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THE  
COVENANT OF  
THE LEAGUE  
OF NATIONS

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## THE LEAGUE OF NATIONS

### SEVEN PAMPHLETS

*for Study Circles*

THE COVENANT OF THE LEAGUE OF NATIONS.

THE LEAGUE AND ITS GUARANTEES. *By Professor Gilbert Murray*

THE LEAGUE IN THE EAST. *By Professor A. J. Toynbee*

THE LEAGUE AND LABOUR. *By C. Delisle Burns*

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## THE COVENANT OF THE LEAGUE OF NATIONS.

### SECTION I.

#### THE LEAGUE IN HISTORY.

THE attempt to make some union between nations for the effective prevention of war has been constantly debated in human history and more than once carried out. It is interesting to notice how the different ideas current to-day have actually taken historical form in the past.

#### THE AMPHICTYONIC COUNCIL OF ANCIENT GREECE: 600-500 B.C.

This Council contained in germ the doctrine and the practice of the present League of Nations. It was a regular meeting of sovereign and independent neighbour-states for the purpose of talking over difficult points of policy and avoiding war. From 586 B.C. onwards it was a peace organisation on a religious basis, discharging the functions of an international tribunal, its decisions being inviolable and in the last resort enforced by an appeal to arms. The Council was composed of representatives from each tribe or state, a state often consisting only of a small town with the land for a few miles around it. Each state, whatever its size, sent two members. The Council met at Delphi, a spot sacred in Greek religion, in the spring of the year; and in autumn it met near the pass of Thermopylæ, where in later times a band of Greeks sacrificed themselves to save their native land (B.C. 480). The Council was bound by the oath taken by its members to secure that:—

- (1) Even in war-time, no City of the League was utterly destroyed.
- (2) No city of the League was deprived of its water supply.
- (3) The sacred temple of Delphi was protected in peace and in war.

The Council lasted in greater or less completeness for 500 years.

## THE ROMAN PEACE: 30 B.C.-170 A.D.

The *Pax Romana* represented the quite different ideal of a world State with unlimited powers. The Romans began by conquering all their rivals, but who were admitted, when conquered, to full rights of citizenship.

For nearly 200 years almost universal peace existed. With all its faults this was a great step towards the unity of mankind. It was impossible to administer the Empire according to the old local formulæ of the Roman Law, and so the Roman jurists constructed a general law founded on the customs of the Mediterranean peoples so far as they could be ascertained. This general law was known as *jus gentium*, and from it has sprung our International Law.

## EARLY CHRISTIAN EUROPE: 50 A.D.-1400 A.D.

After the fall of Rome the problem changed. The so-called Holy Roman Empire never became an effective super-State, but was only a political ideal, sometimes supported and sometimes opposed by another great ideal, *viz.*, the religious union of Christendom under the Pope. Throughout most of the Middle Ages, these ideals were present in men's minds, though in practice little more was achieved by them than the avoidance of a few wars by arbitration.

## PROPOSALS BY INDIVIDUAL STATESMEN.

In the absence of any real unity in Europe, the idea of a Union of Nations for preventing war ceased to be a matter of practical politics, and found its expression in the projects of individual thinkers.

## PIERRE DUBOIS: 1306.

Dubois proposed an alliance of all the Christian Powers for maintaining peace and establishing a permanent Court of Arbitration. The ultimate aim was, however, the re-conquest of the Holy Land.

## HENRY IV. OF FRANCE: 1595.

This scheme, the foundation of a "most Christian Republic," was conceived by Henry's minister, Sully. It was to consist of a General Council of some seventy plenipotentiaries from the member-States, formed by the division of Europe into fifteen States. These would constitute a Senate whose nominal work was to promote peace. The real intention was a League against the House of Austria. This League was designed to include the three antagonistic religions, the Roman Catholic, the Reformed, and the

Lutheran. The assassination of Henry put an end to the project.

## HUGO DE GROOT OR GROTIUS: 1625.

In his book on the "Laws of Peace and War" ("de Jure Belli et Pacis") he wrote: "It is honesty and good faith upon which peace and order are founded inside the nation; and upon the same is to be founded the intercourse of men of different nations." He was the first man who definitely insisted on the necessity of reducing the usages of war to a general system. These practical rules were largely observed from the beginning of the eighteenth century until 1914.

## ABBE S. PIERRE: 1714.

He wrote "A Treaty of Perpetual Peace." He projected a Senate to consist of twenty-four deputies chosen from among all Christian sovereigns. When fourteen sovereigns were enrolled as members, any other sovereign refusing to enrol was to be declared an enemy to the peace of Europe. Each sovereign was to be content with the territory he actually possessed, or might acquire under the rules of the society.

## THE CONCERT OF EUROPE: 1815-1830 AND TO 1914.

This was a real, though very imperfect, attempt at a League of European Nations. It failed, partly because some of the parties were autocracies and oligarchies rather than nations, and chiefly because it was governed more by principles of self-interest and mutual suspicion than by a true desire for co-operation. Even in this stage of development it did something towards keeping Europe for a while at peace, and proved that such unions were possible. "On at least ten occasions (says Professor Hearnshaw in 'Discovery,' May, 1920) the Concert prevented European wars, *i.e.*, in 1830, 1833-1839, 1840, 1852, 1856, 1867, 1884, 1900, 1906, 1912-1913. On at least five other occasions the Concert failed to prevent war."

## THE HAGUE CONFERENCES ON PEACE: 1899 AND 1907.

A Court of Arbitration was formed to deal with the peaceable settlement of disputes. Laws were formulated for the conduct of war. The Conferences were not able, however, to establish a real international Court of Justice, which has been the work of the League of Nations.

## SECTION II.

THE CONSTITUTION OF THE LEAGUE.  
(ARTICLES 1-7.)

The Covenant is the Charter or Constitution of the League of Nations. It is based upon work done by semi-official committees of the various Foreign Offices and private persons, from the first year of the war. After much consultation a draft scheme was issued by a committee of the Allied Delegates to the Peace Conference on February 14th, 1919, in order to invite amendments and suggestions. The amended Covenant was then embodied in the Peace Treaty with Germany, of which it comprises the first twenty-six articles, thus forming the basis upon which the whole treaty rests.

It is important to remember that the League of Nations is **not a Super-State**, that is to say, it is not a separate political unit having jurisdiction over other States and depriving them of their sovereignty; but it is an **Association of Nations commonly agreeing to limit their freedom of action on certain points**, in order "to promote international co-operation and to achieve international peace and security." Four main ideas may be traced in the Covenant as it now is, and each idea has been to some extent, though of course not exclusively, emphasised by a particular nation. There is (1) the "French" idea of a military alliance of all law-abiding Powers, pledged to prevent by force any war of aggression; (2) the "American" idea of a Supreme International Tribunal to decide by definite legal methods all points of difference that may arise between States; (3) the "English" idea, that the best way to avoid trouble is for sensible men on both sides to have the habit of meeting freely, without any compulsion, and talking things over; and (4) an idea specially emphasised by General Smuts, of abolishing annexations and making all backward and undeveloped territories a "trust for civilisation" under the League. The Covenant has been made very elastic, and provision is made for amendments to it. The framers have realised throughout that the force behind any Covenant must be the public opinion or conscience of the world, and have aimed chiefly at providing machinery by which that force may operate effectively and without hindrance. They have not attempted what some theorists desired, to set up a new ruling force to compel nations to do right, but have tried to bring the various States together in frequent conference to consider the interests of the whole family of nations.

One of the most obvious difficulties in the way of the League arose from its direct connection with the War. It was impossible to have nations which confessedly hated each other and had only just stopped fighting to sit together in an assembly where all depended on mutual goodwill and good faith; yet it was utterly foreign to the whole conception of the League that it should be a mere alliance of some nations against others. It has to be a **League of all Nations against war**. Consequently the "Original Members" of the League are to be "The Allied and Associated Powers" which were at war with Germany at the time of the Armistice, or had broken off relations with her. They are thirty-two in number, *viz.* :—

UNITED STATES OF AMERICA.	✓ CHINA.	✓ NICARAGUA.
✓ BELGIUM.	✓ CUBA.	✓ PANAMA.
✓ BOLIVIA.	✓ ECUADOR.	✓ PERU.
✓ BRAZIL.	✓ FRANCE.	✓ POLAND.
✓ BRITISH EMPIRE.	✓ GREECE.	✓ PORTUGAL.
✓ CANADA.	✓ GUATEMALA.	✓ ROUMANIA.
✓ AUSTRALIA.	✓ HAITI.	✓ SERB-CROAT-SLOVENE STATE.
✓ SOUTH AFRICA.	✓ HEDJAZ.	✓ SIAM.
✓ NEW ZEALAND.	✓ HONDURAS.	✓ CZECHO-SLOVAKIA.
✓ INDIA.	✓ ITALY.	✓ URUGUAY.
	✓ JAPAN.	
	✓ LIBERIA.	

