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Simonetta Florissi

*The early League of Nations experience on disarmament*

As it is well known, Great War was a devastating conflict, which had a deep impact on the people living in that period. To give an example it is possible to affirm that, proportionally, such a war caused much more soldiers dead during the battles than it happened during World War II, if compared with the global population.

The League of Nations was an organisation (forerunner of the United Nations) which came into being at the end of WWI to avoid the risk of another so terrible conflict. Its ‘Covenant’ was the result of a brainstorming (begun in 1917/18) at the government level in belligerent and neutral countries. Governments of Great Britain, France, the United States, Italy, the Scandinavian countries and Germany each instituted diplomatic commissions to prepare a scheme for such a forum of nations. Their aim was the construction of a mechanism to peacefully resolve international disputes and impede actions by a state or state that might drag the others into war.

As there was then a strong among Europeans and Americans that the pre-war arms race and accompanying escalation in armaments manufacture had directly caused the tragedy of 1914, much of their attention was given to how such a league would manage global disarmament. Nonetheless, this aspect of planning for what was to become the world’s first institution of global peace management appears to have taken a back seat during the making of the League and the reasons for this have been overlooked. The aim of this study is to illuminate those reasons while evaluating the role of disarmament played in the planning for what became known as the League of Nations.

***British Project***

The first draft project on the LON appeared was the British one, a plan written mainly by one of the most expert English jurists, Lord Phillimore, and released in March 1918.<sup>1</sup> It contains eighteen articles in which the legal construction of the organisation was drawn up: whose decision –making body was the ‘Conference of the Allied States’. This conference was composed by the diplomats of the members accredited to the host country at the time of each meeting of the Conference. The mandatory practice of arbitration was the main element to settle international disputes, but if the members concerned didn’t agree in respect to arbitration they could forward the dispute to the Conference of the Allied States, which would release a recommendation, thus not a binding sentence, meaning without the force of immediate action. A system of economic and military sanctions would be applied in case of a pact’s rupture owing to the behaviour by a member. However, while flexible, the British plan made no mention of Disarmament.

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<sup>1</sup> The Phillimore Plan, March 20, 1918, “Draft Convention” (Document 1), in D.H. MILLER, *Drafting the Covenant*, vol. 2, pp. 3-6.

## *French Project*

In July 1917, the French created an *ad hoc* commission with twenty members called 'Commission interministérielle d'Étude pour la Société des Nations' (CIESDN)<sup>2</sup>, presided by Léon Bourgeois, who had already taken part in the Hague Conferences<sup>3</sup>. Their scheme containing the rules of the new order appeared in June 8, 1918<sup>4</sup>. It stressed that it was necessary to maintain peace through law and not through force or violence, but this aim was expressed with a more direct emphasis than in the English project. The French plan was divided into five sections and, only one decisional organ was present: the International Council (also called the Assembly). The latter was formed by chiefs of governments and states of all the members, then choosing fifteen members of a permanent delegation (and set its powers), working in the interval of the Council's sessions but dealing mainly with bureaucratic tasks. The Council had the duty to settle the disputes in an amicable way (good offices, mediation) as well as to maintain the International Tribunals set up at The Hague able to solve a contrast on a legal basis if the amicable way would have failed; moreover (unlike the British plan), this body had the power to enforce the sanctions for the states not obeying to the reached agreements. In fact the list of sanctions (Diplomatic, Legal, Economic and Military) put at the beginning of the plan, was very detailed: among those there was, as regard as the recalcitrant state, for example the suspension of the conventions relating to the protection of author's copyright and of industrial property, i.e. provisions directly affecting the private interests of the citizens themselves in order to exercise pressures on the government representatives.

As it is known, France, once more wounded by the German behaviour (after 1871), pledged to have an International Army with a Joint Chief of Staff. The main tasks would have been: to verify if each country member observed the limits on armaments foreseen by the League's rules (to avoid an increasing force concealed by whatever enemy); and to prepare military plans for having an amount of troops, provided by the various member States, ready to intervene in case of a pact's rupture. Obviously this proposal was rejected, first, by the US and Great Britain, denying the option because no one would have accepted to allow its soldiers taking part in a supranational army in time of peace. But the fact less famous is that the strong protests of the French delegates, namely Bourgeois and Ferdinand Larnaude (Dean of the Law Faculty at the Sorbonne University) were sustained by other protagonists of the Commission on the League of Nations. In fact, also the Greek politician Elefthérios Venizelos was in favour of creating at least a minimum armed force ready to intervene, in order not to leave the League of Nations without the necessary force to make its will obeyed.<sup>5</sup> And even Mr. Barnes, a delegate expressing the view of the British working classes, called for adding some provisions to build a nucleus of an international force, which should have been ready to strike against an aggressive nation, since the latter could have broken through and win before the forces of mankind were mobilized against it.<sup>6</sup> But, what could surprise, is that Article 42 of the second League of Nations plan elaborated by Germany (inserted in the German reply to the conditions of peace released by the Allied, at the beginning of May 1919) foresaw that, in order to improve Disarmament, it was necessary also to provide an international control to verify the adherence of the member states to the rules laid down for this aim.<sup>7</sup>

