means of Co-ordination and Generalisation:

Study of existing security treaties from the point of view of their use by the Council for the application of Articles 10, 11, 16 and 17 of the Covenant.

Study of agreements which the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States (Resolution No. V, No. 3, paragraph 6).

Study of the procedure to be followed by the Council to give effect to the last paragraph of the Assembly resolution, which proposes that the Council should invite 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 decision or recommendations (Resolution No. V, No. 3, paragraph 7).
Second Group of Questions. — 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 (Resolution No. V, No. 3, paragraph 5).

Though there is no desire to limit the future sphere of action of the Committee in this matter, the programme may forthwith be extended to the following articles:

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 and at present being examined.

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, 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).

II. Proposal regarding Procedure.

The Bureau contemplates a procedure consisting of two stages:

First Stage. — Period between the first session of the Committee (present session) and the second session (date to be fixed).

The Secretariat, acting on the instructions of the Bureau and the Rapporteurs mentioned below, would prepare the necessary documentation, regard being had to the indications given at the meetings.

During this period, certain Rapporteurs would prepare memoranda on questions in the programme described above, which would serve as a basis for the discussion to be held during the second session.

The Bureau considers that three Rapporteurs might be appointed:

One for Question I (A) — Arbitration agreements;
One for Question I (B) — Security agreements;
One for Question II — Articles of the Covenant.

The memoranda prepared by the first two Rapporteurs would be co-ordinated by the authors in conjunction with the Chairman of the Committee and would thus constitute a general memorandum on point I.

The two memoranda thus obtained on points I and II respectively would also be co-ordinated by the three Rapporteurs in co-operation with the Chairman of the Committee, so as to submit to the Committee the final memoranda in the form of an organic whole. This could serve as a basis for the work of the Committee.

Second Stage of the Procedure. — On the basis of the above-mentioned memoranda, the Committee would examine the question with a view to preparing a report for submission to the Preparatory Commission. The Committee would then have to decide whether this investigation should be conducted entirely in plenary session or whether the Committee's task ought to be facilitated by the creation of sub-committees (and if so, what number). In either case the final decision as to the terms of the report to be submitted to the Preparatory Commission would, of course, be taken by the Committee at a plenary meeting. It is, indeed, only at that moment that questions relating to the constitution of these sub-committees could be usefully discussed.
III. PROPOSALS AND OBSERVATIONS BY VARIOUS GOVERNMENTS REGARDING THE WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY.

1. PROPOSALS BY THE SWEDISH GOVERNMENT.

Stockholm, December 30th, 1927.

At the meeting held on December 2nd, 1927, by the Committee appointed to consider the question of arbitration and security, it was decided that Governments should be entitled to forward to the Bureau of the Committee before January 1st, 1928, any proposals they might wish to make with reference to questions on the Committee’s programme of work.

The resolution adopted by the Assembly with respect to the work of the new Committee contains the following statement:

“This Committee would be . . . disarmament agreement.

The Assembly considers . . . sought.

“In action by the League of Nations with a view to promoting, generalising and co-ordinating special or collective agreements on arbitration and security . . . .”

The instructions given by the Assembly to the Committee, with regard to the investigation of the problem of arbitration, thus contemplate an extension of arbitration procedure based on the principles already established by special agreements. The Swedish Government is of opinion that the simplest way of effecting this purpose would be to draw up a draft collective agreement, based so far as possible on the principles already adopted for the four Locarno agreements on arbitration and conciliation. These agreements were concluded between Germany on the one hand and Belgium, France, Poland and Czechoslovakia on the other.

Their contents may be summarised as follows:

“Disputes with regard to which the parties are in conflict as to their respective rights are submitted for decision to the Permanent Court of International Justice or an arbitral tribunal. Other disputes must, at the request of either of the parties, be submitted, with a view to amicable settlement to a Permanent Conciliation Commission and, if agreement is not reached before that body, to the Council of the League, for settlement in accordance with Article 15 of the Covenant. If the parties agree thereto, disputes of a legal nature may also be submitted to the Permanent Conciliation Commission before any resort is made to procedure before the Permanent Court of International Justice or to arbitral procedure.

Similar provisions have, in recent years been adopted for the settlement of international disputes in a large number of special agreements. The Swedish Government is therefore convinced that it would be desirable to give this type of agreement a more general form, as contemplated in the instructions received from the Assembly.

The advantages to be derived from a more general application of the provisions contained in the Locarno agreements consist, firstly, in the fact that these provisions afford appropriate methods for the settlement of the various classes of international disputes. The principle of compulsory recourse to judicial or arbitral procedure for the settlement of international disputes of a legal character has already enlisted the support of an important section of the public in most countries which are Members of the League. The increasing number of signatures secured for the optional clause of the Statute of the Permanent Court of International Justice is a further evidence of this fact. The effect of applying conciliation procedure before special commissions would be that disputes would not as a rule be submitted to the Council of the League of Nations until they had been carefully and impartially investigated by a Conciliation Commission. When examining the matter afresh, the Council would thus be in a better position to devise the most appropriate solution and to put forward unanimous proposals for a settlement.

The extension of arbitral procedure would, moreover, be of great value from yet another point of view. Under Article 16 of the Covenant of the League of Nations, sanctions are to be applied to a State which resorts to war in disregard of the obligation devolving upon it to respect an arbitral award. The provisions of the Covenant governing these sanctions also cover awards given in virtue of special arbitration agreements. Thus being so, it may be asserted that an extension of the principle of arbitration would automatically entail an extension of the system of sanctions. When a dispute is investigated by the Council there is always some risk that that body may fail to reach unanimity and that the States Members of the League may consequently reserve “the right to take such action as they shall consider necessary for the maintenance of right and justice” (Article 15, paragraph 7). The reference of a dispute to a tribunal, on the other hand, secures the final settlement of the legal points at issue.

Guided by the above considerations, the Swedish Government has prepared a draft Collective Conciliation and Arbitration Agreement, based on the principles which were adopted
in the Locarno Agreements and which were rightly endorsed by large sections of the public
in States Members of the League of Nations.

The Swedish Government moreover reserves the right to submit, if necessary, through
its representative on the Committee any further proposals which might, in its opinion, help
to effect the purpose contemplated in the instructions given by the Assembly. It takes this
opportunity of calling attention to the argument advanced in the discussions at the last Assembly
on the subject of measures calculated to strengthen and develop arbitral procedure.

Eliel Löfgren.

DRAFT CONVENTION ON THE SETTLEMENT OF INTERNATIONAL DISPUTES.

Article 1.

All disputes of every kind between the Contracting Parties with regard to which the Parties
are in conflict as to their respective rights, and which it may not be possible to settle amicably
by the normal methods of diplomacy shall be submitted for decision either to an arbitral tribunal
or to the Permanent Court of International Justice, as laid down hereinafter. It is agreed that
the disputes referred to above include in particular those mentioned in Article 13 of the Covenant
of the League of Nations.

Disputes for the settlement of which a special procedure is laid down in other Conventions
in force between two or more of the Contracting States shall be settled in conformity with the
provisions of those Conventions.

Article 2.

The disputes referred to in Article 1 shall be submitted by means of a special agreement
either to the Permanent Court of International Justice under the conditions and according to
the procedure laid down by its statute, or to an arbitral tribunal under the conditions and accord-
ing to the procedure laid down by the Hague Convention of October 18th, 1907, for the Pacific
Settlement of International Disputes.

If the Parties cannot agree to the terms of the special agreement after a month's notice,
either of them may bring the dispute before the Permanent Court of International Justice by
means of an application.

Article 3.

All questions on which the signatory States shall differ without being able to reach an
amicable solution by means of the normal methods of diplomacy, the settlement of which
cannot be attained by means of judicial decision as provided for in Article 1 of the present
Convention, and for the settlement of which no procedure has been laid down by a treaty
in force between the Parties, shall be submitted to a Conciliation Commission, whose duty it
shall be to propose to the Parties an acceptable solution, and in any case to present a report.

Article 4.

In the case of a dispute the occasion of which, according to the Municipal Law of one of
the Parties, falls within the competence of the National Courts of such Party, the matter in
dispute shall not be submitted to the procedure laid down in the present Convention until a
judgment with final effect has been pronounced, within a reasonable time, by the competent
national judicial authority.

Article 5.

The Conciliation Commission, to which the disputes referred to in Article 3 must be sub-
mitted, shall be either permanent, or specially set up for the settlement of the dispute which
has arisen between the Parties.

On a request to that effect being sent by one of the signatory States to another signatory
State, a Permanent Conciliation Commission shall be constituted. Unless the Parties agree
otherwise, this Commission shall be appointed for three years and shall be constituted in accord-
ance with the provisions of the present Convention.

If, at the time when a dispute arises, no permanent conciliation commission appointed by
the Parties to the dispute is in existence, a special Commission, constituted in accordance with
the provisions of the present Convention, shall be set up to investigate the said dispute.

Article 6.

Failing an agreement to the contrary, the Conciliation Commission referred to in Article 5
shall be composed of five members and shall be constituted in accordance with the following
provisions.

The Parties shall each nominate a commissioner chosen from among their respective
nationals, and shall appoint, by common agreement, the other three commissioners from among
the nationals of third Powers. These three commissioners must be of different nationalities, and the Parties shall, by common agreement, appoint the President of the Commission from among them.

If the members of the Commission have not been appointed within two months from the date at which one of the Parties has sent the other a request for the constitution of a Conciliation Commission, the President of the Swiss Confederation shall, in the absence of any agreement to the contrary, be requested to make the necessary appointments.

(The present Draft Convention leaves open the question of the procedure to be followed for the constitution of a Conciliation Commission between Switzerland and another State, as the solution of this question should be made subject to any proposals Switzerland might desire to make on the subject.)

Article 7.

Disputes shall be brought before the Conciliation Commission by means of a request addressed to the President by the two Parties acting in agreement or, in the absence of such agreement, by one or other of the Parties.

The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable settlement.

If the request emanates from one only of the Parties, notification thereof shall be made without delay to the other Party.

Article 8.

Within fifteen days from the date when the Parties shall have brought a dispute before the Permanent Conciliation Commission set up by them, either Party may, for the examination of the particular dispute, replace its Commissioner by a person possessing special competence in the matter.

The Party making use of this right shall immediately inform the other Party; the latter shall in that case be entitled to take similar action within fifteen days from the date when the notification reaches it.

Article 9.

The task of the Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise and to endeavour to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

At the close of its labours the Commission shall draw up a report stating, as the case may be, either that the Parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement.

The labours of the Commission must, unless the Parties otherwise agree, be terminated within six months from the day on which the Commission shall have been notified of the dispute.

Article 10.

In the absence of any special provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 11.

The Conciliation Commission shall meet, in the absence of agreement to the contrary between the Parties, at the place selected by its President.

Article 12.

The labours of the Permanent Conciliation Commission are not public except when a decision to that effect has been taken by the Commission with the consent of the Parties.

Article 13.

The Parties shall be represented before the Conciliation Commission by agents, whose duty it shall be to act as intermediaries between them and the Commission. They may, moreover, be assisted by counsel and experts appointed by them for that purpose, and request that all persons whose evidence appears to them useful should be heard.

The Commission on its side shall be entitled to request all explanations from the agents, counsel and experts of the two Parties, as well as from all persons it may think useful to summon with the consent of their Governments.

Article 14.

Unless otherwise provided in the present Convention, the decisions of the Conciliation Commission shall be taken by a majority.
Article 15.

The Parties to the dispute shall be required to facilitate the labours of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts, and to visit the localities in question.

Article 16.

During the labours of the Conciliation Commission, each Commissioner shall receive a salary, the amount of which shall be fixed by agreement between the Parties, each of which shall contribute an equal share.

Article 17.

If the two Parties have not reached an agreement within a month from the termination of the labours of the Conciliation Commission, the question shall, at the request of either Party, be brought before the Council of the League of Nations, which shall deal with it in accordance with Article 15 of the Covenant of the League.

Article 18.

If the Parties have agreed that a dispute which, under Article 1, or under a special agreement between them, should be submitted to judicial settlement, shall first be submitted to Conciliation procedure, but have not concluded any agreement laying down the composition of the Conciliation Commission or settling the procedure itself, the dispute shall be brought before a Permanent Conciliation Commission, or, failing this, before a Commission appointed for the purpose in accordance with Article 6; as regards procedure, the provisions of Articles 7 to 16 shall be applied.

Article 19.

In any case, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the latter has not been notified thereof, the Arbitral Tribunal or the Permanent Court of International Justice acting in accordance with Article 41 of its Statute, shall lay down within the shortest possible time, the provisional measures to be adopted. It shall similarly be the duty of the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken.

The Parties to the dispute shall be required 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 Conciliation Commission or by the Council of the League of Nations, and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 20.

The present Convention shall be applicable as between the States Signatories who are Parties to a dispute whether or no other Powers are also interested in the dispute.

2. PROPOSALS BY THE NORWEGIAN GOVERNMENT.

Oslo, December 30th, 1927.

The Norwegian Government realises the objections which may be raised, and some of which were actually raised during the last session of the Assembly of the League of Nations, against the draft general arbitration Convention submitted to the Assembly by the Norwegian delegation. The Norwegian Government is, however, of the opinion that these objections will lose a great deal of their force if the proposed Convention is based on the model of the Locarno Treaties, which is at present accepted by a considerable number of States. There is also reason to believe that States whose arbitration policy has hitherto been marked by a certain reserve would subsequently accede to a general Convention drawn up on this basis.

