ANNEX 5.


REPORT OF THE SPECIAL COMMITTEE APPOINTED TO FRAME A DRAFT GENERAL CONVENTION TO IMPROVE THE MEANS OF PREVENTING WAR.

REPORT SUBMITTED BY DR. LANGE (Norway).

Adopted by the Committee on May 15th, 1931.

The Special Committee appointed by the Council to pursue the study of a draft General Convention met at Geneva on May 11th, 1931. It requested M. Nicolas Politis, representative of Greece, to preside, and entrusted the duties of rapporteur to Dr. Lange, representative of Norway. 1

The Committee sat from May 11th to 15th. Before submitting its conclusions, it seems desirable to recall the Committee's terms of reference and the circumstances in which it was called upon to perform its task.

In 1928, the Committee on Arbitration and Security, having before it suggestions from the German delegation relating to conservatory measures for the prevention of war, found it impossible to frame anything more than a model treaty, and the Ninth Assembly expressed the hope that this model might form a useful basis for States wishing to conclude a treaty of that nature.

In 1929, on the proposal of the British delegation, the Tenth Assembly decided to ask the Committee on Arbitration and Security to consider the possibility of establishing a draft General Convention on the broad lines of the model treaty drawn up in the previous year.

1 The following took part in the Committee's work:

M. René Massigli, France.
Dr. Göppert, Germany.
Viscount Cecil of Chelwood, Great Britain.
M. Nicolas Politis, Greece.
M. José Matos, Guatemala.
General Alberto de Marinis Stendardo di Ricigliano, Italy.

M. Nobumi Ito, Japan.
M. Rutgers, Netherlands.
Dr. Christian L. Lange, Norway.
M. Sokal, Poland.
Señor Lopez Oliván, Spain.
M. Ilia Choumenkovitch, Yugoslavia.
The delegations represented on the Committee on Arbitration and Security were unable to reach an agreement — more particularly on the questions relating to conservatory measures of a military character and the means of enforcing them. The various views maintained could, however, be reduced to two main currents of opinion, which, with certain reservations, were submitted to the Members of the League in the form of alternative texts.

The Third Committee of the Eleventh Assembly endeavoured to find some means of reconciling the advocates of these two texts. It became clear, however, that certain "delicate questions of a technical nature" would have to be gone into more thoroughly before there could be any hope of establishing a single text. For that reason, the Third Committee asked the Council to appoint a special committee to continue the study of the question, starting from the following conclusions drafted by a sub-committee of the Third Committee:

1. The Committee is of opinion that, in principle, it would be advantageous to transform the model treaty into a General Convention to strengthen the Means of preventing War.

2. The Committee was unanimous in regard to the provisions given in Article 1 of the preliminary draft concerning the conservatory measures of a non-military nature which the Council may recommend the contracting parties to take.

3. With regard to Article 2 of the preliminary draft, the Committee considered that this article might embody provisions to ensure the integral application of Article 11 of the Covenant, with a view to the prevention of war by making binding on all contracting parties the Council's recommendations for the avoidance of direct contact between the opposing forces, and for the avoidance of incidents at a time when relations between the States concerned in any dispute have become so strained that, in the opinion of the Council, there is a threat of war.

4. The Committee likewise considered that the Convention should provide for a supervision of the measures which, in the cases mentioned in Article 2, would be decreed by the Council (Article 3 of the preliminary draft).

5. Lastly, in view of the fact that the scheme was limited to the prevention of war, as mentioned in Article 11 of the Covenant, the Committee felt that it should be understood that the question of the methods of applying Article 16 of the Covenant would remain intact, and that, on the other hand, the proposed Convention would result in facilitating such application."

On the basis of these conclusions and the observations submitted by various Governments, which are appended to the Minutes of its meeting, the Special Committee appointed by the Council proceeded to reconsider the preliminary draft General Convention drawn up by the Committee on Arbitration and Security, and endeavoured to reconcile the opposing views.

