LEAGUE OF NATIONS

GENERAL CONVENTION TO IMPROVE THE MEANS OF PREVENTING WAR

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REPORT BY THE THIRD COMMITTEE TO THE ASSEMBLY.

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In proposing to the Assembly the adoption of the text of a General Convention to improve the Means of preventing War, the Third Committee desires first of all to offer its thanks to the Special Committee appointed by the Council. This Committee, which was presided over by M. Politis, has greatly lightened the labours of the Assembly by making a very exhaustive study of the questions which had prevented the Committee on Arbitration and Security from establishing a single text.

While the Third Committee has made certain amendments to the draft report prepared by the Special Committee, it has in no way departed from the essential principles on which that Committee had reached agreement.

First of all, the Third Committee, like the Special Committee, would emphasize that the General Convention can in no way limit the powers held by the Council under Article 11 of the Covenant. This Article has proved itself very valuable in practice. To facilitate its application, texts have been drawn up and approved by the organs of the League, more especially the report of the Committee of the Council dated March 15th, 1927, approved by the Assembly on September 26th, 1927, and by the Council on December 6th, 1927, the study of the Committee on Arbitration and Security on Article 11 of the Covenant, recommended to the Council by the Assembly on September 29th, 1928, and the Council’s resolution of June 7th, 1928, regarding measures to be taken in the intervals between sessions of the Council.

As, however, when a question is laid before it under Article 11 of the Covenant, the Council’s decisions must be unanimous, it has seemed desirable to propose to the Governments the acceptance of new undertakings, whereby certain decisions might be taken without their votes counting for the purposes of unanimity when they were parties to a dispute and when the Council thought it fit to recommend to them certain clearly specified conservatory measures.

These measures may be of two kinds: Non-military (Article 1 of the Convention) and military (Articles 2 and 3).

Provision is made for two classes of measures of a military nature:

(1) Measures which, in circumstances that, in the Council’s opinion, do not create a state of war between the Powers in question, are designed to secure the evacuation of the territory or territorial waters of one party or of a zone demilitarized in virtue of international agreements by the forces of the other party which may have entered that territory or may be flying over it in the course of a dispute (Article 2);

(2) The fixing by the Council, if it thinks this necessary, of lines in the territory of the parties which must not be passed by the land, naval or air forces of the parties to the dispute and, where necessary in order to avoid incidents, by their civil aircraft (Article 3).

The text adopted for Article 2 emphasizes the fact that it refers to circumstances which, in the Council’s opinion, do not create a state of war between the Powers in question. A Convention designed to prevent war cannot, after all, be applicable when war has broken out. For that case, other measures and sanctions are provided by the Covenant.
The question of the moment at which war actually breaks out may of course give rise to difficulties of a theoretical nature. It would not seem that any more satisfactory explanations can be given on this point than those furnished in the following passage from the report submitted by M. de Brouckère to the Committee of the Council in December 1926 ¹ which was recognised as a valuable guide in this important matter, but is not formally binding on the Committee.

The Committee has further thought it desirable to specify that there shall be equivalent treatment for land, naval and air forces as regards both measures of the first class (evacuation) and measures of the second class (fixing of lines not to be passed by the troops) in all the States at war. As States regard their territorial waters as part of their territory, those waters must be evacuated by any forces that may have entered them or may be flying over them, just as the territory itself must be evacuated.

Certain doubts have been expressed as to the possibility of ensuring in practice equivalence of treatment as between air forces and the other forces, as regards measures of the first category, since the mobility of aircraft permits it very easily to fly back over foreign territory during or after evacuation.

In this connection, the Committee desires to call attention to the last paragraph of Article 3, according to which the contracting parties agree to give strict orders to the commanders of their forces, if the Council so recommends, to take all necessary precautions to avoid incidents. It is obvious that the latter paragraph will enable the Council to recommend particularly that the order not to fly over the territory or territorial waters of one party should be given to the air forces of the other party. Moreover, any raids by aircraft would, like those by land or sea forces, if necessary be verified or reported to the Council by the Commissioners which it had sent to the spot in accordance with the provisions of Article 4.

Measures of the second category — that is, the fixing by the Council of lines which the forces and, as far as may be necessary, the civil aircraft must not pass — may be prescribed, if the circumstances contemplated in Article 2 have arisen, and after the Council has prescribed measures designed to ensure evacuation, or if, in the event of a threat of war, special conditions, particularly the possibility of contact between the forces, rendered it necessary. It is understood that the State whose territory has been invaded will not be required to withdraw its forces behind the lines fixed by the Council until that territory has been completely evacuated by the alien forces.

The powers conferred on the Council by this article may be exercised without an invasion having taken place or after an invasion followed by an order for evacuation.

The Committee agrees with the Special Committee in thinking that it is obviously impossible in a general convention to formulate provisions for all the special cases which may arise. The Council will fix, within the limits of the Convention, the conditions for carrying out the measures which it prescribes. It will recommend to the parties only useful and practicable measures. Moreover, as regards civil aircraft, each party has also the right, particularly in the event of a threat of war, to notify in accordance with the rules in force, that it prohibits flying over certain zones of its territory by foreign aircraft.

