EDITORIAL COMMENT

THE SECOND ASSEMBLY OF THE LEAGUE OF NATIONS

Convened on September 5, and adjourned on October 5, the Second Assembly of the League of Nations was in session exactly one calendar month. Thirty-nine nations were represented when the session opened; three were added during the first few days; and three others, Esthonia, Latvia, and Lithuania, were admitted during the session. Thus, forty-five representatives of the fifty-one members of the League, were present. Argentina, Honduras, Guatemala, Nicaragua, Peru, and Salvador were not represented.

Dr. Wellington Koo, as Acting President of the Council, delivered the opening address, summarizing the achievements of the League since the last session, and was warmly applauded by the Assembly, the two hundred journalists, and the invited spectators in the galleries. At the afternoon session Jonkheer van Karnebeek, Minister of Foreign Affairs of the Netherlands, was elected President, and made an address in which he emphasized the substitution of law for armed force in international affairs.

On the following day, six committees were appointed, dealing with (1) Constitutional and Legal Questions; (2) Transit, Health, and Economic Matters; (3) Reduction of Armaments and Blockade; (4) Finances and Internal Organization of the League; (5) Humanitarian and Social Questions; (6) Political Questions. Thus organized, the Assembly was able at the end of the second day to take up the work of its agenda.

The first few days of the session were devoted to the discussion of the Report of the Council in a general debate, in which seventeen different nations were represented. The discussion developed very wide differences of opinion, but was characterized by much frankness of expression and in general by a spirit of toleration. The broad interval between the Council, ruled by the will and interests of the Great Powers, and the Assembly, composed largely of small States, was made evident in the course of the debate, which developed evidence of the sensitiveness of the Council to the criticisms of Members of the Assembly. This was conspicuously manifested in the rebuke administered by the First British Delegate, Mr. Balfour, to the sentiments expressed by Mr. Branting, the First Delegate of Sweden, who expressed the conviction that the Council had not risen to the height of its opportunity. It was evident throughout the meeting that the reservation to itself by the Council of exclusive authority to make certain deci-

sions is not agreeable to the representatives of the smaller States, the influence of which, even in its aggregate, where it would be reasonable that it should count, does not have its due effect. As time goes on, there promises to be an urgent endeavor to determine whether four Great Powers, one of them Asiatic and three European, shall be able with the assent of one of the temporary Members of the Council to lay down the law to the Assembly, composed of over fifty States, yet unable to share in important decisions affecting their interests.

The one great triumph of the meeting of 1921 was the success of the plan for the election of a Permanent Court of International Justice. It had been feared that, since the Council and the Assembly were to vote separately in the election of candidates, already nominated by the Hague Tribunal, it might require many days to complete the election. To the gratification of all the result was accomplished without long delay and without friction between the two electoral bodies, although their ballots differed somewhat persistently. The Committee of Mediation provided for in the Court Statute was necessary to break a deadlock, but its good offices were adequate, and fifteen eminent men were chosen to constitute the Court. Among the nine judges who obtained an absolute majority in both bodies was our fellow-countryman, the Honorable John Bassett Moore.

Regret was expressed by representatives of other countries that the American members of the Hague Tribunal had not participated in the nomination of candidates, and that the United States was not represented in the electoral bodies. It was understood that this abstention not only reaffirmed the decision of the United States not to become a Member of the League but that it went far toward emphasizing the fact that the Court, although representing so many States, is not, and is not likely to be, recognized as an international tribunal in the full sense, since representation in it is, by the Statute of the Court, primarily confined to members of the League, with permission to outsiders to appeal to the Court only on conditions to be laid down by the Council. It is, therefore, open to the observation that it is not a universal court but the private court of the League.

The failure to accept the full jurisdiction of the Court, without the consent of both parties, even in justiciable cases, does not advance judicial resort beyond individual option, and thus, although a tribunal is created, it is accessible only as between those nations who mutually agree in each case to submit to its judgments. Happily, eighteen States have now accepted complete jurisdiction in all justiciable cases.

Turning now to some of the more vital matters discussed by the Assembly, but without attempting an exhaustive treatment of the conclusions reached, one of the most important was the reduction of armaments. The fact that the cost of military establishments in Europe is now, notwithstanding the conventional disarmament of Germany, more than three

times what it was before the Great War, rendered the problem a pressing one. The idea of budgetary control, together with the prohibition of the manufacture and traffic in arms, was the subject of an elaborate report and of discussion. The conclusion reached was that, "valuable and important as the proposals are which have been discussed, it is nevertheless true that they do not touch the kernel of the question. If they were all carried out, only preliminary steps would have been taken toward the limitation of armaments."

It is provided in Article 8 of the Covenant that the Council shall "formulate schemes" for the reduction of armaments, and it was brought to the attention of the Assembly that no such scheme had been formulated. It was natural, therefore, that the Council should be urged to perform this duty, and this is in substance the recommendation made.