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The draft Convention framed by the Committee was adopted unanimously by the members present, with certain reservations which will be stated in this report. The Japanese delegation abstained from voting, giving its reasons in a statement which is recorded at the end of the Minutes of the fifth meeting.

We shall analyse below the machinery of the proposed Convention and present such observations as the Committee feels called upon to offer in explanation of the text it has drawn up.

The Committee had in view two essential aims: to afford those States which might think it desirable an opportunity of signing undertakings which would increase, so far as is at present thought possible, the efficacy of the means of preventing war which are placed at the Council's disposal by the Covenant of the League, and at the same time to avoid restricting in any degree the powers conferred upon the Council by the Covenant.

To promote the first of these aims, the Committee thought it advisable to base the obligations in the General Convention on the principle of Article 4 (Article 4 of the preliminary draft framed by the Committee on Arbitration and Security). According to this article, the Council's decisions and recommendations regarding conservatory measures of a military or a non-military character, the supervision of the measures of a military character, and the means upon which, in the event of any violation, the Council might decide to ensure the execution of the Convention, would be binding on the parties to the dispute except as otherwise provided, so long as they were concurred in by all the Members other than the parties to the dispute.

To meet the second consideration, the Committee not merely retained the old Article 6 of the preliminary draft of the Committee on Arbitration and Security (Article 8 of the draft Convention), according to which the Convention may not be interpreted "as restricting the task or the powers of the Council of the League of Nations as laid down in the Covenant"; but thought it advisable to lay down that the conservatory measures of a military character defined in Article 2 should be prescribed "without prejudice to the other powers" which the Council derives from Article 11 of the Covenant. The proposed Convention is in no case to be regarded as limiting those powers.

The Committee must lay particular stress on this idea because it realises perfectly well the limitations of the text it has prepared. It did not seem possible to ask the States to accept more extensive obligations in a general convention. But 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 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.
Ad Title and Preamble of the Convention.

In view of the limited scope of its proposals, the Committee suggests that the title of the Convention should be altered. The title "General Convention to Improve the Means of Preventing War" seems fairly to represent the substance of the articles of the draft.

The Committee also proposes that the first paragraph of the Preamble should be worded as follows:

"Being sincerely desirous of developing mutual confidence by increasing the efficacy of the means of preventing war.

Ad Article 1. — Conservatory Measures of a Non-military Character.

As in the preliminary draft drawn up by the Committee on Arbitration and Security, Article 1 of the Convention deals with conservatory measures of a non-military character.

The Committee has added to the first paragraph of the preliminary draft of the Committee on Arbitration and Security, to which only slight drafting amendments have been made, a second paragraph which received general approval when proposed by the Netherlands delegation in the Third Committee of the last Assembly. According to this paragraph, the Council "shall fix the period of duration of these conservatory measures" and "may extend this period should circumstances render it necessary."

On this question of the duration of the measures, the Committee shares the view expressed in the report of the Committee on Arbitration and Security that it would be impossible in a general convention to fix a maximum period of duration which would be applicable in all the possible contingencies, since these might take the most varied forms. It must be left to the Council's judgment to fix this period, and the Council must be able to extend it should circumstances render it necessary.

Ad Article 2. — Conservatory Measures of a Military Character.

The first question which the Committee had to consider was that of the sphere of application of the Convention as regards conservatory measures of a military character. Should they apply to cases of war and threats of war which are referred to in the first paragraph of Article 11 of the Covenant, or should they only apply to cases of a threat of war? During the exchange of views which took place in this connection in the Committee, it was pointed out that, as it was a question of conservatory measures intended to prevent war, it would appear somewhat illogical that the Convention should apply in the case of war. Three articles of the Covenant deal with the case of war — Articles 11, 16 and 17. The powers and duties of the Members of the League and of the Council are defined in these articles, which will be applied should occasion arise. The Committee accepted this point of view and decided to refer in Article 2 only to the case of a threat of war.