In addition to these thirty-two, the Covenant provides that thirteen States, which were neutral during the war, may at once become "Original Members" upon agreeing without reservation to the rules of the League. These States are :—

✓ ARGENTINE REPUBLIC.	✓ NETHERLANDS.	✓ SPAIN.
✓ CHILI.	✓ NORWAY.	✓ SWEDEN.
✓ COLOMBIA.	✓ PARAGUAY.	✓ SWITZERLAND.
✓ DENMARK.	✓ PERSIA.	✓ VENEZUELA.
	✓ SALVADOR.	

Finally, the Covenant provides that certain States, which are **not Members**, can be elected as Members by a **two-thirds majority vote by the Assembly of the League** ON CONDITION that they give proper guarantees that they will observe their international obligations AND ALSO ON CONDITION that they accept the regulations regarding armaments laid down for them by the League. In this category, there would be included the former Enemy States (GERMANY, AUSTRIA-HUNGARY, TURKEY, AND BULGARIA); RUSSIA; MEXICO; and any other fully self-governing State, Dominion or Colony not already provided for.

This last category will allow for the growth of new

States or Dominions which may come into being in the future.

Any Member-State **may withdraw from the League on giving two years' notice**, "provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal." This provision is an acknowledgment of the principle of national sovereignty. It would clearly be impossible to retain a State in the League against its will; but it seems reasonable to insist that, before leaving, it shall pay its debts, and give due notice. We may hope that the right of withdrawal will never be exercised. It should also be noticed that a State which dissents from an amendment to the Covenant which has been duly passed, ceases to be a Member. And a State which breaks any of its undertakings may be expelled from the League.

The thirteen neutral States entitled to become "Original Members" have since done so.

Of the Allied and Associated Powers five have not yet ratified the Peace Treaty with Germany and are therefore not yet members of the League, *viz.*, The United States of America, Cuba, Ecuador, Hedjaz, and Honduras.

Up to June, 1920, applications for membership have been received from:—

MONACO	ESTHONIA	LATVIA
MARINO	ICELAND	GEORGIA
LUXEMBOURG	FINLAND	UKRAINE

and have been referred to the Assembly, to be dealt with at its first meeting in November, 1920. If accepted these States will not be "Original Members."

### SECTION III.

#### THE ORGANS OF THE LEAGUE.

The organs of the League are:—

- (a) THE ASSEMBLY.
- (b) THE COUNCIL.
- (c) THE PERMANENT SECRETARIAT.

(a) THE ASSEMBLY.—The Assembly is composed of not more than **three representatives of each Member-State** (including the States which are represented on the Council). Thus it may eventually become a body of about 150 men. Each Member-State, however, has **only one vote**. The

Assembly may deal with any matters "within the sphere of action of the League or affecting the peace of the world." Its special functions include the selection of the four lesser Powers who are to be elected on the Council (see next paragraph); the admission of new Members; reconsideration of obsolete treaties; consideration with the Council of amendments to the Covenant; and, in case of disputes, as will be seen later, the parties may elect to have their cases determined by the Assembly.

The main function of the Assembly, however, will be not executive but deliberative. It may discuss "any matters within the sphere of action of the League affecting the peace of the world." It has thus the power of dragging into full publicity, and bringing to the tribunal of world opinion, any intrigue or oppression or abuse of power that "affects the peace of the world," and may cause international trouble. The Assembly is the League itself in being.

(b) The Council is the Executive Committee of the League. It is composed of **one representative each of the Five Great Powers** (which in the Peace Treaty are always referred to as the Principal Allied or Associated Powers, *viz.*:—**The British Empire, America, France, Italy, and Japan**). In addition, **four other Member-States will be selected by the Assembly** from time to time in its discretion, to nominate *one representative each* to sit on the Council. Pending the selection of these four Member-States by the Assembly (which will presumably take place on the occasion of its first meeting) the Covenant lays down that **Belgium, Brazil, Spain, and Greece** are to be temporary Members of the Council. Thus the Council, for the present, is a body of eight men, who will become nine if America signs the Covenant.

If, however, a (bare) majority of the Assembly approve, the **Council may name additional States to be PERMANENTLY represented on the Council**; and the Council may also, again with the approval of the Assembly, **increase the number of States** (at present only four) **which are to be selected by the Assembly for TEMPORARY representation** on the Council. It will be seen that this clause allows for the future admission of Germany and Russia to the Council, when they have rehabilitated themselves; and it also provides a safeguard against the number of the Great Powers in the Council being increased so as to outweigh unduly the representation of the smaller Powers.

Each member of the Council has **one vote**.

The Council **must meet at least once a year**. It has as a matter of fact met ten times up to September, 1920. It

may deal with any matters "within the sphere of action of the League or affecting the peace of the world." When it is considering a matter which specially affects the interest of any Member-State, which is not represented on the Council, it has to invite that Member-State to sit as a temporary Member of the Council.

The Assembly being so large a body it is natural that the Council for ordinary purposes, and especially in dealing with emergencies, should exercise the authority of the League. Actually, the Council's decisions are mostly in the form of "recommendations," but in practice the common interest of all States in the harmonious working of the League will render it highly improbable that the recommendations of the Council will be disregarded, apart altogether from the weight which the unanimous opinion of the leading nations of the world will certainly possess.

It has been suggested by some critics that the Great Powers are too strongly represented on the Council, but in this connection it must be remembered:—

- (1) That the Great Powers represent the large majority of mankind;
- (2) That the execution of the decisions of the League really depends on those Powers, who therefore have a special claim to be consulted; and
- (3) That it is absolutely essential that the Council should be strong enough to see that its decisions are carried out. It would be most dangerous to have Powers outside the Council which might defy or over-ride its decisions.

Generally speaking, the decisions of the Assembly or of the Council must be unanimous, but there are several important exceptions; for instance: admission to membership of the League (which is decided by a two-thirds majority of the Assembly); questions of procedure in either the Council or the Assembly (including the appointment of Committees of Investigation), which are decided by a bare majority of the Council (or Assembly as the case may be); **amendments to the Covenant (which require unanimity in the Council and a bare majority in the Assembly)**; and certain matters which have been referred to the League under the terms of the Peace Treaty in most of which a bare majority is sufficient.

It may also be noticed that most of the administrative work of the League will in practice be done by the International Commissions, who are not bound by any rule of unanimity. The Council will unanimously agree to appoint a Commission to deal with a particular subject—say, the prevention of the

Opium Traffic or the Repatriation of Prisoners from Siberia—but the Commission will set to work by its own rules.

The fundamental reason for the rule of unanimity is the impossibility of its opposite. Many Powers as it is have hesitated to join the League. Is it likely, or even conceivable, that the United States, to take one example, would join the League if that involved the consequence that a majority, or a two-thirds majority, of a Council consisting of Britain, France, Japan, Italy, Greece, Belgium, Spain, and Brazil, should have a right to make the United States do something to which the American Representatives, Congress, and People were opposed? And, if such a situation occurred, would it not break the League? Except in the central engagement of common action against the peace-breaker, which is a special and definite obligation, the Covenant goes on the principle not of compulsion but of agreement between the members of the League. (See further below, Section XI.)

It is also worthy of notice that the Treaty of Versailles was agreed to unanimously by thirty-two States, on whom there was no compulsion to agree, other than the desire for a settlement; and further that the British Empire would itself be unworkable if it were not possible to obtain unanimity amongst the various component nations.

(c) THE SECRETARIAT.—The Secretariat is the "permanent staff" of the League. It has been described as "**a new international civil service.**" It is to be established at Geneva, the seat of the League. Amongst other duties it will be charged with the collection and distribution of reliable statistics from all over the world; and it is intended to be a centre for international bureaux and commissions. There is little doubt that it will also greatly facilitate diplomatic negotiations.

