

1925.
NEW ZEALAND.

PROTOCOL FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES:

CORRESPONDENCE RELATING TO THE POSITION OF THE DOMINIONS.

Laid on the Table of the House of Representatives by Leave.

(1924.)

No. 1.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa.

(Telegram.)

21ST NOVEMBER. Letter has been sent by His Majesty's Government to Secretary-General, League of Nations, 15th November, in following terms:—

Begins: Owing to very recent accession to office His Majesty's Government will not be able for some time to form considered opinion on terms of Protocol for Pacific Settlement of International Disputes drawn up by Fifth Assembly nor will they be able to furnish proper instructions to their representative on Council for purpose of preparatory work for proposed Conference on reduction of armaments which it is contemplated should be undertaken by Council at next meeting. They find themselves therefore to their great regret obliged to request that this item of agenda of next meeting of Council may be postponed to later session when they will have been able to give it close attention which its great importance necessitates. *Ends.*

This step has been taken in order to allow His Majesty's Government more time to study exceedingly important problems involved and in particular on account of their desire to arrive at agreement with Dominion Governments before any further action taken in regard to Protocol.—AMERY.

NOTE.—Copy sent to the Governor-General of the Irish Free State by Secretary of State's despatch, 21st November, 1924.

No. 2.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa, and the Governor of Newfoundland.

[Telegram.]

19TH DECEMBER. Following from Prime Minister for your Prime Minister:—

Begins: We have now been able to give preliminary examination to terms of Geneva Protocol for Pacific Settlement of International Disputes and are greatly impressed with momentous character of question both in its scope and in its consequences. Not only does instrument itself raise issues of highest importance involving as they do such matters as the submission to compulsory arbitration even of vital interests and the imposition of sanctions of the most drastic character, but its consideration necessarily brings to the forefront far-reaching problems affecting the security of the Empire, and its future relations to the countries of Europe and the United States of America.

We conceive it to be essential that in regard to a problem of this magnitude the Empire should have a single policy, and we are equally convinced that such a policy can only be determined as a result of personal consultation between Ministers. The first question to be considered therefore is how soon can such consultation take place.

At recent session of Council of League of Nations, which as you know was attended by Secretary of State for Foreign Affairs, it became evident that it would be expected that at any rate some preliminary pronouncement should be made on behalf of British Empire at next meeting of Council in middle of March. We should like, therefore, if it is at all possible, to arrange a special meeting of Imperial Conference to discuss whole problem before that time. Character of issues is, in our opinion, such as to render presence of Prime Ministers highly desirable, and we greatly hope, therefore, that you may be able to attend in person. Would this be possible if Conference began in first week of March? If not, could you depute one of your colleagues in the Government to take your place and what would be the earliest date at which he could reach London?

Similar message sent to other Dominion Prime Ministers.—BALDWIN. *Ends.*

—AMERY.

NOTE.—Copy sent, at the instance of the Prime Minister, to the Governor-General of the Irish Free State, for communication to the President of the Executive Council, by Secretary of State's despatch, 20th December, 1924.

No. 3.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and the Irish Free State, and the Governor of Newfoundland.

[Telegram.]

22ND DECEMBER. Please inform [*Not to Irish Free State*: your Prime Minister] [*To Irish Free State*: President of the Executive Council] that following statement will be issued to Press here on Tuesday, 23rd December, for publication on morning of 24th December:—

Begins: His Majesty's Government are in communication with the Governments of the Dominions and India with a view to ascertaining whether it will be possible to arrange a special meeting of the Imperial Conference in the early days of March, 1925, to discuss the questions arising out of the Protocol for the Pacific Settlement of International Disputes. *Ends.*

—AMERY.

(1925.)

No. 4.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa, and the Governor of Newfoundland.

[Telegram.]

15TH JANUARY. Following from Prime Minister for your Prime Minister:—

Begins: I am sorry to say that replies from Dominion Prime Ministers to my message of 19th December* indicate that there are great difficulties in arranging for special meeting of Imperial Conference at beginning of March to discuss problems arising out of Geneva Protocol.

Following is summary of replies received. Mackenzie King telegraphed 29th December that Canadian Government agree that it is highly desirable that similar attitude should be adopted towards Protocol by countries of British Empire which are members of League of Nations. Suggestion, however, to hold Imperial Conference in London to be attended by Prime Ministers of Dominions as well as of Great Britain in March does not appear practicable. Canadian Parliament has been called for first week in February. It would be quite impossible for him to be absent from Canada for any length of time during the session, and pressure of legislative duties would also make it difficult for any of the Ministers particularly concerned to be similarly absent. Canadian Government suggest exchange of opinions by cable and post with understanding that, if these means found inadequate and other Dominions consider it practicable to attend Conference in London, Canadian Government will be prepared to consider proposal again.

Bruce telegraphed 23rd December that Commonwealth Government agree that it is of utmost importance that on this difficult and delicate matter Empire should have single policy and speak with single voice. Before expressing opinion with regard to suggestion that Conference should be held in March, Commonwealth Government feel that they must await return of Sir Littleton Groom, first Commonwealth delegate at 1924 Assembly, expected back 10th January. Whole position will be closely examined immediately on his return, and Commonwealth Government will then be in a position to communicate with British

Government as to their views upon Protocol and also as to necessity for personal consultation in order to arrive at single Empire policy. As they see position at present they believe that consultation by cable should enable such a policy to be evolved. In the event of its being demonstrated that it is impossible to deal adequately with matter by cable it will be necessary for personal consultation to take place, but Bruce feels that it is practically impossible for him personally to attend, and grave difficulties are in the way of another Minister being sent in his place. In view of this fact Commonwealth Government urge very strongly that every effort should be made to deal with matter by cable communications.

