LEAGUE OF NATIONS

DOCUMENTS

of the

PREPARATORY COMMISSION

FOR THE DISARMAMENT CONFERENCE

entrusted with the

PREPARATION OF THE CONFERENCE

FOR THE REDUCTION

AND LIMITATION OF ARMAMENTS

SERIES IX

MINUTES

of the

FOURTH SESSION OF THE COMMITTEE

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Chairman: His Excellency Dr. E. Beneš (Czechoslovakia).

Argentina
Belgium
British Empire
Bulgaria
Canada
Chile
China
Colombia
Cuba
Czechoslovakia
Finland
France
Germany
Greece
Italy
Japan
Netherlands
Persia
Peru
Poland
Roumania
Spain
Sweden
Turkey
Uruguay
Venezuela
Yugoslavia
Union of Soviet Socialist Republics

His Excellency Baron Rolin Jaequemyns.
The Right Honourable the Viscount Cecil of Chelwood.
His Excellency M. B. Morfoff.
Dr. W. A. Riddell.
M. E. Gajardo.
His Excellency General Tsiang Tso-Ping.
His Excellency Dr. A. J. Restrepo.
His Excellency M. G. de Blanck.
His Excellency Dr. E. Beneš.
His Excellency M. R. Erich.
M. R. Massigli.
Dr. Göppert.
M. R. Raphaël.
His Excellency General A. de Marinis Stendardo di Ricigliano.
M. Ito.
Dr. V. H. Rutgers.
His Excellency M. Sépahbody.
His Excellency M. M. Cornejo.
His Excellency M. F. Sokal.
His Excellency M. C. Antoniađe.
His Excellency M. E. Cobián.
His Excellency M. O. Undén.
His Excellency Munir Bey.
His Excellency M. A. de Castro.
His Excellency M. D. Escalante.
His Excellency Dr. I. Choumenkovitch.
1. Opening Speech by the Acting Chairman.

The Chairman wished, in the first place, to present the excuses of M. Beneš, Minister for Foreign Affairs of the Czechoslovak Republic, who was for the moment unable to take the chair.

M. Beneš had been engaged for some weeks in very important negotiations in Paris regarding the reparation of Eastern Europe. Only on Saturday, April 26th, had it been possible to sign the agreement in which these negotiations had resulted. M. Beneš had been compelled to return on April 27th to Prague in order to inform the Czechoslovak Cabinet of the results of the Paris negotiations. On these results depended to a very great extent the enforcement of the Young Plan and the beginning of the activity of the International Bank of Settlement. M. Beneš, however, hoped shortly to arrive at Geneva, when he would take the chair at subsequent meetings of the Committee.

M. Undén desired rapidly to recapitulate the results of the Committee's work in past sessions. His colleagues would remember that six model Conventions for the pacific settlement of international disputes had been drawn up, three models of general Conventions, and three of bilateral Conventions. This work had been done at the Committee's third session. The Committee had begun the drafting of three model treaties on non-aggression and mutual assistance, (1) a model collective treaty of non-aggression and mutual assistance, (2) a collective treaty of non-aggression, and (3) a bilateral treaty of non-aggression. Finally, the Committee had drawn up a model treaty drafted with the object of strengthening the means for preventing war, a draft resolution concerning Articles 10, 11 and 16 of the Covenant, and a draft resolution of which the object was to facilitate the adhesion of States to the Optional Clause of the Statute of the Permanent Court of International Justice.

The result of the work of the third session had then been communicated to the ninth session of the Assembly. After having introduced certain changes, the Assembly had adopted a series of resolutions dealing with the submission and recommendation of these models, and the good offices of the Council. The most important change made by the Assembly had been the combination of the three models of a general Convention for the peaceful settlement of international disputes into a single General Act, to which States could adhere either as a whole or in part. Further, their adhesion could be unconditional or subject to certain reservations.

For the Committee to realise to what extent its previous work had been put into practice, it should remember, in the first place, that the General Act of Arbitration was now in force between four States: Sweden, Belgium, Norway and Denmark.

Belgium had adhered to the whole Act, with a single reservation concerning previous events. The adhesion of Sweden and Norway had been given to Chapters I, II and IV without any reservation. The adhesion of Denmark covered the whole Act without any reservation.

Several Governments had laid Bills on the tables of their Parliaments with the object of obtaining their adhesion.

To date, forty-one States had signed the Optional Clause, and twenty-six of them were bound by it. During the last meeting of the Assembly no less than fourteen States had signed.

As far as the model bilateral and multilateral treaties were concerned they could be used to facilitate and hasten the conclusion of such treaties between States, for they were the happy complement of the Covenant of the League and of the Pact against War signed in Paris on August 27th, 1928. A large number of treaties for peaceful settlement had been concluded and registered during the course of these last years.

As regards the present work of the Committee the Assembly at its tenth session had decided to ask the Council to entrust the Committee with the examination of the three following questions:

(1) A draft general Convention, based on the main lines of the model treaties, with a view to strengthening the means of preventing war, which the Committee on Arbitration and Security had drawn up during its third session;
(2) A draft Convention for financial assistance;
(3) An aspect of the question of communications concerning the working of the League at times of emergency; that was to say, facilities to be granted to aircraft.

The two first problems had already been preliminarily examined by the Committee. The Assembly had then taken cognisance of them and discussed them at length, mainly at its last session. As a result of this discussion, the Assembly had decided to submit the various texts and proposals as a whole to the Arbitration Committee with a view to fresh examination.
The Chairman wished to emphasise the fact that the model treaty for the strengthening of means to prevent war was based on proposals originating from the German delegation to the Committee. The British delegation at the last Assembly had urged a fresh examination of the question in order to hasten the realisation of the ideas underlying the German proposals.

The problem of the financial assistance to be granted to States victims of aggression had been raised by the Finnish Government several years previously. Subsequently, that problem had been discussed on several occasions from the financial and the political points of view. If the political consequences of this draft Convention had not yet been sufficiently examined, it was now for the Committee, which was especially designed for the purpose, to demonstrate them clearly and to conciliate the divergence of view which had hitherto subsisted.

Both these problems were very wide in scope. The delicate and important task of the Committee was to bring to perfection and to complete the texts before it, while taking their political consequences into general consideration, and thus to contribute to a solution of the problem of security.

2. Publication of the Observations of the Governments.

On the proposal of the Chairman, it was decided that the observations of Governments on the three questions on the agenda should be published in accordance with precedent.

3. Adoption of the Agenda of the Session.

The agenda was adopted.

On the proposal of the Chairman, it was decided to discuss, when M. Cornejo arrived, the question whether a fourth item which he had proposed should be added to the agenda.

The Chairman said that, so far as the Convention on financial assistance was concerned, it would be necessary to consult representatives of the Financial Committee who would not arrive before Monday, May 5th. The Chairman proposed, therefore, not to begin the discussion of the question before that date.

The proposal of the Chairman was adopted.

Viscount Cecil of Chelwood (British Empire) hoped that the Committee would be able to settle the question of facilities to be accorded to aircraft and the draft general Convention to be concluded with the object of strengthening the means to prevent war before it discussed the draft Convention on financial assistance. If the representatives of the Financial Committee had not arrived by the date on which the Committee desired to begin its examination of the Convention on financial assistance, it could, he thought, discuss other aspects involved, reserving any points connected with the financial aspect until the arrival of the representatives of the Financial Committee.

The proposal of Viscount Cecil was adopted.


Viscount Cecil of Chelwood (British Empire) informed the Committee of a correction to the English text of the report of the Committee on the Amendment of the Covenant of the League in order to bring it into harmony with the Pact of Paris (document A.8.1930.V.) The text of Article 12, paragraph 1, should read in English as follows:

"The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will not employ other than pacific means for its settlement."

SECOND MEETING

Held on Tuesday, April 29th, 1930, at 10.30 a.m.

Acting Chairman: M. Undén (Sweden).

5. Communications affecting the Working of the League of Nations at Times of Emergency; Facilities to be granted to Aircraft: Memorandum by the Secretariat.

The Chairman, in opening the discussion, recalled the procedure which had formerly been followed by the Committee on Arbitration and Security. It had begun with a discussion covering the entire question submitted to its examination; then without proceeding to a vote it had submitted the question to a Drafting Committee which had taken account of the
observations and proposals made and had tried to conciliate the various points of view and
to draw up a text. The Drafting Committee had then submitted a report to the Committee
on Arbitration and Security which had examined it in full session. The Chairman proposed
that the Committee should follow the same procedure in regard to the question now before it.

This procedure was adopted.

The following memorandum prepared by the Secretariat was read:

"At its last session, the Assembly noted the work undertaken by the International
Commission for Air Navigation, at the request of the Advisory and Technical Committee
for Communications and Transit, regarding the facilities to be granted to aircraft ensuring
the communications of the League of Nations at times of emergency. The Assembly requested the Council, as soon as the work of the International
Commission for Air Navigation was finished, to have a study made, possibly by the
Committee on Arbitration and Security, of the requisite measures to ensure that aircraft
engaged in transport of importance for the working of the League of Nations might be
free, at times of emergency, to fly in such a way and over such territory as might be
necessary for the carrying out of their mission, the Secretariat and the Governments
having come to an agreement beforehand as to the rules to be observed and the normal
routes to be followed, and as to any departures therefrom.

"The Council communicated the Assembly resolution to the Chairman of the
Advisory and Technical Committee for Communications and Transit, to enable him
to forward it immediately to the International Commission for Air Navigation.

"The Council also decided that, on the completion of the work of that Commission,
its conclusions, accompanied if necessary by the observations of the Advisory and
Technical Committee for Communications and Transit, would be transmitted to the
Committee on Arbitration and Security.

"The Committee therefore has before it, in virtue of the Council's decision, two
documents, one containing the conclusions of the International Commission for Air
Navigation (documents C.A.S.84, C.P.D.187) (Annex XVII), and the other embodying

"The Committee will observe that the essential object of the Advisory and Technical
Committee for Communications and Transit was to facilitate the study the Committee
is asked to carry out in accordance with the resolutions of the Assembly and the Council.

"The text proposed by the International Commission for Air Navigation takes
the form of provisions amending the Air Convention of October 13th, 1919. All the
Members of the League of Nations are not bound to the same extent by this Convention,
whereas the question of the facilities to be granted to aircraft is of importance to all
of them, seeing that it relates to a body of provisions intended by the Assembly to ensure
the rapid working of the League's organisations in case of an emergency.

"In this connection, it should be pointed out that, as far back as 1927, the Assembly
adopted a resolution (No. III) stating that: 'inspired by the spirit and provisions of the
Covenant, it reasserts that it is the obligation of the States Members of the League of
Nations to facilitate by every means in their power the rapid meeting of the Council
at times of emergency, and it invites the States Members of the League to take in advance
all necessary measures for this purpose'. The Assembly emphasised the importance
which is attached, in particular, to the identification of aircraft making journeys of
importance to the League of Nations at times of emergency.

"The Advisory and Technical Committee for Communications and Transit is
therefore now submitting, on the basis of the investigations carried out by the
International Commission for Air Navigation, a procedure which appears likely to ensure,
in regard to air communications, the rapid working of the organs of the League of Nations
at times of emergency, while taking into account the legitimate preoccupations that
might be felt as regards the safeguarding of the security of the Members of the League.

"Acting in accordance with the method which the Committee on Arbitration
and Security itself followed in 1928, the Advisory and Technical Committee for
Communications and Transit has thought it desirable to submit its suggestion in the form
of a draft resolution which might be transmitted to the Assembly."

The CHAIRMAN noted that two texts had been submitted to the Committee. The first
had been drawn up by the International Commission for Air Navigation for insertion in the
Air Convention of October 1919. The second was a draft resolution drawn up by
the Advisory and Technical Committee for Communications and Transit for submission to the
Assembly.

Baron Rolin Jaequemyns (Belgium) thought it would be very difficult to discuss both
texts simultaneously. He personally had been much struck by the observation of the Committee
for Communications and Transit to the effect that, if the Committee were
to confine itself to adopting certain amendments to the Convention of 1919, its work
be incomplete. Baron Rolin Jaequemyns took the view that the Committee's work would
be more general in character if it followed the procedure suggested by the Committee for
Communications and Transit.

Moreover, in comparing the two proposals, Baron Rolin Jaequemyns noted that the draft
resolution proposed by the Advisory and Technical Committee contained in the first place
a draft preamble on the wording of which he reserved his right to make certain observations
if the Committee was prepared to discuss it. From the sixth paragraph onwards the text
had reproduced, with some improvements on certain points and a number of questionable
amendments on others, the proposal of the International Commission for Air Navigation.
The similarity between the two texts was striking. Baron Rolin Jaequemyns considered
that the text of the Transit Committee, however, was the better of the two. The general
discussion might therefore centre on this text, it being understood that the form of the
preamble would be reserved, since it would have to be submitted to a Drafting Committee.
He proposed that the Committee should for the moment leave on one side the question
whether the texts adopted ought to be added to the Convention of 1919, or be made the
subject of a resolution. He suggested that the Committee should now discuss the principles
underlying the texts submitted to it.

The CHAIRMAN agreed with Baron Rolin Jaequemyns that it would be better to take as
a basis of discussion the more general text drawn up by the Committee for Communications
and Transit. There remained to be decided the question whether or not to draw up a similar
text to be inserted in the Convention on Air Navigation of October 13th, 1919.

The procedure suggested by the Chairman was adopted.

6. Communications affecting the Working of the League of Nations at Times of Emergency :
Facilities to be granted to Aircraft: General Discussion of the Draft Resolution
submitted by the Advisory and Technical Committee for Communications and
Transit,

The following draft resolution, proposed by the Advisory Committee for Communications
and Transit, was submitted:

"The Members of the League are under the obligation to facilitate by all means
in their power the meeting of the Council at times of emergency and the working of
the League in general.

"The use of air transport may be necessary to enable the League to take rapid
action to safeguard the peace.

"The Assembly therefore considers it important that the Members of the League
should, in order to discharge their obligations, grant to aircraft used for air
communications of importance for the working of the League all facilities for navigation
and passage to enable them to discharge their missions. Such aircraft should enjoy
all the rights granted by existing international Conventions to Government aircraft
other than military, Customs or police aircraft, and should at no time be subject to any
exceptional and temporary restrictions that may be imposed on air navigation.

"The conditions on which the various Governments will grant the facilities mentioned
in the previous paragraph shall be laid down in advance by each of the Governments
concerned, after consulting the Secretary-General of the League. In particular, the routes
to be normally followed by aircraft and the procedure contemplated for notifying the
Secretary-General without delay of any changes in such routes should be fixed in
advance.

"The Assembly requests the Secretary-General immediately to open negotiations
on this matter and also on the conditions under which the States whose territory is crossed
will assist aircraft in difficulties and the persons on board to complete the journey by
air and carry out their mission.

"The Assembly trusts that the Members of the League will grant to aircraft used
for communications of importance to the working of the League all facilities in regard
both to supervision and to the routes to be followed.

"Aircraft used for communications of importance to the working of the League,
within the meaning of the present resolution, are aircraft permanently or temporarily
engaged in conveying League officials or League correspondence or in conveying
delegations to the League or their correspondence. Should such aircraft be the property
of the League, the Secretary-General shall have them registered in the Secretariat of
the League. Should such aircraft be used for communications of importance to the
working of the League but be registered in any country and only temporarily placed
at the League's disposal, the Secretary-General shall likewise have them registered in
the Secretariat of the League. All detailed regulations regarding conditions of
registration, the communication of entries and the cancellation of entries, identification
marks on aircraft showing that they are on the service of the League, certificates and
licences for the crew, and other documents generally required by international
Conventions, shall be laid down by the Council of the League of Nations after consulting
the competent international bodies.

"Should aircraft used for communications of importance to the working of the
League be required to fly over a State, the Secretary-General of the League will
endeavour to give that State due notice by suitable means of the identification marks of
the aircraft, of the route to be taken and of the persons on board — the crew and the
passengers to be provided with documents certifying their status and mission.
representatives of the various Governments had expressed their views, the matter could be satisfactory. He would only make objections in regard to a few points.