The Norwegian Government therefore recommends that the Locarno Treaties should be taken as a model in drawing up a general Convention of conciliation and arbitration, with the modifications rendered essential by the necessity of each contracting party constituting a special conciliation commission with each of the other contracting parties.

The Norwegian Government proposes at the same time that the general Convention to be concluded should be of wider scope than the Locarno Treaties as regards the submission of disputes to a decision binding on the parties. The Norwegian Government considers that the provisions of the Locarno Treaties concerning the submission of disputes to the Council
of the League of Nations (Article 18) should be supplemented by a clause under which the contracting parties would undertake to accept as binding the conclusions of the Council's report if this report was accepted unanimously, the votes of the representatives of the parties not being counted in reckoning this unanimity. A decision taken by the Council under Article 15, paragraph 8 of the Covenant should also be binding.

The Norwegian Government also proposes the insertion in the Convention of an optional arbitration clause under which the contracting parties may declare, either on signing or ratifying the Convention, or at a later date, that they bind themselves, in their relations with any other contracting party accepting the same obligation, to submit to an arbitral tribunal instead of to the Council of the League of Nations any non-judicial question which has been referred to a permanent conciliation commission and has not proved capable of settlement by this method. In the absence of an agreement to the contrary, the arbitration tribunal in question should be constituted in conformity with the provisions of Heading IV, Chapter II of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

The Norwegian Government considers that the obligations of the parties under the general convention should not replace their obligations under special conventions of conciliation and arbitration in force between them, but should only supplement the latter. It would therefore propose that the terms of the Convention should only apply to disputes falling entirely outside the scope of the special agreements which have been or may be concluded between the parties with regard to the settlement of disputes by conciliation or arbitration, and to those whose submission to a final and binding decision, in virtue of these agreements, cannot be called for when they have been referred to a conciliation commission. In the latter case, the dispute would be referred under the general Convention either to an international tribunal or to the Council of the League of Nations.

Ivar Lykke.

3. OBSERVATIONS OF THE BELGIAN GOVERNMENT.

Brussels, January 11th, 1928.

After a first examination of the documents of the Committee on Arbitration and Security, it did not seem to me that the Belgian delegate need submit any "recommendations, suggestions or guiding principles" to the Rapporteurs on behalf of the Belgian Government.

At most I might have referred, if need were, to the Report of M. de Brouckère, the previous Belgian delegate on the Preparatory Disarmament Commission, submitted after the meeting of September 1926, and to his speech on September 13th, 1927, to the Third Committee of the Assembly, concerning the necessity of "developing the powers which the League of Nations derives from the existence of the Covenant". But these documents are well known to all those who are interested in the aims of the Committee.

Meanwhile I have just received the text of the Swedish Government's proposals. I see that they consist of a "Draft Collective Conciliation and Arbitration Agreement based on the principles which were adopted in the Locarno Agreements", and I have no hesitation in saying in this connection that such suggestions receive the Belgian Government's wholehearted approval. I am therefore glad to learn that a formal proposal to this effect is now under consideration by the Rapporteurs.

Rolin Jaequemyns.

4. OBSERVATIONS OF HIS MAJESTY'S GOVERNMENT IN GREAT BRITAIN ON THE PROGRAMME OF WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY OF THE PREPARATORY COMMISSION FOR THE DISARMAMENT CONFERENCE.

Question.


"Study of measures enabling the League of Nations to promote, generalise and co-ordinate special or collective agreements on arbitration and security (Resolution No. V, No. 3, paragraph 4).

A. Treaties of Arbitration.

"1. Measures for their Promotion:

"Resolution of the 1926 Assembly.
"Recommendations by States Members and offer of the Council's good offices."
2. Suitable means of co-ordination and generalisation.

Two methods may be indicated:

(1) An analytical study of existing treaties for the purpose of extracting the substance common to all of them on which a model convention might be based.

(2) A study of the draft optional convention for the obligatory arbitration of disputes, submitted to the Third Committee by Dr. Nansen on behalf of the Norwegian delegation, taking into account the following recommendations of the First Committee of the Assembly:

(a) Means should be sought for encouraging and promoting the acceptance of the optional clause of Article 36 of the Statute of the Permanent Court of International Justice, and the conclusion of special treaties for judicial settlement, arbitration and conciliation.

(b) In any investigation into the methods of pacific settlement of disputes between States, special attention should be paid to the procedure of conciliation, which is of the utmost importance.

(c) Very special attention should also be given to the question of the relations between the Council's and the Assembly's mediatory action and the procedures of arbitration and conciliation.

(d) In studying a general convention for compulsory arbitration, enquiry should be made as to how the convention could be given sufficient flexibility to permit the contracting States to adjust the obligations assumed to their particular circumstances.

Answer.

1. Justiciable Disputes.

Meaning of Phrase "Treaties of Arbitration".

1. In considering the question of what measures may be feasible for promoting treaties of arbitration, a distinction must be drawn between the classes of disputes which it is proposed to solve by means of arbitration. It is usual in this connection to distinguish between justiciable and non-justiciable disputes, i.e., between those in which — to use the phraseology of the Treaty of Locarno — the parties are in conflict as to their respective rights and those in which the dispute arises because there is a divergence of view as to the political interests and aspirations of the parties. It is convenient to restrict the meaning of the phrase "treaties of arbitration" to international arrangements dealing with justiciable disputes and providing for the submission of such disputes to a tribunal entitled to give a decision binding on both parties.

Arbitration Treaties in General have no Sanction but Public Opinion.

2. The object of all arbitration treaties being to facilitate the satisfactory solution of disputes so as to restore relations of cordiality between the States concerned, it is well to bear in mind that it is not the rendering of a decision that is important but the acceptance and execution of the terms of that decision by the parties. Arbitration treaties have no sanction behind them but the force of public opinion in the world at large.

An arbitration award which a party to the dispute resolutely refused to execute would not merely fail to settle the dispute; it would prejudice the movement in favour of arbitration.

3. The times hardly seem to be ripe for any general system of sanctions for the enforcement of arbitration treaties. No effective sanctions have been suggested except an agreement by other States, not parties to the dispute, to use force against either of the parties to the dispute which failed to submit the dispute to arbitration or failed to accept and comply with the award. It is improbable that any nation which is strong enough to use force effectively would at present undertake any such general obligation. It would involve a burden which no State would shoulder unless it felt that its interests were vitally affected by any disturbance of the peace resulting from the particular dispute in question remaining unsettled. Even in the Locarno Treaty, where the parties incurred obligations of a far-reaching character because they felt that interests of great importance were effected, the sanction for enforcing the article containing the agreement to arbitrate was limited to an undertaking by the five Powers concerned to comply with such proposals as the Council of the League might make when the failure on the part of the parties to the dispute to honour the obligation as to arbitration was brought before that body.

Need for Reservations.

4. The considerations advanced in paragraph 2 show that one of the controlling elements in formulating any model arbitration treaty or in considering what measures can be taken for promoting the conclusion of arbitration treaties is the extent to which public opinion in any particular country can be counted on to accept and to carry out loyally a decision which is unfavourable to its own contentions. Arbitration treaties impliedly, if not explicitly, impose upon the parties the obligation loyally to accept the decision of the tribunal. An arbitration treaty which goes beyond what the public opinion of a country can be counted
on to support when the interests of that country are in question and when a decision unfavourable to those interests is pronounced is a treaty which is useless. It is merely calculated to deceive the public. In a moment of grave importance it may fail to achieve a solution of a dispute even if the dispute is arbitrated in accordance with its terms. It would embitter relations between the two countries instead of improving them, and would cause a set-back to the movement now so steadily advancing in favour of the pacific settlement of justiciable disputes by means of arbitration.

5. It is because it is so generally felt that there are some questions — justiciable in their nature — which no country could safely submit to arbitration that it has been usual to make reservations limiting the extent of the obligation to arbitrate. These limitations may vary in form, but their existence indicates the consciousness on the part of Governments that there is a point beyond which they cannot count on their peoples giving effect to the obligations of the treaty. That there are limits beyond which a State cannot go in accepting binding obligations to arbitrate justiciable questions in all cases is recognised in Article 13 of the Covenant of the League of Nations. By that provision the members of the League accept in principle but not definitively the obligation to arbitrate justiciable disputes. The framers of the Covenant realised that it was not feasible to embody in the Covenant a definite and comprehensive obligation to arbitrate all justiciable disputes.

6. Mere omission of the limitations on the obligation to arbitrate justiciable disputes which now figure in arbitration treaties would not promote the progress of arbitration. What is necessary is to overcome the difficulties which have caused the insertion of these limitations, and for this time is necessary. As nations get to understand each other better, as the respect for international law gets stronger, and as a sense of security increases, it will become more easy for States — even for those whose interests are world-wide — to accept comprehensive engagements to arbitrate justiciable disputes. Some States are already in that fortunate position. Others less fortunate must approach thereto by degrees.

Lines of Progress.

7. There are two lines along which progress is possible towards a universal acceptance of the unrestricted obligation to arbitrate justiciable disputes, even by the States which cannot at present accept such an obligation.

8. The first is by the inclusion in particular treaties of an undertaking to arbitrate disputes which may arise with regard to the interpretation or application of the treaty concerned. Many multilateral conventions to which Great Britain is a party have been concluded in recent years which contain a provision such as the following:

"Disputes between the parties relating to the interpretation or application of this convention shall, if they cannot be settled by direct negotiation, be referred for decision to the Permanent Court of International Justice. In case either or both of the parties to such a dispute should not be parties to the protocol of signature of the Permanent Court of International Justice, the dispute shall be referred, at the choice of the parties, either to the Permanent Court of International Justice or to arbitration."

9. The time is ripe for an investigation as to whether this type of stipulation might not more generally be included in international agreements, including those of a non-technical character. If it is possible to do so, the field within which all justiciable disputes will be arbitrated will steadily expand.

10. The second and more important method is by widening the scope of agreements dealing with justiciable disputes generally and pledging the parties in advance to submit such disputes to arbitration. It is in treaties of this kind that the reservations referred to in paragraph 5 above are now generally inserted.

11. In 1903 an arbitration treaty was concluded between France and Great Britain which provided as follows:

"Article 1. Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of July 29th, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honour of the two Contracting States, and do not concern the interests of third Parties".
This treaty was the forerunner of a large number of similar treaties concluded between other Powers. Great Britain is at present a party to eleven treaties containing stipulations on these lines.

12. It may well be that this formula as to vital interests, honour, independence and the interests of third States, first adopted a quarter of a century ago, requires re-examination. Whatever changes may be recommended, however, it is clear that some limitations on the scope of a treaty of this kind are essential. Disputes in their nature may arise between two States with regard to matters falling exclusively within the domestic jurisdiction of one of them. No State can agree to the submission to an international tribunal of matters falling exclusively within the range of its national sovereignty. Similarly, there are some political questions even of a justiciable nature as to which a country feels that for the reasons indicated in paragraph 4 the stage has not yet been reached when it can agree unreservedly in advance to submit them to an arbitration tribunal.

13. Cases sometimes arise in which the parties are willing to arbitrate, but where it is felt that a mere decision on the point of law will not solve the dispute. In two such cases between Great Britain and the United States the parties agreed that the tribunal should have power to frame rules or recommendations for the future regulation of the matter out of which the dispute arose. This was done in the Behring Sea Arbitration Treaty (February 29th, 1892; 84 State Papers, p. 48) and in the North Atlantic Fisheries Arbitration Agreement (January 27th, 1909; 102 State Papers, p. 145). This procedure might be followed with advantage in other cases, as it reduces to a minimum the risk of future disputes.

The Optional Clause in the Statute of the Permanent Court.

14. Article 36 of the Statute of the Permanent Court of International Justice embodied an arrangement by which any State which accepted the Statute establishing the Court might accept as compulsory the jurisdiction of the Court in cases relating to:

"(a) The interpretation of a Treaty.
(b) Any question of International Law.
(c) The existence of any fact which, if established, would constitute a breach of an international obligation.
(d) The nature or extent of the reparation to be made for the breach of an international obligation."

Power was given by the terms of the article to accept this obligation in respect of all or any of these four classes of cases and, therefore, a State was enabled to exclude from its acceptance any particular category of disputes.

15. The cause of the somewhat small measure of acceptance that Article 36 has hitherto met with is to be found in the fact that the considerations which deter States from accepting binding obligations to arbitrate all justiciable disputes operate in varying degrees as regards other foreign States. In contracting an international obligation towards another State a country must take into account the nature of its relations with that State. Obligations which it may be willing to accept towards one State it may not be willing to accept towards another. Reservations and exceptions which it may think necessary as regards one State may not be considered necessary as regards another. The method of signing a general undertaking, even when coupled with the power to make exceptions as to the categories of disputes to be arbitrated, lacks the flexibility which enables the measure of the obligation to be varied in the case of the particular States towards which the obligation is being accepted. More progress is likely to be achieved through bilateral agreements than through general treaties open to signature by any State which so wishes. When a bilateral treaty is to be open to other Powers by way of accession, it should provide that the invitation to accede should emanate from all the parties which have already become bound by the treaty.

