M. ERICH had no objection to the principle of unanimity which was required of the Council, but observed that the possibility of establishing a clear presumption of aggression had not been excluded. Emphasis should be laid on the necessity of deciding in what cases a State displayed intentions incompatible with the Covenant, such as refusal to submit a dispute to the procedure of arbitration or conciliation, failure to execute an award or judgment, aggravated perhaps by resistance to the measures taken by the Council to ensure execution, and, lastly, aggression as defined in Article 17. An evil intention was not the only one which could be deduced from this attitude of a State prior to rupture. It must be admitted that if a State requested the Council's intervention — that is to say, in the case with which the Committee was now dealing — and applied for financial assistance under Article 11, it might, by its attitude as a whole, give conclusive evidence of its goodwill and of its intention to conform to the measures taken by the Council to safeguard peace. If, nevertheless, through the fault of the other party, peace could not be maintained, it would be easier, in view of all that happened prior to the rupture, to establish clearly the existence of the situation so admirably described by the Financial Committee in its first report. Nevertheless, the Committee considered that, if once the Council solemnly declared that one of the parties was in no way responsible for the crisis which had arisen, and that accordingly it authorised the application of financial guarantees on behalf of that State and pledged the countries represented on the Council to give it their support, the moral effect, and the confidence produced in the success of the issue of the public loan, would be sufficient to enable the State attacked to obtain the temporary financial accommodation required for its most urgent needs.

M. RUTGERS asked whether the report could not indicate the reasons why it was decided not to fix a maximum for the obligations of States regarding the service of the interest and amortisation charges on the loan, as the Belgian delegation had requested.

Sir Henry STRAKOSCH repeated the reasons he had given. The conditions on which the loan would be issued could not be laid down at once, because it was quite impossible to foresee the circumstances attending the issue. Moreover, to lay down in advance conditions which would necessarily be onerous would create a situation which might subsequently hamper the course of negotiations.

Dr. MELCHIOR added that there would always be considerable differences, according to whether the loan were a long-, medium-, or short-term one.

Count DE CHALENDAR pointed out that the last sentence in point 3 was inserted after discussion by the Financial Committee, it being shown that a State assuming financial responsibility under the scheme of assistance could accede to the Convention much more readily if a definite maximum limit to its obligation were fixed. This provision met an unavoidable necessity which existed in certain countries where parliament would require to know the maximum obligation falling upon the country every year.

Point 3 was adopted with the above observations.
Point 4 was adopted without observations.

Sir Henry STRAKOSCH observed that the Joint Committee might already declare its unanimity on the practical question raised by the provisions of point 1, namely, that a decision unanimously taken by the Council should constitute an obligation upon the signatories, as it would not be practicable to allow the signatory States the option of deciding for themselves after the Council had stated its view. If the Joint Committee were unanimous on that point, a great advance would be made.

M. RUTGERS did not think he could share Sir Henry Strakosch's view on the point, as he was not wholly convinced by the arguments submitted by the Financial Committee; he still thought that the freedom of individual States could be reserved up to a certain point. No doubt the procedure proposed by the Financial Committee was the most practical, but no doubt, too, States would give their accession more readily if they felt they could retain a certain degree of freedom.

M. VALDÉS-MENDEVILLE thought that all the views expressed were intended to ensure the success of the scheme. The Financial Committee was of opinion that, in practice, individual States could not possibly be allowed the right to decide after the Council; M. Rutgers, on the other hand, thought that the number of acceding States would be much greater if they kept their individual freedom. It was, therefore, for the Committee on Arbitration and Security to decide whether the difficulties referred to were all as great as had been thought, and to determine the best way to obtain a decision binding upon the signatory States, while at the same time securing the accession of as many States as possible.

The CHAIRMAN concluded that the Joint Committee would submit a report setting forth the objections raised in connection with point 1. The Committee on Arbitration and Security would take a decision on that subject. The decision would be communicated to the Financial Committee and then to the Council, together with the draft scheme as a whole.

M. ERICH asked that the report should mention the objections put forward by the Finnish Government.
V. German Delegation’s Suggestions.

(a) INTRODUCTORY NOTE TO THE MODEL TREATY TO STRENGTHEN THE MEANS OF PREVENTING WAR.