This idea of a permanent staff working out the details of general decisions arrived at by conferences held from time to time between Ministers of the Great Powers, is really the continuance of the method which worked so successfully with the various Inter-Allied bodies during the war, *e.g.*, the Supreme War Council, the Supreme Economic Council, and the Allied Maritime Transport Council. But it must be pointed out that, as distinct from such temporary war measures, **the formation of a permanent international Secretariat is something quite new in the history of the world.** This alone serves to show the complete difference between the League now being formed, which is intended to have a corporate existence, carried on by the Secretariat, and those early attempts at a comity of nations which have been only partially

successful in the past. As the work of the League develops we shall probably see a great increase in this permanent staff, for the League will need its sources of information and its agents in different countries.

The Hon. Sir James Eric Drummond, K.C.M.G., C.B., has been appointed as the first Secretary-General. He has power, with the consent of the Council, to appoint his own staff.

#### SECTION IV.

##### REDUCTION OF ARMAMENTS (ARTICLES VIII. AND IX.).

It is the task of the Council to formulate plans for reducing armaments to the lowest practicable point "consistent with national safety, and the enforcement by common action of international obligations," and to submit these plans to the several Governments "for consideration and action." The plans will "take account of the geographical situation and the circumstances of each Member of the League," and not attempt to lay down one rule for all. Neither will the Council try to enforce its plan of disarmament in the first instance on any state which does not accept it. That is to say, the nations, surrounded as they now are by wars and dangers of war, are not immediately compelled to disarm; they are given a period for quieting down. But when once a nation has accepted the Council's plan and entered into the general scheme of disarmament, it may not change its policy and exceed the limits permitted except by the special permission of the Council. Any new state applying for membership must first "accept such regulations as shall be prescribed by the League" with regard to armaments. The plans for limiting armaments are to be revised at least every ten years.

Disarmament is at the same time one of the most important and most difficult of the functions of the League. Great armaments in themselves are a cause of war; yet no nation can afford to disarm until it feels itself secure. Thorough-going disarmament will be one of the final signs of the complete success of the League; but a gradual lessening of the strain of competitive armament ought to be one of the very first signs that the League is operating at all.

The Covenant establishes a permanent Commission of experts to advise the Council and keep a general supervision over the problem of disarmament and "military and naval questions generally." Meantime the Members of the League undertake to interchange full and frank information as to "the scale of their armaments, and their military, naval, and

air programmes." The Covenant recognises that private manufacture of munitions is "open to grave objection." Advice for obviating the evils attendant on private manufacture of munitions has to be given to the Council. In all these matters the Council will be advised by the Permanent Commission of Experts.

A further protection against the menace to peace created by the existence of excessive armaments, is to be found in the latter part of Article XI. which gives all Members of the League a friendly right to draw attention to matters that threaten the peace of the world. There is no doubt that the existence of a huge armament trust (such as Krupps) is a very serious menace to peace.

#### SECTION V.

##### AGGRESSION, WARS, AND DISPUTES.

##### AGGRESSION (ARTICLE X.).

Before a State can be expected to disarm, it must have a strong guarantee that it will not be either subjugated or robbed of its territory by an aggressive rival. Consequently, in the very heart of the Covenant comes Article X. All the Members "undertake (1) to respect and (2) to preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." If any change in the present arrangements is desired means are provided for considering the proposal peacefully. By Article XI. (see below) both the Council and the Assembly have power to deal with "any circumstance which threatens to disturb that good understanding between nations upon which peace depends." And by Article XIX. the Assembly has the special power to "advise the reconsideration of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world." This **remedial action** of the League is of the highest importance for future good relations between States. No instrument like it has ever existed before. And it is noteworthy that in the replies given by the Allied and Associated Powers to the various protests made by the enemy Governments against the treaties which closed the war, great stress is laid on the power of the League of Nations to modify any conditions which may prove to be unjust or inexpedient. (See especially the reply to the Hungarian Delegates.)

In case of necessity the Council has to advise how this obligation is to be fulfilled.

## WAR (ARTICLE XI.).

**Any war whatever, or any threat of war, is to be regarded as the concern of the whole League,** which must take the necessary steps to safeguard peace. The action of the League need not, however, be deferred until a crisis has become so acute that war is in sight, for it is the "friendly right" of any Member to draw the attention of the Assembly, or of the Council, to "any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

## DISPUTES.

## (a) BETWEEN MEMBERS (ARTICLES XII., XIII., AND XV.).

**All disputes between Members of the League are bound to be submitted either to arbitration or to an enquiry by the Council.**

## (1) ARBITRATION.

The Covenant, as it has been embodied in the Peace Treaty, **does not actually create a Court of Justice**, but it provides that the Council is to draw up and submit to Members "plans for the establishment of a permanent Court of International Justice" (Article XIV.). This Court is to be competent to hear any international dispute submitted to it, and may therefore be expected to become the recognised Court of International Arbitration; **the Court will also be empowered to give advisory opinions on disputes** or questions referred to it by the Council or by the Assembly; in this capacity it will act in a similar manner to the English judges when they are called upon by the House of Lords to advise on a question of law; but in the case of the Permanent Court questions of fact may apparently also be submitted; and **decisions given in its advisory capacity are not to be acted upon until they are endorsed by the Council** (or by the Assembly, as the case may be). The establishment of this Court has been one of the first tasks to be taken in hand by the League, for otherwise the latter would have been without an indispensable organ for dealing with the disputes which must necessarily be expected to arise in the course of applying the conditions of the Peace Treaty. (See below, Section VIII.)

Disputes suitable for arbitration are recognised to include those as to the interpretation of treaties; as to questions of international law; and as to breaches of international obligations, and the reparation for any such breaches. **Any matter, however, may be referred to arbitration by agreement between the parties concerned.**

The tribunal may be any which is agreed upon by the

nations concerned. In this connection it has been generally considered that no such right is being created as that of one nation taking legal proceedings against another in the sense in which we understand the taking of legal proceedings in a Civil Court. One nation is not entitled to take out a "writ of summons" against another calling upon it to appear before the Permanent Court or before a Court of Arbitration for the trial of a dispute existing between them.\* **Unless both parties agree to the adjudication of their dispute by the Court, the Court will have no jurisdiction to hear the case.** (See, however, the view of the Court itself, Section VIII., Article 34.)

The award of the Court must be given within a reasonable time and the parties are bound to accept it. If a State fails to carry out the award of the Court, though not actually resorting to war, the Council has to propose what action ought to be taken to give effect to the award.

## (2) SUBMISSION TO THE COUNCIL.

**Any dispute which is not submitted to arbitration must be submitted to the Council for inquiry.**

The disputing nations have to send, as early as possible, full statements of their respective cases to the Secretary-General, who is bound to publish them at once. The terms of the settlement, if one is reached, must also be published. If the Council is unable to effect a settlement between the disputing States, it may **(either unanimously or by a majority vote)** publish a report giving the facts and its recommendations for settling the dispute. If the report is unanimously agreed to by all Members (except the party or parties to the dispute) no Member may go to war with a Member who carries out the terms of the recommendations contained in the report. If, however, the report is not so agreed to, the Members of the League reserve the right "to take such action as they shall consider necessary for the maintenance of right and justice," *i.e.*, they may, if they choose, go to war. The Council's report must be made within six months of the dispute being submitted to it for settlement.

**On no account whatever may any Member of the League go to war with another until three months after the decision on the dispute, whether it has been submitted to arbitration or to the Council for settlement.** This is provided in order that even at such a late stage there shall still be time left for a fresh effort to arrive at a peaceful settlement.

It must here be pointed out that if a dispute is claimed

\* Except in certain future Conventions in which it is expected that a clause providing for compulsory arbitration will be inserted.



by one party to arise solely within its own domestic jurisdiction and is found by the Council to have arisen in this manner, the Council must report to that effect and cannot make any recommendation for settlement. This provision absolutely precludes any interference by one Member, or by the League, with the internal affairs of another Member.

(3) SETTLEMENT OF DISPUTES BY THE ASSEMBLY.

Any dispute **may** be referred by the Council to the Assembly for settlement; and if either party to the dispute should, within fourteen days after the submission of the dispute to the Council, request that the dispute be referred to the Assembly, then it **must** be so referred. In the case of disputes which are referred to the Assembly the procedure is the same as that just given for disputes submitted to the Council instead of to arbitration; except that it is only necessary for a **majority** of the representatives of the various States, **not belonging to the Council**, to concur in the report of facts and recommendations, **provided that** the representatives of those States **which are represented on the Council** should **unanimously** concur. In both cases, of course, the parties to the dispute are excluded from voting.