Choice of Tribunal.

16. The progress of arbitration and the development of international law will be encouraged by the choice, whenever possible, of the Permanent Court of International Justice at The Hague as the tribunal to which justiciable disputes are referred for decision. The judgments of competent international tribunals are already playing an important part in formulating the rules of international law. If there is a tendency to concentrate the more important disputes in the hands of the court which has been established at The Hague, it will render the resulting rules more uniform and will also enhance the prestige of the Court.

II. Non-justiciable Disputes.

17. Non-justiciable disputes are less suitable for submission to a tribunal invested with the power of giving a binding decision. A procedure of conciliation is in such cases all that is at present possible.
18. Under the provisions of the Covenant of the League, Members of the League are bound to bring all such disputes, if not solved by other means, before the Council of the League, and though the terms of Article 15 of the Covenant do not render the recommendations of the Council obligatory on the parties to the dispute, they go as far as the States with worldwide interests felt able in 1919 to go, in subjecting all Members of the League to the obligation of refraining from making war against a party to the dispute which complied with the recommendations of the Council.

19. In 1925, when this question was once more considered by the Powers which participated in the Locarno Conference — most of them Powers whose interests are world wide — it was found that the provisions of the Covenant on this question went as far as it was possible for them to go. Accordingly, Article 3 of the Treaty of Locarno provided that questions which were not submitted to judicial decisions should be submitted to a conciliation commission, and that, if the recommendations of the commission were not accepted, the question should be handled by the Council of the League under Article 15 of the Covenant.

20. In 1922 the Assembly of the League adopted a resolution urging upon all Members of the League the advantage of conciliation as a method of solving disputes and inviting them to conclude agreements for setting up conciliation commissions. With this resolution His Britannic Majesty's Government in Great Britain are profoundly in sympathy. The essence of conciliation is that it does not attempt to impose a settlement, but that it frames for the consideration of the parties to the dispute recommendations and terms calculated to compose the conflict of view. It thus brings to bear upon the question at issue the efforts of impartial and qualified statesmen free from the bias which is inevitable among those who are nationals of one of the countries which are parties to the dispute. It has also this further advantage — that recommendations made by impartial bodies after profound study of the facts of the dispute are bound to merit the support of public opinion in other countries and will thereby possess the greatest weight with the States between which the dispute has arisen.

21. The fundamental distinction between justiciable and non-justiciable disputes is one that must be borne in mind in framing any model conciliation agreement. Justiciable disputes should be referred to bodies of men who are accustomed to give binding decisions, and who are in consequence accustomed to base their decisions on rules of law which are obligatory for the parties. Non-justiciable disputes cannot be solved by the application of any such rules of law. Such disputes should not, therefore, be submitted to bodies of judges accustomed to apply rules of law. Treaties which provide that where the parties do not accept the recommendations of a conciliation commission the dispute should be referred to the Permanent Court of International Justice at The Hague should be discouraged.

22. Dr. Nansen has submitted a form of agreement open to general signature for reference of non-justiciable disputes to a small body or committee invested with the power of giving a decision binding on the parties. The utility of studying the draft of any such agreement depends on whether there are any States which feel themselves able to accept and sign such a general agreement. If there are, the draft of such an agreement should be worked out. It would serve as a useful model for future agreements as to this mode of dealing with non-justiciable disputes — whether such agreement were bilateral or multilateral in form — nor would the utility of the draft be destroyed by the fact that there might at present be many States which felt unable to sign it.

B. Security Agreements.

Question.

1. Measures for their promotion:

Resolution of the 1926 Assembly.
Recommendations to States Members and offer of the Council's good offices.

Answer.

The resolution of the Seventh Assembly on arbitration, security and the pacific settlement of international disputes runs as follows:

"The Assembly,
"Having examined the reports of the Council on Arbitration, Security and the Pacific Settlement of International Disputes:
"Records the fact that the resolution adopted by the Assembly at its sixth ordinary session, to the effect that the most urgent need of the present time is the re-establishment of mutual confidence between nations, has had definite results. It sees clear proof of this in the ever-increasing number of arbitration conventions and treaties of security conceived in the spirit of the Covenant of the League of Nations and in harmony with the principles of the Geneva Protocol (Arbitration, Security and Disarmament). It emphasises in particular the importance of the Treaties of Locarno, the coming into force of which has been rendered possible by the admission of Germany into the League of Nations and the principal object of which is to ensure peace in one of the most sensitive regions of Europe;
"Sees in the last-mentioned treaties a definite step forward in the establishment of mutual confidence between nations;
"Considers that agreements of this kind need not necessarily be restricted to a limited area, but may be applied to different parts of the world;
"Asserts its conviction that the general ideas embodied in the clauses of the Treaties of Locarno, whereby provision is made for conciliation and arbitration and for security by the mutual guaranteeing of States against any unprovoked aggression, may well be accepted amongst the fundamental rules which should govern the foreign policy of every civilised nation;
"Expresses the hope that these principles will be recognised by all States and will be put into practice as soon as possible by all States in whose interest it is to contract such treaties;
"And requests the Council to recommend the State Members of the League of Nations to put into practice the above-mentioned principles and to offer, if necessary, its good offices for the conclusion of suitable agreements likely to establish confidence and security — the indispensable conditions of the maintenance of international peace — and, as a result, to facilitate the reduction and limitation of the armaments of all States."

The declaration made by the British representative at the sixth meeting of the thirty-third session of the Council — the declaration of the views of His Majesty's Government on the draft Protocol for the Pacific Settlement of International Disputes — contained the following passage:

"What expedient remains? How is security and, above all, the feeling of security, to be attained? In answering this question it is necessary to keep in mind the characteristics of the 'extreme cases', to which reference has already been made. The brooding fears that keep huge armaments in being have little relation to the ordinary misunderstandings inseparable from international (as from social) life — misunderstandings with which the League is so admirably fitted to deal. They spring from deep-lying causes of hostility, which, for historic or other reasons, divide great and powerful States. These fears may be groundless; but if they exist they cannot be effectually laid by even the most perfect method of dealing with particular disputes by the machinery of enquiry and arbitration. For what is feared in such cases is not injustice, but war — war deliberately undertaken for purposes of conquest and revenge. And if so, can there be a better way of allaying fears like these than by adopting some scheme which should prove to all the world that such a war would fail?

"Since the general provisions of the Covenant cannot be stiffened with advantage, and since the 'extreme cases' with which the League may have to deal will probably affect certain nations or groups of nations more nearly than others, His Majesty's Government conclude that the best way of dealing with the situation is with the co-operation of the League, to supplement the Covenant by making special arrangements in order to meet special needs. That these arrangements should be purely defensive in character, that they should be framed in the spirit of the Covenant, working in close harmony with the League and under its guidance, is manifest. And, in the opinion of His Majesty's Government, these objects can best be attained by knitting together the nations most immediately concerned, and whose differences might lead to a renewal of strife, by means of treaties framed with the sole object of maintaining, as between themselves, an unbroken peace. Within its limits no quicker remedy for our present ills can easily be found or any surer safeguard against future calamities."

His Majesty's Government were not slow to put into practice the expedient which they recommended. They were among those which created the example set by the Treaty of Locarno, so strongly welcomed by the Seventh Assembly. It might not be amiss here to recall the outstanding features of this arrangement — the features which distinguish it from, and render it a more effective guarantee of security than, other agreements concluded before or since. They may be briefly summarised as follows:

The Treaty of Locarno is no mere alliance between a group of friendly States with a community of interests. Such alliances, unilateral in character and directed generally against some other State or group of States, have not always in the past best served the cause of peace. Even when originally inspired by defensive motives they have sometimes become instruments of offence.

The Treaty of Locarno is a bond between nations which were recently at war with one another. It is directed solely to prevent a recurrence of that calamity and to preserve the peace within a group of States whose interests have often conflicted and whose territories have frequently been the theatre of war.

The Treaty of Locarno is in complete harmony with the spirit of the Covenant and a valuable aid in facilitating the execution of its provisions. It is a mutual engagement between certain of the signatories in no circumstances again to resort to war among themselves, and a reciprocal guarantee by all of them for the maintenance of that engagement. Under its terms all disputes are referred in the last resort to the Council, by whose decisions the parties undertake to abide. Even in the event of a deliberate act of aggression — the one case in which the signatories are bound to come to the immediate aid of the injured party — the Council is seized of the matter and the parties undertake to act in accordance with its recommendations.
The Treaty of Locarno is designed to avert a specific danger in a specific area, and imposes on all the parties concerned an equal obligation to preserve its integrity and to execute the decisions of the Council. It is in this way far more efficacious than could be any more general system of guarantees under which the obligation would be spread over a much larger number of States each of which would be inclined, quite naturally, to regard its individual obligation as being pro tanto reduced.

As already stated, His Majesty's Government in Great Britain were among those which set the example of Locarno. In the regions where their particular interests are most directly affected and which have so often been the scene of war, they have given their formal guarantee, backed by the undertaking to bring the whole force of Great Britain to the support of the League's judgment in the event of an act of aggression being committed in defiance of the treaty and of the Covenant. For reasons which are already well known, His Majesty's Government are unable themselves to contract further obligations of this character and extend the tremendous responsibilities involved in regions where their interests are less directly concerned.

Notwithstanding the hope expressed in the above-quoted Assembly resolution that the principles embodied in the Treaties of Locarno "will be put into practice as soon as possible by all States in whose interest it is to contract such treaties", no further treaties on the Locarno model have yet been registered with the League of Nations. His Majesty's Government look forward to the gradual growth of this system, convinced as they are that the easiest way of attaining a universal sense of security is for each State to provide itself with the necessary guarantees in that quarter where its main interests, and consequently its principal danger, lie. If the system is gradually extended until it includes every State which feels that its security is not already amply safeguarded, there will eventually be woven a network of guarantees against a rupture of the peace in any part of the world. In the opinion of His Majesty's Government, such local guarantees, directed to a specific danger and based on well-defined obligations, are infinitely more satisfactory than any comprehensive or universal scheme, which must necessarily be drawn in vaguer and more general terms, and of which consequence the modus operandi and the probable efficacy must remain to some extent a matter of speculation.

In accordance with the Assembly resolution quoted above, the Council placed its good offices at the disposal of all States desirous of "concluding suitable agreements likely to establish confidence and security". So far as His Majesty's Government in Great Britain are aware, no State has as yet taken advantage of this offer. It seems to them that, if States which, owing to any doubt or suspicion, hesitate to open negotiations were mutually to agree to place themselves in the hands of the Council and to conduct their conversations under its auspices, the conclusions of further agreements on the lines recommended would be greatly facilitated.

**Question.**

2. Suitable means of co-ordination and generalisation:

"Study of existing security treaties from the point of view of their use by the Council for the application of Articles 10, 11, 16 and 17 of the Covenant."

"Study of agreements with the States Members of the League may conclude among themselves, irrespective of their obligations under the Covenant, with a view to making their commitments proportionate to the degree of solidarity of a geographical or other nature existing between them and other States" (Resolution No. V, No 3, paragraph 6).

"Study of the procedure to be followed by the Council to give effect to the last paragraph of the Assembly resolution, which proposes that the Council should invite 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 decision or recommendations." (Resolution No. V, No. 3, paragraph 7).

**Answer.**

Though the general use of the word "security", in the connection in which it is now employed, is of recent adoption, the idea is no new one. During the century preceding the late war the underlying motive of many treaties was the desire for a sense of security — the desire, that is, of a State to minimise the risk of finding itself in armed conflict with others over a particular question and to assure itself that in the event of such a conflict it would not be left to bear the brunt unaided.

Such treaties can only be described as "security" agreements, in the present-day sense of the word, if they are directed solely to the preservation of peace and involve no prejudice to the rights or interests of third parties — if, in short, they are imbued with the spirit of the Covenant.

Since the establishment of the League of Nations, a number of such agreements have been concluded. The following are among those to which Great Britain is a party:

*The Convention relating to the non-fortification and neutralisation of the Aland Islands of October 20th, 1921.* — The object of this agreement is "that these islands may never become a cause of danger from the military point of view", and the "High Contracting Parties undertake..."
to assist in the measures which the Council of the League of Nations may decide upon for
this purpose” (the rendering effective of the guarantee of neutrality) if a case should arise in which
its intervention is sought.

The Convention relating to the regime of the Straits of July 24th, 1923. — With the object
of securing “ 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 ”, the high
contracting parties undertake, in the event of certain contingencies arising, to meet such
situation “ by all the means that the Council of the League of Nations may decide for this
purpose”.

The Treaty between the British Empire, France, Japan and the United States of America
relating to their insular possessions and insular dominions in the Pacific Ocean, of December 13th,
1921, by which the high contracting parties undertake to respect each other’s rights in a speci-
fixed area, to meet in joint conference for the consideration and adjustment of any controversy
involving those rights, and to communicate with each other as to the measures to be taken
in the event of the said rights being threatened by the aggressive action of any other Power.

The Treaty of Locarno, of which the salient features have been recalled in an earlier passage
of this memorandum.