In the first place, he wondered whether it was really necessary to make provision for aircraft which would be the property of the League of Nations itself. The task of the Committee was to study the measures necessary to ensure to aircraft engaged in journeys connected with the working of the League at times of emergency the necessary freedom of navigation and passage to enable them to fulfill their mission.

What the Committee should therefore consider was what would happen in a time of emergency. Could it really be maintained that, in order to ensure an aeroplane service at such a time, the League of Nations required to possess aeroplanes on its own account? He felt sure that the answer was in the negative. The Secretary-General would always be in a position to conclude contracts with aerial navigation companies of Switzerland or neighboring countries by the terms of which the aeroplanes which he needed would, if necessary, be put at his disposal. Dr. Göppert would remind the Committee of the enquiry which had taken place as a result of the Council's resolution of December 1926, and the satisfactory results which had been achieved. To attain the object in view it would not be necessary, therefore, for the League to possess aircraft.

The possession of even a single machine would constitute a heavy burden for the League. Without taking into account the expenses entailed by such a machine, which would certainly be a matter for consideration by the Fourth Committee and the Supervisory Commission, the Committee on Arbitration and Security might well wonder what missions that aeroplane would perform in normal times since, fortunately, times of emergency were the exception. It would have to be used somehow if only to ensure that it was kept in proper working order. The journeys it made might cause accidents, for which the responsibility would fall on the League; it was better to avoid this.

Finally, progress in aerial navigation was so rapid that the aeroplane would soon become out of date, and would have to be replaced even before it had been used for the object for which it had been destined.

For all these reasons, Dr. Göppert thought that any reference to the possibility that the League should possess aircraft for itself should be removed from the text.

He would also draw attention to another aspect of the problem, to which Count Bernstorff had referred in the previous year in the Third Committee of the Assembly. A number of countries were subject, under the treaties, to restrictions in regard to aerial navigation. They possessed neither military nor police aeroplanes. They were thus deprived of a very important means in the possession of other countries for the control necessarily imposed, at times of emergency, on all aeroplanes flying over their territory. In those circumstances, such countries ought to derive greater benefit than the others from the permission, provided for in the text, to make exceptions to the general rules regarding the conditions of transport granted to the League of Nations.

M. Sokal (Poland), in agreement with Dr. Göppert, said that the main lines of the draft resolution drawn up by the Advisory Committee for Communications and Transit were quite satisfactory. He could not, however, agree with the observations of the German representative.

M. Sokal would recall that, at the time when M. Paul-Boncour had laid special emphasis on the necessity of placing rapid means of communication at the disposal of the Council, the question of aircraft had been raised. Reference had been made to aircraft belonging to the League, and it was obviously a very important and very effective method of assisting any action taken by the Council during a time of emergency. This view had never been abandoned, and the representative of Poland was quite unable to agree that aeroplanes placed at the disposal of the League of Nations and belonging to national civilian aircraft companies met the case and provided a final solution for the problem. On the contrary, in his view, the essential preoccupation of the Committee should be to provide the Council of the League with its own suitable means of action, and if the possibility of using, as a transitory and provisional measure, national aircraft placed at the disposal of the League of Nations was contemplated, it was because of the wish to attain the desired object as rapidly as possible. That object, however, remained the same as had already been defined. It was to provide the Council with aeroplanes belonging to the League of Nations.

If the Committee took this view — and M. Sokal felt sure that it would do so — it should retain the draft resolution drawn up by the Advisory Committee for Communications and Transit and interpret it in the following manner. It was proposed to establish two categories of aircraft, namely, aircraft belonging to the League and aircraft which, while belonging to
national forces, would be placed at the disposal of the League. Facilities must be granted to these two categories of aircraft. Obviously, all the necessary facilities would be granted to aircraft belonging to the League. There would be no opposition to granting the same facilities to the second category of aircraft, provided that that second category should be considered—and M. Sokal would insist on this point—to be a provisional arrangement, to last until the Council of the League possessed its own means of action.

Baron Rolin Jaequemyns (Belgium) said that he had no instructions from his Government on the question whether the League should possess an air fleet or not. Moreover, he thought that this question did not come within the competence of the Committee. The recommendations contained in the proposal of the Advisory and Technical Committee for Communications and Transit referred to certain legal hypotheses. The idea of aircraft belonging to the League was not excluded; if, however, the Committee decided to consider the various hypotheses, that did not in any way mean that the principle of the acquisition by the League of an air fleet must be regarded as accepted. On this point, Baron Rolin Jaequemyns regretted that he could not agree with M. Sokal.

The League would, he thought, take a decision in due time on the question whether or not it should have an air fleet, but that matter was outside the jurisdiction of the Committee. If the League owned an air fleet, the latter would enjoy certain privileges. If, on the other hand, it used aircraft belonging to various countries for the purposes of its communications, such aircraft would also enjoy certain privileges.

In conclusion, Baron Rolin Jaequemyns thought that the Committee should consider certain legal hypotheses and make proposals to the Assembly in this sense. If it went further, it would be exceeding the limits of its competence.

M. Sokal (Poland) observed that he had not urged that there was any need for the Committee to decide immediately that the League should at once acquire aircraft. He pointed out, however, that the Committee on Arbitration and Security was essentially a political Committee and not a legal one. In these circumstances, and without prejudging the final decision, which it was not for the Committee to take—on this point M. Sokal agreed with the Belgian representative—he maintained entirely his point of view, namely, that the aircraft possessed by the League would enjoy certain facilities which would have to be defined, and that the other category of aircraft would take a second place, though it would likewise enjoy facilities which would also have to be defined. The first category must, however, be regarded as the principle one; that was the true solution of the problem. The second category provided only a provisional or intermediate solution, and did not in any case exclude the first category. There could be no doubt on this point.

Further, the Committee must not confine itself to examining solely the legal point of view. It must define the advantages likely to result from the granting of certain facilities. In examining this problem, the Committee must always remember that it had full authority to decide that the first category of aircraft, that was to say, aircraft belonging to the League, would be far more satisfactory than the second category, which could only be accepted as a subsidiary and provisional solution.

This, however, did not of course in any way anticipate the decision to be taken by the Council or the Assembly. It was in these conditions, and subject to an interpretation of this kind, that M. Sokal would be prepared to agree to a recommendation, but he would have to reject any proposal which excluded here and now the category of aircraft belonging to the League.

Viscount Cecil of Chelwood (British Empire) said that the British Government accepted the substance of the proposals made by the Advisory Committee for Communications and Transit.

With reference to the question raised by M. Sokal, Dr. Göppert, and Baron Rolin Jaequemyns, he thought the Committee might congratulate itself on the very auspicious beginning of its discussions, because it was quite clear that all three were in agreement. M. Sokal had not proposed that a League aeroplane should be brought into existence immediately or in the near future. Baron Rolin Jaequemyns—and in all probability Dr. Göppert—did not exclude the possibility that, in the future, the League should possess an aeroplane. The time might well come, in ten or fifteen years, when everybody would have aeroplanes, and in that case it might well happen that the League would have its own aeroplanes just as it had its own motor-cars. All that the document before the Committee stated—and it seemed a very simple proposal—was that any aeroplane used for the communications of the League should be registered in the League. It did not matter whether the aeroplane belonged to the League or to somebody else; it must in all cases be registered in the League. That was the whole proposal, and he thought that all the members of the Committee were agreed so far as it was concerned.

Another question to be discussed was whether the Committee should adopt a resolution or draw up a convention. Lord Cecil's view was that it seemed desirable first to move a resolution, because he agreed with the Secretariat in thinking that that would be the most practical and rapid way of proceeding. Since, however, that would, in effect, be an amendment of the existing Convention, an amending convention should also be prepared in order to regularise the matter so far as the existing Convention was concerned. He thought, therefore, that both were necessary. The first step should be a resolution showing what the Committee wanted to do; subsequently, it would be a very simple matter for the terms of that resolution to be put into the form of a convention.
M. Massigli (France) was authorised to state that his Government accepted the principles laid down in the draft resolution and the proposal as a whole. When the Committee came to discuss details, he would, however, have certain observations to make on points of drafting.

He wished, nevertheless, to refer to a question which he reserved his right to explain in greater detail later when the Committee came to examine the text, but which seemed to him to be one of principle. The penultimate paragraph of the proposed resolution stipulated that the countries retained their liberty to prohibit, in certain given circumstances, aircraft registered in another State from flying over their territory. In the French Government’s opinion, this idea that the liberty of a State to prohibit aircraft from crossing its territory had something to do with the country of registration was perhaps incorrect and was not in accordance with the aim in view. The French delegation did not think that it was the country of registration which was important, but the nationality of the crew. M. Massigli would propose an amendment in this sense in due course. He had wished, however, to put forward immediately this consideration so that his colleagues might reflect upon it. In his opinion, a change of that kind would meet the wishes of all members of the Committee; it would, at the same time, make it possible to facilitate the working of the proposed system and the placing at the League’s disposal of aircraft belonging to different nationalities.

As regards the question raised by Lord Cecil, M. Massigli thought that the Committee, if it wished to do useful work, should confine itself to adopting a resolution. The question whether the text proposed by the International Commission for Air Navigation should be accepted or not, lay perhaps outside the purview of the Committee. The amendment or rectification of that text would possibly place in a difficult position the delegations of those Governments which were not Members of the International Commission for Air Navigation. On the other hand, an agreement as to the principles to be incorporated in the special conventions to be concluded between the Secretariat and each country concerned was entirely in conformity with the Committee’s terms of reference. This did not mean, however, that the countries which were members of the International Commission for Air Navigation would not consider it desirable in their turn to embody in amendments to the convention the principles thus laid down. It would suffice, when agreement had been achieved on the principles, to forward to the members of the International Commission the texts adopted by the Committee, leaving it to the former to insert them in the convention concluded between them. Care must be taken not to complicate the questions involved and so create difficulties for the States which were not represented on the Commission.

General De Marinis (Italy) thought it would be better to adopt a resolution. It would then be easy to turn it into a treaty.

The Italian delegation entirely agreed with the principle on which the resolution proposed by the Advisory Committee for Communications and Transit was based. It also shared M. Massigli’s point of view concerning the amendment to be made in the penultimate paragraph of the proposed resolution.

M. Ito (Japan), speaking on behalf of his Government, said that he entirely concurred in the principle contained in the draft resolution of the Advisory Committee for Communications and Transit.

With regard to the question raised by Lord Cecil and M. Massigli, M. Ito thought that the Committee’s task was to prepare a draft resolution, leaving it to the competent bodies to transform it into a convention.

Munir Bey (Turkey) observed that Article 100 of the Treaty of Lausanne made it binding on Turkey to adhere to the Convention for the Regulation of Air Navigation. Under the annexed Protocol of 1920, however, that provision had been made subject to the condition that Turkey would be granted the derogations required by its geographical situation. As those conditions had not been fulfilled, the Turkish Government had not adhered to the Convention.

In the next place, the proposal under discussion said that the facilities to be granted to aircraft ensuring air communications connected with the work of the League were included among the obligations of the Members of the League and were identical with those granted by existing international Conventions to Government aircraft. Turkey was not a Member of the League and the Turkish Government was not bound by the 1919 Convention. The Turkish delegation did not accordingly consider that it had to take part in the discussion on this question.

The Chairman proposed that a Drafting Committee should be set up to prepare a draft resolution and that, in order to meet a suggestion made by M. Cobian, the delegations should be asked to send in their observations in writing. This method would save time. The Secretary of the Committee for Communications and Transit, M. Haas, would be at the Committee’s disposal from Thursday. The members of the Drafting Committee and those of any other sub-committees which might be proposed would be nominated at a later meeting.

The proposals of the Chairman were adopted.

The Chairman proposed that the Committee should discuss the draft as a whole and should then take the articles one by one.

Viscount Cecil of Chelwood (British Empire) asked whether a general discussion was really necessary. The general principles of the treaty had been discussed probably half a dozen times already, and the treaty had been approved by the Assembly in principle. The real business of the Committee was now to decide what the text should be. If the Committee adopted that view, he suggested that it might be wise to adjourn the consideration of the question. The proposals put forward by his delegation (Annex III) were not yet quite complete. He thought he would be able to complete them by the afternoon, and, if the Committee decided to adjourn now, he would then be able to put before it the exact position taken by the British Government on the matter. He did not want to oppose a general discussion if anyone desired it, but merely wondered if there was anything to be said in a general discussion which would be new.

M. Massigli (France) agreed that the discussion should be adjourned to the next meeting. This step seemed to him all the more desirable in view of the fact that the British delegation had been the first to make the proposal before the Committee and, in consequence, its views were an essential element in the discussion.

He thought, however, that it was absolutely necessary to have a general discussion and he did not agree with Viscount Cecil that the principles in question had already been approved. These principles had been approved in the case of a special convention. The present case, however, was quite different and the Committee had been instructed to ascertain whether it was possible to draw up a general convention. It was therefore essential, in the first place, to lay down the principles which should form the basis of such a convention. As long as the views of the various delegations in regard to those principles had not been expressed, it would be impossible to discuss the articles in detail. For example, Article V was the dominating factor, and as long as the Committee was unacquainted with the views of the members regarding the principles contained in that article, a discussion on the details would be useless.

Viscount Cecil of Chelwood (British Empire) said he did not wish to adjourn the general discussion until the following day, but was prepared to enter on it immediately. If M. Massigli desired to discuss any general principle, no one could be more anxious to hear what the French delegation had to say than himself. He had not thought there was any question of a general character which still remained to be discussed, but if there was the Committee might discuss it now.

General de Marinis (Italy) supported the proposal to adjourn the discussion to the following day in view of the fact that the British proposal had only just been distributed and required to be carefully examined by the various members.

The discussion was adjourned to the next meeting.

THIRD MEETING

Held on Wednesday, April 30th, 1930, at 10.30 a.m.

Acting Chairman: M. Undén (Sweden).


The Chairman observed that the members of the Committee had received a synoptic table giving the various observations of the Governments. A last proposal by the British delegation had also been distributed (document C.A.S.98(a)) (Annex IV).

M. Massigli (France) said that the draft Convention, the possibility of extending and generalising which the Committee had been instructed to consider, was based on the idea of supplementing the obligations of the Covenant as they stood at present in Article 11. This idea was formulated, for instance, in the memorandum of January 27th, 1928, in which the German Government had communicated its observations to the Committee on Arbitration and Security. The memorandum said:

"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 that can no doubt form the subject of an agreement between a large number of the Members of the League."
The idea occurred again in Baron Rolin Jaequemyns' report on the suggestions submitted by the German delegation to the Committee. After referring to Article 11 of the Covenant, Baron Rolin Jaequemyns had said:

"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."

Thus new obligations would be added to the obligations of the Covenant.

The same idea was also to be found in the introductory note in which the Assembly of 1928 had commented on the draft treaty for the prevention of war.

Lastly, the idea was expressed in the preamble to the treaty, which mentioned the "undertakings assumed voluntarily in advance by the States".

The framers of the draft had wished to add something to the obligations of the Covenant. That was perfectly legitimate. Article 11 imposed certain general duties on the Council, but it contained no special obligation for the Members of the League. The question now to be considered was whether it was possible to define the obligations of the States Members in order to strengthen the armoury at the Council's disposal for the prevention of war.

The French delegation was prepared to undertake this study. The programme was too laudable to allow of any disagreement among the members of the Committee on this point. Defined, however, in this way, the object in view involved certain consequences of a serious nature. Article 11 of the Covenant, according to the interpretation given to it, conferred on the Council only the right to make recommendations, which the countries concerned were free to accept or refuse. If it were not proposed to embody any stipulation that would be binding on the parties, a convention was perfectly useless, since it would only add yet another element to the various "valuable guides" already at the Council's disposal. Furthermore, as it would introduce nothing that was effective, it would unquestionably do more harm than good. The liberty of action granted to the Council under Article 11 would, to a certain extent; be limited; the position which was at present fluid would be crystallised and the rights of the Council would be restricted.

The Convention would have no practical bearing unless the measures prescribed by the Council for such cases were valid without the assent of the parties concerned.