The effect of the above provisions is that **a war can only break out between Members of the League where (1) diplomacy has failed, (2) the Court cannot act, and (3) the Council is unable to make an unanimous report**; or, in cases which have been referred to the Assembly, where the requisite majority (*i.e.*, a majority of the lesser States plus all the States which belong to the Council) cannot be obtained in that body. As will be seen later, if a Member-State goes to war with another Member-State in disregard of these provisions, it brings in the whole League against it.

(b) BETWEEN MEMBERS AND NON-MEMBERS; OR BETWEEN NON-MEMBERS (ARTICLE XVII.).

If a dispute arises between a Member-State and a State which is not a Member, or between Non-Members, then the State or States which are not Members are to be invited to become Members for the purpose of the dispute, on conditions which have to be decided by the Council. As soon as the invitation has been given, the Council proceeds to deal with the dispute. If the invitation is accepted, all the provisions already given, regarding disputes between Members, hold good. But if the invitation is refused and a war results, the measures given below, under the next heading, Breach of Covenant, will be taken. In cases where

both parties to the dispute are Non-Members, and both refuse to become Members, the Council may do whatever it thinks best to avert hostilities. This establishes the principle that **henceforward no State, whether a Member of the League or not, may disturb the peace of the world until peaceful methods have been tried.**

A question of fact arising out of any dispute may, it would appear, be referred to the Committees of Investigation referred to under "the Council" in Section III. It must be noted that these **provisions for the settlement of disputes do not in any way preclude diplomatic negotiations between the parties**, before the disputes are brought to Court. They only provide a means of deciding disputes after diplomatic negotiations have failed.

(c) BREACH OF COVENANT (ARTICLE XVI.).

If any State breaks its undertaking not to go to war and does go to war, **it commits an act of war against all other Members of the League**, and they are bound to break off all financial and commercial relations and all intercourse with it, thus applying the severest economic pressure. The Council then recommends what force shall be contributed by each Member for use, if necessary, against that State; and all the Members must mutually support each other, both financially and economically, against the Covenant-breaker.

A State which breaks any of its undertakings under the Covenant may be expelled from the League by an unanimous vote of the Council (the Covenant-breaker, if a Member of the Council, being disqualified from voting).

It must be noted that **only a breach of the undertaking not to go to war brings in the whole League against a State**. On the other hand, expulsion from the League may be applied to **any** breach of undertaking.

SECTION VI.

TREATIES AND UNDERSTANDINGS (ARTICLES XVIII. TO XXI.).

In future all treaties or international engagements are to be registered at once with the Permanent Secretariat, which has to publish them as soon as possible. Any agreement which is not so registered will not be considered binding.

**Treaties which have become inapplicable, and international conditions which are considered a source of danger to the peace**, are, from time to time, to be the subject of consideration on the advice of the Assembly (this must be read with Article XI.—War, and with Article X.—Mutual Guarantee).

It is agreed that **all obligations and understandings between**

nations which are inconsistent with the terms of the Covenant are invalid, and no engagements may be entered into in future which are inconsistent with the Covenant. If a Member-State, before it became a Member, undertook an obligation which was inconsistent with the Covenant, it must get released from the obligation in question immediately on election to the League.

International engagements and "regional understandings" for securing the maintenance of peace (*e.g.*, treaties of arbitration and the American Monroe Doctrine) are not affected by the Covenant.

In connection with this Section Article XXVI. on "Amendments" should be studied. It allows for the amendment of the Covenant itself.

## SECTION VII.

### MANDATE (ARTICLE XXII.).

The former enemy colonies and territories "which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them," and which are inhabited by peoples "not yet able to stand by themselves," are to be regarded "as a sacred trust for civilisation" and entrusted for tutelage to civilised nations as "Mandatories of the League." The character of the Mandate should be settled by the Council, as it will vary with the state of development of the inhabitants, the geographical situation of the territories, the economic conditions, and so forth. Thus it will be readily seen that owing to the difference in local conditions between, let us say, the Pacific Islands and Armenia, considerable difference will be necessary in the nature of the Mandate.

The Mandatory is debarred from making private profit out of it's trust, and in the reply of the Allied and Associated Powers to the German Delegates, this fact is made the express ground for refusing to take over the debts of the late German Colonies.

Mandates are of three kinds, classed (A), (B), and (C) respectively.

#### CLASS "A" MANDATES.

Class "A" Mandates are to apply to certain communities, such as Mesopotamia, Armenia, and possibly Palestine, which formerly belonged to the Turkish Empire. These communities "have reached a stage of development where their existence as independent nations can be provisionally

recognised" subject to "administrative advice and assistance from the Mandatory Power until such time as they are able to stand alone." Such Mandates are based on the analogy of the independent Native States in India, which are governed by their own Princes, under their own laws, but with a British Adviser or Resident. The wishes of the community in question are to be "a principal consideration" in the selection of the Mandatory.

#### CLASS "B" MANDATES.

Class "B" Mandates will apply to certain of the former tropical possessions of Germany—*e.g.*, Central Africa, German New Guinea, &c. In these cases the territory will become something similar to a Colony of the Mandatory Power. That is to say, the Mandatory will administer the territory and make the laws. The form of the Mandate will make the Mandatory responsible for guaranteeing freedom of conscience and religion, for prohibition of slavery and the slave trade, for abolition of arms and liquor traffic, and for supervising, in the interest of the native, all transactions affecting land. The establishment of fortifications or military and naval bases will be absolutely forbidden, as will be the "military training of the natives for other than police purposes and the defence of territory." Free trade will also be compulsory.

#### CLASS "C" MANDATES.

Class "C" Mandates are designed for territories such as former German South-West Africa, and former German possessions in the Pacific Ocean (such as the island of Nauru). These territories on account of sparse population, or their small size, or because they are situated very close to other territory belonging to the Mandatory, are to be administered "as integral parts of its territory." That is to say, the territory will be absorbed for administration into that of the Mandatory.

Thus, subject to the above guarantees in the interest of the native population, South-West Africa will become, for the purpose of laws and administration, a part of South Africa.

In addition to the above, it is understood that a fourth class of Mandates is contemplated, to be analogous to Class "A," but to apply to territory not formerly the property of the Turkish Empire.

The Mandatory has to make a yearly report on the territory in question, and a permanent commission, on which the Non-Mandatory States shall have a permanent majority,

is to examine these reports and advise generally on all matters relating to the observance of the Mandates. This provision prevents a Mandate from becoming merely a "veiled annexation." The Mandatory Power will be called to account at least once a year, and any gross exploitation of the inhabitants will, it may be hoped, be brought to the notice of the League.

### SECTION VIII.

#### THE COURT OF INTERNATIONAL JUSTICE.

The project for a permanent Court of International Justice continues the work left unfinished at the Hague Conference in 1907, and gives form at the same time to those ideas on the maintenance of the world peace which are incorporated in the Covenant of the League. The attempt at the Hague in 1907 was abandoned because it was judged impossible to reconcile the principle of juridical equality as between States with the demand of the Great Powers to have on the International Tribunal representation in proportion to their importance.

The chief interest of the draft is the way in which it has been able to get over this difficulty, *i.e.*, the problem of the composition of the Court. The solution lies in the juxtaposition of the Council of the League, which includes as permanent Members the representatives of the Great Powers, and the Assembly where all States, big and little, have equal rights. The draft constitution of the Court of Justice proposes that the judges shall be elected by the Assembly and the Council independently from the same list of candidates, which will be drawn up by the National groups of the permanent Court of Arbitration instituted at the Hague by the Conventions of 1899-1907. This method of nominating candidates has three advantages; it connects, in a certain sense, the new Court with the existing Arbitration Court; it ensures that the selection of candidates will be in the hands of people who, by virtue of their appointment, enjoy high respect and esteem; and, inasmuch as the members of the Arbitration Court are chosen by the various Governments, it enables those Governments to exercise indirectly some influence on the choice of candidates.

The Court is to be composed of fifteen Members (eleven regular judges and four supplementary), elected for nine years. The list of candidates presented by the national groups (which number about 44) will contain upwards of eighty names, each group not being permitted to nominate more than two candidates, and the Assembly will thus be able to

choose from amongst a very considerable number of men of different nationalities, representing the various types of civilisation and the various judicial systems of the world.