Provision for meeting a specific danger in a particular area is a common factor of these
treaties, which may accordingly be classed as “ security ” agreements. To a greater or less
extent, varying with the terms in which they are drawn, they are calculated to be of use to the
Council in the application of Articles 10, 11, 16 and 17 of the Covenant. They are a con-
firmation and, in some cases, a reinforcement of the general undertaking to respect and preserve
the territorial integrity and existing political independence of all members of the League
(Article 10); in virtue of their explicit recognition that certain individual Members of the League
are particularly concerned in particular areas, they are a confirmation and a reinforcement
of the general recognition that any war or threat of war is a matter of concern to the whole
League (Article 11); for the same reason they are an additional guarantee that the sanctions
prescribed in the Covenant (Articles 16 and 17) will be readily forthcoming when the need
arises. This is especially so in those cases where the contracting parties formally undertake
to apply those measures which the Council may decide upon.

The considerations referred to in the preceding paragraph apply also, in the view of His
Majesty’s Government, to agreements which States Members of the League may conclude
among themselves, irrespective of their obligations under the Covenant, with a view to making
their commitments proportionate to the degree of solidarity of a geographical or other nature
existing between them and other States. Such agreements may undoubtedly be a contribution
to security in proportion as they relieve the anxiety of the States which conclude them, whilst
constituting no menace or cause of suspicion to others. They will also be of use to the Council
in the degree in which they may facilitate its task in calling upon States to come to the support
of the judgment of the League.

As regards the procedure to be followed by the Council in inviting 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, ” 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. 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.

Question.

“ Second group of questions. — 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 (Resolution No. V,
No. 3, paragraph 5).

“ Though there is no desire to limit the future sphere of action of the Committee in
this matter, the programme may forthwith be extended to the following articles:

“ 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 and at present being examined.

"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, 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)."

**Answer.**

Under Article 10 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."

It is well known that this article from the outset presented some difficulty to certain Members of the League who feared that, if interpreted in a literal sense, it would involve them in the obligation to place their forces automatically at the disposal of the Council for use in any part of the world where an act of aggression in violation of the Covenant had occurred.

It is unnecessary to describe the progress of the study made by the appropriate organs of the League as a result of proposals, first for the elimination, and subsequently for the amendment, of the article. It is sufficient to recall the following interpretative resolution which eventually was submitted to the Fourth Assembly, and which, though not formally adopted owing to one adverse vote, is nevertheless regarded by many Members of the League as the generally accepted interpretation:

"It is in conformity with the spirit of Article 10 that, in the event of the Council considering it to be its duty to recommend the application of military measures in consequence of an aggression, or danger or threat of aggression, the Council shall be bound to take account, more particularly, of the geographical situation and of the special conditions of each State.

"It is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces.

"The recommendation made by the Council shall be regarded as being of the highest importance, and shall be taken into consideration by all the Members of the League with the desire to execute their engagements in good faith."

This interpretation is in harmony with the view of His Majesty's Government in Great Britain, who regard the article, while of great sanctity, as the enunciation of a general principle, the details for the execution of which are contained in other articles of the Covenant.

With the view of facilitating the fulfilment by Members of the League of the obligation involved in the acceptance of this principle, various attempts have been made to define an aggressor. It is unnecessary here to do more than recall the fact that His Majesty's Government have been unable to support them for reasons which they explained fully at the time:

**Article 11.** — "Any threat or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

"It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

This article has also been the subject of considerable study. Recently a report by the Committee of the Council was approved by the Eighth Assembly, which recommended its adoption by the Council:

"as a valuable guide which, without restricting the Council's liberty to decide at any moment the best methods to be adopted in the event of any threat to peace, summarises the results of experience, of the procedure already followed, and of the studies so far carried out with a view to the best possible organisation of its activities in case of emergency."

His Majesty's Government in Great Britain are in full agreement with the terms of the Committee's report, which they regard as a most useful indication to the various steps which
may be taken by the Council, and as calculated to expedite its rapidity of action in an emergency.

Article 16. — "1. Should any Member of the League resort to war in disregard of its Covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

"2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

"3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

"4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon."

Without entering into the history of the study of this article, His Majesty’s Government in Great Britain desire to recall, in the first place, the various protocols of amendment open for signature and ratification, all of which have been ratified on behalf of the British Empire but are not yet in force, and, secondly, the resolutions adopted by the Second (1921) Assembly, of which, as constituting provisional rules for the guidance of the Council, His Majesty’s Government expressed their general approval subject only to certain observations (see letter to the Secretary-General of July 19th, 1922). Their attitude in this matter remains the same to-day. A further opinion regarding the interpretation placed by His Majesty’s Government on Article 16 is contained in the collective note addressed to the German representatives by the representatives of Belgium, France, the British Empire and Italy at the time of the signature of the Treaty of Locarno.

General Remarks applicable to any further Study of the above-mentioned Articles of the Covenant.

His Majesty’s Government in Great Britain have felt constrained on more than one occasion to express themselves as opposed to the application of hard-and-fast rules to the interpretation of articles of the Covenant. Their attitude in that respect is due to no desire to belittle or to diminish the obligations of the Covenant; on the contrary, it is due solely to their conviction that the great strength of the Covenant lies in the measure of discretion which it allows to the Council and the Assembly in dealing with future contingencies which may have no parallel in history, and which therefore cannot, all of them, be foreseen in advance. The elaboration and multiplication of rules must tend, not only to turn the Council into an automaton but to weaken its power of initiative in any contingency not wholly provided for in such rules.

A similar consideration applies also, in the view of His Majesty’s Government, to any endeavours to define an aggressor. The views of His Majesty’s Government on that point were once again clearly stated in the following passage in a speech made by Sir Austen Chamberlain in the House of Commons on November 24th last:

"They made such an attempt in the Protocol; they made an attempt to define the aggressor. If you lay down, far in advance, before circumstances that you cannot foresee, rigid definitions by which the aggressor is to be determined, are you quite sure that in thus making these strict rules in circumstances which are unknown to you, you may not find, when the occasion arises, that by some unhappy turn in your definition you have declared to be the aggressor that party which, to the knowledge of all men at the time, is the aggressed and not the offender ?

"There was an observation made by that eminent jurist and statesman and very true friend of the League and part author of the Covenant, Signor Scialoja, at the last Assembly, which is worth thinking about. He went, indeed, further than I would go, for he seemed to suggest, in one passage, that the aggressor could not be discovered. 'But', he added, 'for after all, is not one thing certain, that if only he has a little diplomatic skill, the aggressor ('se fera agresser'), he makes himself to be aggressed.' I do not believe it will be impossible. I hope it will not be very difficult for the League at a given moment to say who is the aggressor in a particular quarrel and particular circumstances then known; but I think that if you lay down tests by which you must be bound, you will find that the aggressor will carefully conform to your particular test, and will escape
the liability which ought to follow upon his actions just because of the precision of your
definition. I therefore remain opposed to this attempt to define the aggressor, because
I believe that it will be a trap for the innocent and a sign-post for the guilty."

His Majesty's Government in Great Britain have already indicated their attitude towards
the scheme of financial assistance for States victims of aggression. The British delegate
informed the Council on September 8th last that his Government welcomed the scheme
outlined by the Financial Committee "as providing a practical means of mobilising the financial
resources of States Members of the League against a State guilty of aggression, and as affording
an impressive demonstration of the solidarity of League opinion against such a State". Such
a scheme might, moreover, be expected to act as a powerful deterrent to any act of wanton
aggression.

The British delegate proceeded to indicate that his Government must attach two conditions
to their acceptance of the scheme, viz., it must form part of a satisfactory measure of general
disarmament, and there must be an acceptance by the other principal States of a satisfactory
allocation of the guarantee.

A similar statement was made by the British delegate in the Third Committee of the
Assembly.

His Majesty's Government in Great Britain maintain their attitude as thus defined, and
will be guided by these considerations in the further and more detailed examination of the scheme
which will have to be undertaken with the assistance of the Financial Committee.

As regards the "study of the criteria by which aggression may be presumed and the pro-
cEDURE of the Council in this matter ", this problem is examined elsewhere in the course of this
memorandum. If any definite criterion can be established whereby aggression may be
presumed, it will evidently apply to all cases in which Members of the League can be called
upon to take action of any kind, financial, economic or other, in support of the Covenant of
the League.

In regard to the "right of participation by States ", His Majesty's Government in Great
Britain endorse the principle laid down by the Financial Committee that no State should benefit
by the scheme unless it has become a party to the Convention within a period to be fixed, and
thus undertaken its obligations.

The question of the participation of States non-Members must be examined in the light
of various considerations. It may perhaps be assumed that Members of the League are less
likely to be involved in hostilities, either as aggressors or as victims of aggression, than non-
Members, and that to admit the latter to participation in the scheme might be to expose the
other participants to a greater risk of being called upon to give their specific guarantee. This
might therefore be an argument against the admission of some of the less important non-Member
States whose degree of stability and whose conduct of foreign policy may not be such as to
inspire confidence. On the other hand, a general rule excluding participation by States non-
Members would deprive the League of the co-operation of certain States whose financial strength
and general stability would greatly enhance the efficacy of the scheme.

5. OBSERVATIONS OF THE GERMAN GOVERNMENT ON THE PROGRAMME OF
THE WORK OF THE COMMITTEE ON ARBITRATION AND SECURITY.

At the moment when the Rapporteurs of the Committee on Arbitration and Security
are beginning their discussions, the German Government desires to submit a few general
observations on the programme of work. Its sole object in doing so is to give its views on the
form which the preliminary work undertaken by the Rapporteurs could best assume, without
in any way desiring at the present time to put forward definite proposals for the solution of
the individual problems involved.

In principle, the German Government holds the view, which was frequently expressed
in the first discussions of the Committee on Arbitration and Security, that the whole of this
work should not aim at building up a theoretical system, but at framing those practical measures
which are both necessary and attainable under present political conditions. A system constructed
on purely theoretical considerations, logically perfect though it might be, would not only fail
to solve the problem of security but might under certain circumstances even complicate it
to a dangerous extent. In examining the individual measures suggested, the decisive criterion
must be whether they can be carried out in practice. These measures should, however, not
only be so framed that they can easily be executed, but their effectiveness should also be
obvious so that they can exercise an immediate moral influence on public opinion.

The crux of the security problem is the avoidance of armed conflicts. It will only be
possible to prevent war if a method can be found of dealing with all disputes that have led
to wars in the past, which will provide a fair prospect of a peaceful solution. In the opinion of
the German Government, this idea must constitute the starting point of the entire work
of the Committee on Arbitration and Security and the main subject of its discussions. Until
this central problem is solved, all other measures merely represent an artificial system without
a foundation, and one which is therefore not calculated to give practical effect to the idea of a genuine and durable international legal regime.

As regards a number of disputes between States, namely, justiciable disputes, the problem can be regarded, in principle at least, as adequately solved. The optional clause in the Statute of the Permanent Court of International Justice provides a satisfactory means of settling all disputes of this nature peacefully. It will be the task of the Committee on Arbitration and Security to ascertain in which manner a larger number of States can be induced to accept this method immediately.

On the other hand, no corresponding general procedure in regard to disputes which are not of a justiciable character but are exclusively political has so far been arrived at. From the point of view of the problem of security, however, the amicable settlement of such disputes is of the utmost importance. This, accordingly, is the point at which the preliminary work should begin and which should be most thoroughly discussed.

The German Government is convinced that there are practical possibilities here of which full advantage has not yet been taken. The aim of the Committee must be to endeavour to find for all conceivable disputes without exception a procedure which is calculated to lead to equitable and peaceful solutions. Under present conditions, there is as yet no possibility of all disputes of an exclusively political character being submitted for compulsory and final decision to an arbitration authority. Steps can, however, be taken towards the realisation of this idea by introducing other forms of procedure, which, while respecting the legitimate requirements of national life and its development, would practically ensure the settlement of the disputes. Much could be done by developing the conciliation procedure, either before the International Court of the League of Nations or before special organs invested with adequate authority. This is the direction indicated by the development of arbitration procedure since the foundation of the League, and certain fundamental principles have already been evolved which can be advantageously carried further.

A careful investigation of the possibilities offered by Article 11 of the Covenant cannot fail to lead to a series of practical proposals. These can be supplemented by special voluntary undertakings going beyond the scope of the Covenant, undertakings which, even if not acceptable to all the Members of the League, can no doubt form the subject of an agreement between a large number of them. In this connection, the provisions, agreed upon at Locarno, of Articles 4 and 5 of the Rhine Pact and those of Article 19 of the Arbitration Treaty, regarding certain recommendations and proposals to be made by the Council of the League, should, of course, be borne in mind that the effectiveness of all measures of security of this and other kinds will be enormously strengthened when the general disarmament which constitutes one of the most important factors of security at last comes to be carried out.

The duty of preventing a conflict between the States concerned from finally leading to recourse to arms is above all one for the Council, and it will be for the Committee to propose measures which will allow that body to intervene promptly and effectively to prevent threatened hostilities.

