

THE DRAFTING OF THE COVENANT

By

DAVID HUNTER MILLER

WITH AN INTRODUCTION BY
NICHOLAS MURRAY BUTLER

VOLUME TWO

G. P. PUTNAM'S SONS
NEW YORK — LONDON
The Knickerbocker Press
1928

Document 1

The Phillimore Plan, March 20, 1918

DRAFT CONVENTION

(There will be a Preamble reciting that the object of this Convention is to create a League of Nations which will, if possible, prevent all wars in the future.)

Avoidance of War.

Article 1. Each of the Allied States (being the parties to this Convention) agrees with the other Allied States collectively and separately that it will not go to war with another of the Allied States—

- a. without previously submitting the matter in dispute to arbitration or to a Conference of the Allied States; and
- b. until there has been an award or a report by the Conference, provided that in the case mentioned in Article 12 the observance of this sub-clause is suspended;

and also that it will not go to war—

- c. with another of the Allied States which complies with the award or with the recommendation (if any) made by the Conference in its report.

Article 2. If, which may God avert, one of the Allied States should break the covenant contained in the preceding Article, this State will become *ipso facto* at war with all the other Allied States, and the latter agree to take and to support each other in taking jointly and severally all such measures—military, naval, financial, and economic—as will best avail for restraining the breach of covenant. Such financial and economic measures shall include severance of all relations of trade and finance with the subjects of the covenant-breaking State, prohibition against the subjects of the Allied States entering into any relations with the subjects of the covenant-breaking State, and the prevention, so far as possible, of the subjects of the covenant-breaking State from having any commercial or financial intercourse with the subjects of any other State, whether party to this Convention or not.

For the purpose of this Article, the Allied States shall detain any ship or goods belonging to any of the subjects of the covenant-breaking State or coming from or destined for any person residing in the territory of such state and shall take any other similar steps which shall be necessary for the same purpose.

Such of the Allied States (if any) as cannot make an effective

contribution of military or naval force shall at the least take the other measures indicated in this Article.

Pacific Settlement of International Disputes.

Article 3. If a dispute should hereafter arise between any of the Allied States as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach, if such dispute cannot be settled by negotiation, arbitration is recognized by the Allied States as the most effective and at the same time the most equitable means of settling the dispute.

Article 4. But if the Allied States concerned do not agree that the dispute is suitable for reference to arbitration or do not agree as to the question to be referred or as to the composition of the tribunal of arbitration, or if for any other reason a reference to arbitration should prove impracticable, any one of the Allied States concerned may make application to the Conference of the Allied States to take the matter of the dispute into consideration.

Article 5. The seat of the Conference shall be at X, the Convener shall be the Sovereign or President of the State of X, and his representative shall be president of the Conference. The Allied States shall be represented at the Conference by their diplomatic representatives accredited to the State of X. In the event of X being one of the States parties to the dispute, either State may communicate with the Sovereign or President of Y, who thereupon shall become the Convener and shall fix the seat of the Conference and name its president.

The provisions of this Article shall not prejudice the right of any of the Allied States to send other representatives to the Conference, but the Conference shall be under no obligation to await their arrival.

Article 6. It shall be the duty of the Convener of the Conference to give notice of the applications to the Conference to every State party to the dispute and to summon the Conference as speedily as possible.

Article 7. The Conference shall regulate its own procedure, and may appoint Committees to enquire and report. In all matters covered by this Article the Conference may decide by the votes of a majority of the Allied States represented.

Article 8. The function of the Conference shall be to ascertain the facts with regard to the dispute, and to make a recommendation based on the merits of the case, and calculated to ensure a just and lasting settlement. The recommendation shall not have the force of a decision.

Article 9. The Allied States agree to place at the disposal of

the Conference, or any Committee appointed by the Conference, to the fullest possible extent compatible with their interests, the information in their possession which bears upon the dispute.

Article 10. The recommendation of the Conference shall be addressed to the parties to the dispute, and will not require their assent.

Article 11. In the event of the Conference being unable to agree upon a recommendation to be addressed to the parties to the dispute, it shall be the duty of the representatives of such of the Allied States attending the Conference as shall be satisfied as to the nature of the recommendation which should be made—provided that they represent not less than a majority of the Allied States attending the Conference—to publish on behalf of the States which they represent a statement setting out what they believe to be the facts with regard to the dispute. They may also add thereto the text of the recommendation which they consider the Conference should have addressed to the parties to the dispute.

Alternative Article 11. If, in the event of the Conference being unable to agree upon a recommendation to be addressed to the parties to the dispute, any State or group of States having taken part in the Conference issues a public statement of the view which, as a result of the deliberations of the Conference, it takes of the dispute, such action shall not be regarded as an unfriendly act by either of the parties to the dispute.

Article 12. Any one of the Allied States having a dispute pending may apply to the Conference to be relieved from the moratorium imposed by Article 1 (b) on the ground that there is a continuing injury, or on the ground that unless some prompt provision for reparation or restitution is made the injury will be irreparable. The Conference shall, without deciding in any way upon the merits of the dispute, forthwith consider this application, and may relieve the applicant State from the provisions of the moratorium, or may suggest terms of temporary arrangement as a condition of not relieving the applicant State from the moratorium, and may from time to time consider the application and the terms which should be imposed. In the event of relief from the provisions of the moratorium being granted under this Article, any of the Allied States may, notwithstanding the provisions of Article 1, come to the assistance of the State so relieved.

Relations between the Allied States and States not Party to this Convention.

Article 13. As regards disputes between one of the Allied States and a State not party to this Convention, the Allied State shall endeavor to obtain submission of the dispute to arbitration, if it be of a

suitable nature for arbitration, and if the dispute be not of a nature suitable for arbitration, or if the other State will not agree to submit it to arbitration, the Allied State shall bring it before the Conference. In the latter event the Convener of the Conference shall, in the name of the League of Nations, invite the State not party to this Convention to become for this purpose a party to the Conference and to submit its case to the Conference, and in such case the provisions hereinbefore contained shall be applicable to the dispute both against and in favor of such State in all respects as if it were a party to this Convention.

Article 14. If the State not party to this Convention will not accept the invitation to become *ad hoc* a party to the Conference, the Conference may enquire into the dispute *ex parte*, and may make a recommendation in the same way as if both parties were present.

Article 15. If the Allied State shall be attacked by the other State before an award or a report of the Conference is made, or notwithstanding the compliance of the Allied State with the award or the recommendation (if any) made by the Conference in its report, any of the Allied States may come to its assistance.

Article 16. In the case of a dispute between States none of whom are parties to this Convention, any of the Allied States may bring the matter before the Conference with a view to the Conference using its good offices to prevent war.

Article 17. Any State not party to this Convention may apply to the Conference for leave to become a party. The Conference will forthwith examine the application favorably, and will determine whether it should be granted and whether it is necessary to impose any terms.

Conflict of Treaties.

Article 18. A. The Allied States severally agree that the present Convention abrogates all treaty obligations *inter se* inconsistent with the terms hereof, and that they will not enter into any engagements inconsistent with the terms hereof.

B. Where any of the Allied States, before becoming party to this Convention, shall have entered into any treaty imposing upon it obligations inconsistent with the terms of this Convention, it shall be the duty of such State to take immediate steps to procure its release from such obligations.