Further, as regards the actual fixing of the lines which the forces must not pass, it is understood that if the Council, after endeavouring to fix these lines by common agreement with the parties to the dispute, has been obliged, failing such an agreement, to fix them with the consent of the party whose forces are affected, this does not involve the withdrawal of the forces further back than the exterior lines of the defence organisations existing on the frontier of the parties concerned at the time when the Council

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¹ "We must now return to our previous remarks concerning the conditions which must be fulfilled before a country can be regarded as having resorted to war. There is no need to dwell upon the case in which the aggressor State formally declares war. Apart from this eventuality, two conditions are necessary. As we said:

(1) One country must have committed an act of war against another;
(2) The latter country must have admitted the existence of a state of war.

Further, the second country must have justification for taking up this attitude.

Every act of violence does not necessarily justify its victim in resorting to war. If a detachment of soldiers goes a few yards over the frontier in a colony remote from any vital centre; if the circumstances show quite clearly that the aggression was due to an error on the part of some subaltern officer; if the central authorities of the 'aggressor State' reprimand the subordinate concerned as soon as they are apprised of the facts; if they cause the invasion to cease, offer apologies and compensation and take steps to prevent any recurrence of such incidents — then it cannot be maintained that there has been an act of war and that the invaded country has reasonable grounds for mobilising its army and marching upon the enemy capital. The accident which has occurred has in no way released that country from the specific obligations laid down in Articles 12 and following. It could not be so released unless it were the victim of a flagrant aggression of such a serious character that it would obviously be dangerous not to retaliate at once.

In short, to borrow the felicitous phrase used in the Treaty of Locarno, 'the country in question must be exercising the right of legitimate defence'.

Legitimate defence implies the adoption of measures proportionate to the seriousness of the attack and justified by the imminence of the danger. If a country flagrantly exceeded these limits, even if it were affronted by some incident of little intrinsic importance, it would become, in actual fact, the real aggressor and it would be only fair that that country should be made the object of the sanctions provided for in Article 16." (see document A.14.1927, page 80).
of the League of Nations takes its decision, nor the abandonment of any other work, position or line of communication essential to the security or the supplies of the party concerned, the natural lines of defence and vital centres being included among "the essential" works, positions, or lines of communication.

Such are the provisional measures of a military nature which the Council may, under Articles 2 and 3 of the Convention, prescribe for the parties concerned. Obviously, other measures might, in certain special cases, appear desirable. If so, it will be not in virtue of the Convention, but under the general powers which it derives from Article 11 of the Covenant that the Council will be able to prescribe them with the consent of the parties concerned.

Certain delegations have recommended, in particular, the generalisation of the system of permanent demilitarised zones, but the Committee considers that such generalisation might be brought about by way of bilateral agreements, and not by a general convention.

Other suggestions have been made with a view to facilitating the application, if necessary, of Article 3. The possibility has been considered of neighbouring States negotiating between themselves in advance the limits of the demilitarised zones which they agree to create in their territory in the event of a threat of war.

The Polish delegation again defended in the Committee the point of view which it put forward in the Special Committee. It considers that, if the conservatory measures of a military character are restricted to those provided for in Articles 2 and 3 of the Convention, the latter will have little value, and the Polish delegation would, in particular, have liked to have the following clause included:

"In the event of the Council's deciding that an international obligation concerning the state of a High Contracting Party's armaments has been violated, it shall call upon the High Contracting Party to restore the situation in accordance with the said obligation. The High Contracting Parties undertake to comply with such invitation without delay."

The Third Committee shared the opinion of the Special Committee that the question did not come within the scope of the Convention and the Polish delegation reserved its right to submit the matter to the Conference for the Reduction and Limitation of Armaments.

The Third Committee unanimously accepted the text of Article 4 proposed by the Special Committee for the supervision of the execution of measures of a military character prescribed by the Council. It is understood that the task of the Commissioners appointed by the Council in accordance with the provisions of Article 3 will consist exclusively of verifying on the spot the withdrawal of forces prescribed by the Council under the conditions defined in Article 2 of the Convention. The Commissioners may not make a more extensive inspection than is necessary to verify the withdrawal of the forces, works or military establishments and in no case may they inspect naval or air bases.

The Committee furthermore draws the Assembly's attention to the last paragraph of Article 4 under which the rules to be followed for the composition and working of the commission of inspection shall be embodied in executive regulations which shall be prepared by the competent organs of the League of Nations so as to enter into force at the same time as the Convention. The Assembly will certainly wish to draw the Council's attention to the expediency of giving the competent organs of the League the instructions necessary for these regulations to be ready in good time.