Massey telegraphed 23rd December that he was in communication with other Prime Ministers and would endeavour to arrange to attend in March if they were able to do so. He has now telegraphed that communications from Prime Ministers of Canada, Commonwealth of Australia, and Union of South Africa indicate that each has grave difficulty in personally attending proposed Conference, and that each considers consultation by cable preferable. He presumes that Conference will therefore not take place. Though his personal attendance not a certainty, New Zealand Government would attend by a Minister if Conference still desired and can take place.

General Hertzog telegraphed 3rd January that it was not possible for him or any of his colleagues in Union Government to attend Conference before middle of August next.

Monroe telegraphed 24th December that he was unlikely to be able to attend himself owing to sitting of Parliament but would try to arrange to send representatives from Newfoundland.

No reply received from Irish Free State. In the circumstances it is clear that we must endeavour by correspondence to arrive at some common conclusion with regard to the Protocol itself, and the large issues of policy which arise out of its consideration.

Similar message sent to other Prime Ministers. BALDWIN. *Ends.*

—AMERY.

NOTE.—Copy sent to Irish Free State by despatch, 16th January, 1925.

No. 5.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa, and the Governor of Newfoundland.

[Telegram.]

15TH JANUARY. Following from Prime Minister for your Prime Minister :—

Begins : My message of to-day.* Following is summary of views so far expressed by Dominion Prime Ministers with regard to provisions of Geneva Protocol.

Prime Minister of Canada states that Canadian Government has given question some preliminary consideration ; it is now being examined by Departmental Committee, and will in immediate future be gone into in detail by Cabinet.

Prime Minister of Commonwealth of Australia entirely concurs in view that it would be most unwise to reject Protocol except for some cogent reasons or without endeavouring to formulate some positive alternative policy, but Australia will not allow any abrogation of her rights with regard to immigration and is anxious that policy pursued shall if possible be acceptable to United States. He regards as most essential preliminary to any discussion as to British Empire's policy ascertaining of United States Government's real opinion on subject.

Prime Minister of New Zealand stated in his message of 23rd December that he considered whole proposal mischievous and only possible of effect in minor issues between small nations, but recognized difficulty in the way of Great Britain's refusal to concur in some form of general international obligation to refer to arbitration. He stated that New Zealand Government must be largely guided by British Government in final decision, but it was then his opinion that whatever is done now will be rendered nugatory under Article 21 of Protocol by inevitable failure of agreement concerning details of disarmament.

In his further message now received he states that one principal objection is to provisions in Protocol accepting Hague Council as a conclusive authority to determine any questions of international law and also to determine what is a matter of domestic jurisdiction. Reference to reservations in Article 3 Protocol is so drafted as to be without effect. Another principal objection is that though defence against aggression is permitted to nation attacked Protocol prevents friendly nation coming to the aid of nation attacked without the authority of Council after tedious procedure. Article 8 Covenant of League thus reduced in practical effect. He asks to be informed as to attitude of France, Italy, and Japan.

Prime Minister of Union of South Africa has no views to offer as yet as he feels that matter ought to be more fully considered after seeing what Committee of Imperial Defence have to say.

I have included in above summary and summary contained in my message of to-day* all replies so far received including your own in order that each Prime Minister may see form in which his views have been communicated to other Prime Ministers.

Similar message sent to other Prime Ministers. BALDWIN. *Ends.*

—AMERY.

NOTE.—Copy sent to Irish Free State by despatch, 16th January, 1925.

No. 6.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and the Irish Free State, and the Governor of Newfoundland.

[Telegram.]

19TH JANUARY. Please inform your Prime Minister that following statement will be issued to Press here to-morrow for publication on morning of 21st January :—

Begins : The correspondence with the Governments of the Dominions and India as to the possibility of arranging for a special meeting of the Imperial Conference in March to discuss the questions arising out of the Protocol for the Pacific Settlement of International Disputes indicates that the exigencies of Parliamentary and other business render it impossible for a representative meeting to be held in London at the time suggested. In the circumstances the only possible course seems to be to endeavour by correspondence to arrive at a common conclusion on the issues involved, and His Majesty's Government have informed the Governments of the Dominions and India accordingly.

—AMERY.

No. 7.

The Governor-General of the Union of South Africa to the Secretary of State for the Colonies.

[Telegram.]

26TH JANUARY. Your telegram of 15th January.* Geneva Protocol. Following for Prime Minister from my Prime Minister :—

Begins : Ministers after careful consideration of the proposed Protocol regret to have to inform British Government that they feel themselves unable to accept the same or to recommend its acceptance by Parliament. The reasons which have led Ministers to arrive at this conclusion may without going into details be stated as follows :—

1. It seems generally admitted, and Ministers share that feeling, that the League of Nations as at present existing, with America, Germany, and Russia standing aloof, cannot over any length of time achieve its great and primary object of ensuring peaceable world, and must, unless these great nations become members, necessarily as time goes on assume more and more the character of political alliance. To accept Protocol, Ministers feel, would be only to make it more difficult for countries at present outside the League, notably America, to become members, and would consequently contribute very materially to making it impossible for League to attain its real object and so give an additional impulse to the diversion of its activities in the direction of an alliance having as its object the maintenance of a balance of power.