1. During the second session of the Committee on Arbitration and Security, the German delegation presented a series of suggestions designed to strengthen the means of preventing war. At its meeting on March 5th, 1928, the Committee on Arbitration and Security decided to appoint M. Rolin-Jaequemyns, Belgian delegate on the Committee, as Rapporteur, and to request him to prepare a memorandum with a view to the discussion of these suggestions during the Committee’s third session.

2. After carefully considering and discussing the German suggestions and M. Rolin-Jaequemyns’ memorandum during its third session, the Committee on Arbitration and Security framed on first reading a model Treaty to strengthen the Means of preventing War, which it has the honour to submit to the Assembly, requesting at the same time that Governments will give the necessary instructions to their delegations on the subject.

3. In the passages which follow, the Committee on Arbitration and Security ventures to draw the attention of Governments to certain points which arose during the discussion.

(a) It should be observed in the first place that the purpose of the contemplated treaty, as clearly shown by the debates, is to facilitate, by undertakings to be assured voluntarily in advance by the contracting States, the action taken by the Council of the League of Nations under the Covenant.

(b) The German delegation’s second suggestion, that States should undertake in advance to accept the recommendations of the Council to the effect of maintaining and re-establishing the military status quo normally existing in time of peace, gave rise to a lengthy exchange of views.

(c) Another question which gave rise to lengthy discussion was that of supervising the execution of the measures recommended by the Council. Certain delegations expressed the view that the contemplated treaty would not be acceptable unless, in return for the undertakings given, States could be assured that the Council would take prompt and efficient measures to satisfy itself of the execution of the measures recommended. Other delegations, however, said that this suggestion would appear to be impracticable, especially in view of the fact that the difficulty of devising a rigid system for the definition of the military status quo normally existing in time of peace would be so great that the drawbacks of any attempts to provide for such action by the Council would outweigh its advantages.

(d) With regard to the question of the Council’s vote, a number of delegations held that it would be much preferable, and much more in keeping with the idea of the effective prevention of conflicts, if the provision of Article 5 of the model were not limited to the Council recommendations covered by Articles 3 and 4, but extended to the recommendations covered by Article 1.

(e) The Committee did not feel that it could accept the idea of a general protocol open to the signature of all States. It merely prepared a model multilateral treaty, whilst recording its opinion that the practical value of such a treaty would be directly proportional to the number of contracting States. It did not wish, moreover, to exclude the possibility of using this model for bilateral treaties as well, in all cases in which this procedure might appear preferable to certain States owing to the particular circumstances of their special situation.
Finally, the Committee would point out that, in contemplating the conclusion of special treaties of the kind indicated, it did not wish to exclude the possibility of supplementing treaties of mutual assistance on these lines, if certain States preferred to adopt this procedure. A solution of this kind would meet the views of certain delegations which considered that the Council could not avoid drawing the necessary consequences from the measures prescribed by it and referred to in the treaty. In the view of these delegations, the indispensable corollary of the undertakings to be given is a system of mutual assistance against any State which fails to keep its pledges, as their violation ought to entail the same consequences as the violation of Article 3 of the model Collective Treaty of Mutual Assistance.

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(b) MODEL TREATY TO STRENGTHEN THE MEANS OF PREVENTING WAR.

Preamble.

(List of Heads of States.)

Being sincerely desirous of developing mutual confidence by strengthening the means of preventing war;

Noting that to this end the task of the Council of the League of Nations in ensuring peace and conciliation might be facilitated by undertakings assumed voluntarily in advance by the States;

Have decided to achieve their common aim by means of a treaty 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:

Article 1.

The High Contracting Parties undertake, in the event of a dispute arising between them and being brought before the Council of the League of Nations, to accept and apply provisional recommendations by the Council relating to the substance of the dispute and designed to prevent any measures being taken by the parties which might have a prejudicial effect on the execution of an arrangement to be proposed by the Council.

Article 2.

In the case provided for in Article 1, the High Contracting Parties further undertake to refrain from any measures which might aggravate or extend the dispute.

Article 3.

In the event of hostilities of any kind having broken out, without the possibilities of a peaceful settlement having in the Council's opinion been exhausted, the High Contracting Parties undertake to comply with the recommendations which the Council may make to them for the cessation of hostilities, prescribing, in particular, the withdrawal of forces having penetrated into the territory of another State, or into a zone demilitarised in virtue of international treaties, and in general inviting them to respect each other's sovereignty and any obligations assumed in regard to demilitarised zones.