The French Government was prepared to accept this principle and, in consequence, to study the measures that might be taken without the assent of the parties concerned.

There was another principle on which M. Massigli thought a clear pronouncement essential. The Committee was in possession of a model treaty which was offered for signature by those States which were prepared to accept its provisions. The question now before the Committee related to a different matter, namely, a general convention which, in principle, must be signed by all the Members of the League, a convention, therefore, which was to apply regardless of the dispute contemplated, regardless of the type of hostilities to be stopped or foreseen. A general convention must be applicable to all sorts of cases and cover all thinkable hypotheses, while its provisions must be in accordance with the general object in view.

This situation gave rise to certain consequences. The Committee had to consider whether it was possible to confer new rights on the Council, but that immediately implied that the Council would have new responsibilities within the measure of these new rights. This was a very important point. It was desired to say to the countries: "You are about to agree that, in the event of your being threatened by a dispute, you will not take the precautionary measures that appear necessary to you; you undertake to leave it to the Council to prevent the outbreak of hostilities". It was surely obvious that the country in question would reply: "I agree, but I do not know what will happen. I do not know what measures the Council will prescribe. Will the measures that I am prepared to accept be accepted and carried out by the other State? What will happen if it does not abide by them? What will happen if, relying on the Council and on its action and having refrained from taking the precautionary measures which, in the absence of the Convention, I should have taken, I am nevertheless attacked?"

This was an inevitable problem and there was no need to emphasise its gravity.

In this connection there was an argument from which the French delegation had never deviated and could not deviate. Indeed, in order to define the French delegation's position, it was only necessary to repeat the actual terms used by M. Paul-Boncour at the meeting of the Committee on June 30th, 1928, when he had defined the problem as follows:

"You have already seen that nations will not deliberately sign a treaty binding them in advance to accept conservatory measures which, in the case of a dispute, might place them in a difficult situation unless they are assured beforehand that, once the measures have been ordered, their execution may be supervised. Again, if these measures are not observed, if one of the parties — despite the Council's injunctions — refuses to submit to them, is the Council to remain inactive? Does not the obligation to comply with the measures provided for in advance involve the obligation of mutual assistance for the nation complying with those injunctions, which is attacked by the nation that has not complied with them? . . .

"I cannot conceive of these definite engagements with regard to conservatory measures without a definite guarantee of mutual assistance in the case of their observance by one of the parties and violation by the other."

To sum up — and the point must be noted — the entire question of supervision and sanctions was raised. The Council must only prescribe measures, the execution of which..."
it was able to supervise; measures the violation of which would create a situation so clear and so definite that there could be no hesitation as to the conclusions to be drawn and the action to be taken. In a word, there was a close connection between the measures which the Council would be empowered by the Committee to take and the means and possibilities of action to be conferred by the Committee on the Council for the supervision of the execution of those measures and the prevention of their violation.

M. Massigli fully realised that the objection would be made that he was raising a very serious problem, the following up of the different consequences of which had given him the utmost difficulty in the past six years. That was true, but the fact that the problem arose was not due to the French delegation. The problem existed. Any effort that might be made to keep these intricate questions in the background would not prevent their cropping up as obstacles at every turn in the road. Hence, they must be approached frankly.

If, however, the Committee desired to solve the problem that had been raised and the French delegation for its part was resolved to achieve something practical and to arrive at concrete results—it must study that problem under conditions which would enable it to overcome the difficulties. The powers to be conferred on the Council must be understood in such a manner that the Committee would be able to reach an agreement easily, both as to the consequences resulting from those powers in regard to supervision and as to those implied by the necessity of providing sanctions in the event of violation. Measures must be contemplated which would be easy to supervise, measures of such a character must be provided that it would be simple to appreciate their violation and of a seriousness which would exclude any hesitation as to the consequences to be drawn from them. The problem must be expressed in simple and plain terms. M. Massigli had desired to submit these questions, although at the present stage of the discussion and in the absence of any adequate information concerning the feelings of the other members of the Committee he did not propose for the moment to outline any solutions. Solutions could be found. The French delegation had reflected on the matter and believed that it was possible to define certain concrete cases and to foresee certain definite situations for which a convention such as that contemplated would certainly result in important progress as compared with the existing state of affairs.

The nature of the solutions to be sought, however, depended entirely on what opinions were expressed by the members of the Committee in regard to the questions which he had just put and, most particularly, to the first question, namely, whether it was agreed that the Convention to be drawn up should operate without the consent of the parties to the dispute. That question was fundamental; it dominated the entire problem. The French delegation for its part was resolved to achieve something practical and to arrive at concrete results—it must study that problem under conditions which would enable it to overcome the difficulties. The powers to be conferred on the Council must be understood in such a manner that the Committee would be able to reach an agreement easily, both as to the consequences resulting from those powers in regard to supervision and as to those implied by the necessity of providing sanctions in the event of violation. Measures must be contemplated which would be easy to supervise, measures of such a character must be provided that it would be simple to appreciate their violation and of a seriousness which would exclude any hesitation as to the consequences to be drawn from them. The problem must be expressed in simple and plain terms.

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M. Ito (Japan) observed that, according to the terms of the resolution adopted by the last Assembly, it was the Committee's duty "to consider the possibility of establishing a draft general convention". M. Ito thought he was right in saying that this resolution had been voted in consequence of a motion presented by the British delegation to the Assembly. On this point, the Japanese representative on the Committee on Arbitration and Security, like the Japanese delegate on the Third Committee of the last Assembly, had invariably observed the same attitude. At the third session of the Committee on Arbitration and Security the Japanese representative, basing his remarks on the arguments developed by the British delegation, had said that such a convention should be concluded between countries in similar circumstances. It should therefore be established on the regional basis or on the bilateral basis. The Japanese delegate on the Third Committee of the last Assembly had expressed the same point of view. The Japanese delegation still considered that such a convention should not be a general one, owing to the differing circumstances in which the various countries were placed, a fact which would make it very difficult to generalise the measures to be taken in time of emergency.

If, however, the majority of the Committee were in favour of establishing a general convention the Japanese delegation would not object. It would reserve its right to submit later observations on the various articles when they were being discussed.

Viscount Cecil of Chelwood (British Empire) said that from the two previous speeches it would appear that the Convention might be regarded as much more important than he had hitherto assumed. He had always regarded it as a very simple matter indeed. Under Article 11 of the Covenant the Council was given very wide powers to deal with any situation which involved war or a threat of war and to make recommendations of a very extensive character to prevent it. Three years previously, largely at the instigation of the French delegation, a small Committee had been appointed to draw up not a complete series of recommendations on the subject, but some illustrative recommendations. He himself, together with M. de Brouckère and M. Titulesco, had sat on that Committee, which had drawn up a rather elaborate code of the kind of action the Council might take under Article 11. The code was by way of illustration and in order to make the situation more complete and understandable than before. The Committee's work had been very largely due to the continual insistence by the French delegation on the desirability of making the general position more precise. Originally, the discussion had ranged round Article 16, but M. de Brouckère had pointed out that the really effective article of the Covenant for the purpose in question was Article 11, and, consequently, the Preparatory Commission (the present Committee not being then in existence) had devoted its attention to meeting the French thesis by making more clear and definite the obligations under Article 11.
That had been a step forward, though not a large one. In matters of this kind, however, where it was necessary to meet the views of all the Members of the League, with their very diverse outlook on world affairs, it was only possible to advance by degrees; only one step at a time could be taken.

The German delegation had subsequently suggested what Lord Cecil regarded as another small though desirable step forward. It had said that the Members of the League, in agreeing that those powers belonged to the Council, were under a moral obligation to see that they could be taken.

The German proposal accordingly was that the obligation, which so far was only moral and implied, on Members of the League to carry out the recommendations of the Council should become a definite contractual obligation, and that the Members of the League should say: "We are now prepared to go a little further; as honourable Members of the League we have always in effect been bound by this obligation, but we are now prepared to say in so many words that we accept contractually and beforehand the moral obligation that already rests on us under Article 11."

Viscount Cecil begged M. Massigli not to take up the attitude that the advance was so very small that it was scarcely worth making. The question of security, which had been of primary interest to the French delegation from the outset, was extremely difficult, thorny and complicated. No progress would be made if it were sought to cover the whole distance at once; the point was to see whether a small advance could not be made in the direction which both M. Massigli and himself desired to see taken. The present proposal seemed to him to be a step in the right direction, though a small one. To say that because it was small it should be rejected taken at a stroke, he was afraid, that no advance would be possible, and that would be a step backward. Lord Cecil begged M. Massigli to consider whether it was wise to "quench the smoking flax" and whether it was not better to take whatever could be obtained and then ask for more.

M. Massigli had raised two main questions. In the first place, he thought it should be made clear that, in any question of unanimity under Article 11, the votes of the parties to the dispute should not be counted. To some extent, however, that principle was admitted in Article 5 of the draft and when that article was discussed he would be interested to hear how much further M. Massigli thought it was necessary to go. On such a question it was important not to go further than would command general assent. It was no use drawing up a Convention which would not be generally accepted. Personally, he would not express an opinion on the question whether Article 5 should, or should not, be extended, but he thought the question of principle did not arise, since under that article it was conceded that, at any rate in certain cases, the votes of the parties ought not to be counted. When Article 5 was discussed, the Committee could see whether it went far enough as drafted. Personally he would do his best to agree with any suggestion M. Massigli might make, without of course pledging himself until he knew what that suggestion was. On the final question raised by M. Massigli, his only point was that the point did not arise at the present stage, and that if M. Massigli did not obtain satisfaction when Article 5 was discussed it would be open to him to say that, in those circumstances, his delegation took no further interest in the Convention. It was to be hoped, however, that that course would not be adopted.

M. Massigli's other point was that under Article 11 of the Covenant the Council was empowered to take any steps it thought desirable, or to recommend such steps, for preventing war, and that that might involve the making of recommendations which it would be dangerous for one of the parties to accept, and which, if the party was bound to accept them, might put the committee in such a position that it would require assistance in order to justify the acceptance of the recommendation.

Personally, he did not understand Article 11 in that sense and had never done so. The Council, in making any recommendations to prevent hostilities, would have to consider what could be safely done and would have to make fair and reasonable recommendations; it would not be entitled to make a recommendation which would imperil the safety of a State. Its only object under Article 11 was to prevent aggression by each of the States. It was always necessary to proceed on the assumption that the Council was not going to prove an unreasonable body. If it was not believed that, when the Council acted unanimously — with or without the consent of the parties — it would act reasonably, there was not much use in continuing the existence of the League at all, at any rate in regard to that part of its activities at present under discussion, for these depended on confidence being shown in the Council. That was the foundation-stone on which the whole structure of the League was based and therefore it must be assumed that the Council would not make an unreasonable recommendation.

Assuming, however, that a recommendation which was perfectly reasonable on the face of it subsequently proved to be one which increased the hazard of one of the parties, and assuming that the other party took advantage of that circumstance and resorted to war, Article 16 would come into play. It had always been Lord Cecil's view that the supposed difficulty of defining the aggressor was much smaller in reality than it seemed on paper, because, if the system of the Covenant operated at all, there would be a preliminary stage in which the parties would be more or less face to face. At that moment, the Council would give directions to avoid the outbreak of war, and the attitude of the two parties towards those directions would be conclusive as to which was really the aggressor and with whom the violation. It would be easy, therefore, to put into force the sanctions of Article 16 against the party which, by its conduct after the intervention of the Council, had shown itself to be clearly the aggressor.
The sanction that M. Massigli desired accordingly existed already in Article 16. Lord Cecil would not refer to the possibility — he hoped the probability — of the acceptance of the work which he and some of his friends had accomplished a few weeks previously in making a little clearer the interconnection of the Pact of Paris and the Covenant of the League, and which he thought would help matters.

The particular proposal now before the Committee seemed to him a useful though not a very extensive one, and on those grounds he supported it. M. Ito, however, had said that his Government had some doubt as to whether a general Convention was desirable. If, however, M. Ito had followed what Lord Cecil had just said he would see that it was not a question of introducing a new principle but simply of transforming a moral obligation which already existed into a contractual obligation and thus of strengthening to some extent, as the Preamble suggested, the means of preventing war. There was no question of creating a new conception which some might think it would be better to assume only in connection with certain countries; the intention was merely to make rather more effective the obligations which already existed under the Covenant. That was how Lord Cecil understood the Convention.

He earnestly hoped that the Committee, whatever view it might take as to its desirability or importance, would at any rate proceed to the consideration of the actual, definite, special provisions of the Convention, and see what could be made of it. After that had been done it would always be open to any of the Governments, or to the Committee itself, to say that such a Convention was not worth while. He hoped that that would not be the attitude ultimately taken up, but surely any decision to adopt such an attitude could well be left until the Committee had done its best to make the draft Convention, within the limits he had sketched out, as effective a document as possible.

M. Rutgers (Netherlands) said that the Netherlands delegation was entirely in favour of the draft, which in no way involved a modification of the Covenant nor the conclusion of a Convention binding on all Members of the League. The only object of the draft was to establish a treaty open to the signature of all States and only binding on them when their adhesion had been given.

It could be objected that the difference between such a treaty and the model treaty was not very great, for no State could be bound by it before it had signed. To this, however, could be replied that to open a protocol of signature in the Secretariat of the League had a certain suggestive force. By opening the Protocol for signature by the States, the League of Nations was extending its protection to a Convention to which the Committee could give a practical shape.

M. Rutgers had listened to M. Massigli with great interest. Contrary to the view of the French representative, however, he thought that the draft treaty might well increase security.

When the question of security was discussed the difficulty lay in determining who was the aggressor. The provisions, however, of the contemplated treaty and the action of the Council consequent upon those provisions would facilitate the definition of the aggressor. The Council would have an opportunity of prescribing measures. It would then be possible to ascertain whether the parties to the dispute were carrying out their obligations to conform to those measures. The Convention would therefore have a fortunate effect by increasing security.

M. Rutgers thought, on the other hand, that there was a misunderstanding concerning the contents of the draft. He had reached this view in reading the observations of the Swiss Government on the draft treaty. That Government wished to amend Article I, by the terms of which the contracting parties undertook, should a dispute arise between them, to accept the provisional recommendations of the Council. The Swiss Government had asked that mention should only be made of military measures. Article I, however, far from referring to military measures, excluded them. It spoke only of measures dealing with the subject of the dispute.

The idea that a misunderstanding had occurred had returned to M. Rutgers when listening to M. Massigli, who had quoted a speech made by M. Paul-Boncour during the third session of the Committee. That speech had referred to the second suggestion of the German delegation, which was to the following effect:

"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."

M. Paul-Boncour had been opposed to this suggestion, he had criticised the expression "military status quo normally existing in time of peace". As the result of his observations the second suggestion of the German delegation had been rejected.

There was a third German suggestion, however, covering the case in which hostilities had already begun and making provision for an armistice. Lord Cusshendun had criticised the proposal that the Council should decree an armistice, and had submitted an amendment to this suggestion which had been accepted in principle. M. Paul-Boncour had said that he fully agreed with Lord Cusshendun. The criticism of M. Paul-Boncour, based on the idea of security, had applied only to the second German proposal, which had not been accepted, and not to the third suggestion, which amended by Lord Cusshendun in agreement with M. Paul-Boncour, had become Article 3 of the draft now submitted to the Committee.

This being so, M. Rutgers wondered whether it was really to be feared that the Council could, in virtue of the contemplated Convention, prescribe military measures which would weaken the position of one of the parties to the dispute. The scope of Article 3 seemed to....
M. Rutgers on the contrary to be extremely limited. It could be summarised in two words: “Cease fire.” It provided measures of which the object was to cause hostilities to cease and which were in no way designed to endanger the security of any country.

His conclusion was, therefore, that security, far from being weakened, would be strengthened by the power given to the Council to make recommendations which the parties were compelled to accept in advance. The Members of the League of Nations would find in this a new method of determining the aggressor if it were necessary to do so.