2. It is quite impossible even approximately to calculate or tell in advance what are going to be the obligations and consequences direct and indirect which may accrue from an acceptance of the Protocol or what may be the many and various international complications to which it may give rise.

3. By accepting the Protocol the character of the League will be so modified that no nation being a member of it, subject to the provisions of the Protocol, can rightly be said any longer to retain its full measure of sovereign rights. This, Ministers deem a matter of very grave concern, in view more particularly of indefinite character of the obligations which are sought to be imposed and of the practical consequences it may have for the weaker nations not possessing influence derived from power to add prestige and weight to their interpretation of the obligations thus assumed.

4. Ministers feel convinced that while public feeling in the Union may be taken as sincerely in favour of a real and genuine League of Nations, it is generally felt that the League, as it is at present, has not yet arrived at that stage, and that to have obligations of the Union under Covenant extended any further is not in the interests of this country.

5. In matters of such a grave nature as the relationship and obligations of nations over against the League professedly instituted with a view to the guardianship of the peace of the world, but under present conditions more especially the protector of the circumstances and requirements of particular nations and countries Ministers feel they are called upon to exercise particular vigilance and to bestow particular attention upon the peculiar position and interests of South Africa, and are of the opinion that these interests demand that no international obligations should be entered into which may entail a participation and interference by the Union in matters which do not, or only remotely, concern her and whereby her real and proper interests may eventually be jeopardized.

Ministers have considered question as to making suggestions which may serve as amending proposals to the provisions of the Protocol. They find, however, that, from the very nature of the circumstances which have necessitated the drafting of the Protocol, no amendment

* No. 5.

or substitute to its provisions can be expected to prove acceptable unless it carries with it an extension of obligations and responsibilities under Covenant. As already stated, Ministers are convinced that that would be against the interests of this country and contrary to the wishes of the people.

Under these circumstances Ministers must advise that they have no suggestions to offer.

Ends.

—ATHLONE.

NOTE.—Copy sent to Canada, the Commonwealth of Australia, New Zealand, the Irish Free State, and Newfoundland by despatch, 17th February, 1925.

No. 8.

The Governor-General of New Zealand to the Secretary of State for the Colonies.

[Received 4th February, 1925.]

SIR,—

Government House, Wellington, 6th January, 1925.

I HAVE the honour to transmit to you, at the instance of my Prime Minister, the accompanying memorandum dealing with the proposed Protocol for the Pacific Settlement of International Disputes.

I have, &c.,

CHARLES FERGUSON,
Governor-General.

[Enclosure in No. 8.]

Memorandum on the Protocol for Pacific Settlement of International Disputes.

It is desired by this memorandum to define as briefly as possible the principal objections which the New Zealand Government has to the Protocol, omitting all minor precise criticisms of the language used by the draftsmen of that document.

But it is desired first to record an emphatic protest against a process under which the British Empire is hurriedly called upon to give its adhesion to momentous novel conditions expressed in a document hastily prepared and vague in expression both as regards its effect and detail.

The League of Nations in 1923 propounded a Treaty of Mutual Assistance and recommended the Nations, members of the League, to agree to that Treaty. We have on record in the Document A.35 1924 IX of the League of Nations, the printed replies of the principal Nations rejecting that Treaty, and expressing their varying grounds for the refusal.

No outline of the present novel alternative scheme had been before the Council or the Assembly of the League until Mr. Ramsay MacDonald and M. Herriot addressed the Assembly at Geneva, Mr. MacDonald speaking on the 4th and M. Herriot on the 5th September, 1924, and it appears from page 42 of that record that the Assembly on the 6th September passed resolutions directing consideration by the First and Third Committees of the questions there submitted. The first and Third Committees presented a joint report on the 1st October covering this draft Protocol, which the Assembly later adopted.

It is to a document so initiated and so prepared within that space of three weeks, involving wide expansions and grave alterations of the Covenant of the League of Nations, that Great Britain, after a general election and a complete change in its Administration, is asked to give a speedy adhesion and to invite the self-governing Dominions to join it in that act.

In the case of New Zealand, the document itself did not reach the Government until the month of December, though this Government had some knowledge of its general effect in November.

If, as has been contended, the Protocol really defined no greater obligations than are already undertaken by the Nations in the Covenant itself, it might well be the case that, even in the short space of time allowed, Great Britain and the Dominions might have assented. But it is not true that the Protocol creates no new obligations. It is no mere form that we are asked to assent to, but matters of substantive, singular, and almost unexampled importance.

On what ground can it be contended that there is such urgency in the proposals as to require adhesion by Great Britain in March, 1925? Is it because the League insists on holding a conference on Disarmament this year and requires the Protocol as a condition precedent to the Disarmament Conference? If so, the answer is that the Disarmament Conference may well be postponed till next year, and that the British Empire is not to be driven into a decision which its Prime Ministers cannot unitedly consider merely on the grounds that the League of Nations is in a hurry to call a conference at Geneva. And a further answer is that it is absurd to ask the signatory nations to agree now to become bound by such conditions as are expressed in the Protocol on the mere chance that Germany and Russia, for instance, will agree in a scheme of disarmament to be later propounded.