The method of election is to be as follows:—Candidates who obtain a majority in both electoral bodies (the Council and the Assembly) will be considered elected. As, however, it is unlikely the whole fifteen judges can be so elected in the first ballot, it is proposed to take a second, and, if necessary a third, in the same manner. If after the third there are still places to be filled, a commission of mediation can at once be set up on the demand of either the Council or the Assembly, consisting of six members, three nominated by each, which will have the duty of choosing for each unfilled place a name to be presented for adoption separately to the Assembly and to the Council. Should even this ingenious device fail, then the judges already elected are to fill up the vacant places.

The permanent character of the Court is established by the obligation to hold a session each year and the power of the President to call an extraordinary session should circumstances require one. Its judicial (as apart from arbitral) character is emphasised by the obligation to sit in plenary session (eleven judges, with a quorum of nine), but the judges are to appoint three of their number annually to sit as a Court of Summary Jurisdiction should the parties demand it. As it is a Court of Justice and not a Court of Arbitration, its composition remains in principle the same whatever the parties to a dispute. From a practical point of view, however, it has been found necessary to admit some modification on this point, and the committee has made a concession to national susceptibilities by inserting an Article (No. 28) by which each of the parties to a cause has the right to have among the judges on the bench one of his own nationality, and, if necessary, to go outside the Court in finding them, preference being given to persons already on the candidates' list.

On the delicate question of the competence of the Court the project stipulates as follows:—

"When a dispute has arisen between States, and it has been found impossible to settle it by diplomatic means, and no agreement has been made to choose another jurisdiction, the party complaining may bring the case before the Court." In the case of States which are Members of the League, Article 34 says that the Court shall have jurisdiction (and this without any special convention giving it jurisdiction) to hear and determine cases of a legal nature concerning the categories of disputes which under Paragraph 2 of Article

XIII. of the Covenant are declared to be among those which are generally suitable for submission to arbitration. Moreover, Article 34 stipulates that the Court shall also take cognisance of all disputes of any kind which may be submitted to it by a general or particular convention between the parties.

The following is a summary of the main Articles in the Draft:—

There are 62 Articles, divided into three chapters dealing with:—

- (a) The organisation of the Court.
- (b) The competence of the Court.
- (c) Procedure.

#### MAIN ARTICLES IN REGARD TO ORGANISATION.

ARTICLE 2.—The permanent Court of International Justice shall be composed of a body of independent judges elected, regardless of their nationality, from amongst persons of high moral character, who possess the qualifications required, in their respective countries, for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

ARTICLE 3.—The Court shall consist of 15 members: 11 judges and 4 deputy-judges. The number of judges and deputy-judges may be hereafter increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of 15 judges and 6 deputy-judges.

ARTICLE 4.—The members of the Court shall be elected by the Assembly and the Council from a list of persons nominated by the national groups, in the Court of Arbitration.

ARTICLE 22.—The seat of the Court shall be established at the Hague. The President and Registrar shall reside at the seat of the Court.

ARTICLE 23.—A session shall be held every year. Unless otherwise provided by rules of Court this session shall begin on the 15th June, and shall continue for so long as may be necessary to complete the cases on the list. The President may summon an extraordinary meeting of the Court whenever necessary.

#### MAIN ARTICLES IN REGARD TO THE COMPETENCE OF THE COURT.

ARTICLE 31.—The Court shall have jurisdiction to hear and determine suits between States.

ARTICLE 32.—The Court shall be open of right to the States mentioned in the Annex to the Covenant, and to such others as shall subsequently enter the League of Nations.

Other States may have access to it.

The conditions, under which the Court shall be open of right or accessible to States which are not members of the League of Nations, shall be determined by the Council, in accordance with Article XVII. of the Covenant.

ARTICLE 34.—Between States which are Members of the League of Nations, the Court shall have jurisdiction (and this without any special convention giving jurisdiction) to hear and determine cases of a legal nature, concerning:—

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

The Court shall also take cognisance of all disputes of any kind which may be submitted to it by a general or particular convention between the parties.

In the event of a dispute as to whether a certain case comes within any of the categories above mentioned, the matter shall be settled by the decision of the Court.

#### MAIN ARTICLES IN REGARD TO PROCEDURE.

ARTICLE 38.—A State desiring to have recourse to the Court shall lodge a written application addressed to the Registrar.

The application shall indicate the subject of the dispute, and name the contesting parties.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

ARTICLE 40.—The parties shall be represented by agents. They may have Counsel or Advocates to plead before the Court.

ARTICLE 45.—The hearing in Court shall be public, unless the Court, at the written request of one of the parties, accompanied by a statement of his reasons, shall otherwise decide.

ARTICLE 54.—All questions shall be decided by a majority of the judges present at the hearing.

In the event of any equality of votes, the President or his deputy shall have a casting vote.

ARTICLE 58.—The judgment shall be final and without appeal. In the event of uncertainty as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

## SECTION IX.

## THE LEAGUE AND HEALTH (ARTICLES XXIII. AND XXV.).

Under Article XXV. "the Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross Organisations, having as purposes the improvement of health, the prevention of disease and the prevention of suffering throughout the world." These duties of the Red Cross are far more extensive than those hitherto associated with Red Cross Societies, whose function has been more generally to act as auxiliaries to naval and military departments in time of war. The British Red Cross Society has recently obtained a supplementary charter extending its functions and powers to include the work described in this Article, and enabling it to affiliate any other bodies engaged in similar service.

In Article XXIII. (f), which deals with the general benefits aimed at by the League, Members undertake that they will "endeavour to take steps in matters of international concern for the prevention and control of diseases." Article XXIII. (c) states that Members will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs.

Various international bureaux will be placed under the direction of the League; among them those whose object is the promotion of the physical welfare of children and mothers, and of general hygienic reform.

At the meeting of the Council of the League on March 13th, 1920, a resolution was passed for the immediate creation of a Permanent Consulting Committee of Health Experts.

The present typhus epidemic of Central Europe is a case which should come within the jurisdiction of the International Health Bureau of the League.

The main functions of the International Health Commission may be summarised under the headings which follow, and their exercise will be determined by the Permanent Committee:—

- (a) To advise the League of Nations in matters affecting health.
- (b) To bring Administrative Health Authorities in different countries into closer relationship with each other.
- (c) To organise means of more rapid interchange of information on matters where immediate precautions against disease may be required (*e.g.*, epidemics), and to simplify methods for acting rapidly on such information where it affects more than one country.

- (d) To furnish a ready organisation for securing or revising necessary international agreements for administrative action in matters of health, and more particularly for examining those subjects which it is proposed to bring before the Permanent and General Committees with a view to International Conventions.
- (e) In regard to measures for the protection of the worker against sickness, disease, and injury arising out of his employment which fall within the provinces of the International Labour Organisation, the International Health Organisation will co-operate with and assist the International Labour Organisation, it being understood that the International Labour Organisation will on its side act in consultation with the International Health Organisation in regard to all health matters.
- (f) To confer and co-operate with the League of Red Cross Societies.
- (g) To advise, when requested, other authorised voluntary organisations in health matters of international concern.
- (h) To organise missions in connection with matters of health at the request of the League of Nations.

The permanent International Health Commission will consist of a Permanent Committee, an International Health Bureau, and the Office Internationale d'Hygiene Publique, which will become the General Committee. In carrying out its duties the Organisation will conform to the general principles laid down in the resolution of the Council, passed at Rome, May 19th, 1920, as to the relations between the technical organisations and the Council and Assembly of the League of Nations.

## SECTION X.

## THE LABOUR COVENANT.

The Labour Covenant does not form part of the Covenant of the League of Nations, except as referred to in Article XXIII. (a), where the Members of the League undertake that they "will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisation," but it is contained in part 13 of the Peace Treaty with Germany.

A permanent organisation is established consisting of (1) a General Conference of Representatives of the Members of the League; (2) an International Labour Office controlled by a

Governing Body of twenty-four (twelve representing the Government, six elected by the Employers' Delegates and six by the Workers' Delegates).

This organisation, **membership of which is carried by membership of the League**, is to promote an improvement in the conditions of labour.

The General Conference (consisting of two Government delegates, one employers' and one workers' delegate *for each Member-State*, accompanied, if desired, by advisers) **must meet** at least once a year at the seat of the League of Nations, unless it has been decided to meet elsewhere at the previous meeting. Each delegate may record his individual vote on any matter considered.