Article 4.

High Contracting Parties between whom hostilities may have broken out undertake to lend themselves to any action which may be decided upon by the Council with a view to ensuring the observance and execution of the measures it may have recommended in conformity with Article 3.

Article 5.

In the cases referred to in Articles 3 and 4, the High Contracting Parties undertake to act in accordance with the recommendations of the Council, provided that they are concurred in by all the members other than the representatives of the parties which have engaged in hostilities.

Article 6.

The provisions of the present Treaty shall only apply on the basis of reciprocity, i.e., in respect of disputes between the High Contracting Parties.

Article 7.

The present Treaty may not be interpreted as entailing any change in the task of the Council of the League of Nations as laid down in the Covenant.
Article 8.

The present Treaty shall bear to-day's date; it shall be ratified. The instruments of ratification shall be forwarded to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League.

Article 9.

The present Treaty shall enter into force as soon as all the ratifications have been deposited. The present Treaty, done in one copy, shall be deposited in the archives of the League of Nations.

The Secretary-General of the League of Nations shall be requested to deliver certified true copies to all the High Contracting Parties.

Article 10.

The present Treaty shall be concluded for a period of................

Article 11.

The present Treaty 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 Treaty.

Done at .................... on ....................

(c) RESOLUTION ON THE SUGGESTIONS SUBMITTED BY THE GERMAN DELEGATION WITH A VIEW TO STRENGTHENING THE MEANS OF PREVENTING WAR.

The Committee on Arbitration and Security,

Having taken note of the memorandum of its Rapporteur, Baron Rolin-Jaequemyns, on the suggestions submitted by the German delegation with a view to strengthening the means of preventing war;

Thanks its Rapporteur for the exhaustive report which he has submitted;

Adopts the model Treaty designed to give effect to the German delegation's suggestions and submits it to the Assembly;

And requests the Secretary-General to forward the said model with the introductory note, as well as Baron Rolin Jaequemyns' memorandum and the minutes of its third session, to the Governments in order that they may give the necessary instructions to their delegations at the Assembly.

(d) Appendix. — MEMORANDUM ON THE GERMAN DELEGATION'S SUGGESTIONS FOR THE PREVENTION OF WAR.

Submitted by M. Rolin Jaequemyns, Rapporteur.

CHAPTER I. — PRELIMINARY STATEMENT.

At the last session of the Committee on Arbitration and Security, the German delegation submitted a series of suggestions designed to strengthen the existing means of preventing war.

According to the statements of M. von Simson, the German delegate, his Government's proposal was that the League of Nations should use these suggestions in framing certain measures which would lead to an increase in security "by strengthening mutual confidence, and particularly by strengthening such confidence by methods which can be rapidly applied".

Subsequently, at its meeting on March 5th, 1928, the Committee on Arbitration and Security, "appreciating the great importance of these suggestions", adopted the following resolution, stating that it:

"Considers that they should be thoroughly examined and that Governments should be enabled to study them in detail; and

"Decides to place them on the agenda of its next session and to appoint a rapporteur, who will report to the Committee in the light of the Committee's discussions and of any observations which may be forwarded by Governments."
Lastly, at the close of its last session, the Committee on Arbitration and Security decided, more particularly under paragraph 3, "to examine at its third session the suggestions of the German delegation on the basis of the memorandum prepared by " the undersigned rapporteur.

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It may be well to reproduce the text of the above-mentioned suggestions, numbered I to V:

"I. In case of a dispute being submitted to the Council, the States might undertake in advance to accept and execute provisional recommendations of the Council for the purpose of preventing any aggravation or extension of the dispute and impeding any measures to be taken by the parties which might exercise an unfavourable reaction on the execution of the settlement to be proposed by the Council.

"II. In case of threat of war, the States might undertake in advance to accept and to execute the recommendations of the Council to the effect of maintaining or re-establishing the military status quo normally existing in time of peace.

"III. In the case of hostilities of any kind breaking out without, in the Council's opinion, all possibilities of a pacific settlement having been exhausted, the States might undertake in advance to accept, on the Council's proposal, an armistice on land and sea and in the air, including especially the obligation of the two parties in dispute to withdraw the forces which might have penetrated into foreign territory and to secure the respect of the sovereignty of the other State.