His Majesty's Government has recognized that a Conference of the Prime Ministers of the Empire is essential to ensure due consideration of the course that the Empire should take. It appears to be

impossible to hold such a Conference before or during March, 1925. It would seem, therefore, that the only possible course open to His Majesty's Government is to refuse adhesion in March, and it would seem that such a refusal could not be construed as a refusal to concur in any scheme of general compulsory arbitration. The refusal would obviously be limited at present to the ground that His Majesty's Government cannot commit the Empire without due consultation, and that the date fixed allows no time for such consultation. It is earnestly hoped that His Majesty's Government will adopt that course, for New Zealand will never consent to be bound by the Protocol in its present form, and believes that the whole Empire would be endangered if the signature of Great Britain were appended to such a document, dangerous in its effect, crudely and hurriedly drafted, and capable of various interpretations.

Great Britain will always keep faith in letter and spirit with any obligations it signs. If other nations are to be similarly bound to conform to the letter and the spirit, both must be defined with far greater accuracy than has been attempted in the terms of the Protocol. But apart from the form of expression, the intention and effect of the document itself is not in accord with common-sense, however much it may accord with visionary doctrines.

The principal objections from the point of view of New Zealand are :—

1. The reference of matters to the Court of International Justice. So far Great Britain has never made a declaration under Article 36 of the Statute of the Court authorizing that Court to determine, without special submission, the matters defined in paragraphs A, B, C, and D of that Article, and New Zealand never will consent to such a declaration.

But Article 3 of the Protocol binds the signatory States to accept that jurisdiction in all matters. The reference in that Article to reservations is idle and useless as the Protocol is drafted. A reservation would have absolutely no effect in limiting the jurisdiction in matters referred under the Protocol, though it might limit the jurisdiction in matters of peaceful negotiations. Where a question of international law arises in the course of arbitrations under the Protocol, that is to say, in cases where war is threatened, the permanent Court of International Justice at the Hague is given express jurisdiction, firstly, to decide whether a claim by a nation is a claim in respect of matters within its domestic jurisdiction, and, secondly, to determine all other questions of international law, and signatories are to be bound by such decision.

New Zealand's immigration laws are framed to preserve, as far as possible, British nationality in New Zealand. No foreigner may come to New Zealand to reside without having first made written application from his country of origin. Whatever the jurists at Geneva may think, the law advisers of the Crown in New Zealand believe that there is grave danger that the International Court of Justice at the Hague, consisting mainly of foreigners, might hold that the New Zealand law is contrary to the comity of Nations, and that the New Zealand system is not a question of merely domestic jurisdiction. And our law advisers believe that, if a question arose for determination under the Protocol, the Permanent Court might decide, firstly, that the right of foreigners to reside in New Zealand was not a matter exclusively within the domestic jurisdiction of New Zealand, and, secondly, that as a matter of international law we must admit them or reduce the restrictions on their admission.

But consideration of the minor interests of New Zealand in this respect is negligible as compared with admission of the Permanent Court as the deciding factor in Great Britain's belligerent rights at sea. It seems to us idle to contend, as has been contended, that, inasmuch as such questions would only effectively arise during actual war, and as the assumption is that Great Britain will only wage war with the consent of the League, therefore the point may be waived. That seems to us idle because the question would be raised by neutrals whose vessels were stopped and searched for contraband. It is with regard to the rights of His Majesty's ships against neutrals when Great Britain is at war that difference exists between the opinions of foreign jurists and the decisions of the English Courts. And it seems obvious that the effect of adhesion to the Protocol would be deliberately to accept a foregone conclusion against the exercise of privileges in war which are essential to the defence of the Empire.

2. The Protocol, it is true, partly cuts down the rights and duties of signatory nations expressed in Article 8 of the Covenant, but that reduction of obligation is objectionable. Provision is made in the Protocol for suspension of operations by nations about to go to war, and for non-mobilization, &c., and it authorizes defence against acts of aggression by a nation attacked. The definition of aggression in Article 10 is not, and obviously is not intended to be, exclusive, and it may be assumed that any attack on territorial integrity or political independence as mentioned in Article 10 of the Covenant would still be aggression under the Protocol, but there is absolutely no provision in the Protocol enabling or entitling a nation which is not itself attacked by aggression to come at once to the assistance of a friendly nation which is so attacked. Indeed the effect of the Protocol is to prevent such nations from entering upon war to aid another nation against actual attack on its territories, until such time (probably far too late for effect) as the Council, after the tedious procedure directed, is at liberty to authorize assistance. This may be intentional, but if it is intentional Great Britain will surely not consent to such a limitation to its rights and duties to France and Belgium as is expressed in Article 10 of the Covenant and subjected to such ludicrous limitation by the Protocol.

3. The object and effect of Articles 11 and 13 of the Protocol is to create for the Council of the League an entirely new power and authority in warfare between Signatories to the League. It is not true to say that those Articles merely define the effect of Article 16 of the Covenant. It does not appear necessary to emphasize this by quotation, the intention and the effect is apparent, and those Articles require drastic amendment.

4. Reference has already been made to the Document A 35 1924 IX of the League of Nations, containing a reprint of the replies received from the various Governments to the proposal for the Treaty of Mutual Assistance. The reply of His Majesty's Government is to be found on pages 15, 16, and 17 of that Document, and it is no exaggeration to say that the whole of that criticism is equally applicable to the terms and effect of the Protocol. If His Majesty's present Government agrees with that criticism of the late Government, it will find in paragraph 12 on page 17 a concise statement of

the point of objection last taken in this memorandum, and it is convenient to paraphrase the further language of the succeeding paragraph 13, as summarizing New Zealand's objection to the Protocol: "For the reasons which have been enumerated, the draft " Protocol " in the eyes of His Majesty's Government " of New Zealand " holds out no serious prospect of advantage sufficient to compensate the world for the immense complication of international relations which it would create, the uncertainty of the practical effect of its clauses, and the consequent difficulty of conducting national policy."