General de Marinis (Italy) said that the position of the Italian delegation was exactly the same as that of the Japanese. It had upheld the same principles during previous discussions and had stated its preference for special treaties and considered too general treaties to be ineffective. In this respect, it would be enough to recall the very long discussions which had taken place on this point for the Committee to be in a position to realise the complexity and delicate nature of the problem which consisted in settling the action of the Council and of confining it to a rigid procedure. The authors of the Covenant had not felt equal to doing so. That difficulty sensibly increased when the case concerned not two contracting parties only, which might be in a position, by taking their own situation into account, to provide fairly completely for the measures to be adopted with a view to meeting possible divergencies of view, but when it concerned several States the situations of which differed to a greater or less degree. To draw up a general treaty it would be necessary, in this case, either to adopt rather vague formulae which might be applied to the various possible cases, or else to construct a very complicated mechanism of which the object would be to cover every possible eventuality. The first solution were adopted, great difficulties would be encountered for Governments which were not ready to assume ill-defined undertakings. In this connection, he wished to state that the Italian Government attached particular importance to being informed in advance of the scope and exact limit of the undertakings which it might be asked to assume.

As far as the second solution was concerned, the discussions which had taken place when the model treaty had been drawn up at the third session of the Committee had shown that such mechanism gave rise to very great difficulties in regard to its application, and that it probably constituted an ineffective solution which would greatly increase the responsibility of the Council. This was important not only in the case of the parties adhering to the general Convention but also for every member of the Council whose task would be very heavy and whose responsibility would be very great.

All these difficulties, however, would certainly be removed if the problem were viewed in its full scope, and M. Massigli had done so very remarkably in his very interesting speech. M. Massigli had shown that it would be possible to adopt a Convention of this kind provided that certain problems were solved, for example, the control of sanctions and the previous undertaking to be assumed by the contracting parties to apply every measure which the Council might decide to recommend, even if they did not participate in the vote of the Council. Viscount Cecil, in his remarkable speech, in referring to the fears of the French representative, had said that the Covenant contained moral obligations which must be transformed into contractual obligations. He had not, however, defined them. M. Massigli, on the other hand, had gone a little further, had defined those obligations and had sought to draw the Committee’s attention to their importance. If, however, it were a question of adding to these obligations by means of a convention, why should not a more direct course be taken? It was a question of increasing the powers of the Council and the obligations assumed by Members of the League of Nations. This amounted therefore to amending the Covenant and, in those circumstances, why was it necessary to draw up a convention? This solution did not appear to be either the most regular or the most logical. It would be preferable to amend the Covenant direct.

Viscount Cecil of Chelwood (British Empire) pointed out that this action had been taken in connection with the Pact of Paris.

General de Marinis (Italy) next recalled that M. Rutgers had maintained that he saw no great difference in substance between the model treaty which had been drafted and the general Convention now contemplated by the Committee. He thought that that Convention would not be compulsory but would be open to the signature of those who desired to adhere to it.

Did not the Netherlands representative think it somewhat inconvenient to establish within the League a group of States bound by stricter rules than their co-Members? This solution would be admissible if only two or a small number of States were involved, although the result would always be an increased responsibility on the part of the Council, whose duty it was to supervise the execution of the undertakings adopted by these States. General de Marinis, however, did not think it desirable that a large group of States bound by stricter rules should be established within the League.

In conclusion, he was prepared to co-operate in the details of the Committee’s work, but he awaited with great interest any observations on the possibilities which the other members might see of giving this Convention a positive and practical form.

Dr. Göppert (Germany) said that Viscount Cecil’s interpretation of the suggestions made in 1928 by M. von Simson was correct. The object of these suggestions had been to transform into legal and contractual obligations, obligations which had hitherto been only of a moral kind. Such a transformation would certainly not constitute a very big step in advance but nevertheless a measure of progress which could certainly be described as important would have been achieved.
to adopt half-measures. The proposed Convention would have no real value unless it were
in his view, it might provoke ill-disposed criticisms of the League.
be of advantage either for the cause of peace or for that of the League. On the contrary,
four, five or six States was obtained, Dr. Goppert did not think that such a situation would
immediately come to hand after the first two ? Even if the adhesion or ratification by three,
were deposited by States whose geographical position made any armed conflict between them
would, in fact, prevent the rifles from going off by themselves.
would prevent the occurrence of incidents which might subsequently provoke hostilities, which
by the Council of a line of demarcation on the territory of each of the States involved in the
its right to submit its proposal in writing. It ventured to define accurately and Dr.
British proposal though there were a number of differences. The German delegation reserved
the precautionary measures which should be applied, should a danger of war arise, by the
signatory States on the recommendation of the Council. The proposal covered the fixing
of the discussion which had taken place both in the Committee on Arbitration and Security
and in the Assembly. It thought that it would be possible to find a solution to which the
former objections made to the second German suggestion concerning the military status quo
would no longer be such as to give satisfaction to every one.
In its general lines the solution proposed by the German delegation was similar to the
British proposal though there were a number of differences. The German delegation reserved
its right to submit its proposal in writing. It ventured to define accurately — and Dr.
Goppert thought that in so doing his delegation was approaching the French point of view
— the precautionary measures which should be applied, should a danger of war arise, by the
signatory States on the recommendation of the Council. The proposal covered the fixing
the precautionary measures which should be applied, should a danger of war arise, by the
Council of a line of demarcation on the territory of each of the States involved in the
dispute. The forces of those States would be required not to cross the line laid down in
this way, which meant that they would remain a certain distance from each other. This
would prevent the occurrence of incidents which might subsequently provoke hostilities, which
would, in fact, prevent the rifles from going off by themselves.
Dr. Goppert thought that this solution would constitute in a time of crisis one of the most
effective means of preventing hostilities. Experience had proved this in a celebrated case
in the history of the League.
Dr. Goppert would return to another point in the British proposals which he thought
he ought to be great importance. He referred to Article 8, concerning the entry into force of the
Convention. The British delegation had thought that the Convention should enter into force
as soon as two members of the League had ratified or adhered to it. It was obvious that
this was merely a beginning and that the League counted on obtaining a far larger number of
adhesions or ratifications. Nevertheless, the German delegation was unable, in this matter,
to agree with the British delegation. What would be the position if the first two ratifications
were deposited by States whose geographical position made any armed conflict between them
almost, if not quite, out of the question? What would be the impression on public opinion
if, owing to this fact, the Convention entered into force and if other ratifications did not
immediately come to hand after the first two? Even if the adhesion or ratification by three,
five or six States was obtained, Dr. Goppert did not think that such a situation would
be of advantage either for the cause of peace or for that of the League. On the contrary,
in his view, it might provoke ill-disposed criticisms of the League.

The German delegation thought, therefore, that the Committee should be careful not
to adopt half-measures. The proposed Convention would have no real value unless it were
adhered to, and ratified, by a large number of States. M. von Simson had, on several occasions
during the previous discussions, emphasised this point. Dr. Goppert said that, in his view,
ratification was necessary by twenty-five States in the very least by twenty.
If it proved impossible to hope from the beginning that this number of signatures followed
by ratifications would be obtained, it would be better to renounce all idea of a Convention.

Dr. Goppert saw no reason to be pessimistic. The entry into force of the Convention
must necessarily be subordinate to the condition that it had to be ratified by a number
of States sufficient to enable it to merit the name of a general Convention.

M. Massigli had emphasised the fact that the measure contemplated in the Convention
should be applicable without the consent of the parties to the dispute. This raised the
question of the way in which the Council should vote, a matter already referred to in the
German suggestions and discussed at length by the Drafting Committee during the second
session of the Committee on Arbitration and Security. The general arguments then put
forward against abandoning the provisions of the Covenant in so far as the vote was concerned
had made a certain impression on the German delegation. He hesitated to give his views
on this question and reserved his right to return to it later.

M. Massigli had also mentioned sanctions. In this respect, Dr. Goppert would associate
himself with the observations made by Viscount Cecil and M. Rutgers. He would only add one
practical consideration. The League would be required to make use of its conciliatory
action in the cases covered by the Convention, and for this the main requisite was patience.
If a State did not conform to the first recommendation made it might perhaps obey the
second. A series of attempts should be made so long as any hope of success remained. The application of a sanction, even if the State party to the Convention had accepted it in advance, would be equivalent to a rupture between the League and the State in question. Any fresh attempt at conciliation would then become impossible. It would therefore be dangerous and premature to contemplate sanctions in cases where a State failed to fulfil the obligations contained in the Convention. Baron Rolin Jaequemyns (Belgium) expressed the regrets he had felt regarding the Assembly resolution of 1929, which invited the Committee on Arbitration to draw up a draft general Convention to strengthen the means of preventing war. He wished also to express the anxiety felt by his Government in this matter. He personally shared the scruples that had been expressed by M. Massigli. He also agreed, up to a certain point, with the objections which had been raised by M. Ito and General de Marinis. He was not of the opinion which Lord Cecil had humourously expressed that the Committee had only to take a small step forward. Quite the contrary, he thought that the step to be taken was most important, since it would have to advance from a model convention to which States could subscribe or not and in which they knew who were their fellow-subscribers, to a general convention. Baron Rolin Jaequemyns would have preferred — and perhaps this was also the case with his Government — for the Committee first to have ascertained the degree of confidence which this model convention might arouse, and for which the representative of Belgium felt great sympathy.

At the point at which the Committee had now arrived it would be desirable to close the general discussion, however interesting it might be, and to pass to the discussion of the articles. It would have been preferable, perhaps, for the Committee not to have undertaken this work at the present juncture. It would also have been preferable to have ascertained the welcome that the next Assembly would extend to the amendments proposed with the object of bringing the Pact of Paris into harmony with the Covenant of the League. The Committee, however, had received definite instructions. All that there was to be said in the general discussion had already been said, and the best course to follow would be to begin the discussion of the articles as soon as possible. Moreover, questions of a general kind would naturally arise in connection with the various articles. He reserved his right in regard to each of them and in regard to the amendments submitted to the Committee, to make any proposal and suggestion which appeared to him useful. Despite his scruples which he had just explained, the representative of Belgium would do all that lay in his power to assist the Committee to draw up a text and thus justify the confidence which the Assembly had placed in it. It would then be for the Assembly and, finally, for the Governments themselves to decide whether this draft Convention should be signed and ratified.

M. Cobian (Spain) recalled that he had always supported the League of Nations and been in favour of the peaceful objects which it was pursuing with a perseverance deserving of the warmest praise. For that reason he felt that its prestige would be weakened by multiplying draft treaties all with the same object. He understood, however, that logic was not always a necessity and that sometimes technical considerations must take precedence. The League of Nations possessed its own technique. To attain a particular object it was quite possible to adopt the method of investment, and it was this method which was now before the Committee. The representative of Spain shared the views of General de Marinis who had said that what the Committee was really called upon to do was to amend the Covenant of the League. This was true, but it was better to say so clearly and definitely and to take advantage of the work done by the Committee, which had been instructed to bring the Covenant of the League into harmony with the Pact of Paris. He quite understood, however, that it might be more practical to draw up a draft general Convention capable of securing the adhesion of a large number of States, and only subsequently to amend the Covenant. In any case, all these problems possessed a political aspect which only the Council was competent to consider. For that reason, he suggested that a passage should be inserted in the report to the effect that the Council or the Assembly might discuss whether it would be preferable, in order to attain the object contemplated in the model treaty under discussion, to enlarge the scope of the amendments to be introduced into the Covenant to bring it into harmony with the Pact of Paris.

The Chairman thought that certain delegations wished to continue the general discussion at a subsequent meeting.

M. Sokal (Poland) considered that the Committee could vote immediately and without further discussion. In that case, however, the majority would no doubt be against the adoption of a general Convention if it must be limited to reproducing the stipulations of the present model treaty. If the Committee desired to achieve a definite result it would be better, he thought, to adjourn the discussion until the following morning in order to make it possible for delegates to examine the position. M. Sokal wished to raise a previous question: Did the Committee desire to transform the model treaty into a general Convention? If the reply was in the negative, any detailed discussion would seem to be superfluous. As far as he was concerned, he would be obliged to vote against such a convention reproducing the text of the model treaty in question.

The Chairman pointed out that, up to the present, it had not been the custom of the Committee to vote on any question until it had been submitted to a sub-committee. The
Committee was, however, free to act otherwise on this occasion. He thought it impossible, however, for the Committee to vote on the question of principle before it had even discussed the contents of the draft treaty.

Viscount Cecil of Chelwood (British Empire) agreed with the Chairman. The Committee had been instructed by the Assembly to point out what could be done to establish a general Convention and, until the Committee had gone through the details and considered what form a general Convention might take, it was impossible to decline to do the work which the Assembly had asked it to do.

M. Sokal (Poland) said he would naturally follow the procedure which would be adopted. He would, however, find it necessary to develop the Polish point of view and this would be impossible in a short speech. He therefore reserved his right to speak again during the general discussion.

The continuation of the discussion was adjourned to the next meeting.

FOURTH MEETING

Held on Wednesday, April 30th, 1930, at 4.30 p.m.

Chairman: M. Beneš (Czechoslovakia).

The Chairman opened the meeting and wished first to thank M. Unden, Vice-Chairman, for being good enough to act for him during his absence at the Conference in Paris and later at Prague.


M. Sokal (Poland) wished to explain that the Polish delegation, although favourable in principle to the idea of a general treaty for strengthening the means of preventing war, could not, however, agree to a treaty of this kind if restricted to the provisions of the model prepared by the Committee at its third session, and recommended by the Assembly.

The model laid down in the first place an obligation for the countries to carry out the recommendations of the Council made with the object of preventing certain measures prejudicial to subsequent action by the Council. Furthermore, it required the States to refrain from any measures — and possibly measures which were necessary for their defence — on the ground that such measures might aggravate or extend the dispute. All these obligations were perfectly logical and their acceptance by all countries appeared most desirable. But one essential quid pro quo was lacking. What certainty would the countries have that, if they loyally carried out the Council's recommendations, advantage would not be taken of that fact by a dishonest opponent? Why was there no reply to the inevitable question, what would happen to a country which had manifestly omitted to conform to the obligations it had undertaken and to the recommendations made by the Council?

In the absence of any provisions to meet these vital considerations, the Convention was too partial, too fragmentary in character, and it was not adequately linked up with the general system of the Covenant. It must be remembered that the report approved by the Committee of the Council on March 15th, 1927, on the methods which would enable the Council to take such decisions as might be necessary to enforce the obligations of the Covenant as expeditiously as possible, although it did not go so far as the model Convention, nevertheless contained, inter alia, the following very pertinent and very valuable observation: "If, in spite of all steps here recommended, a 'resort to war' takes place, it is probable that events will have made it possible to say which State is the aggressor, and, in consequence, it will be possible to enforce more rapidly and effectively the provisions of Article 16."

It was obvious that the model treaty which imposed new obligations and went beyond the scope of the Covenant, must contain still clearer and more precise indications for defining the aggressor, as a consequence of the attitude adopted by the parties to the dispute in regard to the obligations resulting from Articles 1 and 2.

There would be yet other consequences of the obligations as they stood in the model treaty. They were, moreover, closely bound up with the previous question. An effective system of supervision must be laid down and established in order to make it possible to ascertain whether or no there had been an infringement of the measures recommended by the Council and to know exactly in what way the said measures had been carried out by the two parties.

M. Sokal reminded the Committee that his delegation had considered that the formula in Article 4 was too vague, and had proposed that the article should be redrafted as follows:

"The High Contracting Parties, considering that the provisions referred to above will not be effective unless accompanied by a system of prompt control, undertake
for a country which had violated these peace covenants, since such obligations might confer legal aspect on its action.

General Tsiang Tso-Ping (China) stated that the Chinese Government was ready to co-operate with other countries in drawing up, and eventually signing, a general Convention to strengthen the means of preventing war, based on the model treaty. His delegation, while prepared to accept the main ideas of the model as a basis for discussion in drafting the general Convention, could not help feeling, however, that the model as it stood still required much careful study.