"IV. The question should be considered whether the above-mentioned obligations should be undertaken only in case of a unanimous vote of the Council (the votes of the parties to the dispute not being counted), or whether the majority, simple or qualified, might suffice in the matter. Furthermore, it should be considered in what form the obligations would have to be drawn up in order to bring them into conformity with the Covenant.

"V. These obligations might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations, and which might come into force separately for the several continents, in a way similar to that provided for in the draft Treaty of Mutual Assistance of 1923."

The suggestions reproduced above supplement the ideas put forward in the Observations submitted in January 1928 by the German Government on the programme of the work of the Committee on Arbitration and Security (document C.A.S. 10, pages 58 to 60).

We would note more particularly the following passage in those Observations:

"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. 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. As an example may be quoted 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."

The idea underlying the suggestions which form the subject of the present memorandum is therefore that special voluntary undertakings should be entered into by means of a general agreement, or at all events an agreement between a large number of parties.

The arguments put forward by the German delegate, M. von Simson, at the last session of the Committee, in support of these suggestions by the German Government, may be summed up as follows:

1. In order that the action of the Council of the League of Nations may be exercised with increasing effect in the pacific settlement of international disputes, provision must be made for measures which will prevent either party to the dispute from employing the delay involved by such intervention to modify the status quo improperly in its own interests. Accordingly "conservatory measures" of a purely provisional character should be taken by the Council.

2. In order to prevent a difference or dispute between States from leading to war between them, the Council of the League of Nations must be in a position to prevent the said States from making military preparations with this object, such preparations being of a nature to lead to war despite the pacific efforts of the responsible statesmen.

3. The League of Nations must endeavour to stop armed conflicts, even when a state of war already exists, and this, not only in the case of a war waged in violation of the Covenant, but even in the case of a war not prohibited by the Covenant. Hence the first step to be considered must be an armistice, under clearly defined conditions.

4. The possibility might be considered whether the Council, in the above-mentioned contingencies, should not take its decision by majority vote, simple or qualified, as otherwise it might be unable to take any action whatever.
5. To increase the feeling of confidence, an essential factor in security, the measures proposed by the Council must be binding upon the parties, in virtue of a general treaty or of collective treaties open to signature by all States, including even those which are not Members of the League. The above is a summary of the considerations put forward during the discussions, in support of preventive measures for the more adequate maintenance of peace.

In the following chapter, the suggestions are examined individually from this standpoint.

CHAPTER II. — OBSERVATIONS ON THE SUGGESTIONS SUBMITTED.

Suggestion No. I.

"In case of a dispute being submitted to the Council, the States might undertake in advance to accept and to execute provisional recommendations of the Council for the purpose of preventing any aggravation or extension of the dispute and impeding any measures to be taken by the parties which might exercise an unfavourable reaction on the execution of the settlement to be proposed by the Council."

Suggestion No. I aims at provisional measures touching the actual subject of the dispute. These closely resemble the system of "conservatory measures" found in a number of national codes of civil procedure and in various systems of arbitration and conciliation procedure under international law.

Most arbitration and conciliation treaties contain a provision requiring the parties, while the procedure is in progress, to refrain from certain acts which might " prejudicially affect the execution of the award or the final proposal ".

Furthermore, the arbitration treaties confer on the arbitral court, in the majority of cases, the right to order conservatory measures. In the arbitration and conciliation treaties, this power is generally conferred on the Conciliation Commission, especially as there is a growing tendency in conciliation procedure to recognise the Commission's proposals as binding. The position is the same as regards the Council of the League when arbitration and conciliation treaties provide for its intervention in disputes. Article 19 of the Locarno Treaties of Arbitration and Conciliation is a case in point.

The German delegation's first suggestion is simply a proposal to generalise this system of conservatory measures, so that the actual principle is not likely to encounter opposition.

Difficulties in the matter of application, however, may be anticipated, since many States would undoubtedly refuse to assume undertakings conferring unlimited discretionary powers on the Council. Accordingly, it might be expedient to limit the Council's powers in the matter. This would also facilitate agreement within the Council itself in regard to the conservatory measures it is entitled to propose.