The more the system of measures to prevent war is developed, the smaller becomes the need for measures to be applied in the case of an actual breach of the peace. Common action on the part of all the Members of the League in the event of a breach of the peace is, at the present moment, not possible, since general disarmament is not yet a reality. It is proposed to seek a substitute for this in regional agreements, taking into account the requirements as regards security of a particular area. It is one of the Committee's tasks to examine this proposal. It must be realised, however, that the League is not in a position to exert pressure on individual members or groups of members with a view to the conclusion of such agreements. In any case, only such solutions should, of course, be sought as settle the relations between individual States in a view of the particular group without thereby bringing those States into opposition with States which do not belong to that group. An increase in the security of particular States at the expense of the security of other States constitutes no progress in the direction of peace.
A system of treaties was set up at Locarno which confined itself to the political relations of the States taking part, without the interests of other States being affected. On the other hand, the constitution of alliances between groups of States within the League which aimed at the protection of the States parties to them against other Members of the League might easily lead to a split in the League, and particularly in times of crisis, might render any joint action impossible.

In conclusion, the German Government desires to repeat that, in its opinion, it is important, in dealing with the problem of security, to concentrate on the crux of the question: the pacific settlement of all kinds of international disputes. If, instead of doing this, an attempt were made to take the outbreak of war and the provision of military sanctions as the point of departure, it would be like trying to build a house from the roof downwards. War cannot be prevented by preparing for a war against war, but only by removing its causes. In the German Government's opinion, however, this is only possible if a settlement is reached which will guarantee permanent peace and provide for the removal of all international conditions endangering the peace of the world.
OBSERVATIONS BY THE ROUMANIAN DELEGATION ON THE INTRODUCTION BY THE CHAIRMAN OF THE COMMITTEE ON ARBITRATION AND SECURITY AND ON THE MEMORANDUM ON ARBITRATION AND CONCILIATION SUBMITTED BY M. HOLSTI, RAPPORTEUR.

I. INTRODUCTION.

The Roumanian delegation is glad to state that it approves the sound and judicious observations made in this note. It accepts the principle (paragraph 5) that the Covenant creates a measure of security “which needs to be appreciated at its full value”. In appreciating this value, however, it feels bound to approve the observations made in paragraph 53 of M. Politis’s memorandum. When the organisation of security comes to be discussed, the Roumanian delegation will favour guarantees which are more definite in principle and less hazardous in their application than those offered by the Covenant.

II. MEMORANDUM ON ARBITRATION AND CONCILIATION.

In accordance with the letter and spirit of the Covenant, the Roumanian Government is an ardent advocate of the peaceful settlement of international disputes by arbitration and conciliation. Its delegation on the Committee wholly approves the spirit and the general trend of M. Holsti’s memorandum. Nevertheless, as the Rapporteur, with praiseworthy impartiality, is submitting for decision by the Committee several alternatives for each question to be solved, the Roumanian delegation feels obliged to define its position and state to which of the possible solutions of the problem it gives its preference.

It regards as of capital importance the distinction between legal and non-legal disputes which is implicit in the Covenant and is explicitly made in the Treaties of Locarno. On this basis, it suggests the settlement of legal disputes by arbitration, with the option of preliminary conciliation procedure, and the settlement of non-legal disputes by conciliation, followed, if unsuccessful, by the reference of the dispute to the Council of the League of Nations.

As regards the form of treaties of arbitration, the Rapporteur offers a choice between a general treaty and private treaties. The Committee will have to give its opinion on the preparation and recommendation to the attention of Governments of model treaties of both kinds. For reasons adequately set forth in the memorandum and in the observations of certain Governments, a general arbitration treaty providing the same procedure for all kinds of disputes, whether legal or not, would be unlikely to secure acceptance by many States. Similarly, an arbitration treaty confined to legal disputes would also fail to secure wide acceptance, even if open to all States, because treaties of this kind are usually based mainly on a feeling of mutual confidence between the States concerned.

In these circumstances, therefore, the Roumanian delegation is in favour of private arbitration treaties. At the same time, it does not wish to exclude a priori and finally a system based on a general treaty if the Committee thinks that the drafting of such a model treaty might serve a useful purpose and might secure wide acceptance.

In the Roumanian delegation’s opinion, the model private treaty should be restricted to legal disputes and, in order to be more readily acceptable, should allow a certain latitude both as regards the choice of a tribunal, which might be either the Permanent Court of International Justice or one of the arbitral tribunals provided for by the Hague Convention of 1907, and also as regards the system of reservations to be allowed. These could easily be reduced to the four categories mentioned by the Rapporteur: vital interests, territorial status, questions arising out of internal legislation and previous facts.

As regards non-legal disputes—to which the same system of reservations will, of course, apply—the Roumanian delegation favours the procedure of conciliation, as under the Locarno system, which it desires to advocate in this matter. As, according to the practice followed in recent years, these two procedures have constantly been dealt with together, the parties themselves may be left, if they so desire, to make the conciliation procedure—as provided in the Locarno Treaties—the starting-point for all procedure for pacific settlement of disputes.

As regards the constitution of the Permanent Conciliation Commissions, the Roumanian delegation accepts the rules laid down either in the Treaties of Locarno or in the Swedish draft, these being practically the same.

If the conciliation procedure does not result in agreement between the parties, the dispute will be brought before the Council of the League, which will proceed in accordance with Article 15 of the Covenant. Here, however, arises the question as to what will happen if the Council
is not unanimously in agreement on its report or its recommendations. On this point, the
Treaties of Locarno make no provision whatever. In order that the dispute may not be left
unsolved, the model treaties to be drawn up might submit, at the choice of the contracting
parties, suggestions similar to those proposed in paragraph 75 of M. Politis’s memorandum:
the parties might agree either that the Council should give its decision, unanimously or by a
majority, in the capacity of an arbitrator, or that the Council itself should refer the dispute
to a committee of arbiters.

There remains the question of a general treaty of conciliation covering all possible questions
and open to accession by all States. The objections to the general arbitration treaty also
apply to a treaty of this kind. Nevertheless, conciliation may not be without its uses as a
preliminary method to pacific procedure of any kind. The Roumanian delegation would
not be opposed to the drafting of such a model treaty, to be submitted to the various States,
if the majority of the Committee considers such a step desirable and necessary. This system
would raise the somewhat vexed question of a possible dispute as to competence between the
conciliation commission and the Council acting in virtue of Article 15. In order to prevent
this difficulty, the Roumanian delegation would prefer the system of conciliation and arbitration
by means of private treaties on the model of the Locarno Treaties.

In submitting these observations, the Roumanian delegation desires to affirm its conviction
that any pacific settlement of disputes by conciliation and arbitration will lead the way to
general security, but that arbitration, however universal, is not enough to supersede it alto-
gether. Any treaty of arbitration and conciliation would have to form part of a general system
of security which will form an indissoluble link between arbitration and guarantees and will
guarantee and sanction the execution of arbitration.

ANNEX 3.

OBSERVATIONS OF THE POLISH DELEGATION

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

1. The Polish delegation feels justified in accepting as a whole the principles set forth
   in the Introduction, and proposes no amendments. In order, however, to make its views
   on these principles clear, it desires to offer certain observations which it thinks might be taken
   into consideration when the Committee’s final report comes to be drawn up.

2. The Polish Government realises that the Covenant of the League in itself affords the
   States Members a certain degree of security, inasmuch as the signatories of the Covenant
   have formally undertaken to co-operate in the preservation of peace, more particularly by the
   following Clause in Article II:

   “Any war or threat of war, whether immediately affecting any of the Members of
   the League or not, is hereby declared a matter of concern to the whole League, and the
   League shall take any action that may be deemed wise and effectual to safeguard the
   peace of nations.”

   Since, however, in the present state of international relations, such action cannot be
   specified or laid down in advance for all possible contingencies, the Polish Government shares
   the view, put forward in paragraph 12 of the note, that, in order to increase the degree of
   security and render it measurable, the obligations contained in the Covenant must be supplemented
   by additional regional undertakings.

3. The Polish Government is quite able to agree that, “although paragraph 7 of Article I5
   contains a gap from a legal point of view, nevertheless, from the 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 Polish Government considers, however,
   that this observation holds good only provided that the powers with which the Council is
   invested for the maintenance of peace are adequate, and that the action of the Council to
   prevent conflict and to mediate is backed, if necessary, by sanctions.

4. While accepting the idea that the undertakings given by the various States in virtue
   of Article I6 can be amplified if the Members of the League are honestly desirous of co-operating
   for the establishment of international peace, the Polish Government reserves the right to state
   more fully, when the Memorandum on Security comes to be discussed, its views regarding the
   part to be played by the League in the organisation of regional security by supplementary
   treaties of guarantee and assistance between groups of countries.

5. The Polish Government desires to emphasise specially the importance it attaches
   to the ideas developed in paragraphs 11 and 12 of the Introduction.
II. Memorandum on Arbitration and Conciliation.

VI. Types of General Treaties of Arbitration. — 1. The hypothesis of a treaty applying only to conflicts of a juridical nature would make it impossible for the parties to extend its scope, if they so wished, to the solution of all disputes, juridical or non-juridical, by means of arbitration. This hypothesis has therefore as limited a scope as the acceptance of the compulsory jurisdiction of the Permanent Court of International Justice, as provided in Article 36 of the Statutes of the Court. The French delegation would prefer, for disputes of a juridical nature as well as for disputes of a non-juridical nature, that a little latitude should be left as regards the choice of jurisdiction. Certain examples which are followed by M. Holsti in his description of type I are of such a nature as to allow of the broadening of the type-treaty in this direction. This broader solution would therefore be preferred by the French delegation.

II. The solution under which States are bound by arbitration only in disputes of a juridical nature may secure the approval of certain States which are not in favour of arbitration for all disputes. But in this case it is absolutely necessary that conciliation procedure in non-juridical disputes should not be dissociated therefrom, because, for a security agreement, conciliation procedure is the indispensable corollary of arbitration when arbitration is not absolutely obligatory.

III. A system for the pacific settlement of international disputes which only includes conciliation procedure without arbitration, even for conflicts of a juridical nature, seems to the French delegation to be inadequate.

IV. General Arbitration Treaties. — The French delegation is in favour of the proposal for a treaty which would cover every kind of dispute and would apply to all possible relations of the contracting States inter se. It feels that arbitration treaties on the lines of the Franco-German Treaty concluded at Locarno and as suggested by the Swedish and Norwegian Governments might be applied generally, as far, at any rate, as the principles concerned.

In practice, the difficulty would be the composition, in a general treaty, of different committees of conciliation to suit the different States. The members of committees of this kind must, of course, possess the personal confidence of each party, and experience proves that States are not by any means always inclined to select the same person. This is particularly the case when arbitration, applied to non-juridical disputes, necessitates the intervention of a mediator with special powers. A general arbitration treaty could only be established in the form of an agreement as to the framework; States would have to be left the power to decide, by means of bilateral agreements, the composition of the committee of conciliation.

V. Distinction between Disputes of a Juridical and Non-juridical Nature. — Such a distinction is a practical necessity because, in disputes of a juridical nature, the arbitrator gives judgment in the light of the law and relevant texts. In conflicts of a non-juridical nature, however, the arbitrator must have special powers to give a judgment in equity, as friendly mediator. It is important that this distinction should be so clearly defined as to be beyond all dispute. It would also be preferable to refrain from stating what disputes are of a non-juridical nature, since the very title means that they are all disputes which cannot be defined as juridical. If a definition were given in each case, there would be danger of positive or negative conflicts between the two definitions.

ANNEX 4.


Observations of the French Delegation with regard to the Memorandum on Arbitration and Conciliation.

1. The French delegation is in favour of the idea of treaties subjecting all disputes to arbitration (type No. 1 of the table annexed to M. Holsti's memorandum), (see Annex 1).

From the form in which the Rapporteur has arranged his table, the French delegation concludes that disputes of a juridical nature would, under type I, be solely within the jurisdiction of the Permanent Court of International Justice. The French delegation would prefer, for disputes of a juridical nature as well as for disputes of a non-juridical nature, that a little latitude should be left as regards the choice of jurisdiction. Certain examples which are followed by M. Holsti in his description of type I are of such a nature as to allow of the broadening of the type-treaty in this direction. This broader solution would therefore be preferred by the French delegation.
2. A wider treaty including provisions regarding the rules to be applied by the arbitrators when they are called upon to decide disputes of a non-juridical nature would be more in keeping with the thesis of compulsory arbitration in every case. On the other hand, it would, from a practical point of view, raise the same difficulties as the general treaty of arbitration (see paragraphs IV and V). It is almost impossible to conceive of a friendly mediator appointed for all cases and having the same powers in every case. A treaty of this kind could only be established as an agreement with regard to the framework; it will be left to the various States to define, by means of special agreements, the powers of the friendly mediator who would have to decide between them.

VII. Reservations which might have to be made in signing a General Treaty of Arbitration. —

1. Reservations making it possible for contracting States only to enter into obligations with regard to certain States would tend to deprive the general treaty of its universality and to cause States to revert to individual agreements open to the accession of third parties. It will be rather strange to adhere to the idea of a general treaty if certain States were to be excluded therefrom.

2. Reservations making it possible only to enter into obligations as regards certain disputes. —

The British memorandum points out that this possibility is allowed under Article 36 of the Statutes of the Permanent Court of International Justice and that, if a similar clause is not included in the general treaty of arbitration, the treaty itself would be less elastic than the clause. The French delegation is also of opinion that the system of arbitration should be elastic, but it has a different inception of the nature of such elasticity. It admits arbitration for all disputes without exception; on the other hand, it would prefer that States should be left free, to a certain extent, to choose their own court of arbitration.