In the first place, the question of sanctions raised by the French delegation was a very important one. He would not go so far as the French representative, and say that no attempt should be made to overcome these difficulties. All he would say was that the question of sanctions had a very real bearing on the treaty. A treaty to prevent war would have very little value without a stipulation as to the consequences of its violation. He did not think this difficulty was met by the argument that since Article 16 of the Covenant had provided sufficient sanctions, it could also be applied when any of the provisions of a convention to prevent war were violated. The application of Article 16 of the Covenant was expressly confined to cases in which a Member of the League resorted to war in disregard of its obligations under Articles 12, 13 and 15 of the Covenant. He did not see how it could be extended to cover other cases provided for under other international agreements. If it were, the sanction of the Covenant would be applied in a case where the Pact of Paris was violated, and the Committee would not now have to discuss once more the question of strengthening the means of preventing war. It was true that half a loaf was better than no bread, but an ineffective international instrument was no bread at all. What the nations wanted was bread, not a stone.

Secondly, war was now no longer a regional concern. Any outbreak of war might lead to a world conflagration. No nation could say that it had only its immediate neighbours to reckon with, and could afford to be indifferent to the question whether or not a future war should be made more difficult. Such an attitude was wrong, and was not conducive to peace between the nations. The nations must have a broader outlook and longer views in formulating their national policy. Starting from this standpoint, there should be no difficulty in readjusting differences and arriving at a mutual understanding and co-operation which alone could help the nations to find a means of preventing future wars.

M. de Castro (Uruguay) stated that the question raised by the establishment of the proposed Convention included the possibility of measures previous to arbitration. Arbitration was the basic idea of the model under examination by the Committee. Anything that was connected more or less closely with means of arbitration had the effect of facilitating the solution of the problems of security. The Netherlands representative had rightly pointed out this fact at the preceding meeting.

In the opinion of the Uruguayan Government, the numerous arbitration treaties recently signed by that country had indisputably enhanced the feeling of its security. Any measure adopted by the Committee for the purpose of promoting the consolidation of the idea of peace by means of the security resulting from systems of arbitration in conformity with the spirit of the model treaty should be encouraged by the Committee on Arbitration and Security and by the Assembly of the League, the object being to generalise, as far as possible, the pacific measures contemplated in the Covenant.

It was for these reasons that M. de Castro would vote in favour of the principle of arbitration which underlay the draft Convention, provided that each article was examined separately.

As regards the various proposals submitted by the British, Danish and Netherlands delegations for the completion of the Preamble by a reference to the Pact of Paris, the Uruguayan Parliament had not yet taken a decision on the Pact and must reserve its opinion. If a vote were taken on the matter, M. de Castro would abstain.

Munir Bey (Turkey), speaking as representative of a country that was not a Member of the League, wished to point out that the draft Convention was intended to extend the powers of action conferred on the Council under the Covenant to which Turkey was not a party. The States non-Members clearly could not accept the undertakings stipulated in such a Convention.

The Chairman declared the general discussion closed, and proposed that the following procedure should be adopted. In the course of the general discussion three or four questions of principle had been raised: (1) the question whether a general Convention should be
established; (2) the question whether the parties to a dispute could take part in the vote of
the Council or not; (3) the question of control; and (4) the question of sanctions, which was
bound up with the question of control. It seemed difficult immediately to take a vote on
these principles, and it would be better to proceed to discuss the articles, in the course of which
discussion the principles could also be referred to. At the end of the discussion, the Committee
would see on what lines it might be possible to establish a general Convention.

The proposals of the Chairman were adopted.

10. Examination of the Revised Synoptic Table of the Text of the Model Treaty to strengthen
the Means of preventing War, and of the Observations of the Governments (document
C.A.S.95(1). C.P.D.196) (Annex V)).

Preamble.

Viscount Cecil of Chelwood (British Empire) suggested that it would be better to
postpone the discussion of the Preamble since it would not be possible to know what should
be said in the Preamble until a decision had been taken regarding the contents of the articles.

This proposal was adopted.

Articles 1 and 2.

The Chairman observed that these two articles, being essential to one another, should
be taken together and in conjunction with the amendments proposed.

There was, in particular, the Netherlands delegation's amendment to substitute in
Article 1 the words "conservatory measures" for the words "provisional recommendations".

M. Rutgers (Netherlands) pointed out that the amendment appearing in the document
under discussion was a summary of an observation submitted by his Government. The
summary was not altogether correct, since the actual text of the amendment read as follows:
"To accept and apply any conservatory measures of the Council". The Netherlands
Government would prefer the phrase: "To accept and apply any conservatory measures
recommended by the Council".

Furthermore, the Netherlands Government had not made this amendment because
it was opposed to the word "provisional". On the contrary, the second part of the
Netherlands amendment made it clear that the Council's recommendations could only be
of limited duration.

Baron Rolin Jaequemyns (Belgium), referring particularly to the scope of Articles 1
and 2, pointed out that the order in which they had been placed was contrary to the natural
sense of the text. Article 2 indicated the general duty of the States, quite apart from the
action of the Council. It should therefore appear first. Article 1, on the other hand, indicated
the first hypothesis of action to be taken by the Council in the case of a simple dispute. Next
came Article 3 which covered the more serious case of acts of hostility and then Article 4,
concerning the control or at least supervision by the Council, and Article 5 relating to the
conditions for voting by the Council. Baron Rolin Jaequemyns thought that Article 5
should refer, not only to Article 3 which covered the case of acts of hostility, but also to
the measures to be taken in the case of a simple dispute. Since the whole formed a sequence,
the Convention should begin with Article 2, which might be worded as follows:

"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 refrain from
any measures which might aggravate or extend the dispute."

That was a reminder of the general principle on which the spirit of the Covenant was based.
Article 2 might read as follows:

"In the case provided for in the preceding article, the High Contracting Parties
further undertake to accept and apply the conservatory measures recommended by the
Council of the League of Nations 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."

That was the first point with which the question of the voting laid down in Article 5
should deal.

Lastly, consideration must be given to the Swiss Government's proposal, which was
calculated to restrict the scope of Article 2 so as to cover only conservatory measures of a
military nature. It would be valuable to have the views of the various delegations on this
very important point.

M. Massigli (France) considered it somewhat difficult to give an opinion on the general
sense of an article when its true significance was unknown. At the previous meeting M.
Rutgers, after observing that the Council was to be entrusted with a grave responsibility
towards the States which would rely on it and after asking what would happen if a State
refused to heed the Council's recommendations, had said that the latter must only cover
civil and not military measures. It should be noted that the Swiss Government had thought
that military measures might be involved, and that Dr. Göppert, the German representative,
had expressed the same opinion when referring to an amendment submitted by Lord Cecil.
If only civil measures were involved, the question of sanctions did not arise, or at any rate had not the same gravity. The question was, however, whether the measures were to be of a non-military nature or not? M. Massigli had no information on this point.

Again, in order to decide on the attitude to be taken with regard to these articles and to determine their contents, he must know the Committee's opinion regarding the conditions under which the Council would vote. Would the parties to the dispute be allowed to intervene and vote in the Council in regard to the application of these articles? According to the decision which might be taken, the situation would differ very widely.

From whatever aspect the problem was considered, these fundamental questions must be faced. It was necessary to know what would be the situation of the parties with regard to the Council's recommendations. The general scope of Article 1 must be defined. Until these two points were cleared up, the French delegation could not express any opinion on the substance of the article.

M. Undén (Sweden) supported Baron Rolin Jaquemyns' proposal to invert Articles 1 and 2. The present Article 2 embodied the expression of a principle which should appear before the present Article 1.

As regards the actual meaning of the two articles, M. Undén thought that when the Committee had previously drawn up this text, it had taken as a model the Treaty of Arbitration signed at Locarno. The latter treaty contained almost word for word the provisions found in Articles 1 and 2 of the present treaty. The Treaty of Arbitration between Germany and Belgium said:

"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 German and Belgian Governments undertake respectively 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."

M. Undén was prepared to accept the present sense of Articles 1 and 2. The only amendment which, in his opinion, should be considered was that proposed by the Netherlands Government for fixing a limit of three months for the provisional recommendations made by the Council. He did not claim that such a limit was absolutely necessary, but he thought that the provisional character of the recommendations made in virtue of this article should be brought out a little more definitely.

Baron Rolin Jaquemyns (Belgium) had overlooked the fact that Switzerland was not represented on the Committee. The Swiss Government had sent in a note to which he attached very great importance. He had confined himself to referring to it, thinking that the Swiss representative would consequently intervene in the discussion and offer his observations. Baron Rolin Jaquemyns wished to urge the great importance of the view indicated in the Swiss Government's note. Personally, he considered that it would be very valuable — and he thought that in this he was meeting the views of the French representative — to make it clear that only military measures were involved. Any interference in civil measures might be very dangerous. It was very difficult to determine what measures should be left to the authority of the Government concerned. It would therefore be wise to restrict the Council's action to measures of a military nature, as proposed by the Swiss Government. In these circumstances, Baron Rolin Jaquemyns thought that his proposal for Article 1, which would become Article 2, might be formulated to read: "to accept and apply the conservatory measures of a military nature recommended by the Council".

As regards the proposal of the Netherlands delegation to fix a time-limit of three months, Baron Rolin Jaquemyns considered that it might be dangerous to fix any time-limit at all, especially in a treaty. It was quite possible that it might be advantageous for the Council, itself to indicate the duration of the measures it recommended; but a time-limit of, say, three months might be far too long in certain circumstances and too short in others. Personally, Baron Rolin Jaquemyns could not choose between eighteen months, three months and one month. Nor did he think that it should be said that the Council would determine the time-limit, for, even if it could do so in certain circumstances, it would be very difficult to do so in others. To sum up, he proposed that nothing should be said on this subject, and that the matter should be left to the wisdom of the Council.

Viscount Cecil of Chelwood (British Empire) agreed with Baron Rolin Jaquemyns that it would be proper to make the present Article 2 the first article in the Convention. He thought, however, that the purpose of the present Article 1 had been somewhat misunderstood and he would therefore venture to explain the position.

When a case was brought before and considered by the Council, under, say, Article 15 of the Covenant, it was very important that neither of the parties should do anything, while the Council was considering the case, which would interfere with the decision which the Council might take. All that was suggested was that, while the Council was considering its decision, nothing should be done by either party which would confront the Council with a fait accompli and make it impossible for it to suggest what it thought would be the best measures for the preservation of peace. For that reason he would not limit the word "measures" by inserting the word "military" in front of it.
The proposal was not one which need frighten anybody; it was not a question of giving the Council additional powers, but only of saying that the parties should not do anything which would prevent the Council exercising the powers it possessed. Cases could be recalled where, pending the decision, action had been taken which had made it impossible for the Council to take a decision which was of any value to anybody.

M. COBIÁN (Spain) said that he had not understood the amendment proposed by the Swiss Government in the same way as Baron Rolin Jaequemyns. In his opinion, the amendment referred, not to the measures which the Council might take or recommend, but to those taken by the parties concerned and which had resulted in action by the Council. It was for this reason that the Swiss Government considered that the range of Article 1 must not be unduly extended, and that the article should apply only to the case where the Council was manifestly face to face with a danger of war. In other words, the Council should only intervene in extended, and that the article should apply only to the case where the Council was manifestly reason that the Swiss Government considered that the range of Article 1 must not be unduly extended, and that the article should apply only to the case where the Council was manifestly face to face with a danger of war. In other words, the Council should only intervene in such cases.

Baron Rolin Jaequemyns had then continued: “certain roads, the carrying out of certain works, or the obtaining of certain supplies could be proposed by the Council, or whether it should say that “the contracting parties should abstain from taking any military measures”.

What might the measures under consideration be? General de Marinis supposed, in the first place, that the term “military measures” was meant to cover all army, naval or air measures. Would, however, the establishment of a big stock of foodstuffs be regarded as a military measure? Would this term include the building of roads which might be of a strategic nature? It might be replied that these were questions for the Council to determine. In that case would the parties to the dispute be allowed to vote or not? The exclusion of the vote of these parties would be more or less important for them according to the character and extent of the measures which the Council might adopt. These measures should be defined as far as possible, that was to say, the scope of the engagements which the States were required to accept must be defined.

Further, even if the principle that the parties would take part in the vote were admitted, the actual facts of the situation must be carefully considered. The Council with its great authority would take decisions, but what would be the position of public opinion in the two opposing countries? Public opinion in one might be convinced that the arrangement of certain roads, the carrying out of certain works, or the obtaining of certain supplies could not be regarded as a warlike preparation, whereas public opinion in the other might hold the contrary belief. How could the Convention be put into execution in such circumstances? There would be enormous excitement in both countries. The Governments, which would bear the responsibility and whose duty it would be to observe the engagements they had assumed, would find themselves in a very delicate position. The question whether a procedure which might be extremely dangerous should be adopted called for very serious consideration in the interests of peace and of the prestige and authority of the League.

M. Rutgers (Netherlands) thought, like M. Massigli, that the scope of the articles under discussion must be clearly defined. He wished to remind the Committee that Baron Rolin Jaequemyns, in his memorandum on the German suggestions, had written: “Suggestion 1 aims at provisional measures touching the actual subject of the dispute.”

The words “touching the actual subject of the dispute” had been inserted in Article 1. Baron Rolin Jaequemyns had then continued: “These measures 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.”
Dr. Göppert (Germany) shared entirely the view expressed by the Netherlands representative. In his opinion, the misunderstanding was due to the fact that, at the time when the model treaty had been drawn up, the German suggestion 2 concerning the second phase, that during which the dispute was aggravated and in which there was a danger of war, had not been adopted. This phase formed the subject of the British proposal and of a suggestion which Dr. Göppert himself had submitted. It was in that connection that military measures should be mentioned. Article 1, on the other hand, did not cover military measures; in point of fact it excluded them, except, however, where the dispute concerned military measures.

Baron Rolin Jaequemyns (Belgium) agreed with the Spanish representative. The amendment which he had proposed had appeared to him to be in conformity with the Swiss Government's idea. If the Swiss Government's amendment were examined carefully, it would be seen that it referred to action taken on account of military measures. There was therefore definitely a restriction to the Council's intervention. There was no question, as certain members appeared to imagine, of extending the Council's action. It would therefore be admitted, if the Swiss suggestion were accepted, that in the hypothesis embodied in Article 1, which would become Article 2, the Council would only intervene when faced with military measures.

M. Ito (Japan) reminded the Committee that Article 1 referred to the cases in which the Council was to act. The question at once arose on what occasions should such action be taken and what form should it take? In his opinion, the essential point was to know when the action would be taken.

The Committee was now drafting a Convention with a view to strengthening the means of preventing war. The essential point was to prevent war. The present wording appeared to M. Ito somewhat vague, as the British representative indeed had remarked at the Committee's third session. The article stipulated that the contracting parties should undertake, in the event of a dispute arising between them and being brought before the Council of the League of Nations, to accept the recommendations of the Council. It would be difficult to agree to so vague a text if it were to be converted into a general Convention. It was essential, on the contrary, to specify the cases in which the Council would be called upon to act. It was for that reason that M. Ito would be very glad for the action of the Council to be limited, in accordance with the Swiss Government's suggestion, to cases in which there was a danger or threat of war. A limiting provision of that kind would facilitate the adhesion of many countries to the draft Convention.

Viscount Cecil of Chelwood (British Empire) agreed with M. Ito that it was desirable to make it clear that the Committee was not contemplating giving the Council any additional jurisdiction to deal with disputes with which it could not deal under the Covenant. That was not the idea at all. The idea was that, if a dispute had been brought before the Council under the Covenant or some other treaty right, nothing should be done by either of the parties, while the matter was being considered by the Council, to make it impossible to arrive at a just decision. M. Rutgers had referred to systems of national jurisprudence. Lord Cecil assumed that in every system of law there was a provision enabling the court, while it was considering a case, to issue an order that nothing should be done by either of the parties which would so change the condition of affairs as to make it impossible for the court to come to a decision.

Here the idea was the same — that in the case where a dispute had, in fact been lawfully and under treaty brought before the Council, this provision should apply. In order to meet M. Ito's point, he would suggest that it might be advisable to introduce some such words as: "Where the dispute has been brought before the Council under the provisions of a treaty".