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<sup>2</sup> The origin of this Commission was in a resolution adopted in June 5, 1917, by the French *Chambre des Députés*.

<sup>3</sup> The Hague Conferences on Disarmament took place in 1899 and 1907, and they represented the first effort to reach a global agreement on the limitation of armaments carried on by the Great Powers.

<sup>4</sup> English version in LEAGUE OF NATIONS ARCHIVES, *French Plan, Commission on the League of Nations, June 8, 1918*, Shepardson Private Papers, Box 257, Files 16-27.

<sup>5</sup> D.H.MILLER, *Drafting...*, op.cit., vol.2, p. 576-577.

<sup>6</sup> *Ivi*, p. 575.

<sup>7</sup> LEAGUE OF NATIONS ARCHIVES, *Proposal of the German Government for the Establishment of a League of Nations*,

In brief, the concrete motivation to refuse such a control was well described in a Commentary elaborated by the British Foreign Office: preparations for war on a large scale could have not been concealed, while no inspection could have hoped to discover such really important secrets as new gases and explosives and other inventions of detail.<sup>8</sup>

But, truly, another reason impeded to form an international army: surely the Head of this military body would have been the French Marshal Foch, as he was considered the ultimate winner of the war, a fact really prohibiting the sustain by other powers.

In any way, no specific provisions on Disarmament were present in the French plan, the matter had to be faced later in a separate agreement. So that some contradictions arise: even if many words were said in regard to the limitation of armaments, the very important issue was the manner to react with military means to a sudden attack of whatever enemy. For this reason, during the negotiation, France didn't accept to abolish conscription, so rooted in the national conscience. Though, August 1919, the French Chamber of Deputies released a Bill for the Revision of the Three Years Service Law; in the document, a reduction from three years to eight months Service Law was foreseen, in view of a definite system of international politics managed by the League.

### ***United States Projects: House and Wilson***

When President Wilson read the British project on the League of Nations, he found it too weak and decided to assign his most reliable adviser, Colonel Edward Mandell House, to the task of writing an American plan, following the studies of the 'Inquiry Commission'<sup>9</sup>. The House draft appeared in July 1918 and contained twenty-three provisions.<sup>10</sup> The initial articles were dedicated to the importance of having a loyal and transparent behaviour in international relations.

Even here, the collective body (without a specific name) imagined to govern the League was just one, formed by the delegates (Ambassadors or Ministers) of the member countries, who should have gathered all together in case of an emerging threat of war, and who had also the power of inquiry. However, the mechanism to solve the controversies relied on two different structures:

- International Court (not present in the British plan), able to determine any dispute between nations not yet settled by diplomacy or arbitration, and relating, for example, to the treaties' interpretation or to the matter of commerce; moreover, every highest national court should have had jurisdiction on the international disputes, if so agreed upon by the Parties involved;
- Arbitration before three arbitrators: one to be selected by each party to the dispute and one to be chosen by the two arbitrators so selected. The Delegates should have voted to set aside a decision of arbitrators, in such a case the controversy should have been submitted again to arbitration and the second decision was binding and conclusive, without right of appeal.

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Shepardson Private Papers, Box 257, Files 16-27.

<sup>8</sup> LEAGUE OF NATIONS ARCHIVES, *The Covenant of the League of Nations with a Commentary Thereon. Presented to Parliament by Command of His Majesty, June 1919*, Shepardson Private Papers, Box 257, Files 16-27

<sup>9</sup> In the United States the task to prepare peace was, first of all, carried through by a commission called 'Inquiry', put under the supervision of Colonel Edward Mandell House, the main adviser of President Wilson. The XXIIth section of the Inquiry, headed by David Hunter Miller, analyzed the League of Nations issues.

See L.E. GELFAND, *The Inquiry: American Preparation for Peace 1917-1919*, New Haven, Yale University Press, 1963.