The Committee thought it advisable to limit the conservatory measures provided for in Article 2: (1) to the withdrawal of the land or naval forces having entered the territory or waters of a contracting party or a zone demilitarised in virtue of international agreements, and (2) to the fixing by the Council, if it thinks necessary, of lines 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.

The measures of the first category are dealt with in the first paragraph of Article 2. It was understood that those measures should be taken without delay. In this provision, the words "waters of a contracting party" are not to be interpreted in their technical sense. The point is to deal with a threat of war and consequently to prevent the immediate danger of an armed conflict. Furthermore, although air forces are not expressly mentioned in this paragraph, it goes without saying that they must withdraw in the same manner as the land or naval forces which they have accompanied.

The measures of the second category are dealt with in paragraphs 2, 3, 4 and 5 of the said article.

It is obviously impossible in a general convention to lay down stipulations providing for all the particular cases which may arise. The Council will determine within the limits of the Convention the details of the measures which it may prescribe. It will only recommend to the parties measures which are useful and practicable.

With regard to these measures, the French delegation explained that the "necessity" referred to in the second paragraph of Article 2 relates to the impossibility of contacts between the armed forces, and that the existence of a zone demilitarised in virtue of international agreements is sufficient to answer to this necessity. The German delegation stated that it was "necessary" to avoid, not only contact between the armed forces, but also "incidents" of all kinds on the frontiers of the contracting parties concerned.

As regards civil aircraft, the Committee only provided for the prohibition, as far as might be necessary, of the crossing by civil aircraft of the parties to the dispute of the lines fixed by the Council. Naturally, this clause does not affect each party's right, notably in case of a threat of war, to announce, in conformity with existing regulations, that it forbids foreign aircraft to fly over certain zones of its territory.

As regards the actual fixing of the lines which the forces must not pass, the Committee proposes the following procedure: The Council will endeavour to fix them in common agreement with the parties to the dispute. Failing such an agreement it shall fix them with the consent of the party whose forces are affected, provided always that 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 contracting parties concerned at the time when the Council takes its decision, and that the lines
do not involve the abandonment of any other work, position or line of communication essential to the security or the supplies of the party concerned. The Committee was of opinion that the formula "essential work, position or line of communication" was sufficiently wide to include natural lines of defence and vital points.

In view of the fact that Article 2 applies to the case of threats of war, and that the Council must therefore take urgent action, the Convention lays down that it shall in every case rest with the Council to determine the period within which the said lines shall be fixed under the conditions specified above.

On the German delegation's proposal, the Committee decided to add to Article 2 a last paragraph under 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.

The Committee thinks that it has thus solved as far as possible the difficulties which have prevented the Committee on Arbitration and Security from reaching a single text.

In its observations, which have been forwarded to the Committee, the Austrian Government pointed out that "the creation of demilitarised zones would in its opinion constitute one of the most effective means of preventing the outbreak of hostilities". The British delegation expressed its sympathy with this point of view. But the Committee considered that it could not propose the generalisation of the system of permanent demilitarised zones in a general convention. It did not think it possible to recommend measures going further than the creation of a temporary demilitarised zone, subject to the conditions laid down in Article 2. It will always be open to two parties to create between them by agreement a demilitarised zone.

Nor did the Committee think it advisable to lay down in the Convention other conservative measures than those indicated above. It thought that the Convention should be limited to the measures which in case of danger of war would appear the most urgent. The Polish delegation would have wished that it was possible to insert in the Convention another category of conservative measures. Its proposal not having been accepted, the Polish delegation asked that the following declaration should figure in the present report:

"The Polish delegation proposed in its communication of May 11th, which was circulated to you at the beginning of our proceedings, that, in case of a threat of war, the Council should be able to recommend in the first instance to the contracting parties concerned that they should immediately put an end to any violation of an international obligation. The draft Convention prepared by the Drafting Committee provides only for certain particular cases of a flagrant breach of international engagements and gives the Council the necessary powers to put an end to violations of this kind. The Polish delegation desired to go further in this direction by authorising the Council to intervene in all cases of a violation of an international obligation, if this violation could constitute a peril to world peace. Our proposal met with the support in principle of nearly all the members of the Committee and was referred to the Drafting Committee."