The case was not an imaginary one. M. Rutgers had cited certain cases, and there were others. Suppose, for instance, that a country was under an obligation not to import arms, that a case occurred in which it was alleged that arms had been imported contrary to
that obligation, and that, before the case could be decided, the arms had all been distributed so that it was impossible to say whether they had been imported in breach of the agreement or not. That was the kind of case which would make it impossible for the Council or any other tribunal to arrive at a decision.

Lord Cecil was unable to understand why anybody should feel that there was any risk in the provision. It seemed a perfectly simple one which ought to have been included already. He suggested that the matter might be left to a Drafting Committee which, after taking into account the discussion that had taken place, might draw up an appropriate text with the object of guarding against the dangers and difficulties to which reference had been made.

While he highly appreciated General de Marinis's powers of criticism and cautious wisdom, Lord Cecil thought that the Italian delegation greatly exaggerated the danger. It must be remembered that the Committee was trying to establish a new system, under which the relations of the countries were to be peaceful and not warlike. Such a change would be a considerable one, which could only be effected if the Governments were prepared to take certain possible risks as to the result of any particular step that was decided upon. He begged General de Marinis to realise that there were many occasions — and this was one where it was just as dangerous to stand still as to move forward.

M. Ito (Japan) thanked Lord Cecil for his explanations. He had only raised this question because, certain of the problems brought before the Council might have a special character. There was, for instance, the dispute referred to in paragraph 8 of Article 15, which was of a quite special nature. Would the countries concerned be prepared to agree to do nothing pending the Council's decision? M. Ito had merely wished to express his point of view on possibilities of this kind.

The Chairman summed up the situation.

M. Massigli had posed very clearly a first question, namely, what were the measures involved? Were they civil or military measures? He had put a second question in which Articles 1 and 2 were linked up to Article 5, namely, in what way should the Council vote.

From the discussion on the first point, it appeared that there had been no intention to specify clearly in Articles 1 and 2 whether the measures referred to were civil or military measures. This question had been left more or less in the dark. The Chairman understood that the measures might be first civil and then military measures as well. This impression followed from the amendment proposed by the British delegation for an Article 2A which read as follows:

"The High Contracting Parties undertake, in the event of a threat of hostilities between them, to accept and apply such precautionary measures as the Council, acting in the exercise of the powers of the League under the first paragraph of Article 11 of the Covenant, may recommend with a view to preventing an outbreak of hostilities."

This impression had been confirmed by the reading of Article 3, which referred to military measures without any possibility of doubt. Consequently, the conclusion was that the general Convention which the Committee was instructed to prepare must certainly contemplate both civil measures and military measures.

If these observations could assist the Drafting Committee in preparing the necessary formula and if the Committee agreed that the discussion on the first question put by M. Massigli might now be concluded, the Chairman proposed to pass at once to the second point put by the French representative.

Agreed.

The Chairman proposed to refer to the Drafting Committee the amendment, submitted by the Netherlands delegation, to limit to three months the duration of the Council's recommendations, especially seeing that certain objections had been raised to this amendment.

The Chairman agreed with M. Massigli's suggestion that it would be desirable to link up the discussion of Article 5 with that of Articles 1 and 2 and to decide whether the parties to the dispute should take part or not in the voting of the Council.

Dr. Göppert (Germany) wondered whether the procedure as proposed was the best, for it might be difficult to give an opinion on the principle contained in Article 5 until the contents of the other articles were known.

The Chairman feared that with any other procedure the Committee would be caught in a vicious circle. M. Massigli considered it difficult to give an opinion on Articles 1 and 2 until the scope of Article 5 was known, whereas the German delegation wished first to determine the contents of Articles 1 and 2.

Dr. Göppert (Germany) asked that his observation might be taken as a reservation.

Viscount Cecil of Chelwood (British Empire) asked if M. Massigli wished the Committee to discuss the broad question whether, in any proceedings under the Convention, the decision of the Council should be considered as not unanimous as a result of the vote of one of the parties to the dispute. In order to save repetition, he would prefer that the discussion of that point should be deferred until Article 5 was reached, it being understood that the final views of all the delegations would ultimately depend upon the way in which Article 5 was drafted. He personally, however, was prepared to discuss the question at any time.
M. Massigli (France) said that he had put his questions with the object of elucidating the discussion and because his Government had given him instructions to achieve something positive. He was anxious to assist in the establishment of a draft which he could recommend to his Government for signature. The tendency sometimes noticeable in League Committees to prepare draft general conventions with the idea that others would sign them and that, after all, the matter was one of no great importance, was pernicious in the extreme. M. Massigli was sure that Lord Cecil, who also desired to do positive work, felt the same anxiety as himself.

There was, however, the further case where the matter was not so urgent and where, therefore, it was much more necessary for them to know what means would be at the disposal of the Council to ensure the application of the measures it prescribed and, if necessary, to bring sanctions into operation in cases of transgression. M. Massigli had that morning referred to the great importance attached by certain Governments, among them the French Government, to the question of control and the situation which would result from an infringement of the measures laid down.

In that case, therefore, it was much more necessary for them to know what means would be at the disposal of the Council to ensure the application of the measures it prescribed and, if necessary, to bring sanctions into operation in cases of transgression.

Lastly, if it were agreed that nothing could be done without the interested parties, the question arose whether it was really worth while preparing a convention.

Viscount Cecil of Chelwood (British Empire) said that the French Government appeared to urge that in any decision taken under the Convention the votes of the parties should not be counted; in other words, the Council could be unanimous, within the meaning of the Covenant, even though one of the parties to the dispute voted against a decision. The Convention, as it stood, with the British amendments of which he had given notice, would not go so far as that. If any hostile act had been committed, the votes of the parties were not to be counted in any recommendation made by the Council. Further, if a dispute arose under Article 15, the votes of the parties were not to be counted in ascertaining whether a unanimous decision had been reached under paragraph 6 of that article.

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M. Massigli had put the question of the voting precisely in order to ascertain what attitude should be adopted on the subject of the problem and to what extent it was necessary to provide for control and sanctions. That was a fundamental question.

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Lord Cecil had that morning criticised the French representative for wishing to go too far and for expecting too great results from the Convention under discussion. M. Massigli was on his guard against committing any such mistake; he knew the difficulties of the question. He was anxious for genuine progress to be made and it could therefore only be moderate progress. He was certain, however, that if the Committee thought that the votes of the parties were necessary, it would be adding nothing to the powers now held by the Council under the Covenant; by adding nothing to them it would, in point of fact be reducing them, for it would be inferred a contrario from the Convention, that a country which was not a party to it need not take into account the recommendations of the Council; and that would be a very serious matter.

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The Chairman noted that the discussion on Article 5 had begun without the Committee’s having decided to begin it. The question, however, had now definitely been asked, in view of the declarations made by the French and British representatives. The points involved were fundamental ones for the general Convention.

In reply to the observations of the Italian representative, he wished to say that the present discussion did not in any way prejudice the Committee’s final decision on the point whether a general Convention should be prepared or not. It was only by discussing the draft article by article that the Committee could finally settle this latter question.

He therefore proposed the following procedure: the Committee would discuss Articles 3 and 4, which presented no difficulties, and would hold over until later the discussion on Articles 1, 2 and 5, thus enabling Lord Cecil to obtain instructions from his Government.
The proposal of the Chairman was adopted.

The Chairman then read an amendment proposed by the British delegation (document C.A.S.98 (a)) (Annex IV) and an amendment proposed by the German delegation (document C.A.S.103) (Annex VI). If the same difficulties arose in regard to those two amendments, it would be better to postpone them.

M. MASSIGLI (France) said that the French delegation had prepared a proposal which was linked up with the complete system which the French Government had in view and which resembled the German proposal in many respects. He agreed that the whole question should be postponed.

The continuation of the discussion was adjourned to the next meeting.

FIFTH MEETING

Held on Thursday, May 1st, 1930, at 10.30 a.m.

Chairman: M. BENES (Czechoslovakia).

11. Examination of the Revised Synoptic Table of the Text of the Model Treaty to strengthen the Means of preventing War, and of the Observations of the Governments (continuation).

Article 3.

The text of Article 3 of the Convention, together with the Belgian, British and Danish amendments, was read, and also the amendment proposed by the German delegation (document C.A.S.103) (Annex VI).

Viscount CECIL OF CHELWOOD (British Empire) did not think that there was anything obscure in the British amendment. There were, in fact, two amendments: the first was to delete the words "without the possibilities of a peaceful settlement having in the Council's opinion been exhausted". Since all or almost all of the Governments represented on the Committee had accepted the Pact of Paris, it was evident that hostilities should not break out under any circumstances, whether the possibilities of a peaceful settlement had or had not been exhausted. The obligations became absolute and not conditional. It was really a matter of drafting, and it was not intended to make any substantial change in the text.

The important amendment was the substitution of the words "In the event of hostile acts of any kind having been committed by one High Contracting Party against another" for "In the event of hostilities of any kind". "Hostilities" was a somewhat vague expression and might refer to war. The British conception was that the article was meant to apply to frontier incidents, such as that which had occurred between Greece and Bulgaria. Cases in which there had actually been a resort to war were, he thought, sufficiently provided for by Article 16 of the Covenant, and it was not desired to throw any doubt on the value of that article. The essential part of the British Government's policy was that it was prepared to support Article 16 of the Covenant to the utmost.

Lord Cecil would repeat that it was hostile acts which had to be contemplated, and he accepted the German view that it would be useful if all the Members of the League would definitely agree in advance to be bound by such precautionary measures as the Council had been in the habit of directing when such cases arose. It might be said that no difficulty had arisen so far, and that the Council's suggestions had always been accepted. That was true, but it would give added strength to the Council's suggestions if it were recognised that everyone had formally agreed to accept them before the crisis actually arose.

The Chairman noted that the basis of the Danish and British amendments was identical though their form differed. They could be discussed together and if the Committee accepted them, the Drafting Committee could bring them into harmony.

Baron ROLIN JAQUEMYNS (Belgium) was glad to be able to support the British amendment. He wished simply to ask Viscount Cecil the following question. If Article 3 as amended were adopted, would there be any important reason for adding Article 2A, in accordance with the British note of April 29th?

The British text no longer referred to hostilities, but to acts of hostility, which included the idea of the threat of hostilities which was found in amendment 2A proposed by the British delegation. On the other hand, Article 1, which would become Article 2, referred to disputes. Was it necessary to make provision here between the hypothesis of disputes on the one hand and that of acts of hostility on the other, for the case of threats of hostility? He considered that such shades of meaning were exaggerated, and would only lead to confusion.
M. COBIÁN (Spain) was prepared to accept the British and Danish amendments, it being understood, as the Chairman had indicated, that they would be combined by the Drafting Committee. Nevertheless, in the spirit which had inspired the observations of the authors of the amendments, M. Cobián would prefer the suppression of Article 3. He did not care, in 1930, to hear reference made to hostilities or acts of hostility. He was one of the most long-standing delegates to the League of Nations, and he recalled that the idea of a demilitarised zone had already been put forward in connection with the Treaty of Mutual Assistance in 1924. At that time, the idea was conceivable, for the work for peace had not then followed the course which it had since taken.

Viscount Cecil had well explained that the object of the draft Convention at present under discussion was to transform the moral obligation arising out of the Covenant of the League of Nations into a treaty obligation. If, however, the Council had the power to take adequate measures to avoid any threat of war, conflict or hostility, M. Cobián considered that it should be able to take such measures without the necessity for precisely admitting the possibility of a rupture of serious and formal engagements which had raised such great hopes on the part of public opinion.

Viscount Cecil of Chelwood (British Empire) agreed with Baron Rolin Jaequemyns that there was a possibility of pleonasm and overlapping in Articles 2A and 3. He was content to leave it to the Drafting Committee to see that all the cases which the Committee had in mind were covered. A case might arise where there was obviously a menace of hostilities without any actual breach of the peace. Article 2A was designed to cover such a case, but the question was one of drafting and could easily be settled.

With regard to M. Cobián's remarks, he must point out that the Covenant still contemplated the possibility of resort to war, and not long ago the Pact of Paris had been signed, by which it was agreed never to utilise war as an instrument of national policy.

He had to be admitted, therefore, that the nature of man was still so imperfect that war and hostile acts might occur, and the wording of the present article had been devised in order to cover that possibility.

The Chairman understood that there was no objection to referring the British and Danish amendments to the Drafting Committee with a view to their insertion in Article 3. The Belgian delegation had supported the proposal. There remained the suggestion of M. Cobián, in regard to which the Chairman associated himself with Viscount Cecil's remarks.

M. MASSIGLI (France) reserved his right to present later some observations on Article 3 as a whole. He accepted the amendment of the British delegation and confined himself to pointing out that, in order to make it correspond with the idea that had inspired it, it would be preferable to replace the word "hostilities" by the words "hostile acts".

M. UNDÉN (Sweden) was prepared to accept the proposal for the suppression of the phrase "without the possibilities of a peaceful settlement in the Council's opinion being exhausted"). It was not desirable to discourage the Council from making recommendations likely to put an end to the hostilities.

M. Undén had no objection in principle to the British amendment. Nevertheless, he must make a reservation regarding the theoretical interpretation given by Viscount Cecil regarding the relation of Article 3 with Articles 11 and 16 of the Covenant.

In his opinion, it was very difficult to establish a precise line of demarcation between Articles 11 and 16. He considered that, even when Article 16 was applicable, it was for the Council, if it was unanimous, to make the recommendations contemplated with a view to putting an end to hostilities, if possible.

M. SOKAL (Poland) wished to make a reservation in regard to the original text of the article as well as to the text of the British amendment. In his opinion, it was necessary to be quite clear as to the meaning of the new terms employed. He had in mind the word "hostilities". Viscount Cecil had explained that the British delegation considered it necessary to say "in the event of hostilities of any kind".

Viscount Cecil of Chelwood (British Empire) observed that he accepted M. Massigli's suggestion to replace the word "hostilities" by the words "hostile acts".

M. Sokal (Poland) pointed out that it was precisely in the employment of these new terms that he found a difficulty. Up to the present the world had been faced with two possibilities — war or peace. The mission of the League of Nations was to prevent war and stabilise peace. On the other hand, the main object of the Pact of Paris was to make war as an instrument of national policy impossible. If between those two conditions — peace and war, an intermediate condition covered by the words "hostile acts" were now created, the situation would be that war was prohibited but that the intermediate state was, so to speak, legalised. It was not as yet war but it was no longer peace. Public opinion would never be able to understand that.

It was necessary to be absolutely clear and very sincere. M. Sokal was certain that all his colleagues were well aware that, in introducing into the text new terms likely to give rise to grave misinterpretation, there would be a risk, in concrete cases, of rendering the task of the Council a great deal more difficult and of increasing the danger.

He felt it all the more necessary to draw the attention of the Committee to the new definition in that, in spite of the British proposal, the hostilities would appear to him to have the character of war, since provision was made for cases in which the armed forces penetrated
into the territory of another State. That was no longer a frontier difficulty, such as that to which Viscount Cecil had called attention in citing the Greco-Bulgarian case, and there would then be a violation of all pacts, of the Pact of Paris and of the Covenant of the League of Nations. If it were not desired to give to such acts the name of war, what would be called war?

The Committee desired that in such a case the Council should prescribe an armistice. The Polish delegation could agree in advance to such a decision, for to stop hostilities was - it was to be hoped - to stop war. An aggressor, however, existed and, since the Covenant imposed on the Council the obligation of determining who was the aggressor, this should be done immediately. The prohibitions contained in the Covenant of the League of Nations were sufficient to enable the Council to intervene with all the necessary powers on the basis of the provisions of those instruments and of the means at present at its disposal. Moreover, it could not be imagined that a State which violated the Pact of Paris and the Covenant of the League of Nations would be stopped by Article 3 of the Treaty on the Prevention of War. In effect, it would amount to asking a State to undertake in advance to carry out a recommendation of the Council after it had violated the most solemn disposal. Moreover, it could not be imagined that a State which violated the Pact of Paris and in the Pact of Paris were sufficient to enable the Council to intervene with all the necessary powers on the basis of the provisions of those instruments and of the means at present at its disposal. Moreover, it could not be imagined that a State which violated the Pact of Paris and the Covenant of the League of Nations would be stopped by Article 3 of the Treaty on the Prevention of War. In effect, it would amount to asking a State to undertake in advance to carry out a recommendation of the Council after it had violated the most solemn engagements. It was hardly probable that a State which had already committed so criminal an act would be stopped by virtue of such a recommendation.