VIII. General Treaty of Conciliation. — It is difficult to see how a general treaty of conciliation could be concluded. For all Members of the League the conciliator is, under the Covenant, the Council. Any other mediating body designated by a general treaty would find its work overlapping that of the Council unless it possessed the special confidence of the States submitting to its jurisdiction. But it would seem that a mediating body enjoying such special confidence could only be designated by means of bilateral agreements.

ANNEX 5.

C.A.S. 16.

PROPOSALS OF THE SERB-CROAT-SLOVENE DELEGATION.

INTRODUCTION.

The object of the Covenant is to create security, but the exact meaning of security has to be defined. The provisions of the Covenant may then in certain cases prevent war. There have, indeed, been instances in the last few years in which the Council has been able to forestall a conflict. In theory, therefore, the members of the Council possess, under the Covenant, a fairly wide possibility of maintaining international peace. In the domain of practical politics, the system laid down in the Covenant has not yet gained, in its actual working, the importance fairly wide possibility of maintaining international peace. In the domain of practical politics, the system laid down in the Covenant has not yet gained, in its actual working, the importance of security guaranteed by the Covenant, with all its logical consequences as regards the application of the Covenant the effects which the Covenant was intended to produce. The system of security, as contained in the Covenant, must be applied and studied for some time yet before any final conclusions can be drawn. Its value will have to be proved in cases of serious crises in which the interests of great Powers are involved, in order that the peoples of the world may feel an absolute confidence in the unfailing action of the Covenant. Time is necessary for this.

The Serb-Croat-Slovene delegation feels that an effort should be made to strengthen the authority of the Council of the League, so that it may be a final arbiter of peace or war should we be able to speak of security guaranteed by the Covenant, with all its logical consequences as regards the limitation and reduction of armament. This is not the case at the present time in most European countries.

II. ARBITRATION.

The pacific settlement of international disputes by arbitration, by judicial settlement or by conciliation procedure is at present an ideal still unattained throughout the greater part of Europe. In theory, the essential principles have been established for the application of all these peaceful measures, but in the practical policy of Governments arbitration and its corollaries occupy only a secondary position. The situation is distinctly better than it was before the war, but it is not yet possible to say that all these peaceful processes form an effective part of the national policy of the various European countries. In this case, too, time is necessary to allow these new methods for the pacific settlement of international questions gradually to replace the older methods of foreign policy. No pressure can be brought to bear, because a change in the mentality and general outlook of public opinion itself must first take place before the usual methods of intimidation and force can be excluded from practical foreign policy.
For the problem of security, the evolution of arbitration and other pacific methods is a matter of capital importance. This evolution is still in progress; it must be stimulated and encouraged by every means, that is to say, by the development of the idea of arbitration and its effective application in the foreign policy of every country. Not until compulsory general and guaranteed arbitration dominates in the practical national policy of the countries Members of the League shall we be able to speak seriously of the security of nations guaranteed by arbitration. At present, this is not the case.

ANNEX 6.

C.A.S. 17.

OBSERVATIONS OF THE BRITISH DELEGATION ON THE MEMORANDUM ON SECURITY QUESTIONS.

In paragraphs 58 to 63 inclusive, the Rapporteur enumerates and classifies the existing arbitration and security agreements, to the number of eighty-five. In his classification he seems to recognise only a varying degree of efficacity, without indicating that the various forms of these agreements are by their very nature diverse, some of them being evidently inspired by the Covenant, others, though not incompatible with the letter of the Covenant, being capable of being employed eventually in a manner inconsistent with its spirit. The point will be dealt with later in connection with paragraph 82.

In paragraph 75, the Rapporteur examines the possibility of finding some means of “filling the gap” in Article 15 of the Covenant and of providing a way of obtaining a final and binding decision in all cases. He refers first to the suggestion that the parties might agree between them to hold the Council’s decision as final and binding even if the decision were only reached by a simple or specified majority. He points out, however, that the defect of this arrangement would be that such an agreement would bind only the parties to the dispute; it would have no legal effect on the other Members of the League, which could not therefore be called upon to apply the sanctions of Article 16 against a party which might seek to evade the obligation to accept a majority decision.

He accordingly suggests two other alternatives.

1. That the Council, if unable to make a unanimous report under Article 15 of the Covenant, should assume the rôle of arbitrator and, acting, if need be, by a majority, give an award which would be of the same value and force as an award given under Article 13. The Council would thus be acting as the “tribunal agreed on by the parties to the dispute” referred to in that article. (The Mosul decision is invoked as providing some precedent for this procedure, but it must be noted that in that case the Permanent Court of International Justice laid down that “the decision to be taken must be taken by a unanimous vote”, though for this purpose the votes of the parties were not to be counted.) Now, according to Article 13, “the Members of the League agree that they will carry out in full good faith any award or decision that may be rendered”, and, further, “that they will not resort to war against a Member of the League which complies therewith”. Article 16 of the Covenant comes automatically into operation whenever a Member “resorts to war in disregard of its covenants”. Consequently, if a party to the dispute under this proposed arrangement refuses to accept a majority decision of the Council and resorts to war, all the other Members of the League could be called upon to apply Article 16, even including those which may have voted in the minority.

2. The second alternative is borrowed from the provisions of the Geneva Protocol. The Council, having failed to achieve unanimity, would refer the dispute to a body of arbitrators, whose decision would be binding and enforceable by the sanctions of Article 16.

The effect of both of these alternatives is the same: Members of the League might be called upon to apply sanctions in the enforcement of a decision in which they do not concur and against which they may even have recorded a definite vote. This would cut at the root of the principle of unanimity and the sovereign rights of individual States. The Covenant purposely avoids this difficulty: under Article 15, paragraph 7, if the Council fails to reach unanimity, “the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice”. As was pointed out at the time of the discussion of the Protocol, His Majesty’s Government consider this inadmissible. The present proposals for filling the gap in the Covenant, even if practical, are to be deprecated as compromising one of the great principles which underlie the whole Covenant and which facilitate its application.

At the end of paragraph 79, the Rapporteur, in examining the question of the determination of unprovoked aggression, refers to the proposal, contained in the Geneva Protocol, that the Council, in the event of the outbreak of hostilities, should prescribe an armistice, and that the party violating the terms of the armistice should be held to be the aggressor. He further raises the question whether, for this procedure, the Council should be empowered to take decisions...
by a majority vote. His Majesty's Government see serious objection to these proposals. In the first place, there must always be great difficulty in imposing an armistice on belligerents once hostilities have broken out. The moment an attempt is made to bring about a cessation of actual hostilities, all kinds of subsidiary questions must inevitably be settled provisionally at the same time, such as the procedure in regard to reinforcements or supplies on their way by sea, land or air; movement of forces in general, as also of supplies, both for the armies and the civil population; aerial reconnaissance and many other matters, which will vary in each case. In the second place, it is proposed that the Council should fix the terms of the armistice by a majority vote. Those who vote with the minority might think these terms unworkable. Yet, if one party refuses to comply with them, it becomes automatically an aggressor, and those Members of the Council which object to the terms of the armistice are nevertheless called upon to apply sanctions against that party.

Paragraph 82, which deals with the possibility of providing for common action by the parties to a regional pact against aggression by a non-participating State, requires very careful consideration in that the acceptance of the proposals there made might give rise to a misconception of the true nature of regional pacts, as understood by His Majesty's Government at least. It is only necessary to refer to the British memorandum (Annex I, B, Question I page 170) to show that they regard regional pacts of security as "treaties framed with the sole object of maintaining, as between the nations concerned, an unbroken peace". If such pacts are used for the purpose of securing the parties, by a unilateral guarantee, against possible aggression from without, they become to that extent invested with the character of defensive alliances. It is true that a defensive alliance as such, and for so long as it is employed solely for defensive purposes, ought not to be regarded as contrary to the spirit of the Covenant. But one defensive alliance is apt to call into existence a rival group, and this process might result ultimately in the division of Europe into hostile camps. Owing to the possibility of this development, defensive alliances against an external danger cannot be unreservedly admitted to be designed in accordance with the spirit of the Covenant. Security pacts on the model of the Locarno Treaty, on the other hand, are entirely in accordance with the spirit of the Covenant and really reproduce its provisions. For, under that Treaty, the parties are only bound to act together against the one of their number which resorts to war. If any outside party were subsequently to be brought within the scope of such a treaty, he should rightly be entitled to expect, if attacked by one of the parties, to receive assistance from the rest, as well as being threatened with their combined opposition in the event of his attacking one of them.

Conditions (a) and (b) in paragraph 84 are dependent on the establishment and entry into force of a general plan for the reduction of armaments. This is a matter which must await final decision until that plan is in the last stages of elaboration. These conditions are in the nature of a "sanction" to be attached to the plan of disarmament, and their suitability can best be discussed in connection with disarmament.

As regards the accession of third States to security pacts (paragraph 85), it would seem to follow from what has been said above that this could only be effected with the consent of the existing parties and on condition that the acceding State assumes all the obligations as well as benefiting by the advantages involved. Even so, His Majesty's Government see difficulty in providing for accession by third States in that it would be invidious for the existing parties to have to refuse a request for accession by a party whose inclusion in the pact might seem, for one reason or another, undesirable.

One of the sub-paragraphs of paragraph 88 suggests that, "before registration", regional pacts would be examined by the Council from the point of view of their conformity with the Covenant. The Council could, if necessary, suggest changes in the text of pacts submitted to it. If this means that the Council would be entitled to refuse registration of pacts that did not conform to its ideal, this raises a delicate question which has already caused some division of opinion, and of which the elucidation would entail a critical study of Article 18 of the Covenant—a task which does not fall within the competence of the Committee.
I. First, Fifth, Seventh and Tenth Conclusions.

The French delegation regrets the complete abandonment of the criterion of aggression adopted in the Geneva Protocol for the Pacific Settlement of International Disputes. The objections adduced by M. Rutgers against a hard-and-fast definition of the aggressor certainly apply to the system of determining the aggressor resulting from the Rapporteur's proposals. The Council would indeed, according to the Rapporteur, be obliged to determine the Power to which the sanctions or Article 16 would have to be applied, on the basis of the greater or less goodwill shown by that Power in accepting its previous decisions during the progress of the dispute followed by the Council in pursuance of Article 11 of the Covenant.

It is to be feared that, if the Council is guided by facts which it is not easily able to verify, the good or bad faith of the parties may too easily be misrepresented. The system of the Protocol, on the other hand, had the advantage of entirely disregarding facts of this kind. One of the parties accepted or did not accept arbitration. It is conceivable that, if the Council is not able to verify sufficiently what is happening on the scene of action, the aggressor may even be the party which submitted the matter to the Council in face of its adversary's threat.

In connection with Articles 7 and 8 of the Geneva Protocol, Sir Austen Chamberlain, at the thirty-third session of the Council of the League, followed a line of argument which might easily be invoked against M. Rutgers' tenth conclusion.

The French delegation sees only two effective methods of obviating the drawbacks of the proposed procedure:

(a) The simultaneous taking of conservatory measures and setting up of supervisory bodies to verify their execution on the spot, the Council only ordering conservatory measures the execution of which it is in a position to verify.

(b) The avoidance, in the Council's decisions, of too exact an enumeration of the conservatory measures to be taken in all cases, seeing that in certain cases they might have an effect contrary to that desired. On this understanding, the French delegation approves the first paragraph of the Rapporteur's first conclusion.

II. As regards M. Rutgers' second conclusion, the French delegation suggests that it would no doubt be advisable for the Committee on Arbitration and Security, either through its bureau or through a special sub-committee, to follow closely the work being done by the Transit Section of the Secretariat with regard to the improvement of the communications of the organs of the League in times of emergency.

III. As regards the Rapporteur's third and sixth conclusions, the French delegation points out that, if the sanctions of Article 16 are not arranged for in advance, the possibility of having to apply Article 16 is much more likely to arise. To solve the problem of security, the three following types of solution are necessary simultaneously: organisation of the pacific procedure for settling international disputes; mutual assistance against the aggressor; reduction and limitation or armaments. There can be no hope of applying an effective pacific procedure if the measures of moral pressure are not supported, if need be, by the threat of sanctions, and the Rapporteur seems to acknowledge this himself when, in his twelfth conclusion, and in paragraphs 203 and 204 of his report, he notes the importance of the scheme of financial assistance from the point of view of the prevention of conflicts.

In paragraph 168 of his report, however, M. Rutgers indicates a preference for a "general" preparation of sanctions in place of a preparation specially worked out with a view to a specific situation such as would result from the regional systems of security. The French delegation points out that the impression created by a threatened sanction obviously depends on the degree of clearness with which the preparations for assistance have been defined.

IV. M. Rutgers' Eighth and Ninth Conclusions.

In No. 161 and the following paragraphs of his report, M. Rutgers indicates, as still possessing value at the present time, the restrictive interpretations of the obligations devolving on States Members under Article 16 of the Covenant which were given by the 1921 Assembly in a series of resolutions. The Rapporteur states that the Assembly declared at the time that, pending ratification, these resolutions were to serve as provisional guiding principles for the States Members.