**The International Labour Office is to be established at the seat of the League as part of the League organisation.** Of the twelve government members of the Governing Body eight are nominees of the Members of chief industrial importance (**questions as to which are for decision by the Council of the League**) and four are nominated by the Members elected for this purpose by the Government delegates to the General Conference, excluding the delegates of the eight chief industrial Members. Members of the Governing Body hold office for three years.

The International Labour Office is under a Director appointed by the Governing Body; and its functions include the collection and distribution of information about the international adjustment of industrial life and labour; preparation of agenda for the Conference (including the examination of proposals for International Conventions regarding labour); conduct of special investigations; and the publication in various languages of a periodical dealing with industrial problems. The Director appoints his own staff, selecting them from different nationalities as far as possible.

**The Secretary-General of the League of Nations is to give all assistance in his power** and pay to the Director all expenses (except the travelling and subsistence expenses of Delegates) from the general funds of the League—the Director being responsible to the Secretary-General for all monies so paid. The Director acts as Secretary to the General Conference.

The decisions of the General Conference are given effect to (a) by a recommendation to the Members with a view to National legislation, &c.; (b) by a draft international Convention for ratification by Members. A two-thirds majority is necessary for the adoption of any recommendation or draft covenant by the Conference. A copy of the recommendation or draft convention is then deposited **with the Secretary-General**

**of the League who communicates certified copies to each Member.** Members must then, at the earliest moment, and in no case later than eighteen months, bring the matter before the competent legislative authorities of their own country, informing the Secretary-General of the action taken by those authorities—*e.g.*, the passage of an Act of Parliament—in the case of a recommendation; or communicating to him the formal ratification (in the case of a convention). If on a recommendation no legislative or other action is taken to make it effective, or if the draft convention fails to obtain the consent of the authorities, no further obligation rests on the Member; but in the event of a Member failing to do what is required with regard to a recommendation or draft convention (*e.g.*, to lay it before the proper authorities) **any other Member may refer the matter to the Permanent Court of International Justice.** Failure to carry out the decree of the Permanent Court involves the economic penalties described later in dealing with complaints.

A Convention when ratified is **registered by the Secretary-General of the League**, but it only binds those members who ratified it; a proposed convention, however, which fails to obtain the two-thirds majority necessary for its adoption by the Conference, may still be adopted by any Member of the Permanent Organisation, and if so adopted will be communicated by the Governments concerned to the Secretary-General and registered.

An annual report must be rendered by each Member to the International Labour Office on the effect given to conventions to which it is a party; a summary of these reports is laid before the next Conference.

Employers or workers may make representations to the International Labour Office as to the non-observance of conventions; these complaints may be communicated to the Governments concerned by the Governing Body, which may take action if necessary by means of publicity.

Complaints from one Member that another Member is not observing a common convention, are dealt with as follows:—The Governing Body may apply for the appointment of a Commission of Enquiry (or it may institute such proceedings on its own initiative without waiting for a complaint). Now, under the Treaty, each Member undertakes to appoint three persons of industrial experience (an employers' representative, a workers' representative, and a person of independent standing) to form a panel from whom Commissions of Enquiry may be drawn. **On application by the Governing Body for a Commission of Enquiry, the Secretary-General of the League**

**nominates a Commission of three**, one from each section (*e.g.*, employers, workers, and independent) of the panel, **and designates one of them as President**. All Members must then place any information in their possession at the disposal of the Commission.

Having considered the complaint, the Commission reports its findings on all relevant questions of fact, and makes its recommendations accordingly, reporting at the same time any appropriate economic measures to be taken against a Government, in case of default in carrying out these recommendations. **This report is communicated by the Secretary-General to the Governments concerned**, and is published. Within one month **each Government concerned must notify the Secretary-General whether it accepts the recommendations**; and if not, **whether it proposes to refer the complaint to the Permanent Court of International Justice of the League**. In the latter case the decision of the Court is final; it may affirm, vary, or reverse the recommendations of the Commission, and in its decision it indicates the appropriate economic measures to be taken in case of default.

In the event of default (whether in carrying out the recommendations of the Commission, or the Court's decree) any Member may then take against the defaulter those economic measures which have been declared to be appropriate. Should, however, the defaulting Government afterwards report that it has carried out the recommendations or decree, then, **upon request, through the Governing Body to the Secretary-General, another Commission will be held to verify the statement**, and if the result is favourable the other Governments must forthwith discontinue the economic pressure.

Amendments to this part of the Treaty, if adopted by a two-thirds majority of the Conference, take effect when ratified by the States whose representatives compose the Council of the League, and by three-fourths of the Members. Questions of interpretation are to be referred to the Permanent Court.

The International Labour Conference met for the first time at Washington on October 29th, 1919. Forty countries were represented. America was not represented, and the delegates of Germany and Austria were unable to secure passages in time.

The first executive act of the Conference was to set up the Governing Body of the new Labour Office.

The body of Conventions, Recommendations and Resolutions agreed upon at the first Conference of the International Labour Office may be described under the four heads of the Agenda: (1) the eight hour day, (2) unemployment, (3) the

work of women, and (4) the work of children. These Conventions and other agreements are mentioned here not as though they were a finished work, but simply as definite examples of the sort of work which can be accomplished by the new Organisation. The texts, of course, do not constitute laws, and are not even binding on the Governments represented at Washington until they are ratified. They stand in this regard on exactly the same footing as all previous conventions between sovereign Governments; but in this case, as we noted above, the Governments represented in the Conference have bound themselves to introduce legislation to give effect to the agreements.

The Convention of the hours of labour makes it necessary for the signatory Governments to introduce bills to establish the eight-hour day and the forty-eight hour week in mines, factories, and transport services of various kinds. Agriculture was excluded and is to be considered at a future international Conference, probably in 1921. The authorities in the several States are to decide on the maximum amount of overtime to be allowed, and the Convention is so phrased that special provision can be made for such services as those on railways. In continuous processes the limit is to be fifty-six hours instead of forty-eight per week. Of course there are the exceptions common to most forms of such legislation in case of accidents, when the time limit has to be exceeded; and there is no provision for the hours of supervisory or managerial staffs.

Japan and India are given special consideration under this Convention on the ground mentioned in the Treaties, that they are countries of incomplete industrial development.

With regard to unemployment the Convention establishes an international system for collecting information at the International Labour Office from all the countries in regard to unemployment and measures taken or contemplated to combat it; secondly, it establishes free employment offices in countries in which they do not now exist; and thirdly, it secures for emigrant workers unemployment benefits similar to those received by the workers of the country. Apart from the agreed Convention, it was recommended by the Conference that all new private employment offices should be forbidden and all existing private employment offices should be permitted only under a licence. The British Government Delegates opposed this recommendation. It was also recommended that there should be unemployment insurance; that public works should be allocated to periods during which there was serious unemployment; and that foreign workers should be protected

by national agreement between the States. The Conventions will be made, or are already, the basis of laws and will be ratified. The recommendations are of course not binding in the same way, but they will doubtless be made the basis for resolutions of Parliament like that concerning the Fair Wages Clause, and they also can be "ratified" in a new form of ratification.

With regard to women's labour, a Convention was agreed to which will involve a law that for six weeks after childbirth a woman shall not work in industry and shall have the right to leave work six weeks before confinement. More important still, the law must allow for maintenance during both periods. Dismissal is not to take place during the two periods of rest before and after childbirth. A second Convention on women's labour forbids the night work of women in industry, and defines the night as including the time from 10 p.m. to 5 a.m. Recommendations were also made in regard to the prevention of anthrax and the prohibition of the work of women and children where there was risk of lead poisoning.

With regard to the labour of children, a Convention fixes the minimum age of employment as fourteen, except in Japan and India where it may be twelve. A Convention also forbids the work of persons under eighteen during the night, but persons over sixteen may be employed in the night on continuous processes.

This body of Conventions and Recommendations provides material on which laws may be based. The Labour Office will, of course, press for ratification of the Conventions and the passing of laws.