"In the latter Committee, the Polish delegation found that the wording of this proposal seemed to the members of the Drafting Committee to have too general a character. By way of compromise, it therefore restricted the scope of its suggestion by specifying that it referred particularly to obligations connected with disarmament, these being of primary importance for the maintenance of peace. Despite this modification, and although the principle of our proposal was hardly contested by anyone, the Drafting Committee came to the conclusion that the present Convention, which only constitutes a first and modest step towards the development of the means of preventing war, could not include the idea which we had suggested. In the Drafting Committee's opinion, our proposal might be taken into consideration later and on another occasion.

"The Polish delegation continues, however, to think that the problem referred to in its proposal is of capital importance from the point of view of the prevention of war and of the maintenance of international order and that it should have constituted the pivot of the whole Convention, the other provisions having only a supplementary character. The text of the Convention which has been submitted to us by the Drafting Committee and which contains no trace of our suggestion cannot therefore be regarded by our Government as a truly effective means of preventing war. The provisions which we have before us do not appear to improve the present state of international security, since they do nothing more than consecrate the methods which have already been applied by the Council and which would be better placed in regulations relative to the Council's action in preventing the contact of the troops of adjacent countries in times of a threat of war. This observation applies in particular to Article 2, which contains, for example, a paragraph introduced on a German proposal and worded as follows:

"'The High Contracting Parties further agree to give strict orders to the commanders of their forces, if the Council so recommends, to take all necessary precautions to avoid incidents.'"

"By inserting in the Convention provisions which are so self-evident and which are the outcome of previous obligations, the execution of the Pact of Paris, among others, it unintentionally subordinated to the new conditions, which will perhaps not be without harmful effect on the prestige of these obligations.

"We do not desire to continue the discussion on the subject, for this would unduly prolong our proceedings, which, according to the general desire, are to conclude to-morrow. The Polish delegation nevertheless feels it its duty to declare that it reserves the right to raise the same question again at the Assembly of the League of Nations and at the
Disarmament Conference. We shall then revert to our proposal; for we are convinced that only a convention giving special powers to the Council to prevent the violation of international obligations can constitute a really useful instrument for the maintenance of peace and bring about an appreciable progress in the general organisation of international security."

The Yugoslav delegation endorsed the Polish delegation's point of view in so far as concerns disarmament obligations, and the French delegation, while expressing its regret that no provision would be inserted in the text of the Convention concerning the respect of the status of armaments resulting from international obligations, accepted the general opinion of the Committee that the question was foreign to the purpose of the Convention. The British delegation stated that, while it considered that the Polish proposal could find no place in the Convention as conceived by it, it desired to express its sympathy with this proposal, the examination of which might usefully be resumed on another occasion.

Ad Article 3. — Supervision.

The Committee was able to arrive at a single text in regard to the supervision of the execution of the measures laid down by the Council. Agreement was reached between those in favour of supervision in all cases and those in favour of supervision only in cases where this was considered expedient by the Council, on the following lines: the Council will appoint commissioners for the sole purpose of verifying on the spot the execution of the conservatory measures of a military character recommended by it under the conditions specified in Article 2, either if it thinks fit or if one of the parties to the dispute so requests.

In order to avoid any parties which may consider it necessary, a guarantee that the measures will be supervised, and at the same time to prevent one of the parties from unnecessarily delaying the execution of those measures by alleging that the commissioners have not arrived on the spot, the Committee proposes: (1) That the request that commissioners should be sent may not be made by a party after the Council has taken one of the decisions referred to in Article 2; and (2) that, in arranging for the execution of the measures prescribed, the Council may, on the application of a contracting party, a party to the dispute, accompanied by a statement of reasons, arrange for this execution to coincide, as far as it considers this necessary, with the arrival of the commissioners on the spot.