<sup>10</sup> Draft of Colonel House, July 16, 1918, 'Suggestion for a Covenant of a League of Nations', (Document 2), in D.H. MILLER, *Drafting...*, op. cit., vol. 2, pp. 7-11.

In case a member would have not waited for, or abided by, the decisions of the International Court of Arbitrators, the main sanction consisted in the loss of all rights of commerce and intercourse with the Contracting Powers.

It was House himself who introduced, for the first time, a specific, structured Article on Disarmament, but at the end of his plan (Art. 21): the contracting powers recognized that permanent peace required the reduction of national armaments to the lowest point consistent with safety, hence, the Delegates would have formulated a plan to carry on such reduction, which had to be finally approved unanimously. Moreover, it was necessary to forbid the private manufacture of arms, and, at the same time, to give publicity to national armaments and programmes. All this sounds a little bit utopian; nonetheless, it was a product of an intelligent man, who perhaps saw WWI so tragic that such an Article didn't seem abstruse.

After a while, in late summer of 1918, even the project written by President Wilson himself was ready: thirteen prescriptions based on the House draft, the document was called 'Wilson's First Draft'<sup>11</sup>.

In the Preamble the necessity to have honourable relations between nations and a firm understanding on the ground of International Law was underlined. Then the composition of the Body of Delegates was described: ambassadors or ministers of the contracting powers gathering when needed and having the power to form committees in order to inquiry international problems. Similarly to the previous plans, the governing organism of the League was just one, having the possibility to decide by a majority vote of the whole Body.

In this case, Article on Disarmament, in Wilson's draft became number IV, whilst in House draft it was number 21<sup>12</sup>. Giving this Article more relevance demonstrated that, in Wilson's mind, the issue of Disarmament had a great importance, as already stated in the fourth point of his Fourteen Points. Hence, the contracting powers recognized that to maintain peace it was necessary the reduction of national armaments to the lowest point consistent with domestic safety and allowing the enforcement of the international obligations (a point not present in House's draft). The Delegates had the duty to formulate a plan to realise this reduction, which then should have been unanimously approved by the Governments. They also agree that munitions and implements of war could not have been manufactured by private enterprises or for private profits, whilst, full and frank publicity should have been done to national armaments and programmes.

Then, after Disarmament, Article V regulated the settlement of international disputes: the only one mechanism to trust in was Arbitration, in fact the Contracting Powers should have agreed upon that all disputes arising between or among them, not satisfactorily settled by diplomacy, should have been referred for arbitration to three arbitrators; the mechanism to compose the arbitration pool was very detailed. There was no Court of Justice in Wilson's first draft, similarly to the British draft, but differently from House's draft who preferred to put it in the plan.

Sanctions contained in the following Articles were for those countries that didn't submit a dispute to Arbitration or rejected its decision: they would have lost all rights of commerce and intercourse with any of the Contracting Powers. It was also possible for the League members to unite in blockading and closing the frontiers of that power to commerce and intercourse with any part of the world and to use any force that might have been necessary in case the Body of Delegates would have declared the pact's rupture.

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<sup>11</sup> Wilson's First Draft, 'Covenant' (Document 3), *Ivi*, pp. 12-15.

<sup>12</sup> In the House draft the numbers of Articles are written with Arabic characters (1,2,3...), whilst in the Wilson First Draft are written in Roman characters (I, II, III...).

The ban of the private manufacture of arms was introduced by House and promoted by Wilson: it aimed at eliminating private profits deriving from the commerce of arms. A very peculiar position for the American people, subject to a legal system that didn't allow the central power to forbid the manufacture of anything in each of the different states.

### ***Italian Project***

A 'Commission for the Aftermath of War' was established in March 1918 by the Italian government to deal with the problems deriving from the just ended war. It was divided in two subcommittees, the first subcommittee in twelve special sections and Dionisio Anzilotti was member of the first special section, set up for juridical matters. He was the main jurist elaborating the Italian plan on the League of Nations, called 'Schema di Atto Generale per costituire la Società delle Nazioni' (Draft Scheme for the Constitution of the Society of Nations)<sup>13</sup>.

The plan, which appeared in December 1918, began with a sort of preamble establishing, first of all, that the League was an initiative of the US, Great Britain, France, Italy and Japan and then that every state is equal before Law. In the following 'General Provisions' an affirmation on Disarmament was present: the contracting states would have reduced their armed forces within the limits deemed necessary according to the provisions which will be established in a future special protocol; so, at that moment, the problem was not taken into account (more or less the same mechanism of the French plan).