This memorandum may well conclude with a request to be informed whether the words just quoted do not apply with even greater force to the Protocol, and with a statement that the New Zealand Government is unable to understand any necessity for creating such obligations as the Protocol invents merely for the purpose of facilitating an International Conference on disarmament at Geneva.

W. F. MASSEY, Prime Minister.

Wellington, 6th January, 1925.

NOTE.—Copy of memorandum sent to Canada, the Commonwealth of Australia, the Union of South Africa, the Irish Free State, and Newfoundland, by despatch, 17th February, 1925.

No. 9.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and the Irish Free State, and the Governor of Newfoundland.

[Telegram.]

3RD MARCH. Following from Prime Minister for [*Not to Irish Free State*: your Prime Minister [*To Irish Free State*: President of Executive Council]]:—

Begins: Cabinet, after most careful and exhaustive inquiry, have come to the conclusion that they cannot accept the Geneva Protocol or recommend its acceptance to the other Governments of the Empire. In this conclusion they have been confirmed by the general agreement revealed in the communications so far received from the Dominion Governments. We feel that in view of the forthcoming session of the Council of the League of Nations, which begins on 9th March, a definite statement can no longer be withheld, and the Foreign Secretary has been authorized by the Cabinet to make a statement, text of which will, I hope, be ready for transmission to you in a separate telegram* as soon as its terms have been finally approved at meeting of Cabinet which is to be held to-morrow.

I trust that this course and the tenor of the statement will meet with your general approval. I am very sorry not to have been able to communicate with you earlier, particularly in view of impending meeting of Council, but I am sure that you will appreciate that the important questions of policy involved rendered full consideration inevitable. Similar message sent to other Prime Ministers. BALDWIN. *Ends*.

—AMERY.

No. 10.

The Secretary of State for the Colonies to the Governors-General of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa, and the Governor of Newfoundland.

[Telegram.]

4TH MARCH. Referring to message from Prime Minister 3rd March.† Geneva Protocol. Following is text of communication referred to:—

Begins: (Here follows text as printed in Cmd. 2368.) *Ends*.

Cabinet has approved above statement and authorized Foreign Secretary to use it in such manner as he may find most desirable either as a statement or as a communication to the Secretary-General, League of Nations. In meantime please ask your Prime Minister to treat it as strictly confidential.—AMERY.

NOTE.—Copy of statement sent to the Irish Free State, 4th March, 1925.

No. 11.

The Governor-General of Canada to the Secretary of State for the Colonies.

[Telegram.]

4TH MARCH. Following from my Prime Minister for your Prime Minister:—

Begins: After careful examination of the Geneva Protocol by members of the Cabinet and by inter-departmental Committee, our Government has come to conclusions which may be summarized as follows:—

First, that we should continue to give whole-hearted support to the League of Nations and particularly to its work of conciliation, co-operation, and publicity. Second, that we do

* No. 10.

† No. 9.

not consider it in the interests of Canada, of the British Empire, or of the League itself to recommend to Parliament adherence to the Protocol and particularly to its rigid provisions for application of Economic and Military sanctions in every future war. Among the grounds for this conclusion is the consideration of the effect of non-participation of the United States upon attempt to enforce sanctions and particularly so in the case of contiguous countries like Canada. Third, that as Canada believes firmly in submission of International disputes to joint inquiry or arbitration and has shared in certain number of undertakings in this field we would be prepared to consider acceptance of compulsory jurisdiction of Permanent Court in justiciable disputes with certain reservations and co-operation in further consideration of method supplementing the provisions of the Covenant for settlement of non-justiciable issues including method of joint investigation reserving ultimate decision in domestic issues and without undertaking further obligations to enforce decisions in case of other States. Fourth, that we would be prepared to take part at any time in any general Conference on reduction of armaments which did not involve prior acceptance of the Protocol. *Ends.*

—BYNG.

NOTE.—Copy sent to the Commonwealth of Australia, New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland, by despatch, 12th March, 1925.

No. 12.

The Governor-General of the Commonwealth of Australia to the Secretary of State for the Colonies.

[Telegram.]

5TH MARCH.—Following from my Prime Minister :—

Begins : The Commonwealth Government, after having given full and most careful consideration to the Protocol for the Pacific Settlement of International Disputes, has reached the following conclusions regarding the important and far-reaching provisions that are therein contained. In the first place, my Government desires to reaffirm its adherence to the principles which governed its adoption of the League of Nations Covenant and loyal observance of the League's recommendations. It believes that the League came into existence because all nations who were signatories to the Covenant realized from their experience during the War that the time had come to substitute arbitrament of reason for that of force. It cannot overlook the fact, however, that there are some very definite defects in the Covenant which arose, not because their ideals fell short, but because there still existed some mistrust and uncertainty as to the method by which the force of the League should be applied. The League as it stands is a great moral force which gives to the world some concrete expression of the ideals for which its members stand. The Protocol represents a praiseworthy attempt to go further than was found possible when the League was first established. The particular problem with which my Government has exercised itself has been whether the time is opportune to do what was not possible in 1919, and whether advantages to be derived by strengthening the machinery are not altogether disproportionate to the risk of weakening the already established moral influence of the League by serious disagreements among its members.