In order to take into account the legitimate pre-occupations of national security, it was decided that the inspection of the commissioners on the spot should be carried out for the sole purpose of verifying the withdrawal of the forces. They may not inspect military works or establishments for any other purpose, and naval or air bases will in every case be exempted from this inspection.

For the purpose of furnishing supplementary guarantees to the contracting parties and also with a view to the rapid application of the measures of supervision, if necessary, it is proposed that the rules to be followed for the constitution and working of commissions of control should be embodied in executive regulations which will be prepared by the competent organs of the League so as to enter into force at the same time as the present Convention.

Ad Article 4. — Sanctions.

The question of sanctions had been an even more serious obstacle than the question of supervision to the acceptance by the Committee on Arbitration and Security of a single text. The present Committee distinguished between two kinds of sanctions: (1) sanctions intended to ensure the execution of the Convention in cases where a contracting party violated the conservatory measures of a military character which it had undertaken to accept in accordance with Article 2, and (2) sanctions applicable to cases of recourse to war resulting from this violation.

As regards the measures to be taken in the first case, the Polish delegation proposed the following text: "If any violation of the measures defined in Article 2 is noted by the Council and continues in spite of its injunctions, the Council shall consider what means of all kinds are necessary to ensure the execution of the present Convention. The High Contracting Parties shall in such case lend their assistance to the Council."

In the second case (resort to war following the violation of the conservatory measures of a military character), the French delegation proposed to the Committee on Arbitration and Security a text providing that, under certain conditions, the contracting parties would consider the action so taken as a flagrant and unprovoked act of aggression and as a resort to war within the meaning of Article 16 of the Covenant.

The Committee adopted a compromise proposal made by the British delegation to delete from the Polish proposal the clause to the effect that the contracting parties would lend their assistance to the Council in the event of violation maintained despite its injunctions, and to provide that, if war broke out as a consequence of this violation, they would regard the said violation as prima facie evidence that the guilty party had resorted to war within the meaning of Article 16 of the Covenant.

In speaking of prima facie evidence (présumption), the Committee had in mind a mere presumption (présumption simple) which does not preclude proof in refutation.

The Netherlands delegation pointed out that two different views might be taken of this latter proposal: either that the provision increased the obligation laid down in Article 16 of the Covenant or that it left the question of the application of that article intact.
In the first case, the Netherlands delegation held that this provision would not be in conformity with Article 16 of the Covenant, which left Members of the League free to decide whether the Covenant had been violated. In the second case, the Netherlands delegation was of opinion that a provision of this kind should not be incorporated in the Convention, but might be inserted in the Preamble, preferably in the form adopted in the conclusions of the Third Committee of the Assembly, which considered “that it should be understood that the question of the methods of applying Article 16 of the Covenant would remain intact, and that, on the other hand, the proposed Convention would result in facilitating such application”.

The British delegation pointed out, and the Committee, with the exception of the Netherlands delegation, agreed with this view, that the text proposed by it, in the event of war following on a violation of the conservatory measures, fully met the wishes expressed by the Assembly. On the one hand, the question of the methods of application of Article 16 of the Covenant was left intact. In the case of resort to war, the Members of the League had the power and the duty to decide whether the obligations laid down in the Covenant had been violated. On the other hand, it could not be said that, if war broke out as a consequence of a violation of the obligations freely undertaken by a party in the proposed Convention, this violation did not furnish evidence — “prima facie evidence” — to use the legal term — that the said party had resorted to war within the meaning of Article 16 of the Covenant. The Committee considered that the adoption of this provision would make it possible to give States parties to a dispute a solemn warning of the consequences of any ill-considered action on their part. By inserting the second paragraph in Article 4 of the Convention, the Committee would appear to have complied with the task entrusted to it by the Assembly: to leave the question of the methods of application of Article 16 of the Covenant intact and to make it clear that the proposed Convention would facilitate this application.