As regards Article 5 concerning the question of penalties, the Third Committee succeeded in achieving unanimity, the Netherlands delegation having renounced the reservation which it had asked to have inserted in the Special Committee's report. It is understood that the second paragraph of Article 5 refers to the case of wars breaking out as a consequence of a violation, established by the Council, of the conservatory measures of a military character defined in Articles 2 and 3. As in all cases in which war breaks out, the Members of the League may, and, in fact, must, decide whether a State has resorted to war contrary to the obligations entered into under Articles 12, 13 or 15 of the Covenant, before considering ipso facto that a Member of the League has committed an act of war against all the other Members. Furthermore, in the special case referred to in the second paragraph of Article 5 of the General Convention, the contracting parties will consider that the violation by one of the contracting parties of the supplementary obligations which it has freely entered into under Articles 2 and 3 of this Convention constitutes prima facie evidence, if war breaks out, that the said party has resorted to war within the meaning of Article 16 of the Covenant. It is understood that this is only prima facie evidence, which does not preclude proof to the contrary.

The Committee inserted in Article 6 a clause under which the parties to the Convention undertake to provide, by the means at their disposal, such publicity as the Council may think fit for its proceedings, decisions and recommendations when a dispute is brought before it in the case contemplated by the Convention. For the application of this clause, which is aimed at preventing public opinion as far as possible from receiving one-sided information and also at influencing the public opinion of the countries involved with all the Council's moral authority, the Council must take a decision concurred in by all the Members voting other than the parties to the dispute. Naturally, this clause, like the others, cannot affect the rights of the Council under the Covenant, and particularly its right to regard publication of its discussions, decisions and recommendations as a matter of procedure under Article 5, paragraph 2, of the Covenant; but publicity only becomes compulsory under Article 6 of the Convention if it is decided upon unanimously.
The British delegation proposed the addition of a clause stipulating that it was understood that the measures laid down in paragraph 1 of Article 2 should not affect the right of free passage through the Suez Canal provided for in the Convention on the Free Navigation of the Suez Canal signed at Constantinople on October 29th, 1888. To meet the British delegation's wishes, the Committee inserted a second paragraph in Article 9 referring to this Convention.

The formal clauses of the Convention do not call for much comment.

It may, however, be well to draw attention to the fact that for the entry into force of the Convention as provided in Article 14, ten ratifications or accessions will be necessary. Moreover, the last paragraph of the said article gives each contracting party the right to accompany his ratification or accession by a reservation under which he makes the entry into force of the Convention, in so far as he is concerned, conditional on ratification or accession on behalf of certain countries named by him. It goes without saying that the ten ratifications or accessions necessary for the entry into force of the Convention must either be ratifications or accessions not accompanied by reservations, or ratifications or accessions accompanied by reservations but rendered final by the fact that the conditions laid down in the said reservations have been fulfilled.

A proposal was put forward to insert a clause making the entry into force of the Convention conditional, apart from the number of ratifications or accessions provided for, on a declaration by the Council accepting the responsibilities laid upon it by the Convention. After consideration, it was thought that such a declaration was superfluous; the Convention having to be approved by the Assembly, it was recognised that the Council would have to obey its provisions.

It was also proposed to draw up the Convention in the form of an instrument open only to the accession of the parties on the model of the General Act. The Governments would only have been able to accede after obtaining the authorisation prescribed by the national constitutions.

The Committee eventually decided on the system generally adopted for conventions concluded under the auspices of the League of Nations, because it recognised the force of the argument that it would be easier for Governments to affix their signatures before the Conference for the reduction and limitation of armaments than to obtain the necessary authorisation for accession before February 2nd, 1932, the date on which this Conference is to open. In signing the Convention, the Governments will assume a moral obligation, and it is highly desirable that a large number of them should assume this obligation before the Conference.

In conclusion, the Committee wishes to recall the passage in the Special Committee's report in which the latter appraises the value of the draft which it drew up, and which has become, with a few amendments, the text of the present Convention.

After stating that it realised perfectly well the limitations of the text it had prepared, the Committee explained that it did not seem possible to ask the States to accept more extensive obligations in a general convention, "But", it added, "whereas, in the matter of conservatory measures, the contracting parties will not be legally bound except by the obligations in the convention, there can be no doubt that they may, if they think fit, themselves agree or propose to the Council to take other measures that may be deemed wise and effectual to safeguard the peace and the good understanding between nations upon which peace depends".

Moreover, although the draft represents only a modest advance in the direction of the means of preventing war, the Committee desires to emphasise its practical importance and cherishes the hope that in the future this first step may be followed by other and more important steps."

The Committee fully endorses the Special Committee's opinion, and associates itself with the hope thus expressed.

I have accordingly the honour to submit the following draft resolution for the approval of the Assembly:

"The Assembly,

(1) Taking note of the report submitted to it on behalf of the Third Committee;

(2) Thanking the Special Committee for the admirable work it has done towards the framing of the draft general Convention to improve the Means of preventing War;

(3) Approves the text of the said Convention which has been drawn up by the Third Committee;

(4) Decides to open the Convention for signature by the States Members of the League and by those non-member States to which the Council of the League shall have communicated a copy of the Convention for that purpose;

(5) Earnestly trusts that a large number of States will sign the Convention before the opening of the forthcoming General Disarmament Conference; and

(6) Requests the Council to make the necessary arrangements in good time for the preparation of the rules referred to in the last paragraph of Article 4, in order that, should circumstances so dictate, the Convention may be put into effect immediately upon its entry into force."