M. de Brouckère would seem, however, to have definitely disposed of the question as far back as December 1926, in a report the conclusions of which have since served as a basis for the work of the Committee of the Council. (See, in particular, paragraphs 3, 4 and 5 of Chapter...
II of the report.) M. de Brouckère's detailed arguments should be supplemented by the more general observation that the non-ratified resolutions of 1921 created a provisional situation which, in the opinion of the French delegation, has no more value than the provisional situation resulting from the Geneva Protocol of 1924, which also was not ratified.

It might further be stated that the conception of the obligations contained in Article 16 of the Covenant has developed since 1921 in such a way that it is not now possible to go back to those interpretations. Under the resolutions in question, the individual Members of the League decide for themselves whether the Covenant has or has not been broken. In reverting to this idea, particularly in his ninth conclusion, M. Rutgers has been led to indicate in paragraphs 198 et seq. of his report the practical difficulty of reconciling this idea with the application of the scheme of financial assistance drawn up by the Financial Committee. The system represented by the 1921 resolutions was in harmony with an application of Article 16 that is left entirely to the discretion of the States Members at the time when the aggression occurs. Once a beginning is made with the consideration of predetermined plans of assistance, it is obviously essential that all States Members should automatically be bound by the determination of the aggressor as reached by the Council.
ANNEX 7.

B. REPORT OF THE COMMITTEE ON ARBITRATION AND SECURITY ON THE WORK OF ITS SECOND SESSION HELD AT GENEVA FROM FEBRUARY 20TH TO MARCH 7TH, 1928

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I. Account of the Committee’s Work from its Creation up to the End of its Second Session.

At its meeting on November 30th, 1927, the Preparatory Commission for the Disarmament Conference constituted the Committee on Arbitration and Security, transmitting to it “for guidance in its work the Council’s decision concerning arbitration, security and disarmament dated September 27th and 28th, 1927, the report as approved on this occasion by the Council, and Resolutions IV and V adopted by the Assembly on September 26th, 1927”.

At its meeting on December 2nd, 1927, the Committee on Arbitration and Security drew up its programme of work and instructed three Rapporteurs, M. Holsti, M. Politis and M. Rutgers, to submit three memoranda on the following questions : arbitration, security, articles of the Covenant.

1 See Minutes of Second Meeting of Fifth Session of the Preparatory Commission, Section 4, Part II, page 227.
M. Benes, Chairman of the Committee on Arbitration and Security, convened a meeting of the Rapporteurs on January 26th, 1928, at Prague, in order to enable them to co-ordinate their work in collaboration with himself.

The Chairman and the Rapporteurs endeavoured to take into account, as far as possible, the suggestions contained in the notes sent by the Belgian, British, German, Norwegian and Swedish Governments and the indications given by the representatives of the other Governments, in the course of previous discussions on the question of arbitration and security.

The Chairman and the Rapporteurs have prepared a document, containing:

(1) An introduction to the three memoranda relating to arbitration, security and the articles of the Covenant;
(2) A memorandum on arbitration and conciliation, submitted by M. Holsti;
(3) A memorandum on questions relating to security, submitted by M. Politis;
(4) A memorandum on Articles 10, 11 and 16 of the Covenant and financial assistance, submitted by M. Rutgers.

The memoranda, submitted by their authors in a personal capacity, has furnished a basis for discussion at the second session of the Committee on Arbitration and Security.

The Committee on Arbitration and Security, which met at Geneva from February 20th to March 7th, 1928, under the Chairmanship of M. Benes and the Vice-Chairmanship of M. Undén, discussed the ideas contained in the Introduction and the three memoranda. It appointed a Drafting Committee which, taking into account the points of view expressed by the different delegations during the discussion, prepared:

(1) A model general convention for the pacific settlement of all international disputes;
(2) A model general convention relating to judicial settlement, arbitration and conciliation;
(3) A model general conciliation convention;
(4) A model treaty of mutual assistance;
(5) A model collective treaty relating to non-aggression;
(6) A model bi-lateral treaty of the same type;
(7) Various resolutions which will be found hereinafter.

These texts were then submitted for approval to the Committee on Arbitration and Security.

The Committee, after renewed discussion, decided:

(1) To authorise its Chairman to convene it for a third session, not later than the end of June 1928;
(2) To proceed, at its third session, with the second reading of the model treaties drawn up during its second session;
(3) To examine, at its third session, the suggestions of the German delegation, on the basis of a Memorandum prepared by M. Rolin Jaquemyns;
(4) To study, at the same session, draft model bi-lateral treaties;
(5) To continue the examination of the articles of the Covenant in accordance with the resolution of the Assembly of 1927.

The Committee on Arbitration and Security further expresses the hope that the results of its second session will be communicated to all the States in time to be discussed at the next Assembly.

II. Resolution concerning the Introduction to the Three Memoranda on Arbitration, Security and the Articles of the Covenant.

The Committee on Arbitration and Security,

After studying the introduction to the Memoranda on Arbitration, Security and the Articles of the Covenant submitted by the Chairman:

Declares its concurrence in the views therein expressed that:

(1) The Covenant itself creates a measure of security which needs to be appreciated at its full value and that its articles are capable of being applied in such a way that in the majority of cases they can prevent war;
(2) The common will for peace of the States Members of the Council can be exercised effectively within the framework of the Covenant, all the more so because that instrument does not provide any rigid code of procedure for the settlement of international crises and that it is, therefore, inexpedient to attempt to draw up in advance a complete list of measures for preserving international peace;
(3) For those States which seek more effective guarantees of security, side by side with an extension of the machinery for the pacific settlement of their international disputes, the conclusion of security pacts with other States in the same geographical area constitutes one of the most practical forms of supplementary guarantee which it is at present possible to recommend.
III. Pacific Settlement of International Disputes.

(a) INTRODUCTION TO THE GENERAL CONVENTIONS ON ARBITRATION AND CONCILIATION.

I. PRINCIPLES FOLLOWED BY THE COMMITTEE ON ARBITRATION AND SECURITY.

The Committee has the honour to submit three draft general conventions. In not submitting on this occasion any drafts of separate conventions, the Committee has no intention of indicating any disinclination for this type of convention. The reason it has given priority in its programme to general conventions is that conventions of this type are the most comprehensive. Once they have been drawn up it is easy to extract from them the elements of a separate convention, and this is what the Committee proposes to do at its next session.

The two first conventions (Conventions A and B) provide for arbitration and conciliation; the third (Convention C) provides exclusively for conciliation procedure.

In drafting these conventions the Committee has been guided by a certain number of main principles:

1. It is necessary to take into account the particular situations of the different States and the objections which some of them would feel to the conclusion of extensive arbitration undertakings.

In these circumstances it would be useless to attempt to bring forward a single and rigid type of arbitration and conciliation convention which would fall short of what some States are prepared to accept and go beyond what others might be able to accept. The three Conventions A, B and C provide sufficient variety to meet the desires and conditions of the different Governments.

The operation of the reservations authorised by these various conventions increases their elasticity—a feature which has been regarded as essential.

It should be noted that the general conventions contemplated do not affect the general or special obligations with regard to arbitration or judicial settlement which States have assumed or may assume between themselves. The general conventions will only be applied subsidiarily, and will only govern disputes not already covered by other conventions.

2. While the freedom of States must be fully respected, and no pressure, even if it is only moral pressure, be exerted on Governments to induce them to contract undertakings which they do not consider themselves able to perform, it is nevertheless essential that the undertakings entered into, however restricted they may be, should be of concrete value.

To that end provisions already adopted in numerous separate conventions and ensuring the observance of undertakings assumed have been inserted in the Conventions. Hence the absence of an agreement with regard to the submission to arbitration or to the constitution of the tribunal or Conciliation Commission will not prevent the procedure of peaceful settlement from taking its course. Thus all reservations of a vague and indefinite character have been avoided.

3. The Committee has endeavoured to make as few innovations as possible. It has been guided by past experience, taking as a basis the numerous separate arbitration and conciliation conventions already concluded between large and small States in all parts of the world.

Thus, the traditional distinction between disputes of a legal and of a non-legal nature constitutes the fundamental principle of Conventions A and B.

II. CHARACTER OF THE THREE DRAFTS.

Convention A. — The structure of Convention A is as follows:

1. Disputes of a legal nature are submitted compulsorily to a judicial or arbitral settlement, and optionally to a preliminary procedure of conciliation.

If the parties do not decide to resort to a special tribunal, or having decided to resort thereto, fail to agree on the terms of the special agreement (compromis), the dispute is brought, by means of an application, before the Permanent Court of International Justice.

2. Disputes of a non-legal nature are submitted compulsorily to a procedure of conciliation.

The composition of the Conciliation Commission, its mode of operation and the part it plays are the same in all three conventions. They will be dealt with in the commentary on Convention C.

3. In the event of the failure of conciliation, the dispute must be brought before an arbitral tribunal composed of five members.

If the parties fail to agree regarding the selection of the members of the tribunal to be appointed jointly, or if they fail to choose the members whom they must appoint severally, the Acting President of the Council of the League of Nations will make the necessary appointments.
I. Disputes of a legal nature are brought before the Permanent Court of International Justice unless the parties agree to have recourse to an arbitral tribunal. The rules are the same as in Convention A.

2. Disputes of a non-legal nature are submitted simply to a procedure of conciliation. If this fails they may be brought before the Council of the League of Nations under Article 15 of the Covenant.

Convention C. — The Committee has considered that there are very few States which, finding it impossible to accept the general or restricted obligations to submit to arbitration and judicial settlement contained in Conventions A and B, would refuse to accept Convention C, which simply provides for conciliation procedure.

The composition, mode of operation and duties of the Conciliation Commission laid down by the Convention are in general reproduced from the provisions in the Locarno treaties of arbitration and conciliation. The only change is that greater latitude has been granted to the parties; in particular, it is stipulated that the Conciliation Commission may be permanent or specially constituted.

III. General Provisions Common to the Three Drafts.

The general provisions, which, except for the adaptations required by the three draft conventions, are common to all, call for the following explanations:

1. It is stipulated that the parties shall, during the procedure, abstain from any measures which may aggravate the dispute. The Permanent Court of International Justice and the arbitral tribunal may prescribe provisional measures. The Conciliation Commission has only the power to "recommend" such measures.

2. The case of third Powers, parties or not to the Convention, which have an interest in the dispute is specially provided for and settled. If the third State is a party to the Convention it must take part in the procedure; if it is not a party it will be requested to participate.

3. In spite of the importance of the largest possible number of accessions being given without reservations of any kind, the Committee, which has sought to achieve something practical and to take account of the difficulties peculiar to each State, has made a wide allowance for reservations.

Nevertheless, it has tried to regulate and classify them in order to avoid uncertainty and abuse. Four kinds of reservations have been laid down. The last, which is the widest, refers to "disputes concerning particular clearly defined subject-matters, such as territorial status" (see Convention A, Article 36, No. 2. (d)). Thus, any State, when acceding to the Convention, may exclude any question whatever. All that it need do is to make special mention of this question. In this way it has been found possible to get rid of the dangerous and vague reservation of vital interests; if a State considers that certain questions affect its vital interests it will exclude them by a reservation mentioning these questions.

Furthermore, the reservations stipulated by acceding States only apply to arbitration unless it is expressly stated that they shall also apply to conciliation. The Committee is strongly of opinion that reservations, which are in all cases undesirable, should be of a wholly exceptional nature in the case of conciliation.

Finally—and most important of all—the operation of possible reservations has not been left to the discretion of the parties; it is subject to control by the Permanent Court of International Justice.

4. Disputes relating to the interpretation or application of the Convention will be submitted to the Permanent Court of International Justice. The object of this provision is to prevent conflicts of interpretation constituting a reason or pretext for any of the parties to bring about the failure of the forms of procedure laid down.

5. Duration: it is stipulated that the Conventions shall have a fixed and uniform duration of five years. On the expiration of that period they shall be renewed for the same period in the case of Powers which have not denounced them in due time.

IV. Facilities Provided for the Conclusion of Conventions on Arbitration and Judicial Settlement.

In order better to give effect to the last Assembly's wish for an increased use of forms of pacific procedure and for a larger number of conventions on arbitration and judicial settlement, the Committee has thought fit to frame a draft resolution defining the conditions on which the Council will be able to lend its good offices to States desiring to conclude such treaties.

V. Method of Facilitating Accessions to the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice.

The Committee, realising the obstacles which prevent States from committing themselves, has thought that the only method of reducing them at present possible is to draw attention to the possibilities offered by the terms of the Clause in Article 36 to States which do not see their way to accede to it without qualification to do so, subject to appropriate reservations limiting the extent of their commitments, both as regards duration and as regards scope. Accordingly, the Committee has framed a draft resolution enabling the Council to request those States which have not yet acceded to the clause of Article 36 to consider with due regard to their own interests whether they can do so on the conditions above indicated.
(b) MODEL CONVENTIONS.

DRAFT GENERAL CONVENTION FOR THE PACIFIC SETTLEMENT OF ALL INTERNATIONAL DISPUTES.

(Convention A)

(List of Heads of States)

... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ...