The recommendation presents, and appears to have been felt to offer, only a faint hope of results. The truth is, that the reasons for armament are conditions over which the Council has little control, unless it decides to resort to force, which it is disinclined to do. The dictation of the Council on the subject of armament would be resented, and the exhortations it might make to diminish it would have greater influence if they were reinforced by example, which thus far has not been made impressive. It lies with the States which are armed against one another themselves, by their mutual conciliation of their interests and assurances of peaceful purposes, to remove the causes of armament. Unfortunately, the difficulty of this procedure is increased by the fact that the boundaries of many of the States and the economic consequences of these divisions were imposed by the Supreme Council of the Allies at Paris, and were not adjusted by mutual agreement between the States themselves. Not until this latter method is resorted to and the community of interest between them is made the basis of understanding by their own acts, will the reduction of land armament have any prospect of achievement.

The conclusion reached in the Assembly was that "there seems to be no reason why the Council, in performance of the duty imposed upon them by the Covenant, should not lay down the general lines of a policy for the limitation of armaments." The important matter, however, is not the general lines of policy but the actual acceptance of definite apportionments by the different armed powers, now so numerous and independent. They would be likely to accept the policy "in principle," and then debate regarding their apportionment before the Council, stating their reasons why they could not accept it. Such a procedure would, of course, lead to nothing. They would insist, and not without reason, upon being the final judges of what armed defense they need.

The truth of this statement seems to have been finally grasped by the Committee of the League, which says in its Report, referring to the United States: "The naval strength of this Power makes any scheme of naval

disarmament impossible without her support, and it is for this reason, among others, that the Committee warmly welcomes the forthcoming Conference at Washington, and trusts that it may be fruitful in securing a large measure of reduction of armaments."

Generalizing this statement, it is evident that no strong country will permit its armament to be reduced by dictation. It will reduce its armament only by its own consent. If, therefore, the European nations will themselves propose to one another a reduction in their own armaments, following the example of Washington, in a manner to reduce the existing means for national defense proportionately, there is no reason why immense reductions could not be immediately made; and, if accompanied by reciprocal economic arrangements between them, the remedy for the impoverishment of Europe would be found to be in its own hands.

Such a procedure would imply a change in the method of the League of Nations. It would involve the substitution of cooperation and mutual agreement for coercion and the enforcement of obligations.

Such a change of method was foreshadowed in nearly every report and in the general trend of discussion throughout the whole session of the Assembly. This was particularly noticeable in the matter of proposed amendments to the Covenant.

A preliminary question regarding amendments produced a hesitation to proceed in a radical manner, since some members of the Assembly believed that unanimity was required, while others objected that this would make amendment almost impossible. As the Covenant itself makes no provision as to the method of submitting amendments to the nations for their ratification, and a division of opinion was evident and might lead to extensive controversy, it was unanimously decided that provision should be made for future amendment by a three-fourths majority of the Assembly and that no amendment should be made at the time without the assent of three-fourths of the members.

No amendments of vital importance were, in fact, definitively adopted, but several were rejected. The Canadian proposal to eliminate Article 10 from the Covenant was postponed till the next meeting. The Argentine proposal that "all sovereign States recognized by the Community of Nations be admitted to join the League of Nations in such a manner that if they do not become Members of the League this can only be the result of a decision on their part," was considered at length; but, in the absence of the Argentine Delegation, a decision was deferred. The Colombian proposal that unanimity be not required for Assembly decisions regarding articles of the Covenant was withdrawn.

The Czecho-Slovak amendment regarding the approval of special agreements between a limited number of members of the League was not adopted, it being apprehended that some agreements of this kind might

result in combinations that would not be in the spirit of the League, though others might be of great advantage.

The conviction that certain radical changes in the Covenant would eventually have to be made was general. Some of the obligations of the Covenant had clearly awakened fears that it would be difficult and even impossible to fulfill them. They were, therefore, brought forward with a view to modifying them by interpretation.

The purpose of Article 18, for example, was to prevent the making of secret treaties. It was known, however, that several military conventions had been signed which had not been and probably would not be registered. What then was to become of the obligation of that article, which requires that all treaties, in order to be binding, must be registered with the League? To cover the military engagements, it was proposed in committee that "treaties of a purely technical or administrative nature which have no bearing on international political relations" need not be registered. The equivocal character of this proposal was evident, and when it came before the Assembly it was pointed out that it might fatally invalidate Article 18. It was, therefore, not adopted as an amendment, but passed on to the next Assembly, with the understanding that, "in the meantime, Members of the League would be at liberty to interpret their obligations under Article 18 in conformity with the proposal made."

The obligations incurred under Article 16, which proved such an insurmountable obstacle to acceptance of the Covenant by the United States, were made the object of an analysis which went to the very heart of the compact.