The aim of the Protocol, which is to further the settlement of international disputes without having recourse to war, thus ensuring to the nations of the world that measure of external security which would permit them to obtain relief from the heavy burden of armaments, is one which, in principle, must commend itself to any State anxious to see strengthened the ties that bind together the members of international communities. It is also indisputable that members of the League, recognizing as they do the relationship between military armaments and the danger of war, are bound to reduce national armaments to the lowest point consistent with national safety. The Protocol has been framed from the point of view that machinery other than that existing in the Covenant destined to provide safeguards against aggression must precede any scheme for disarmament. Relief from the burden of armaments is regarded ultimately as being dependent on the adoption of compulsory arbitration.

It is obvious that the adoption of the principle of compulsory arbitration, which, as laid down in the Protocol, would apply not only between countries accepting that instrument but also between a signatory State and a non-signatory State not a member of the League, would completely transform the method at present provided in the Covenant for the settlement of disputes. The Covenant obliges the member States to refer disputes that are not settled by diplomatic means either to arbitration, judicial settlement, or to inquiry by the Council. A limited class of disputes is regarded as being generally suitable for submission to arbitration or judicial settlement. Should the Protocol become law between member States, compulsory arbitration would become the rule for the settlement of all disputes. Inquiry by the Council would tend to disappear. It is not proposed to enter into discussion on the principle of compulsory arbitration, nor to review the difficulties that may be

encountered by a Government in giving effect to an award pronounced by an arbitral body on a matter which public sentiment considers to be of paramount and vital importance. The present system as laid down in the Covenant, which furnishes an alternative procedure, does appear, however, to have very evident advantages in elasticity and adaptation to the existing state of public opinion over the proposed machinery of compulsory arbitration.

There exist at the present time other very serious practical objections to the adoption of compulsory arbitration as a general system. To be effective, compulsory arbitration must secure the consent of all countries between which disputes may conceivably arise. To establish a general system of compulsory arbitration to which any powerful States are not parties cannot fail to be a source of danger both to the successful carrying-out of the system itself and to the international organization under which it operates. It has been a matter of grave concern always to the Commonwealth Government that certain of the foremost nations of the world have not yet become members of the League of Nations, thus accepting the international obligations which are contained in the Covenant and lending their authority for the preservation of peace, this position throwing heavier obligations on the member States than were originally contemplated when the Covenant of the League was agreed to. It is, therefore, considered that the progressive incorporation of those nations in the League should precede and not follow the assumption of greater obligations that the Protocol will impose upon member States. This reason alone is considered by the Commonwealth Government as amply sufficient to render premature any endeavour at the present time to generalize the principle of compulsory arbitration.

Articles 10 and 11 of the Protocol, which are regarded as complementary to the provisions respecting compulsory arbitration, while possessing some features that could with advantage be incorporated into the Covenant would also introduce novel, and in some respects, it is believed, undesirable, elements into the constitution of the League. These Articles accentuate very considerably the coercive provisions of the League's Charter. It is felt further that these provisions, while not actually converting the League into a super State, would tend to deflect that organization from being a powerful moral agency for the moulding of the world's opinion in the direction of peaceful and healthy international relations to being an organization for the imposition of pains and penalties.

As the foregoing observations touch the main principles on which the Protocol is based, little would appear to be gained by a detailed examination of the subsidiary provisions. Several of the latter, however, may be briefly referred to.

Article 10 of the Protocol defines the circumstances in which certain presumptions of aggression arise against a State, and provides that, "in the event of hostilities having broken out, any State shall be presumed to be an aggressor unless a decision of the Council, which must be taken unanimously, shall otherwise declare (1) if it has . . . disregarded a unanimous report of the Council, a judicial sentence, or an arbitral award recognizing that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State, nevertheless in the last case the State shall only be presumed to be an aggressor if it has not previously submitted the question to the Council or Assembly in accordance with Article 11 of the Covenant . . ."

It does not appear that any logical reason can be advanced to justify an award declaring that a dispute arising from a matter of domestic jurisdiction should be placed on a different footing from any other arbitral award or a unanimous decision of the Council. When a State commits an act of war against another State concerning a matter which International Law declares to be one of purely domestic jurisdiction, it is obviously not in the interests of good understanding between Nations that such an act of aggression, constituting, as it does, an International crime, should be covered by some special proviso. And this is particularly so as under Article 11 of the Covenant any dispute assuming the character of a war, or a threat of war, is a matter of concern to the whole League. The proviso of Article 10 (1) is, therefore, unacceptable to the Commonwealth Government.

Article 10 also provides that if the Council does not at once succeed in determining the aggressor, it shall enjoin upon the belligerents an armistice fixing the terms thereof, and any belligerent which refuses to accept armistice, or which has violated terms, shall be deemed an aggressor. To give effect to this provision, which is one of capital importance, it would be indispensable for the League to possess organic control on the spot. This would present certain difficulties in a theatre relatively near to the centre of activity; in a remote theatre it is feared that to establish which party violated the terms of an armistice (fixed at the commencement of hostilities) would present in practice exceptional, if not insuperable, difficulties, and thus be impossible of carrying out.