One way of thus limiting the powers of the Council or, more correctly, of conferring specific powers on it in this matter of conservatory measures, would obviously be to enumerate and define all the categories of conservatory measures that it might have to order. But considering the extreme diversity of cases that might arise and the differences in internal legislation, such a definition seems neither opportune nor feasible. For this reason, none but general formulae have hitherto been adopted, the Arbitral Court, the Conciliation Committee or the Council being empowered at its discretion to define the measures in each particular case.

This would appear then to point to the advisability of conferring general powers on the Council in the matter of conservatory measures, particularly as it is the Council's special function to intervene in political disputes, in which a definition or limitation of such measures is even more difficult than in legal disputes.

Furthermore, even in the absence of any exact statement or definition, the actual nature of the conservatory measures specifically limits their scope. They cannot in any case prejudice the fundamental issue.

Accordingly, adopting the suggestion to be found in Article 19 of the Locarno Treaties, States might rely on the wisdom of the Council and recognise that it will only order such conservatory measures as are fair in themselves and really indispensable.

If, however, it were deemed advisable, especially in general agreements, to limit the power conferred on the Council in the matter of conservatory measures in order to relieve the anxiety of States unwilling to undertake obligations not defined beforehand, use might be made of the following or other similar indications:

(a) For all questions generally left by international law to the exclusive jurisdiction of a State, the latter would retain its liberty of action. For example, in the case of a serious dispute arising out of increases in the Customs tariff (failing a commercial treaty) or the
expulsion of aliens, it would hardly be possible to place any restraint on a State in the regular exercise of its sovereign rights.

(b) As a general rule, no conservatory measures should be taken in regard to a State, save in the case of injury which cannot be made good by the payment of ordinary compensation or some other material form of reparation. This principle appears to be generally accepted in international law and was explicitly recognised quite recently by the Permanent Court of International Justice, in Judgment No. 8 (Denunciation of the Treaty between China and Belgium).

(c) Again, it will have to be decided whether conservatory measures might be taken by the Council in the case of all disputes, or only if there is danger of war. In this last eventuality, the Council's intervention would be of the first importance and the prevention of war would seem to justify a greater restriction on the liberty of the parties. Such restriction is, however, open to various objections which seem very difficult to overcome. In the first place, the conservatory measures would depend on one of the States parties to the dispute adopting an uncompromising and threatening attitude calculated in actual fact or in appearance to create the danger of war, whereas the same State, should it adopt a more moderate and conciliatory tone would not secure the benefit of conservatory measures. Furthermore, it would be unfortunate to confine conservatory measures to cases involving a danger of war, when there is every reason to hope that, if such measures were taken in good time, they might prevent that danger from arising. Lastly, is it really desirable that the Council should be obliged, for the purposes of ordinary conservatory measures, to raise the very serious question of the threat of war?

The Committee on Arbitration and Security will decide whether these various limitations are necessary. It will be open to the Committee to adopt all of them in principle, or only one, or more.

Suggestion No. II.

"In case of threat of war, the States might undertake in advance to accept and to execute the recommendations of the Council to the effect of maintaining or re-establishing the military status quo normally existing in time of peace."

It may perhaps be useful, in this connection, to recall Article 12 of the Covenant of the League, which also deals with the threat of war, Members of the League agreeing more particularly "in no case to resort to war until three months after the award by the arbitrators or the report by the Council ".

The second of the Geneva suggestions, relating to the question of the "military status quo", appears to be based on the same principle. It is not the first time that this question has come before the League of Nations. Apart from the Protocol of 1924, the work of the Preparatory Commission for the Disarmament Conference involved a protracted investigation into the status quo ante. The results are incorporated in the report of the Committee of Three on Article 11 of the Covenant, approved by the Council on December 6th, 1927 (document C.109.M.119. 1927 — C.D.C.67 (1)).

The report states, in paragraph III (a), that "the Council may take steps to see that the status quo ante is not disturbed in such manner as to aggravate or extend the dispute, and thus to compromise the peace settlement thereof. For this purpose, it may indicate to the parties any movements of troops, mobilisation operations and other similar means from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended."

Sub-paragraph (e) reads: "In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute."