This article provides that, "Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII, or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations," etc.

The evident inconvenience of fulfilling this obligation, the possible consequences of loss to the nation severing all trade and financial relations with a neighboring State upon which it was economically dependent, and the impossibility of making such an economic blockade effective when undertaken against a strong nation, had caused a general disposition to modify this article. It was argued in the Special Blockade Commission that an "*act* of war" is not necessarily a "*state* of war," and therefore the obligation would not automatically go into effect, unless a member of the League chose to consider it a "*state* of war"; a subterfuge the transparency of which is clear the moment it is considered that by the terms of the article it is explicitly an *act* of war which brings the obligation into operation, and not a *state* of war; a consideration which renders the attempt to make a distinction between an act and a state of war wholly beside the mark.

The second attempt to evade the obligation of the article was the proposal to interpellate between an act of war and an economic blockade a decision by the Council that the obligation had come into effect as a necessary preliminary to action; a decision wholly superfluous if not positively ruled out by the precise terms of the article, which not only makes no mention of the Council with reference to economic blockade but distinctly pledges all the members of the League severally and *immediately* to sever all trade or financial relations. It is not until military or naval force is brought into question that the Council, according to Article 16, has any part to play in punishing a delinquent. It then becomes the duty of that body "to recommend to the several Governments concerned what effective military or naval force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

Interpretation having thus failed utterly to soften the obligation of each member severally and immediately to institute an economic blockade against an offender,—a duty upon which so much reliance was placed as a means of avoiding sanguinary war,—a series of amendments to the Covenant were approved by the Assembly without dissent, subject to the prescribed ratification of all the members of the Council and half the states represented in the Assembly. The first amendment thus adopted was that it is for the Council to give an opinion whether or not a breach of the Covenant has taken place, though it rests with each State to make its own final decision in this matter in so far as its responsibilities are concerned.

In order to secure identity of action, another amendment was accepted, to the effect that the Council will notify all members of the League as to the date which it recommends for the application of economic pressure under this article, and until this is done no action is to be taken.

Thus, the economic blockade which was imposed automatically and imperatively upon all members of the League in case of violation of the Covenant, is to occur, if at all, only when the Council, in which one single vote can prevent action, recommends it and fixes the date. Pending formal ratification, these provisional amendments are to constitute "the rules for guidance" for members of the League.

As to Mandates, it is difficult to find evidence that the Assembly has any serious control over them. They were discussed on the basis of a report by a special committee, and the report was approved by the Assembly. Certain members were disposed to press for an immediate definition of Mandates, but the Assembly finally assented to leaving the whole subject in the hands of the Council, which desired not to be embarrassed pending negotiations with the United States. The Official Summary of the Secretariat states, that "the Mandate situation has generally been admitted to be one of great importance and of great difficulty, and there was a considerable divergence of opinion." The conclusion appears to be war-

ranted that, if it was the original intention to internationalize in any real sense the great areas taken from Germany in Africa and the Pacific Ocean, and from Turkey in Asia, that purpose has not been realized.

With regard to the League of Nations generally, as its actual character was manifested in the sessions of the Second Assembly, it would appear that it is undergoing a radical transformation not contemplated by its founders. By its statutes it is undoubtedly a super-government. In actual practice it is not. The central and controlling international authority in Europe is not the League, but the Supreme Council of the Allied Powers. To a certain extent the members of the Supreme Council and the Council of the League are identical, but all the force being in the Supreme Council and only the obligations in the League, it is the former that is the only super-government in the proper sense of the word.

The Assembly without the Council would be a more useful body than it is, for it would then have an increased sense of responsibility. That it is even now in many respects useful admits of no doubt. It discusses with great intelligence many current questions. The Secretariat is a busy international clearing-house served by capable and industrious men. It does what such an office can, but it is without decisive authority. So long as the Supreme Council continues, the League can have no other authority than that which the Supreme Council permits it to have; and that is none, apart from the powers of the League Council which it controls.

The impression one derives from the Assembly is that it is inspired by noble motives but lacking in courage. It does not venture boldly to lay hold upon the most vital realities of the European situation. It is not fully representative of Europe; and, bound by its Covenant, which is an article in a treaty of peace imposed by war, it cannot be. Its most far-sighted members know this and privately admit it. I thought that, in some cases, they recognized this with sadness. Quite evidently, the League is gradually seceding from the obligations of its Covenant. To become a real association for peace, it must transform itself fundamentally. And this, in my belief, it will continue to do. At present it is just a "league," not the Society of Nations.

I cannot close this editorial without a personal word of appreciation of the courtesy, the hospitality, and the fine faith and devotion of the personnel of the Secretariat of the League, some of whom are our own fellow-citizens, whose place is made less happy because their country is not a member of the League. It is greatly to their credit that with patience and unfailing courtesy they are willing to listen to the reasons why it is not a member.

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