From above considerations it will be seen that the Commonwealth Government is of opinion that the Protocol contains principles and provisions which do not at present appear to be applicable to the present situation of International life. It is also believed that any endeavours to amend the Protocol so as to give effect to objections that have been raised would present but little practical utility, as these objections cut through the essential principles on which the whole reposes. But this does not imply that the prolonged efforts of which the Protocol is the outcome have been spent in vain. No serious attempt to evolve methods of preserving International peace can be considered as fruitless. The gradual strengthening of the Covenant in these directions where it reveals weakness should be, and doubtless is, the aim of all member States. Such a method seems to be preferable to that of recasting the whole principle on which the present constitution of the League is based, and the Commonwealth Government will gladly and sincerely co-operate along such lines.

It would, perhaps, be out of place for the Commonwealth Government, removed as far as possible from that part of the world whose conditions may have so largely determined the principle on which the Protocol has been framed, to offer any observations on the manner in which the problem of disarmament has been envisaged in that instrument. Whilst recognizing the existence of very strong feeling which prevails in European countries that no reduction of armaments can be effected without some equivalent substitute being forthcoming from other sources, it is felt that to confine the question of disarmament within the four corners of compulsory arbitration and attendant sanctions is to impose limitations which may prejudice any general agreement being arrived at and thus render the problem insoluble. The development of a spirit of mutual confidence amongst Nations will, it is believed, contribute more effectively to prepare public opinion to accept disarmament than the setting up of the most elaborate machinery for settlement of disputes. Whilst, therefore, sympathizing entirely with the spirit of the Protocol, which was designed with the object of strengthening the League, my Government sees very serious objection to the methods proposed. Apart from being distinctly unacceptable to Australia, for the reasons already given, it will have the effect of still further alienating Nations who are already hesitant about accepting the authority of the League, and will in the present state of International opinion defeat the object which the designers of the Protocol had in view. We are anxious that the authority of the League should grow, but as its authority depends mainly on the spirit which animates its members we are opposed to what in the circumstances must be regarded as a dangerous attempt to accelerate its growth. The time may come when it will be possible to set up some machinery such as that proposed. We feel, however, that the attempt should not be made until there is no possibility of compromising the achievements that the League has already won. *Ends.*

—FORSTER.

NOTE.—Copy sent to Canada, New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland by despatch, 12th March, 1925.

No. 13.

The Governor-General of New Zealand to the Secretary of State for the Colonies.

[Telegram.]

7TH MARCH. Your telegram of 3rd March.* Your telegram of 4th March.† Geneva Protocol. Following for Prime Minister from my Prime Minister :—

Begins : I agree fully both with course His Majesty's Government propose to take and with tenor of the statement which it is propose that Foreign Secretary should make as set forth in your telegram of 4th March† to the Governor-General. I desire, however, that it should be noted that the proposed statement of reasons for rejecting the Protocol is no doubt properly confined to the reasons which would affect any great Power considering the subject from a general and common sense point of view and that therefore the reasons for the rejection which are founded upon considerations specially affecting the British Empire are excluded. As the New Zealand Government was concerned more especially with excluded reasons I wish it noted that my entire concurrence in the proposed statement does not indicate that the statement sets forth all the reasons which have induced the several Governments of the Empire to refuse concurrence in the plan of the Protocol. *Ends.*

—FERGUSON.

No. 14.

The Governor-General of Canada to the Secretary of State for the Colonies.

[Telegram.]

7TH MARCH. Following from Prime Minister for your Prime Minister :—

Begins : Statement on Geneva Protocol referred to in your telegram 3rd of March* was received shortly after despatch† had been sent summarizing conclusions to which Canadian Government had come on same subject. We have read this statement with much interest and are pleased to note that our Government have taken substantially the same view as to additional obligations involved in sanction provisions of Protocol. *Ends.*

—BYNG.

* No. 9.

† No. 10.

‡ No. 11.

No. 15.

The Governor-General of the Commonwealth of Australia to the Secretary of State for the Colonies.

[Telegram.]

10TH MARCH. Following from my Prime Minister:—

Begins: Your telegram 4th March,* my Government note that after careful and exhaustive inquiry British Cabinet cannot accept Geneva Protocol or recommend its acceptance to Governments of the Empire. Text of statement proposed to be issued by Foreign Secretary meets with our general approval, and there is no objection to Mr. Chamberlain stating at Council that we concur. *Ends.*

—FORSTER.

No. 16.

The Governor-General of the Irish Free State to the Secretary of State for the Colonies.

(Received 26th June, 1925.)

SIR,—

Vice Regal Lodge, Dublin, 25th June, 1925.

I have the honour to refer to previous correspondence concerning the Protocol for the Pacific Settlement of International Disputes, and to transmit herewith a copy of statement on the Protocol made by the Minister for External Affairs in the Dail, on the 13th May. The statement represents the views of the Executive Council on that instrument.

I have, &c.,
T. M. HEALY.

[Enclosure in No. 16.]

Statement made in the Dail by the Minister for External Affairs of the Irish Free State, on Wednesday, the 13th May, 1925.

We have given earnest consideration to the Protocol for the Pacific Settlement of International Disputes, drawn up at the Fifth Assembly of the League of Nations. We have approached the subject with due advertence to the admirable intentions which animated the authors of that document, and with which we are in complete accord—namely, that a basis should be found which would enable differences arising between Nations to be adjusted without recourse to arms, and thus remove from the sphere of international relations the menace of war.

For this country—a small nation with no aspirations to territorial aggrandizement and no interests other than the social and economic welfare of our people and the maintenance of cordial intercourse with all other nations—the attractions of a scheme which has for its objective the maintenance of international peace are manifest. In so far, therefore, as the Protocol constitutes a unanimous manifestation by the States Members of the League of their genuine desire to render recourse to war impossible, we welcome the opportunity which it has afforded for the study of measures devised for that purpose, and while, on consideration of its details, we find ourselves unable to recommend its acceptance, we wish to place on record that we are by no means of opinion that the object of the framers of the Protocol is beyond the realm of achievement.