It seems impossible to define the measures to be taken more precisely beforehand. The great diversity of cases must preclude any attempt to catalogue them all in advance. Accordingly, the Council should be left wide powers of action, not only in order to ensure that States shall abstain from all threatening or provocative acts, but also, if necessary, with a view to restoring the status quo existing before such measures were taken. In each particular case, moreover, the Council will of course ask the opinion of its competent technical organs or of qualified experts.

If this procedure were adopted, it would perhaps be possible to avoid certain disadvantages which attach to the Council's intervention for the maintenance of the military status quo ante, and which consist in consolidating the advantages of the State harbouring aggressive designs. Such a State would, indeed, probably have been making particularly intensive military preparations for some time past.

The German suggestion appears to require supplementing in another direction, namely, by some provision whereby the Council should supervise the execution of any measures ordered, as proposed in the above-mentioned report of the Committee of Three (III (e)). A State would not be likely to undertake to execute measures of such gravity from the point of view of its national security unless it were sure and possessed some guarantee that the other party to the dispute would also execute them in good faith and in their entirety. These measures, which would be clearly defined and enforceable without delay, should of course always be suited to the individual case.
Suggestion No. III.

"In the case of hostilities of any kind breaking out without, in the Council's opinion, all possibilities of a pacific settlement having been exhausted, the State might undertake in advance to accept, on the Council's proposal, an armistice on land and sea and in the air, including especially the obligation of the two parties in dispute to withdraw the forces which might have penetrated into foreign territory and to secure the respect of the sovereignty of the other State."

The idea that the Council might call upon the parties to agree to an armistice after hostilities have broken out is to be found in the Geneva Protocol (Article 10). It was taken up again by the French delegation in the memorandum submitted in 1926 to the Preparatory Disarmament Commission, and by M. Politis in his "Memorandum on Security Questions" (cf. document C.A.S. 10, paragraphs 79 and 96).

In these documents, however, the main purpose was to facilitate the designation of the aggressor; the idea accordingly formed of the procedure respecting sanctions.

The German suggestion, on the other hand, would make the undertaking of the parties to accept an armistice primarily a link in the chain of preventive measures.

Whatever the object in view, the suggestion would undoubtedly be of very great value, both as a preventive measure and as one of the means by which the Council might subsequently determine the aggressor.

The obligations in regard to the armistice should of course always include, as the German delegation suggested, an obligation on the parties to withdraw any forces which might have entered a foreign territory and to respect the sovereignty of the other State.

But even under the simplest conditions, the enforcing of an armistice is bound to meet with considerable difficulties.

As was mentioned at the second session of the Committee on Arbitration and Security, a State which had resolved to become an aggressor in violation of the Covenant and any other undertakings would probably not be inclined to accept the Council's recommendations in regard to an armistice.

Furthermore, considering the variety of possible cases, the duty of laying down equitable armistice conditions might involve the Council in a very difficult and very delicate technical task.

Accordingly, as a solution of the difficulty, the Council might first take a preliminary decision stating that an armistice was necessary and ordering the parties to withdraw such of their forces as might have penetrated into foreign territory and to respect the sovereignty of the other State. These provisions might also apply to demilitarised zones, in virtue of international agreements.

As regards the other conditions of the armistice, the Council would grant the parties a short time to come to a direct understanding, and only if they failed to do so would it proceed itself to lay down the conditions, after consulting its technical organs or qualified experts.

It is of course understood that, in all the cases considered above, the question of the supervision of the armistice conditions by the Council is just as important here as it is in the case of Suggestion No. II.

Suggestion No. IV.

"The question should be considered whether the above-mentioned obligation should be undertaken only in the case of a unanimous vote of the Council (the votes of the parties to the dispute not being counted), or whether the majority, simple or qualified, might suffice in the matter. Furthermore, it should be considered in what form the obligations would have to be drawn up in order to bring them into conformity with the Covenant."

(a) Vote of the Council. — The question of the simple or qualified majority vote of the Council brings us back to the difficulties encountered during the discussion on M. Politis' memorandum at the second session. These led him to adopt the view of those delegates who maintained that the rule of unanimity should remain unchanged.

The dangers, however, are perhaps less serious in the present case. The Council's decisions, it must be remembered, would never touch the fundamental issue in the dispute, but would be limited to preventing the parties from modifying the situation to their own advantage while the procedure is in progress, or from continuing hostilities.
The Governments would have to decide whether in these circumstances the idea of a majority vote might be considered.