## SECTION XI.

### THE FUTURE OF THE COVENANT.

The Covenant of the League has naturally been the target of world-wide criticism, but has on the whole shown itself a well-considered, flexible, and statesmanlike document. The failures and imperfections that have appeared up to the present in the action of the League have in no case been due to defects in the Covenant itself, but to the inability or unwillingness of the Governments of the Great Powers to fulfil their duties under the Covenant. And these, again, are largely due to the inherent difficulties of a very disturbed time. They are the inevitable legacies of the Great War, and are as follows:—

1.—The Supreme Council of the Allies still continues to rule the affairs of Europe and Asia. Great Britain and France,

sometimes supported by Italy, are the dictators of Europe, by the so-called "right" of conquest; and, until they abdicate, the League, representing the "right" of Law and Common Agreement, is overshadowed and overridden. This is seen in the matter of Mandates. It has apparently been impossible for the League to induce the Powers to accept the Mandates it has drawn up. They have hitherto acted as if there were no Mandates at all, but merely the "spoils of war." And finally the Council of the League has so far surrendered its rights as to leave the Powers to draw up Mandates for themselves. The only control left, it would seem, is that the proposed Mandates are to be communicated to the Assembly for information and criticism. Furthermore, the Commission to which the annual report must be made is to have a permanent majority of Non-Mandatory nations.

The League failed to act in the Ruhr crisis, where the German Government, in order to put down the insurrectionary movement, moved some troops to a district within fifty kilometres of the Rhine, which was forbidden by the Treaty of Versailles. Consequently the French of their own motion invaded Germany and occupied certain towns with black troops; a very unfortunate incident. It also failed to act in the winter of 1919-1920 when apprised of the "threat of war" between Poland and Russia, and again in May, 1920, when the war actually broke out through the Polish invasion of Russia. (On both occasions strong representations were made on behalf of the League of Nations Union by Lord Robert Cecil.) The reason here was nothing in the Covenant. It was merely the brute fact of a difference of opinion among the Great Powers. France, rightly or wrongly, adhered to the policy, which Great Britain had abandoned, of trying to overthrow the Russian Government by war.

A far more grave dereliction of duty would seem to have occurred, if there is truth in the statements of the Press that a Military Treaty has been concluded between France and Belgium, which is not to be communicated to the League. The exact facts are not known; and it would appear incredible that the two nations concerned would contemplate so direct a breach of one of the principal Articles of the Covenant. (XVIII.) "Every Treaty or international engagement entered into hereafter by any Member of the League shall forthwith be registered with the Secretariat, and shall as soon as possible be published by it." It is conjectured that a distinction is being drawn between (a) the Agreement itself, to co-operate in certain emergencies, and (b) the technical clauses, arranging how exactly the co-operation should take



place. In any case a treaty not registered with the League is not binding on either party.

Other nations seem to have reported all their engagements. Twenty treaties are already registered, including the Anglo-Japanese treaty, the treaty between Czecho-Slovakia, Jugo-Slavia, Rumania, and Austria, called the "Little Entente," and a number of treaties sent in voluntarily by Germany. (Not being a Member of the League Germany was not bound to send them.)

A most dangerous though unavoidable legacy of the war is the exclusion from the League of the defeated nations. It is clearly essential to the success of the League, and incidentally to the peace of Europe, that those ex-enemy States which can satisfy the requirements of Article I. should be admitted into the League without delay. The case of Russia presents special difficulties both because a nation still engaged in civil war is not eligible for membership, and because of the attitude of undisguised hostility to the League which has been—perhaps for intelligible reasons—adopted by the Russian Government. But to leave a number of formidable and discontented nations outside the League is to encourage the formation of a counter-league and to split Europe again into two hostile alliances.

2.—Criticisms against the Covenant itself have proceeded on somewhat contradictory lines.

(a) American opinion is apt to regard the Covenant as too rigid and tyrannical, and most of the Reservations proposed in the Senate aimed at leaving the United States absolutely unbound by any decision of the League, however unanimous. This difficulty is largely due to the peculiarities of the American Constitution, which does not provide any means of changing the Executive—or in European language "turning out the Government"—except at the Presidential election. In England, if Parliament disapproved the action of the Government's representative on the Council of the League, it would turn the Government out. In the United States, Congress has no such power, and is naturally anxious not to have the whole foreign policy of America decided by a representative not responsible to Congress or public opinion.

Objection is specially concentrated, not very reasonably, on Article X. (see above). It is pretended that the Members are bound too rigidly to support the existing territorial settlement, even where it is wrong, as it seems to be, for example, in the attribution to Italy of the Austrian district of South Tyrol. In reality Article X. would only operate if Austria, instead of arguing her case,

suddenly made war with Italy. In that case, no doubt, the League would have to stop her. But the right course is quite simple. Austria calls the attention of the League under Articles XXI. and XIX. to "a circumstance in international relations which threatens to disturb that goodwill on which peace depends" and to a provision in the Treaty of St. Germain which is in need of "reconsideration." Suppose the Council agrees with the Austrian claim, all is well. But suppose Italy resists, so that the Council is not unanimous, and nothing can be done? Then Austria makes the matter a "dispute" between herself and Italy and refers it as such to the Council. Neither of the interested parties can vote, and the rest of the Council decides.

(b) Most of the European criticism is on the opposite line: *viz.*, that the Covenant is not sufficiently drastic and compulsive. It is argued that disarmament should be compulsory from the beginning; that in Article XVI. instead of saying that the Covenant-breaker "shall be deemed to have committed an act of war against all other Members of the League," which leaves them free to declare war or not, it should be provided that he shall "be at war" with them; that in the settlement of disputes the decision of a majority of the Council or Assembly should be a compulsory award and not merely a "recommendation," and similarly that a majority of the Council should have power to determine the policy of all its members. The general objection to all these proposals is practical. They are proposals that the weak should coerce the strong, or, what is almost as bad, that bodies of fairly equal strength should habitually use force to each other when they disagree and one has a majority. For example, it is very possible that a majority of the Council and of the Assembly think the British Navy excessive, even allowing for the reasonable claims of Britain to a command of the seas; but, supposing the Commission on Armaments expressed that opinion, does anyone really think it would be desirable for the League to make war on Britain in order to make her reduce her Navy? The whole conception on which the League is based is that, except in the very last resort, persuasion is not only better, but actually more effective than force.

(c) This series of criticisms generally leads sooner or later to a demand for a great international force to supersede or overawe all national armies and navies. One critic has definitely demanded that all the existing armies should continue under the command of General Foch, as Commander-in-Chief for the League, empowered to carry out by force any decision reached by a majority of an "International Jury."

The objections to any such notion are overwhelming and need hardly be stated. But the Council is free to determine what small special forces may be needed by the League in certain disturbed parts of the world for police work; *e.g.*, if the League were to undertake the protection of Armenia.

(*d*) Another line of criticism urges that representation on the Council of the League should be made in some way "more democratic." It is difficult to see exactly what this means. At present all the European Governments are elected democratically and, so far as the electoral machinery is satisfactory, represents—at the time of the election—the majority of the nation. A Prime Minister is Prime Minister because, rightly or wrongly, the majority of his people wish him to be, and a majority of popularly elected representatives continue to support him. It is difficult to see how there could be a more "democratic" representative than a Prime Minister or one of his colleagues who has his confidence. And there is another essential consideration: that the representative of a nation on the Council has no weight unless he is able to carry his nation with him. Otherwise he is not really representative, and his votes are all liable to be reversed by his own Parliament. On the Assembly it would no doubt be desirable to have the three representatives drawn to some extent from different groups of opinion and not to be all mere nominees of the Government.

(*e*) Provision, of course, is made in the Covenant itself for its own amendment, and certain proposals are actually coming before the Assembly in November, 1920, moved by the Danish, Swedish, and Norwegian Governments in concert. These are, shortly:—

1. That the Assembly should meet annually at a fixed date, say, the second Monday in September; and that any ten Members of the League should at any time have a right to have the Assembly summoned.

2. Of the four non-permanent Members of the Council, one should retire every year and not be immediately re-eligible. This would establish a principle of rotation.

3. The language of Article XIII. describing the kinds of dispute suitable for arbitration by the Court should be made more precise by omitting the word "generally." It may be noted in this connection that the Court itself has proposed to the Council an important ruling, which is apparently not regarded as an amendment but an interpretation: "That, when a dispute has arisen between States and (1) it has been found impossible to settle it by diplomatic means, and (2) no agreement has been made to choose another jurisdiction, the party complaining may bring the case before the Court."

This would greatly widen the powers of the Court. (See above, Section 8.)

4. In special circumstances, when an economic blockade is declared against an offending State, the Council may exempt a particular State in close vicinity to the blockaded State from the duty of enforcing the blockade, "provided that such action is considered by the Council necessary to prevent the blockaded State from threatening or attacking its neighbour."