The Netherlands delegation made a reservation in regard to this second paragraph. The German delegation stated that it was reluctant to borrow the term “prima facie evidence,” used in civil procedure, for the purpose of inserting it in the text of an international convention. It was afraid that the result would be to “mechanise” the system laid down in Article 16 of the Covenant.


The Swedish Government, in the observations which it forwarded to the Committee, drew up the following draft article as a basis for discussion:

“The High Contracting Parties undertake to give wide publicity, in the cases referred to in Article 2 of the present Convention, to the Council’s recommendations for the maintenance of peace and the settlement of the dispute, and to the statements on the dispute published by the Council.

“They further undertake to endeavour, so far as their national laws permit, to suppress all verbal or written propaganda designed to prevent a peaceful settlement of the crisis.”

The Committee thought it desirable to retain the suggestion in the first paragraph of the Swedish proposal with certain modifications. It desired in particular to leave it to the Council to decide on the information in regard to which it would be desirable to ensure publicity. The essential object of the article is to prevent public opinion’s receiving information from one side only.

As regards the proposal contained in paragraph 2, the Committee considered that it could not be inserted in the Convention in view of the wide diversity between national Press laws and the absence of common legislation.

The Committee suggested that the question might be laid before the Assembly, and the Polish delegation submitted the following recommendation:

“The Special Committee,
“Being aware of the danger which, in the event of an international crisis, may arise from irresponsible Press campaigns and publicity given in the Press to inaccurate or tendentious information;
“Recognising that aggressive propaganda against a foreign Power may in certain circumstances constitute a veritable threat to the peace of the world:
“Requests the Assembly to consider this problem and examine the possibilities of finding a solution.”

Article 7 reads as follows:

“The provisions of the present Convention shall only apply as between the High Contracting Parties.”

The Finnish Government, noting that “Article 11 of the Covenant and various other passages of that instrument also provide for intervention by the League of Nations in disputes not confined to Members of the League”, proposed to submit for examination “the question as to whether Article 1 (of the draft Convention) should not be amended so as to apply if necessary, mutatis mutandis, to cases in which the League’s organs may have to take cognisance of a dispute or threat of war also affecting non-member States”. Further, in connection with Article 5 of the
preliminary draft of the Committee on Arbitration and Security (Article 7 of the draft Convention), the Finnish Government "desired to repeat its observations concerning Article 1 . . . ."

Obviously, it is legally impossible for the provisions adopted between the contracting States to have effects in regard to third States, whether Members of the League or not. The Committee; however, desires to point out that the case of a dispute affecting a State not a member of the League is referred to in Article 17 of the Covenant and that, moreover, States not members of the League may, if they so desire, accede to the proposed Convention. Article 9 of the draft put forward by the Committee provides for the communication of the Convention to non-member States. They may either sign it (Article 9) or accede to it (Article 11).

Ad Article 12.

The Committee did not think itself authorised to indicate the number of Members of the League of Nations or non-member States whose ratifications or accessions would be necessary for the entrance into force of the Convention. In its opinion, it is for the Assembly to take a decision on this point.

Ad Article 14.

The last paragraph of Article 14 regarding the effects of a denunciation of the Convention by a contracting party is based on precedents on this point.

The British delegation expressed the opinion that the text of this paragraph should be taken to mean that such denunciation will only affect the rights and duties under this Convention of the party denouncing, but, with respect to that party, will put an end to all such rights and duties one year after the date of denunciation. The Committee unanimously accepted this interpretation.

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The Committee ventures to express the hope that the Members of the League will think it desirable to give their delegates to the Assembly the necessary instructions to decide on the text of the draft General Convention. Governments which are disposed in principle to accept it will no doubt also consider that it might be advisable to give their delegates the necessary powers to sign the Convention, should it be approved by the Assembly.