The majority vote undoubtedly possesses a very special importance in the case of measures which must be taken as rapidly as possible if they are to have the desired effect. Accordingly, a mixed system might be feasible whereby the Council would normally comply with the rule of unanimity (naturally excluding the votes of representatives of the parties), an exception to this rule being allowed in the case of decisions in the nature of questions of procedure. But how are such decisions to be defined?

(b) Conformity with the Covenant. — When studying the German suggestions from the point of view of conformity with the letter and spirit of the Covenant, it is important first to note that, to a considerable extent, the proposed convention is simply a confirmation of existing law. As regards the first of the German suggestions, the provisions of the League Covenant would appear to be comprehensive enough to empower the Council to recommend that the parties should take consular and non-military measures. As to the second and third of these suggestions, it must be remembered that the Council, on December 6th, 1927, adopted a report concerning measures calculated to facilitate the application of Article II of the Covenant. This report contemplates a series of similar measures designed mainly to arrest military preparations and even, up to a point, to enforce their suspension. A system of supervision was also included.

The German suggestions, however, go even further. The fundamental idea lies in the proposal that States should assume an explicit undertaking in advance to accept the Council's recommendations.

The usefulness of this proposal would appear in itself to admit of no dispute. The establishment of a definite international undertaking must undoubtedly strengthen the obligations assumed under the Covenant. The first effect would be to facilitate action by the Council and to increase its efficacy. This is in keeping with the policy of those who insist on the progressive and systematic development of preventive measures.

From the standpoint of sanctions, equally valuable results might be anticipated. A State that refused to obey a recommendation of the Council would place itself in a very serious position. It would be violating a definite and specific international undertaking, and would thereby provide the Council, as already shown, with valuable evidence to be used when the latter came to determine the aggressor and, if necessary, to set in motion the machinery of sanctions. This legal offence appearing among disputes of a purely political character would also assist the Council in its work.

But notwithstanding the undoubted advantages of adopting the German suggestions, it is obviously necessary to determine whether these agreements could exist side by side with the machinery of the Covenant, or whether they would have to be drawn up in some particular form, with a view at least to this requirement.

This point is referred to in the last sentence of Suggestion No. IV.

It raises, in effect, the question whether the proposed system might not create difficulties as regards the application of the Covenant of the League. This difficulty does not appear likely to arise. What would happen if a State actually violated undertakings of the nature contemplated in the German suggestion? The matter would be brought before the Council in virtue of one of the articles of the Covenant — Article II in the first instance. The Council would be in possession of additional evidence (violation of an international obligation under the Convention in question) when deciding what arrangements should be made or what measures should be adopted. The normal working of the machinery of the Covenant, however, would not thereby be affected.

Suggestion No. V.

"These obligations might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations, and which might come into force separately for the several continents, in a way similar to that provided for in the draft Treaty of Mutual Assistance of 1923."

The German delegation suggests, lastly, that the obligations of the States "might constitute the object of an agreement or of a protocol which would be open for signature by all States Members and non-members of the League of Nations".

An agreement of so general a scope undoubtedly has much to recommend it. Moreover, as several delegates pointed out at the second session of the Committee on Arbitration and Security, the German suggestions could not be expected to give practical results of any importance unless they were accepted by a large number of States. In other words, the efficacy of the agreements would depend essentially on the number of contracting parties.

At the same time, it must be borne in mind that important projects undertaken by the League have failed chiefly by reason of their general character. Some States might feel doubtful whether their vast, numerous and varied interests would permit of their assuming a general undertaking in regard to all States without exception, even if the undertaking appeared acceptable, or had already been accepted, in regard to specific States.

This difficulty also exists in the present case, as was amply demonstrated in the discussion at the second session of the Committee on Arbitration and Security. It is of capital importance, as the general form of the undertaking to be entered into by States appears to be one of the essential features which distinguish the German suggestions from similar provisions contained in many special treaties.
The German delegation, however, has foreseen these objections and suggests that the general agreement might come into force separately for the several continents in a way similar to that provided for in the Draft Treaty of Mutual Assistance of 1923.