In this case, the organs to manage the organization were two: the representatives of all the contracting states would have met in Conferences periodically to examine general problems of common interest, whilst the Council was composed by a representative of each of the five Great Powers (already mentioned in the Preamble as promoters of the Scheme) and by four representatives of the other contracting states. Under the direction of the Council three Commissions had to be constituted: an Economic Commission for the solution of the international economic problems; a Labour Commission to formulate provisions for the protection of workpeople; and a Military Commission able to deal with the military matters facing the League of Nations: hence, this is the first time in which a specific body was imagined to supervise issues relating to armaments.

The way to solve international controversies had more options:

- Any dispute that was not possible to solve by amicable negotiations, was automatically settled by Arbitration.
- If the Parties didn't agree on the arbitrators, the matter should have been referred to the Council in his capacity of Court of Enquiry and Conciliation, having the power to create a committee for investigating on the merit of the question. It had also the possibility to refer the dispute to the Conference by reason of its importance or nature, in any way both deciding on the grounds of equity or political experience, and releasing binding sentences.
- If the dispute pertained to a matter of International Law, it should have been referred to the Court of International Justice, which would have been established at The Hague.

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<sup>13</sup> Draft Scheme for the Constitution of a League of Nations, Annex 3 to Minutes of the Commission on the League of Nations First Meeting', in D.H. MILLER, *Drafting...*, op.cit., vol. 2, pp. 246-255.

Also available in LEAGUE OF NATIONS ARCHIVES, *Paris Peace Conference, 1919, Commission on the League of Nations*, Box R 1568, Document 40/340/293, pp. 12-18.

Original version in LEAGUE OF NATIONS ARCHIVES, *Schema di Atto Generale per Costituire la Società delle Nazioni*, Shepardson Private Papers, Box. 257, Files 16-27.

In case of violation the sanctions would have been decided by the Council of States: there is a very detailed list of measures, beginning from the rupture of the diplomatic relations as well as the Police supervision and expulsion of the recalcitrant state's citizens from the territories of the loyal ones, not to mention the economic and commercial boycott, the embargo on all ships, etc. etc. These provisions neared the Italian plan to the French one.

It has to be recognized that the Italians wrote a consequent and logic scheme for the League, featured it as a structure containing the main elements not only of the League's Covenant but even of the today's UN mechanism. In fact, an Assembly was imagined where all the members took place; then a restricted Council formed by the Great Powers (quoted in the initial phase of the plan), as inviting the others to join the League, was thought: it was a body with the specific function to solve political controversies; and a Court of Justice to decide the disputes on the grounds of International Law was also present. Nevertheless, the 'vulgata' is that this project didn't influence the work for the final version of the Covenant.

### *Scandinavian Countries Project*

The following project was prepared by the Scandinavian countries: Swedish, Norway and Denmark, who had the necessity to coordinate their interests as neutrals at the end of the war. The 'Avant-projet de Convention sur une organisation juridique internationale'<sup>14</sup> was elaborated by three committees, and finally presented, together with a Report indicating the reasons of some choices, to the Sweden Foreign Minister in December 1918 (becoming public in January 1919)<sup>15</sup>.

The draft Convention contained eighty-eight articles, but the setting out was different from the above mentioned plans. In effect, it focused only on the manner to solve the international controversies, that is on the tribunals or commissions suitable to deal with the political or juridical disputes. The Scandinavian plan had not a system of collective security, while the British, French, American and Italian projects regarded the way to build a collective system of security, i.e. an organization working thanks to its own organisms, able to organize a defensive action against a breaking Covenant State.

In fact at the beginning, in Section I, named 'Obligations générales'<sup>16</sup>, it was specified that the members of the Convention were obliged to submit the controversies between them, impossible to resolve by diplomatic means, to judicial decisions or to an inquiry and conciliation procedure. The judicial decisions would have been adopted by an International Court of Justice not yet instituted, or by the Permanent Arbitration Court already existing at The Hague (1907), or by an Arbitration Court agreed on by the Parties: the motivated sentences were binding. The Inquiry and Conciliation Procedure foresaw to send the conflict's reasons to specific commissions able to write a report suggesting the measures (not binding) to resolve the controversy (Articles 5-8).