This did not mean that the Polish delegate did not appreciate and support the idea of giving to the Council the possibility of dealing with or settling a conflict by pacific means, but it was necessary to take into account all the consequences of such a provision. It would only be useful and possible if the Committee confirmed its decision to provide the Council with all powers of control. Control was involved in all cases in which the Council would be called upon to take such other measures as had been contemplated, and it went without saying that it involved sanctions. It could not be admitted that a State which committed a hostile act would merely be invited by the Council to continue so to act. The State must be aware that if it did not comply with the injunctions of the Council, the sanctions which were the logical consequence of its act would be applied.

M. Sokal then stated that, if the proposal of the delegate of Spain to suppress Article 3 - a suggestion which merited close examination - were not accepted, it would be desirable to consider the problem as a whole and to study carefully the new definitions and their consequences. It would also be necessary to take into account the organic connection existing between such a provision as that of Article 3, and control and sanctions.

M. Rutgers (Netherlands) agreed with M. Sokal that the Drafting Committee would have to study carefully the terms to be used in the draft Convention, and in particular the expression "hostile acts". He had some doubt as to the exact meaning of that expression. He recalled that such a formula was employed between Governments in order to make it known that a certain act was considered to be inspired by a hostile intention. But the Committee was considering rather facts which did not represent the intention of a Government, such frontier incidents, for instance, as arose if, during a war, an attack was made on the neutrality of a neutral Power - if, with or without orders, a detachment of soldiers crossed the frontier, and if the neutral Power resisted such an attack on its neutrality. Would that be a hostile act? The Convention of 1907 did not appear to admit it, since it laid down that the fact that a neutral Power resisted attacks on its neutrality even by force could not be considered as a hostile act. It was an act of that kind that it was desired to consider as falling under Article 3.

In conclusion, he would ask whether it was wise to employ the term "hostile acts" which already figured in other Conventions with a different meaning from that which it was now desired to give it.

M. Fierlinger (Czechoslovakia) considered that Article 3 was the kernel of the whole Convention. It was certain that, according to the Committee's discussions, it would be necessary to omit all the stipulations which did not fall within the framework of Article 3 and especially those to which Article 5 could not be applied. Moreover, the greater number of the delegations, and in particular the British delegation, appeared to be ready to accept the application of Article 5 to Article 3. In M. Fierlinger's opinion, that was the most essential point, for, if stipulations were adopted which Article 5 could not be applied, the authority of the Covenant and, let the Council of the League of Nations would be in danger of being considerably weakened. The discussion of the previous evening, and in particular the speech of General de Marinis, had made a great impression on M. Fierlinger, and it was under the influence of that deep impression that he had formulated his observations.

He could not agree with the opinion put forward by the delegate of Spain. Personally, he believed that Article 3 was the keystone of the whole Convention. Indeed, that article still remained incomplete, even with the new amendments which had been presented, including the German amendment which was about to be discussed. It would probably be necessary to collect all the elements which had been brought out in the discussion. The Drafting Committee would then be able to draw up the terms of the article and thus attain to the main object of the Convention, which was to provide for cases in which the Convention should be applied.

How should the Convention be applied? That question would have to be settled. In that connection, it would be necessary to dissipate certain misunderstandings and to ally certain legitimate fears, such, for example, as those formulated by the delegate of Poland. As a matter of fact, the present question was not that of dealing with hostilities which had already taken a clear form - a war of invasion, for instance, a premeditated war. In such a case, Article 16 must be applied. The present Convention would operate in cases where certain hostile acts had been committed, or where the two parties in dispute
were discussing their responsibility before the Council. Such cases would be very grave and very complicated, and the Council would be unable usefully to intervene if it did not know the exact situation. It could even be foreseen that, in certain cases, the situation might be aggravated to the extent of the breaking out of a world war without anyone knowing who was the perpetrator of the original "hostile acts".

In regard to the expression "hostile acts", he agreed with M. Rutgers, who had very rightly drawn the attention of the Committee to the different meanings which might be given to it. It might refer to legitimate threats which had not assumed a clearly hostile character, but which the opposite party might consider to be hostile. It would perhaps be useful to examine very carefully the terms which would figure in the Convention and, in the particular case before the Committee, to find a more precise expression. The words "hostile acts" better indicated cases to which the Convention should be applied.

In agreement with M. Sokal, M. Fierlinger considered that, in the event of open hostilities, it would be necessary to discover who was the aggressor, for that was the aim of the Convention. To that end, it would be necessary for the Council to have at its disposal an instrument which would enable it to seek for and to determine the aggressor. Although the question of control did not enter into the scope of Article 3, it could usefully be discussed. On the other hand, if measures of control were contemplated, it would be necessary to draw up a special article which would apply to the whole Convention.

The idea developed before the Committee by Viscount Cecil was very logical and just, but M. Fierlinger asked his British colleague to be good enough to draw from it the logical consequences. The Council would never be able to determine who was the perpetrator of the original hostile acts if it did not possess the instrument of control which had just been spoken of, if it was not possible, for instance, to send to the Committee an instrument of enquiry. Moreover, Article 3 provided for certain fixed hostile acts, and enquiry would be relatively easy, all the more so in that the Committee was in agreement that the terms of Article 3 should be still more clearly explained.

M. Sokal had gone further, for he had passed from the idea of control to the idea of sanctions. The question of sanctions was obviously very important. It constituted to some extent the threshold which led from Article 11 to Article 16, and it was a threshold on which it was necessary to pause.

M. Fierlinger was of opinion that the logical functioning of the whole Convention depended on the definition of the aggressor. When it was known who was the aggressor, Article 16, which provided sanctions, could be brought into force.

Finally, he considered that the problem of sanctions was not yet ripe for discussion to the fullest extent. Certain difficulties had arisen in the past, but it seemed that, at the present time, at least one step, which consisted in finding the means by which the aggressor could be discovered, might be taken. That would be a useful piece of work.

Viscount CEeIL OF CHELWOOD (British Empire) agreed with M. Rutgers that it was necessary to consider very carefully the wording of the Convention. Possibly the expression "hostile acts" would have to be revised, and it would be necessary to consider whether a more exact phrase could not be found to cover the subject under discussion.

M. Sokal's speech was part of his campaign against the Convention as a whole. As he had said, his Government was opposed to the Convention and, consequently, to Article 3 and to any amendment which would improve that article. His position was logical and understandable, and so long as the Committee knew exactly what he had in view, it could appreciate the force of his arguments.

M. Sokal had stated that to imagine a stage intervening between peace and war was to introduce a new conception. That was true; peace was peace and war was war. The Committee, however, had to deal with facts and not with dialectics, and it was well known that acts of a hostile character which did not amount to war constantly occurred. The League of Nations had frequently dealt with such situations.

Lord Cecil referred to certain well-known cases in which the League had intervened. There was the case of the controversy between Italy and Greece in Corfu. Rightly or wrongly Corfu had been bombarded and occupied by Italian forces. Unquestionably it was part of Greek territory, but, as a matter of fact, it had never been suggested that Italy had resorted to war against Greece, and the case had been treated throughout as one arising under Article 15 of the Covenant; that was to say, as a case where there was a dispute so tense as to be likely to lead to a rupture.

Again, there had been the recent incident between Greece and Bulgaria. The Greek forces had unquestionably crossed the Bulgarian boundary and had bombarded Bulgarian towns and villages, but there was no question of doubt about the acts of hostility.

In neither of these cases was it suggested that there had been a resort to war. It was of no use to say, therefore, that cases of hostility must be divided strictly into peace and war. The facts must be taken as they were, and cases had unquestionably occurred where hostile acts had been committed (acts of aggression, invasion, bombardment or occupation) which did not amount to a resort to war. Such cases did exist, and must be provided for in any reasonable proposals for preserving the peace of the world. That was the conception which ran through the Covenant itself - the idea that acts might be wrongful which amounted to a threat to peace but which did not amount actually to a resort to war, and it was in dealing with those cases that the Committee had to consider the question of hostile acts.

M. Sokal has said that, if a country committed such hostile acts, that constituted, in his view, a breach both of the Pact of Paris and of the Covenant, and that such acts would never be stopped by provisions of the kind suggested. There, he thought, M. Sokal was wrong. Acts
occurred which might very easily lead to a war but which were not intended by the country in question to amount to acts of war; they might arise from a dozen reasons. They might arise from the excess of zeal of a local commander, or from a desire to protect the nationals of the country in question, with no intention other than to provide the necessary force to avoid actual danger. He agreed with M. Sokal that it would be better if it were possible to reach a condition of international affairs where it would be unnecessary for nations to do any of these things, and if nations could resort to a court of law as did individuals, but that stage had not yet been reached, and the facts had to be dealt with as they existed. Prevention was better than cure, and the question was whether something could not be done to strengthen the preventive machinery of the Covenant. That was the whole point.

The Committee was not dealing with the question of punishment in the case of a resort to war, it was dealing with the question of strengthening the machinery to prevent war, and the suggestion at the bottom of the proposal before it was that, if all the nations could agree to comply with the preventive measures which the Council might dictate, a step forward would have been taken. M. Sokal and the school to which he belonged considered that to be of no use, and thought it necessary to have a complete system of control and sanctions.

Lord Cecil himself had always thought — and this was his personal view as an observer of international affairs — that, in order ultimately to establish a satisfactory system of peace throughout the world, it was necessary to deal with the question of security. He had always considered the statement in the Covenant that any threat of war was a matter of concern to all the Members of the League to be literally true. It was impossible for one nation — at any rate, for one European nation — to say that it was concerned in a breach of the peace in a given district but not in a district a little further on. That, he thought, was to misread the course of history; every nation was concerned in a breach of the peace wherever it might take place, because it might always extend so as to involve itself.

Lord Cecil added that he was entirely in accord with the fundamental position which M. Sokal and his friends occupied, and recalled that he himself had been concerned in a vigorous attempt to translate these ideas into facts in the Treaty of Mutual Assistance. He was not convinced that he had been wrong, but his attempt had failed, and he was bound to tell M. Sokal that he had had very little support in his own country.

Again, there was the attempt of the Protocol, which had failed also and on the same ground. He regretted the failure of both those attempts, but the point was that they had failed. Was it of any use continually to run one's head against a stone wall? Was this the method of prudence, the method of progress? There was an obstacle in the way, and it was not possible to obtain what he and others believed was security by any such large and extensive measures as were suggested. It was possible to go on destroying all minor efforts of the kind now under discussion and to say "We will have nothing unless it is complete". But was that wise? Was it the way to make progress? He feared that such a method was bound to fail.

Moreover, time was getting short. If anything really effective was to be done in developing a great system of peace, it must be done within a reasonable period after the conclusion of the late war, while men's minds were still under the influence of the terror and horror of war. If time were wasted in useless parade, in manoeuvres which led nowhere, by the time a more reasonable course was adopted the opportunity of doing anything might have been missed. He asked M. Sokal to bear this in mind when considering, not the present document only, but all documents. It was better to make a little advance in the right direction and then go a little farther when it was found possible to do so. If he and M. Sokal were right, sooner or later their views would prevail, and the world would be persuaded that security was an essential condition of real pacification, and perhaps even of disarmament, though personally he thought disarmament was part of security. That, however, was a different proposition.

These were the reasons why he was anxious to do something with the document under discussion. He was prepared to consider proposals regarding control, but things must not be pressed too far. It might be possible to establish the conception that all nations were bound to comply with the precautionary measures the Council might dictate. He thought they were morally bound already, but they could be persuaded to say formally: "We will accept those precautionary measures". Personally, he would tie the hands of the Council as little as possible beyond that.

It was necessary to have confidence that the Council would not recommend measures which were unreasonable or which would be dangerous for any country. He did not believe there was the slightest risk of that. The Council was a very prudent body. If he were to make any criticism of so high an international institution, it would be that it was sometimes too prudent. He was not in the least afraid, therefore, of rashness on the part of the Council, and if it were left with the full discretion it already possessed under Article 11 to make any recommendations it thought necessary, and if the countries agreed to accept and carry out those recommendations, a small step in the right direction would have been made, as M. Sokal and himself believed — he was not speaking for the moment of the British Government. He therefore asked M. Sokal not to persist in his opposition to the proposal but to take it for what it was worth; when the opportunity arrived, M. Sokal could press for something further in the desired direction.
M. CHOUENKOVITCH (Yugoslavia) wished to put certain questions and to express certain doubts. He considered that it was absolutely necessary to express himself clearly, and he would permit himself to draw attention in that connection to the text of the British amendment. If that amendment were adopted, Article 3 would read as follows:

"In the event of hostile acts of any kind having been committed by one High Contracting Party against another, 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 . . . ."

Thus, the text began by considering simple hostile acts in order to consider immediately afterwards a serious situation in which hostilities had already broken out, since the forces of one State had penetrated into the territory of another State.

In M. Choumenkovitch's opinion, the British amendment changed nothing in Article 3. If the situation was such that hostilities had already broken out, a grave situation existed which had to be faced. It was then no longer simply a question of hostile acts. In those conditions, the same questions arose under the amended article as under the original article, that was to say, the question of control, that of the determination of the aggressor, etc. It was necessary then, to consider all the consequences which the delegate of Czechoslovakia had indicated and which led to Article 16 of the Covenant.

The British amendment spoke of "hostile acts of any kind". That expression could be interpreted in various ways. The considerations put forward in support of the British text referred to "frontier incidents". Could "hostile acts of any kind" be confused with "frontier incidents"? M. Choumenkovitch would observe, in the first place, that in the definitive draft of Article 3 it would certainly not be necessary to mention frontier incidents as an explanation of the words "hostile acts of any kind". Moreover, in his opinion they were two different matters. The expression "frontier incidents" covered an element into which chance entered, and did not imply the intention of hostility. A frontier incident was a matter of very small importance when an endeavour was being made to reach a settlement by direct agreement between the parties concerned. A procedure had even been established by the mixed commissions. M. Choumenkovitch did not consider that a definition of frontier incidents could be drawn from the words themselves, but the procedure habitually employed defined to some extent the cases indicated by them.

Those were the questions which arose. M. Choumenkovitch was unable to reply to them, but they gave rise to some hesitation on his part.

M. SOKAL (Poland) spoke again to thank Viscount Cecil for the very definite and clear explanations which he had been good enough to give in reply to a series of questions put by the Polish delegation, which was very much moved by the courteous and amicable form of the replies.

M. Sokal desired to dissipate a misunderstanding. Viscount Cecil had spoken of a negative attitude on the part of the Polish Government in regard to the Convention, of a campaign of opposition by the Polish delegation against it. That was true if the remark referred to the text submitted to the Committee, but it was not true of the principle which was or should be at the basis of the Convention.

Viscount Cecil had been good enough to recognise — and he had reproached M. Sokal with it — that the Polish delegation and the school to which it belonged was asking for too great an amplification of the Convention.

That was quite true. M. Sokal considered it superfluous to say that the Polish Government was very desirous of knowing to the step forward of which Viscount Cecil had spoken, even if it could be only a very small step, seeing the impossibility — which was not the fault of the Polish delegation — of taking a larger step forward. The difference, however, which existed between the positions taken up by the various delegations arose precisely from a doubt felt by certain members of the Committee. Was the small step which it was proposed to take really a step forward, or would it not, on the contrary, be a step backward? Would it not lead to a decrease in the general security established by the Covenant of the League of Nations and the Pact of Paris?

M. Sokal, however, could assure Viscount Cecil that the Polish delegation would seek with the greatest goodwill for a solution, on condition that it was practical, real and definitely constituted a step forward.

M. MASSIGLI (France) noted that the discussion had somewhat deviated, as often happened, and that the debate, which had started with a precise amendment, had been transformed into a general discussion on Article 3. He felt the less disposed to complain of that because the discussion had been so wide that it did honour to the speakers.