The provisions for the entry into force of this Treaty are as follows:

"It (the Treaty) shall come into force:

"In Europe when it shall have been ratified by five States, of which three shall be permanently represented on the Council;

"In Asia, when it shall have been ratified by two States, one of which shall be permanently represented on the Council;

"In North America, when ratified by the United States of America;

"In Central America and the West Indies, when ratified by one State in the West Indies and two in Central America;

"In South America, when ratified by four States;

"In Africa and Oceania, when ratified by two States."

The legal and political difficulties of such a system appeared so great, however, that the Third Committee mentioned expressly, in its report to the Assembly on the Draft Treaty of 1923, that the text proposed was not a definite text, but merely an indication "of subject-matter requiring further study by those Governments to which the Draft is submitted with a view to arriving at a satisfactory and definite result". The question is thus seen to be both delicate and complicated. It may be granted, however, that the political difficulties will be less serious in the present case, which does not involve measures of mutual assistance, like the Draft of 1923, but simply provisional measures that do not touch the actual substance of the disputes, and can, moreover, failing a general agreement, be adopted in the form of regional pacts.

The question of the signature of the proposed agreement by States non-members of the League raises an even more delicate political issue. From the legal standpoint, it does not appear to involve insurmountable difficulties, in view of the principles of the Covenant, more particularly Articles 11 and 17.

CHAPTER III. — CONCLUSIONS.

Following on the account of the German suggestions and the observations thereon given in the preceding chapters, the Rapporteur has decided to summarise the questions of principle raised, questions in regard to which the Committee on Arbitration and Security might be required to give a decision at its next session:

**With reference to Suggestion No. I.**

1. Should the Council have power, in virtue of an agreement to be concluded between States, to lay down "conservatory measures" for the purpose of preventing any aggravation or extension of a dispute between States?

2. Should such conservatory measures be left entirely to the discretion of the Council, or should the powers of the latter be restricted in conformity with the following principles, or with one or more of those principles?

   (a) In all questions left by international law to the exclusive jurisdiction of a State, the latter will retain its liberty of action (e.g., Customs tariffs, expulsion of aliens);

   (b) Conservatory measures may not be ordered when satisfaction may be given for the injury by the payment of ordinary compensation or by some other national form of reparation;

   (c) The Council will only have power to take conservatory measures if there is a danger of war.

**With reference to Suggestion No. II.**

1. Should the Council have power, in virtue of an agreement to be concluded between States, to order measures, when there is a danger of conflict between the said States, with a view to maintaining or restoring between them the status quo ante in the matter of preparations for war?

2. Should the above rule relating to principle be supplemented in accordance with the following provisions reproduced from Article III (d) and (e) of the report on Article II of the Council, approved by the Council on December 6th, 1927?

   (d) The Council "may indicate to the parties any movements of troops, mobilisation operations and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended";

   (e) "In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute."
3. Should the Council be given explicitly a right of supervision in regard to the execution of measures prescribed with a view to restoring the status quo ante, and should it be granted entire freedom to adopt for this purpose measures clearly defined and of immediate application?

*With reference to Suggestion No. III.*

1. Should the Council have power, in virtue of an agreement to be concluded between States, to order the parties to accept an armistice when hostilities have broken out between the said States?

2. Should it be laid down that the Council will first order the parties to withdraw any forces which may have penetrated into foreign territory and to respect the sovereignty of the other State, and that it will only proceed to fix the other conditions of the armistice if the parties fail to reach a direct agreement within a specified time?

3. Should the execution and observance of the armistice conditions be placed under the supervision of the Council?

*With reference to Suggestion No. IV.*

1. Should the Council resolutions concerning the cases mentioned in the above suggestions be adopted unanimously (not counting, of course, the votes of the representatives of the parties to the dispute), or would a majority vote, simple or qualified, be admissible, at all events in certain cases? If so, in what cases?

2. Would the Council's action, in virtue of the above-mentioned agreements between States, be in conformity with the Covenant?

*With reference to Suggestion No. V.*

1. Should the above-mentioned agreements take the form of an open protocol, or general or regional conventions, or even separate agreements?

2. In each of the above-mentioned cases, could the agreements in question include States not members of the League?

3. In the case of an open protocol or general convention, should this come into force separately for the several continents in a manner similar to that provided for in the Draft Treaty of Mutual Assistance of 1923?

* * *

After a discussion on the above questions, the Committee will no doubt be able to frame proposals to be submitted to the next Assembly.