## SECTION XII.

### THE FUNCTIONS OF THE LEAGUE IN CONNECTION WITH THE PEACE TREATY.

#### DISTRICTS OF EUPEN AND MALMEDY IN BELGIUM.

The inhabitants of the districts (*Kreise*) of Eupen and Malmedy, which Germany has been made to cede to Belgium, were allowed, during the first six months after the Treaty comes into force, to express their desire in writing that the whole or part of the territory should remain German. The protest registers lay open for six months in the towns of Eupen and Malmedy in accordance with Article XXXIV. of the Treaty of Versailles. When they were closed on July 23rd, the number of protests were 208 for the district of Eupen and 58 for the district of Malmedy.

The lists were submitted to the Council of the League of Nations at the Paris Meeting in September, 1920, and the Council of the League authorised the transference of both districts to Belgium.

#### THE SAAR BASIN.

*Under the Peace Treaty Germany renounced the Saar Basin in favour of the League, which now acts as a trustee, administering the territory by a "Governing Commission" of five members, chosen by the Council of the League, including one Frenchman, one native inhabitant of the Saar Basin not a Frenchman, and three members from three States other than France or Germany. The members of this Committee hold their appointments for one year, and may be re-appointed; they are removable by the Council of the League. Their salaries, which are fixed by the Council, are charged on the local revenues of the Saar Basin. Their decisions are taken by a majority. The Chairman, who acts as the executive of the Commission, is appointed from year to year by the Council from among the five members. This Commission has all the powers of government and*

administration formerly exercised by Germany. It may levy taxes, prepare a budget, establish Courts of Justice, and guard the interests of inhabitants of the region when travelling abroad; but it cannot modify labour regulations affecting the mines without consulting France, unless as the result of some general labour regulation adopted by the League of Nations, whose principles regarding conditions of labour the Governing Commission are bound to consider.

It is expressly laid down that the existing nationality of the inhabitants is not affected by these stipulations, and that no hindrance will be placed in the way of those who wish to acquire a different nationality; but the acquisition of a new nationality involves the loss of any other. No military forces or establishments of any kind, except local gendarmerie, are allowed to be maintained. The Saar Basin is subject to the French Customs *régime*, but the Treaty provides for what is tantamount to Free Trade between Germany and the Basin for five years, during which period France is allowed certain safeguards against excessive importation into her markets through the Basin. French currency is to pass in the Basin, and France has the right to make all payments in connection with the mines in French money. A majority of the Governing Commission decides all questions of the interpretation of the foregoing provisions.

The mines within the area as defined in Article XLVIII. have passed into the full and absolute possession of the French State. (See Article XLVI.)

The Governing Commission has already published three detailed reports of its work, of which the latest is of June 1st, 1920. These are to be obtained from the office of the Secretariat of the League of Nations, Geneva.

#### AUSTRIA.

The independence of Austria, within the frontiers which has been fixed by the Treaty between that State and the Allies, is acknowledged by Germany, and *cannot be surrendered without the consent of the Council of the League.*

#### EAST PRUSSIA.

Conventions are to be entered into between Germany and Poland within one year of the Treaty coming into force. to secure to **Germany** full rail, telegraph, and telephonic facilities (over Polish territory) between the rest of Germany and East Prussia, and to **Poland** the same facilities (over German territory) between Poland and the Free City of Danzig. *In case of difference, the terms of Conventions are to be settled by the Council of the League.*

#### FREE CITY OF DANZIG.

Immediately on the coming into force of the Treaty, Danzig and the territory were established as a "Free City," and within fifteen days a Commission of five (consisting of a High Commissioner, Sir Reginald Tower, and two other nominees of the principal Allied and Associated Powers, a German nominee, and a Polish nominee) were constituted to delimit on the spot the above frontiers.

Under Article CII. of the Treaty of Versailles, the Allied and Associated Powers undertake to establish the town of Danzig as a Free City under the protection of the League of Nations.

This protection does not operate until the Free City of Danzig is established, which will not be until its constitution is drawn up by its duly appointed representatives.

#### MILITARY, NAVAL, AND AERIAL CLAUSES.

The scale of armaments which the Treaty lays down for Germany will remain in force when Germany becomes a Member of the League, *until modified by the Council.*

#### COMMERCIAL RELATIONS.

*The Council of the League have discretion to maintain in force certain obligations which the Treaty imposes on Germany in regard to Customs, Shipping, Towage, &c., beyond the term (five years), after which under the Treaty these provisions would lapse.*

The provisions relating to the treatment of Allied and Associated nationals, their trades, industries, &c., may be kept in force beyond or for less than the five years, *as determined by a majority of the Council of the League.*

#### TREATIES.

Within six months of the German Peace Treaty coming into force, any of the Allied and Associated Powers may revive with Germany any Treaty which existed before the War, and is not at variance with the terms of the Peace Treaty. *In case of doubt as to what contravenes the Peace Treaty the League will decide.*

#### DEBTS, PROPERTY, CONTRACTS, &C., BETWEEN NATIONALS OF ALLIED AND ASSOCIATED POWERS IN GERMANY.

In case of failure by the nations concerned to reach agreement as to the Presidents of the Mixed Arbitral Tribunals which are to be established within

three months of the coming into force of the Treaty to deal with these matters, *they are to be chosen (with two understudies each) by the Council of the League from nationals of an ex-neutral Power.*

#### SOCIAL AND STATE INSURANCE IN CEDED TERRITORY.

*The Council of the League is to consider and decide upon the resolutions of the Special Commission, which in certain eventualities is to be appointed to deal with the transfer by Germany, to the Power concerned, of certain accumulations of money for the carrying on of Social or State Insurance in ceded German territory which has now to be administered by a Mandatory of the League.*

#### THE ELBE, THE ODER, THE NIEMEN, AND THE DANUBE.

The following are created as international waterways:—The **Elbe** (from its junction with the Vltava); the **Vltava** (from Prague); the **Oder** (from its junction with the Oppa); the **Niemen** (from Grodno); the **Danube** (from Ulm); and all such navigable parts of these rivers as provide more than one State with access to the sea, whether by trans-shipment or not. There are to be no distinctions between any Powers on these international Waterways (except that German vessels may not ply, without special authority, on regular passenger or goods services between the ports of Allied and Associated Powers). Navigation charges and conditions of transit are laid down, and riparian States are liable for upkeep. *In case of neglect to upkeep by the State liable, there is an appeal to a Tribunal of the League; and the same Tribunal is empowered on appeal to suspend or suppress works of a nature to impede navigation in the international section.* Rights in connection with irrigation, water-power, fisheries, and other national interests are, with the consent of the riparian States, to be given priority over the requirements of navigation.

The foregoing provisions, however, are to be superseded by a General Convention, relating to water-ways of an international character, to which Germany undertakes to adhere. This Convention is to be drawn up by the Allied and Associated Powers *and approved by the League.*

The Elbe and Oder are placed by the Treaty under the administration of an International Commission. The Niemen also may be placed under an International Commission (containing a representative of each riparian State and *three representatives of other States nominated by the League*), on application to the League by any riparian State. The same will apply to the Rhine-Danube water-way if constructed.

#### PORTS, WATER-WAYS, AND RAILWAYS. DISPUTES, &C.

Disputes as to the interpretation of the articles of the Treaty dealing with ports, water-ways, and railways, *are to be settled by the League, which may at any time recommend the revision of any stipulation relating to a permanent administrative régime; whilst at any time after five years from the coming into force of the Treaty, the Council of the League may revise any stipulations regarding the above subjects.* Failing this revision no benefits under these Articles may be claimed by the Allied and Associated Powers after that period has expired unless there is a reciprocity accorded to Germany in respect of the stipulation in question. *The period, however, may be extended by the Council of the League.*

In the event of any general Convention regarding the "International régime of Transit" being concluded by the Allied and Associated Powers *with the approval of the League*, within five years of the coming into force of the Treaty, Germany undertakes to adhere to it.

#### KIEL CANAL.

It is provided that the Kiel Canal shall be maintained free and open to vessels of commerce or war of all nations at peace with Germany, without distinction of any kind. Canal dues must be reasonable, based on the cost of maintenance and improvement of the canal. Loading and unloading, and embarkation or disembarkation may only take place in the ports specified by Germany. Germany is obliged to maintain good conditions of navigation.

In the event of any violation of these conditions, which cannot be dealt with by the local authority to be established by Germany at Kiel, *an interested party may appeal to the jurisdiction to be instituted for that purpose by the League.*

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