The difficulty was that all the delegations had not in view the same object, as M. Choumenkovitch had so well pointed out. As Boileau had said, "what is well understood is well expressed", and it was perhaps because those who originally drafted the text which was the basis of the Committee's work had had no very clear idea of what they desired that the Committee was now faced with so many difficulties. Thanks, however, to the exchange of views which had just taken place and to the very broad-minded and generously inspired statement made by Viscount Cecil, and by which everyone had been deeply moved, thanks also to the very penetrating observations of M. Sokal, the question was more clear, and the Committee saw more clearly what path it might take.
It was certain — and he would ask Viscount Cecil to contradict him if he were mistaken — that it had never been the intention of the delegate of the British Empire to interpret Article 3 in such a manner that in certain cases it would exempt the Council from doing its duty and putting into action the methods provided under Article 16 of the Covenant. The meaning given by Viscount Cecil to the measures proposed in Article 3 was as follows: cases might arise in which shots were exchanged without the wish of a Government, cases in which a Government took or was thought to have taken the initiative. In such cases, the Council might be hindered in acting by its own act or its failure to act. It was necessary to state clearly that such a solution was possible.

On the other hand, the preoccupations of M. Sokal were well founded, and the French delegation shared them. The delegate of Poland did not wish that, under the pretext that, in virtue of the Convention under consideration, the contracting parties undertook to submit to an armistice, the Council should be exempted, in cases where there was an obvious intention of aggression, from putting into operation the repressive methods which it had a right to apply. M. Sokal had made another very just observation; the Pact of Paris had outlawed war. In the future, no Government animated by evil intentions would commit the folly of declaring war; this would be too obvious a violation of the Pact. It would resort to other methods, it would resort to acts of force. It would begin the war without notice, and M. Sokal feared that in such cases the functioning of Article 16 would be hindered by the text proposed.

Taking that situation into account, M. Massigli considered that the work of the Committee would gain in clearness and rapidity if the texts to be prepared brought out clearly the above facts. It might be said, for example, that without prejudice to the decisions which should be taken by the countries to which the treaty referred, the Council was to take certain measures which the contracting parties undertook to accept. On that basis a solution could be found.

On the other hand, Viscount Cecil had very rightly recommended a prudent advance, considering — and the French delegation would not contradict him on this point — that the League of Nations could no longer indulge in experiments. In such matters, it could not allow itself the luxury of drawing up draft Conventions on which the peoples based their hopes of peace and in which they saw the strengthening of their security, but which would suddenly disappear because a Government hesitated to accept all the consequences. It was preferable to advance step by step. Moreover, M. Massigli did not doubt that, if it depended only on Viscount Cecil, it would be possible to make progress.

M. Massigli then turned to a delicate question to which Viscount Cecil had referred, and which, in his opinion, could be solved by observing that prudence which had been recommended by the delegate of the British Empire. M. Sokal and M. Fierlinger had spoken of control. They had been right to do so. It was an essential point, for a country could not be asked to undertake in advance to observe the prescriptions of the Council concerning an armistice without being told at the same time how the Council would supervise the execution of the prescribed measures. M. Massigli was sure that the Committee would be able to adopt a very clear text which would not ask the contracting parties to undertake in advance to observe the prescriptions of the Council concerning an armistice, without being told at the same time how the Council would supervise the execution of the prescribed measures.

In conclusion, M. Massigli desired to make a remark which was only indirectly related to the present discussion, but to which he had been led by an observation of M. Rutgers. He wished to make that declaration in order that it should not be said that certain theories had been put forward without the necessary reservations having been made within the Committee. M. Rutgers had spoken of neutrality and had referred to the case of conflicts in which countries were neutral. A discussion had already taken place on that subject in the past year or in 1928 in the Third Committee. M. Massigli remembered it very clearly. He wished to repeat that the French Government, except in the case of a contractual neutrality resulting from Conventions formally accepted by the League of Nations, did not consider that, under the regime of the Pact of Paris, combined with the Covenant of the League of Nations, there could be neutrals.

M. Rutgers (Netherlands) had put forward no theories, for it was neither the place nor time for theories. He had simply wished to draw attention to the term "hostile acts" contained in this article and to the fact that in the Convention of 1907 the term had a different meaning. He thought that M. Massigli would not contest his right to do this, all the more so since the statement, according to which there was no longer neutrality, had been accompanied by a reservation, namely, except in the case which he had mentioned.

The Chairman closed the general discussion on Article 3 which had been very useful and which would enable the Drafting Committee to take into account all the suggestions presented to complete and elucidate the article.

It was necessary to recognise that the article formed the essential basis of the Convention, and if the suggestion that Article 3 should be omitted were adopted that omission would lead
to the suppression of Article 4. If, on the other hand, the first two articles were left on one side, nothing would remain of the draft Convention, since the other articles were only articles of form. It was thus essential to retain Article 3, and it would be the task of the Drafting Committee to draw up a clear article, taking into account the amendments which had been presented, and which it would have to bring into harmony. The question of control could be reserved and taken into consideration when Article 4 was discussed. At that moment, the proposal of the Netherlands delegation, as well as that of the Polish delegation, could also be examined.

If the Committee accepted that suggestion, the German amendment to Article 3 could immediately be discussed.

The Committee agreed to the Chairman's proposal.

Amendment proposed by the German Delegation (document C.A.S.103) (Annex VI).

Dr. Göppert (Germany) explained that the German proposal did not affect the principle of the question. It was simply a modification which it was true was not merely a modification of form. It related to the second part of Article 3. The German delegation was prepared to accept the proposals formulated by the British delegation concerning the first part of the article, with the reservation that a more appropriate term be found to replace the expression "hostile acts".

The present text of Article 3 covered the case in which the armed forces of a State had penetrated into the territory of another State. It indicated that if the Council prescribed the withdrawal of the troops, the contracting parties undertook in advance to conform to that recommendation. In the opinion of the German delegation, however, that was not sufficient. The troops, having been withdrawn from the territory of the other State, should no longer remain along the frontier. If they did so, incidents might occur, for it could be foreseen that, on the two sides, feeling would be exasperated. Indeed, the Council had the right to go further and to prescribe the creation of a neutral zone. The present text authorised the Council to draw up a recommendation in that sense, but it appeared desirable to say so in explicit terms, to find, for instance, a text stating that the Council prescribed that a neutral zone should be left between the two States, and that they should undertake in advance to comply with that recommendation. Such was the object of the German proposal. It was simply a question of making impossible contact between the armed forces on each side of a frontier. Encounters might occur without the authority of any responsible body. They might arise simply as a result of a state of tension or from the excessive zeal of a subordinate body.

The second paragraph of the German amendment, which related to naval forces and to aerial forces employed over the sea, was inspired rather by the desire for completion. It was perhaps not absolutely necessary.

Viscount Cecil of Chelwood (British Empire) recognised the importance of the German proposal, but was a little nervous (and that applied somewhat to the original drafting of Article 3) about making definite suggestions as to what the Council could do unless the subject were gone into very thoroughly, because the circumstances were very different in the various cases. It might be that withdrawal behind the line was not at all the kind of thing that was desired. He would not return to the history of certain cases that had arisen, but members of the Committee would realise that withdrawal behind the line would not have been, in some of those cases, the most appropriate way of dealing with them.

Lord Cecil wondered whether it would be possible to reach a solution of the question — and perhaps of some other questions — if the report of the Committee of the Council on Article 11 of the Covenant were taken as a basis. That report had the great advantage of being already approved by both the Council and the Assembly and therefore already had authority. It might possibly be a way out of some of the difficulties with which the Committee was faced if that report were made an appendix to the Convention. He did not propose that it should be made part of the Convention, but that it might be referred to in the Convention as indicating the kind of step which the Council might take and which the Members of the League would agree to accept.

He wished particularly to draw M. Massigli's attention to the fact that the report provided specifically for control. It stated that, "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 then went on to set up the required machinery by which those representatives should be Members furnished.

Lord Cecil said he would not ask for an immediate expression of opinion by the Committee on his suggestion, but would ask the Secretariat to distribute the report which he had mentioned to the members of the Committee in order that they might know exactly what it contained.

In the meantime, he would ask the German delegation to consider carefully whether it was desirable to put a definite proposal of the kind suggested into Article 3, because it might not be applicable in all cases and might limit the powers of the Council and do exactly what the Committee did not desire to do — namely, make Article 3 less effective than it would otherwise be.
Dr. Göppert (Germany) replied to Viscount Cecil that his intention was not in any way to limit the bearing of the article. The original text of Article 3 stated:

"... 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..."

The continuation of the text constituted an example for which another could be substituted, in order to give to the situation a more practical solution and more frequent application in future than were provided for in Article 3.

M. Massigli (France) thanked Viscount Cecil for his interesting suggestion to which he would reserve his right to return later. He also thanked Dr. Göppert for his explanations. The latter reduced considerably the bearing of the German amendment in which, in relation to the text of Article 3, an important omission could be made good. There was no question of demilitarised zones, and it might be feared that the provision proposed would have the effect of weakening, in this respect, the treaties already in existence. The explanations of Dr. Göppert, however, were very clear; obviously, it was simply a question of a drafting omission. M. Massigli, therefore, did not insist on the point.

Nevertheless, he would draw attention to two points which appeared to him to be somewhat vague and which it was necessary to make clear. The idea expressed in the German amendment was as follows: Article 3 provided for the withdrawal of forces which had penetrated into the territory of another State or into a demilitarised zone. The German delegation wished to go further and to provide for a line of demarcation by means of a greater retreat on the national territory. That was a very interesting idea, but it might be asked what consequences it would have in practice. M. Massigli would suppose two countries, A and B. B had fortifications on its frontier. A made, or allowed to be made, an incursion into the territory of B, as the result of which the Council was led to take measures. If the measures taken by the Council had the effect of compelling B to evacuate the fortified positions on its frontier there was a risk that the solution was not practicable and that the proposal was even dangerous. That was a difficulty.

On the other hand, Dr. Göppert claimed, in principle, that precautions should be taken also in regard to naval forces. M. Massigli agreed, but Dr. Göppert had referred in this connection only to paragraph 2 of his Article 2A, which had been reserved; in the opinion of the French delegation the provision thus contemplated was somewhat vague. While it was necessary to avoid all contact on land, it was equally indispensable to avoid contact between the naval forces.

The Chairman noted that the discussion which had taken place on Article 3 had been very rich in new suggestions which would inspire the work of the Drafting Committee.

On the proposal of the Chairman, Article 3, together with the German delegation’s amendment and the reservations and proposals made at the previous meeting, were referred to the Drafting Committee.

SIXTH MEETING

Held on Thursday, May 1st, 1930, at 4.30 p.m.

Chairman: M. Beneš (Czechoslovakia).

12. Examination of the Revised Synoptic Table of the Text of the Model Treaty to strengthen the Means of preventing War, and of the Observations of the Governments (continuation).

Article 4.

The Chairman observed that there was no new proposal on the part of the Polish delegation, but that the Netherlands Government’s observation was equivalent to a proposal to substitute for Article 4 in its present form, the text proposed by the Polish delegation during the third session of the Committee.

M. Sokal (Poland) was glad that the Netherlands delegate had taken up the Polish proposal. He wished, however, to say that the Polish delegation still adhered to its opinion in all points and that its proposal should be regarded as being before the Committee.

M. Rutgers (Netherlands) said that in its letter to the Secretariat its Government had only supported the Polish proposal. This was why the name of the Netherlands Government appeared in connection with that proposal.

Baron Rolin Jaqueymyns (Belgium) said that it must be remembered that the question of control had formed the subject of an exhaustive discussion at the time when the model treaty had been drawn up. It had been realised that, in certain cases at any rate, some supervision might be indispensable. On the other hand, it had appeared that there might be certain grave objections to the organisation of a control in the strict sense of the term, and that if the form of the control were too systematic, many countries might be prevented.
from adhering to the Convention. It was for that reason that in the text of the model treaty, from which Article 4 was taken, the word “control”, which was distasteful to certain delegations, had been avoided. Article 4 referred merely to the contingency or possibility of supervision.

If these arguments had been accepted as valid and had dictated the decision taken at the time when the model treaty was being drawn up, it seemed that they must be equally valid in connection with the text which the Committee was now drafting.

General de Marinis (Italy) observed that the discussion showed that the Committee was not completely in agreement concerning the principle on which these articles were based. The method of agreeing on the order in which the articles should appear and on questions of wording was perhaps the most fruitful for the Committee’s work, which was directed with all the talent and experience of the Chairman. Nevertheless, questions of principle arose constantly, and it was plain that the Drafting Committee would be obliged to take this fact into account when it set to work.

Article 4 was a very striking example. The question of control was one of the most controversial questions that had arisen since the foundation of the League. On this very grave point it had always been found that there were two different points of view. In the long debates that had occurred on this subject the Italian Government had not changed their opinion. Nevertheless, in the particular cases referred to in Article 4 of the draft general Convention, the difficulties inherent in carrying out control were aggravated. The debates that had taken place regarding control had concerned armaments and their manufacture. The present question was far more serious, since it related to the control of the use of armaments. If such control appeared difficult to carry out for land operations, it was extremely difficult to imagine how it could be carried out at the naval or air bases of two countries which were disputing, and this difficulty was aggravated still further in the case of the control of the movements of naval and air fleets. Control must be real and effective, as indeed was urged by those who considered it necessary. General de Marinis was happy to note M. Sokal’s agreement on this point.

Since, however, Italy did not accept control, the reply might be made that General de Marinis had no reason to trouble about it. That, however, would be incompatible with the spirit of co-operation by which he was guided. The question was not merely one of the duty of co-operation, which General de Marinis was anxious to discharge. His observations were further justified by the fact that Italy held a permanent seat on the Council.

Viscount Cecil of Chelwood (British Empire) said that it was a most unfortunate fact that there appeared to be no exact English translation of the French word “contrôle”.

He sympathised with General de Marinis in his difficulty in accepting anything like direct supervision by agents of the League in a foreign country against the will of that country. He had always felt that anything like direct supervision of the reduction of armaments, for instance, would be an excessively difficult thing to carry into effect. On the other hand, it must be admitted that there were cases of disputes, and even of hostile acts, where the presence of a representative of the League and of each of the parties might be of the greatest possible importance and value.

Lord Cecil referred to the Greco-Bulgarian dispute, in regard to which representatives were sent to the scene of the dispute as soon as possible in order that they might tell the League exactly what was happening. In that case, it had been generally admitted that their presence was invaluable. In other cases, no such supervision would be practicable or useful, and it was for that reason that he was unable to support the Polish proposal, which stated broadly that there must always be control or supervision. Lord Cecil considered that there might be many cases where it would not be the least necessary to have supervision. There was the example of the Corfu dispute, in which there had been no question of supervision or control being required or desirable. Other cases of the same kind could be cited.

He could not accept the phraseology of the Polish amendment — “considering that the provisions referred to above will not be effective unless accompanied by a system of prompt control” — it would be absurd to say that Article 1 could under no circumstances be put into operation without a system of rigorous control.

Personally, Lord Cecil would have preferred to leave the text of Article 4 as originally drafted. It seemed to give the Council perfect liberty to establish a system of supervision, and in fact it had that liberty already. All that was needed was to secure agreement on the part of the Members of the League to the execution of the plans which the Council might have for establishing whatever supervision it considered necessary.

Viscount Cecil proposed that the Drafting Committee might be asked to see whether it could make some sort of synthesis of the two ideas, leaving liberty of action to the Council and yet recognising the importance of control in a great many cases.

M. Massigli (France) reminded the Committee that in opening the discussion he had not failed to emphasise the difficulties which the Committee would have to face in connection with the question of control. A country that was threatened could not be asked to assume an engagement to conform to such recommendations as the Council might make at a time that was critical for its security, unless at the same time it received the assurance that the Council would take all the necessary steps to ensure the supervision of the execution of the measures it prescribed.

Control must be established, but it must be a simple control. Similarly, without any way affecting the Council’s right to make any recommendations which it considered useful,