The Covenant of the League of Nations, while it marked a notable advance in the direction of international peace, cannot be regarded as an instrument capable in all circumstances of preventing war. Its machinery for dealing with disputes is somewhat unwieldy, and the preponderance on its Council of the more powerful States tends to diminish its prestige amongst the smaller nations, who have less to gain and more to suffer by international strife. But it is our opinion that the place of the League of Nations in world civilisation is not to be gauged by the suitability of its machinery to arbitrate in disputes between Nations when they arise in acute form—rather is it to be measured by the efficacy of the intercourse between States to which it has given rise in resolving differences before they become acute by harmonious interchange of ideas and by mutual appreciation of national aspirations and national difficulties.

The Covenant of the League of Nations makes provisions for certain sanctions in the case of a State which resorts to war in disregard of its obligations. It has always appeared to us that the application of these sanctions would present grave difficulties, and that the machinery for effecting them would in practice prove unworkable. It is true that sanctions could in all probability be effectively enforced against a relatively small State engaging in hostile operations for purposes of aggrandisement, where the verdict of the world-conscience would be unanimous in condemnation of the objects for which resort was had to war. But it appears equally evident that, in the case of aggressive acts by one or other of the greater Powers, and particularly where world opinion was divided as to the merits of the dispute, the sanctions could not be enforced. We are, accordingly, forced to the conclusion that, while the sanctions of the Covenant may prove a useful deterrent in the case of small and turbulent communities, they are quite powerless to prevent either the oppression by a larger Power of small States or the occurrence of a war of world magnitude. It may also be observed that the application of sanctions implies the maintenance of armaments rather than their abolition, and in this

respect is scarcely compatible with one of the primary objects of the Protocol—viz., Disarmament. The portions of the Covenant, therefore, dealing with the imposition of sanctions appear to us to be the least valuable for the general purposes of the Covenant, and an extension of these provisions, such as is contemplated in the Protocol, the least profitable avenue of exploration towards improvement.

The expressed intention of the framers of the Protocol to exclude from the new system of pacific settlement any disputes which may arise regarding existing territorial divisions appears to us to detract considerably from the value of the instrument. Many existing frontiers were fixed by Treaties negotiated before the shadow of the Great War had receded and before the passions which the War aroused had subsided. The passage of years may prove these delimitations to be convenient and equitable; on the other hand, it may in time become apparent that present boundaries are in some cases unsuitable and provocative of ill-will. We realize that the stability of the Continent of Europe, and the prevention of a renewed international race in armaments must depend largely on the extent to which the existing apprehensions of nations, whether well or ill-founded, regarding possible interference with their territorial integrity can be allayed. As long, however, as some of the more powerful States refrain from participation in the League of Nations the feeling of uneasiness and distrust will continue. The continued absence of certain of these States from the Councils of the League is in some degree admittedly attributable to their unwillingness to be called upon to take active measures to maintain for all time existing frontiers even though these should prove to have been inequitably drawn. We fear that the conclusion of an agreement which must to some extent appear to these Nations to partake of the nature of an alliance confined to States Members of the League emphasizing by implication the immutability of these frontiers and imposing upon Members additional obligations, particularly by way of participation in disputes and in sanctions, is not calculated to induce them to accept the responsibilities of membership and is, therefore, likely to hinder rather than further the progress of world pacification and disarmament.

The Irish Free State, because of its geographical position, because its armed forces have been reduced to the minimum requisite for the maintenance of internal order, and because of its Constitution, which provides that, except in case of invasion, it can only be committed to participation in war with the consent of the Oireachtas, cannot be regarded as a material factor in the enforcement of sanctions. Consequently, the foregoing observations on the Protocol are not affected by any considerations especially affecting the Irish Free State, and are dictated solely by our genuine desire that the League of Nations should realize the aspirations of its founders by uniting all nations in the common interest of world peace.

If we might express an opinion upon the measures by which these aspirations may best be realized, and naturally we do so with the utmost diffidence, we would suggest that the solution is to be found not in an endeavour to close some of the fissures in the Covenant by elaborate definition or drastic sanction, but rather in an effort to enhance the moral influence of international conscience. An extension of the principle of arbitration which serves to define and enunciate international judgment, and which relies in the last resort on the moral pressure of world opinion and not upon the application of material sanctions, appears to us to be the most effective feasible means of attaining, at least in a large measure, the objects which the Protocol has in view.

The League of Nations has justified its existence even if account is taken only of the immense scheme of social progress which it has initiated. The reconstruction of countries devastated by the Great War which has been accomplished under its aegis, the succour which has, through its machinery, been afforded to hundreds of thousands rendered homeless by international calamity, and the measures which have been adopted for the suppression of traffic in arms and of vice are achievements of which it may justly be proud.

It is not without significance that in this section of the activities of the League it has had the active co-operation and support of States which have not hitherto found it possible to accept obligations of membership, and perhaps it may not be too much to hope that the opportunities thus afforded for intercourse between member and non-member States may by the further development of these activities be instrumental in allaying the apprehensions and in removing the prejudices which hinder the full co-operation of those States in the efforts of the League for the maintenance of international peace.

NOTE.—Copy sent to Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, by despatch, 2nd July, 1925.