Being sincerely desirous of developing mutual confidence and of consolidating international peace by assuring, through resort to pacific procedure, the settlement of disputes arising between their respective countries;

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals;

Recognising that the rights of the several States cannot be modified except with their own consent;

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure allows of the settlement of all international disputes; and

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of ............. that all States should conclude a general convention for the pacific settlement of all international disputes:

Have decided to achieve their common aim by means of a Convention and have appointed as their plenipotentiaries:

(List of Plenipotentiaries)

... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ...

who, having deposited their full powers found in good and due form, have agreed on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between two or more of the high contracting parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by judicial means or arbitration, preceded, according to circumstances, as a compulsory or optional measure, by recourse to the procedure of conciliation.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the dispute shall be settled in conformity with the provisions of those conventions.

2. The present convention shall not affect any agreements in force by which conciliation procedure is established between the high contracting parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute.

3. If, however, the agreements in force provide only for a procedure of conciliation, after such procedure has been followed without result the provisions of the present Convention concerning settlement by judicial means or arbitration shall be applied.

Article 3.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

CHAPTER II. — JUDICIAL OR ARBITRAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 36, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.
Article 5.

If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement; unless the parties agree to adopt as they stand the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, the aforesaid special agreement shall determine, in addition to the arbitrators and the subject of the dispute, the details of the procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months notice, to bring the dispute by a simple application directly before the Permanent Court of International Justice.

Article 7.

If in a judicial sentence or arbitral award it is stated that a judgment, or a measure enjoined by a court of law or other authority of one of the parties to the dispute is wholly or in part contrary to international law, and if the constitutional law of that State does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction of another kind.

Article 8.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the case of the conciliation procedure failing, and after the expiration of the period of one month laid down in Article 25, the dispute may be submitted to the Permanent Court of International Justice, or to the arbitral tribunal mentioned in Article 5, as the case may be.

CHAPTER III. — CONCILIATION.

Article 9.

All disputes between the parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special conciliation commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another contracting party, a Permanent Conciliation Commission shall be constituted within a period of three months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The parties shall each nominate one Commissioner, who may be chosen from among their respective nationals. The three other Commissioners shall be appointed by agreement from among the nationals of third Powers. These three Commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned. The contracting parties shall appoint the President of the Commission from among them.

2. The Commissioners shall be appointed for three years. They shall be re-eligible. The Commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a Commissioner whom it has appointed. Even if replaced, the Commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no Permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special Commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.
Article 14.

If the appointment of the Commissioners to be designated jointly is not made within a period of three months from the date on which one of the parties requested the other party to constitute or to fill vacancies on a permanent or a special Conciliation Commission, the President of the Swiss Confederation shall, failing some other agreement, be requested to make the necessary appointments.

Article 15.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or, in the absence of such agreement, by one or other of the parties.

2. The application, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take any necessary measures with a view to arriving at an amicable settlement.

3. If the application emanates from only one of the parties, notification thereof shall be made by such party without delay to the other party.

Article 16.

1. Within fifteen days from the date on which a dispute has been brought by one of the parties before a Permanent Conciliation Commission, either party may replace its own Commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The party making use of this right shall immediately inform the other party; the latter shall in that case be entitled to take similar action within fifteen days from the date on which the notification reaches it.

Article 17.

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the League of Nations or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 18.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the parties.

Article 19.

1. Failing any provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable should be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of the two parties as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 20.

Unless otherwise agreed by the parties, the decisions of the Conciliation Commission shall be taken by a majority.

Article 21.

The parties undertake to facilitate the work of the Conciliation Commission and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 22.

1. During the proceedings of the Commission each of the Commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same way.
Chapter IV. — Settlement by Arbitration.

Article 25.

1. If the parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission mentioned in the previous chapter, the question shall be brought before an arbitral tribunal which, unless the parties agree otherwise, shall be constituted in the manner indicated below.

2. If, however, recourse to arbitration is precluded by the operation of the reservations provided for in Article 36 the question shall, at the request of either party, be brought before the Council of the League of Nations, which shall deal with it in accordance with Article 15 of the Covenant of the League.

Article 26.

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties concerned.

Article 27.

1. If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute the arbitral tribunal, the President for the time being of the Council of the League of Nations shall, failing any other agreement, be requested, on the proposal of either party, to make the necessary appointments.

2. In the event of the President for the time being of the Council of the League of Nations being a national of a Power concerned in the dispute, the right of making the necessary appointment shall belong to the Council.

Article 28.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 29.

The parties shall draw up a special agreement determining the subject of the dispute, and, if necessary, the details of procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 30.

Failing stipulations to the contrary in the special agreement, the procedure followed by the Arbitral Tribunal shall be that laid down in Part IV, Chapter III, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 31.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted the dispute shall be brought before the Tribunal by an application by one or other party.

Article 32.

In the absence of rules laid down by the special agreement, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. If the dispute cannot be settled by the application of the rules of law alone, the Tribunal may exercise the functions of a friendly mediator.
CHAPTER V. — GENERAL PROVISIONS.

Article 33.

1. In all cases, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. It shall in like manner be the duty of the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties to the dispute undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission or the Council of the League of Nations and in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34.

Should a dispute arise between more than two States parties to the present Convention, the following rules shall be observed for the application of the forms of procedure laid down in the foregoing provisions:

(a) In the case of conciliation procedure, a special commission shall invariably be constituted. The composition of such Commission shall differ according as the parties all have separate interests or as two or more of their number act together.

In the former case, the parties shall each appoint one Commissioner and shall jointly appoint Commissioners nationals of third States, whose numbers shall always exceed by one those of the Commissioners appointed separately by the parties.

In the second case, the parties who act together shall appoint their Commissioner jointly by agreement between themselves and shall combine with the other party or parties in appointing third Commissioners.

In either event, the parties shall, unless they agree otherwise, be guided by Article 13 and the following articles of the present Convention;

(b) In the case of judicial procedure, the Statute of the Permanent Court of International Justice shall apply;

(c) In the case of arbitral procedure, if agreement is not secured as to the composition of the Tribunal in the case of the disputes mentioned in Article 4, each party shall have the right, by means of an application, to submit the dispute to the Permanent Court of International Justice; in the case of the disputes mentioned in Article 9, Article 26 above shall apply, subject to the inclusion in the Tribunal of one additional arbitrator for each third party having separate interests.

Article 35.

1. The present Convention shall be applicable as between the high contracting parties, whether or no a third State has an interest in the dispute.

2. In conciliation procedure, the parties may agree to call upon such third State; the latter shall be free not to intervene.

3. In judicial or arbitral procedure a third State having an interest in the dispute shall always be requested to take part in the procedure which has been begun. It shall be bound to comply with this request if it is a party to the present Convention.

Article 36.

1. The acceptance of the present Convention may be made conditional upon reservations which must be indicated either at the time of signature or at the time of accession.

2. These reservations may be such as to exclude from all or part of the obligations laid down in the present Convention:

(a) Disputes arising out of facts prior to the signatures or accession;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;

(c) Disputes concerning questions which affect the principles of the constitution of the State;

(d) Disputes concerning particular clearly specified subject-matters, such as territorial status.

3. The operation of the reservations is to be deemed to be conditional upon reciprocity.

4. Disputes which, as the result of reservations, are not subject to arbitration or judicial settlement still remain subject to the procedure for conciliation in the absence of any provision to the contrary.
Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes and the scope of reservations, shall be submitted to the Permanent Court of International Justice.

Article 38.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not in any way affect the rights and obligations of the Members of the League of Nations and shall not be interpreted as restricting the duty of the League to take, at any time and notwithstanding any conciliation or arbitration procedure, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 39.

1. The present Convention, of which the French and English texts shall both be authentic, shall bear to-day's date 1; it may, until ................. 2, be signed on behalf of any Member of the League of Nations or of any non-Member State to which the Council of the League of Nations shall communicate a copy of the said Convention for this purpose.

2. The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-Member States referred to in the preceding paragraph.

Article 40.

As from ................. 3 the present Convention may be acceded to on behalf of any Member of the League of Nations or any non-Member State mentioned in Article 39. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-Member States mentioned in Article 39.

Article 41.

The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the ratification or accession of not less than two contracting parties.

Article 42.

Ratifications or accessions received after the entry into force of the Convention, in accordance with Article 41, shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the League of Nations.

Article 43.

1. The present Convention shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of high contracting parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-Member States mentioned in Article 39.

4. Notwithstanding denunciation by one of the high contracting parties concerned in a dispute, all forms of procedure pending at the term of the expiration of the period of the Convention shall be duly completed.

Article 44.

The present Convention shall be registered by the Secretary-General of the League of Nations on the date of its entry into force.

In faith whereof, the above-mentioned plenipotentiaries have signed the present Convention.

Done at ................. in a single copy, which shall be kept in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-Member States referred to in Article 39.

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1 Date of adoption by the Assembly.
2 One year after the adoption of the Convention by the Assembly.
3 The day following the date mentioned in footnote 2.
DRAFT GENERAL CONVENTION FOR JUDICIAL SETTLEMENT, ARBITRATION AND CONCILIATION.

(Convention B)

(List of Heads of States)

Being sincerely desirous of developing mutual confidence and of consolidating international peace by assuring, through resort to pacific procedure, the settlement of disputes arising between their respective countries,

Noting that respect for rights established by treaty or resulting from international law is obligatory upon international tribunals,

Recognising that the rights of the several States cannot be modified except with their own consent, and

Considering that the faithful observance, under the auspices of the League of Nations, of forms of peaceful procedure, allows of the settlement of all international disputes,

Highly appreciating the recommendation of the Assembly of the League of Nations contained in its resolution of . . . that all States should conclude a general convention for judicial settlement, arbitration and conciliation,

Have decided to achieve their common aim by means of a Convention and have appointed as their plenipotentiaries:

(List of plenipotentiaries)

Who, having deposited their full powers found in good and due form, have agreed on the following provisions:

CHAPTER I. — PACIFIC SETTLEMENT IN GENERAL.

Article 1.

Disputes of every kind which may arise between two or more of the high contracting parties and which it has not been possible to settle by diplomacy, shall be submitted to a procedure of judicial settlement, arbitration, or conciliation as laid down hereinafter.

Article 2.

1. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the parties to the disputes shall be settled in conformity with the provisions of those conventions.

2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the high contracting parties or they are bound by obligations to resort to arbitration or judicial settlement which ensure the settlement of the dispute.

3. Nevertheless, if the agreements in force provide only for a conciliation procedure, the provisions of the present Convention regarding judicial or arbitral settlement shall come into operation when that procedure has been unsuccessfully employed.

Article 3.

1. In the case of a dispute, the occasion of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case the party which desires to resort to the procedure laid down in the present Convention must notify the other party of its intention within a period of one year from the date of the aforesaid decision.

CHAPTER II. — JUDICIAL OR ARBITRAL SETTLEMENT.

Article 4.

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 29, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.
Article 5.

If the parties agree to submit their dispute to an arbitral tribunal, they shall draw up a special agreement; unless the parties agree to adopt as they stand the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, the aforesaid special agreement shall determine, in addition to the arbitrators and the subject of the dispute, the details of the procedure and the rules in regard to the substance of the dispute to be applied by the arbitrators.

Article 6.

If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators, either party shall be at liberty, after giving three months' notice, to bring the dispute by a simple application directly before the Permanent Court of International Justice.

Article 7.

If in a judicial sentence or arbitral award it is stated that a decision, or a measure enjoined by a court of law or other authority of one of the parties to the dispute is wholly or in part contrary to international law, and if the constitutional law of that State does not permit or only partially permits the consequences of the decision or measure in question to be annulled, the parties agree that the judicial or arbitral award shall grant the injured party equitable satisfaction of another kind.

Chapter III. — Conciliation.

Article 8.

1. Before any resort is made to arbitral procedure or to proceedings before the Permanent Court of International Justice, the dispute may, by agreement between the parties, be submitted to the conciliation procedure laid down in the present Convention.

2. In the case of the conciliation procedure failing, and after the expiration of the period of one month provided for in Article 25, the dispute may be submitted to the Permanent Court of International Justice, or to the arbitral tribunal as the case may be.

Article 9.

All questions the settlement of which cannot, under the terms of the present Convention, be attained by means of a judicial or arbitral award shall be submitted to a procedure of conciliation.

Article 10.

The disputes referred to in the preceding article shall be submitted to a permanent or special conciliation commission constituted by the parties.

Article 11.

On a request to that effect being sent by one of the contracting parties to another contracting party a Permanent Conciliation Commission shall be constituted within a period of three months.

Article 12.

Unless the parties concerned agree otherwise, the Conciliation Commission shall be constituted as follows:

1. The Commission shall be composed of five members. The contracting parties shall each nominate one Commissioner, who may be chosen from among their respective nationals. The three other Commissioners shall be appointed by agreement from among the nationals of third Powers. These three Commissioners must be of different nationalities and must not be habitually resident in the territory, nor be in the service of the parties concerned. The contracting parties shall appoint the President of the Commission from among them.

2. The Commissioners shall be appointed for three years. They shall be reeligible. The Commissioners appointed jointly may be replaced during the course of their mandate by agreement between the parties. Either party may, however, at any time replace a Commissioner whom it has appointed. Even if replaced, the Commissioners shall continue to exercise their functions until the termination of the work in hand.

3. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 13.

If, when a dispute arises, no Permanent Conciliation Commission appointed by the parties to the dispute is in existence, a special Commission, appointed in the manner laid down in the preceding article, shall, unless the parties decide otherwise, be constituted for the examination of the dispute.