Then the project described the composition and the functions of the International Court of Justice: fifteen members, elected by an Assembly made of judges pertaining to The Hague Arbitration Tribunal, and chosen without regards to their nationality, in any way no more than two judges coming from the same country could have participated to the juridical body, nominated for life. Its verdicts were valid only if at least seven judges were present, and the

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<sup>14</sup> In English: 'Draft Project for an Agreement to build a Juridical International Organization'.

<sup>15</sup> LEAGUE OF NATIONS ARCHIVES, *Avant-projet de Convention relative à une organisation juridique internationale élaboré par les trois comités nommés par les gouvernements de Suède, de Denmark et de Norvège avec un exposé des motifs extrait du rapport du comité suédois*, Shepardson Private Papers, Box 257, Files 16–27.

<sup>16</sup> In English: 'General Obligations'.

matters which could have been submitted to the Court were decided by the Parties thanks to a general pact or by means of a specific agreement concerning particular situations.

Section III related to the ‘Conseil International’<sup>17</sup>, a body formed of fifteen members chosen by an Electoral Assembly composed by all the members of the ‘Convention’<sup>18</sup>. It was entrusted to follow the evolution of the international life in the political and economic domain and, as a consequence, to submit to the Governments the treaties’ projects derived from this evolution. Other tasks of this Council were to assure the gathering of the ‘Conférences internationales de la Paix’<sup>19</sup>; to render public the treaties; to work as a central organ for the Inquiry and Conciliation procedure as well as to notify to the members the Signatory States not observing the Convention (Articles 40-47).

Section IV concerned the ‘Procédure d’enquête et de conciliation’<sup>20</sup>: the Contracting Parties would have nominated some inquiry and conciliation commissions able to examine the conflicts verified thereafter, in case two States disagreed on which kind of tribunal should have decided on their controversy. The commission should have elaborated a report with the solution concerning every conflict submitted to her by both countries or by one of them. Also the ‘Conseil International’<sup>21</sup> could have invited the commission to intervene, even if the Parties would have not resorted to her; in alternative the commission could have decided herself to make a report, lacking the request of the Parties (Articles 48-72).<sup>22</sup>

In Section V, the last one, there were Articles referring to the ‘Organisation permanente des Conférences Internationales de la Paix ou du Droit international’<sup>23</sup>. This kind of diplomatic conferences, formed by a number of delegates determined by the States themselves, would have taken place periodically (every five years), in order to develop and codify international laws and to elaborate international pacts aiming at the maintenance of peace (Articles 73-88). Clearly the reference was to the two Hague Conferences, which in public opinion achieved a good result.

So, in this project some specific dispositions to oblige the Signatory States to act together by means of collective measures against a country not observing its engagements lacked. In fact, there is not a section dedicated to the sanctions in the Scandinavian plan, as well as there isn’t any word dedicated to Disarmament. In the Swedish Report this position was explained in such a way:

“Si les commissions se sont abstenues d’introduire dans leur projet des dispositions relatives aux sanctions internationales à appliquer aux Etats qui auraient contrevenu au statut dont il a en vue la création, c’est, en ce qui concerne du moins les délégués suédois, parce-que ceux-ci estiment, et leur gouvernement s’est prononcé dans le même sens – que l’initiative dans ce domaine n’appartient pas aux petits Etats. La question est étroitement liée à celle de la limitation internationale des armements. Les petits Etats ne sauraient qu’éprouver la plus grande hésitation à contracter l’engagement de s’associer à des mesures coercitives internationales, aussi longtemps qu’ils risquent, en le faisant, de se trouver placés, sans aide immédiate et efficace, en face d’un voisin plus puissant. Une réduction générale des armements

<sup>17</sup> In English: ‘International Council’.

<sup>18</sup> In English: ‘Covenant’ or ‘Pact’.

<sup>19</sup> In English: ‘International Conferences on Peace’.

<sup>20</sup> In English: ‘Enquiry and Conciliation Procedure’.

<sup>21</sup> In English: ‘International Council’.

<sup>22</sup> The model was the ‘Bryan System’, meaning that it was possible for the States to institute some committees, two by two, to whom submit the international disputes. The States could have instituted these committees before a controversy would arise or, on the contrary, to create them after the controversy took place.

The first solution is called ‘Bryan System’, the name deriving from the US State Secretary who invented it.

<sup>23</sup> In English: ‘Permanent International Conferences on Peace or International Law’.



modifiera évidemment cette situation. Mais ce n'est pas davantage des petits Etats que doivent venir les propositions relatives à ce sujet".<sup>24</sup>

Thus in the Scandinavian project the priority was given to the juridical measures to solve the controversies and the final architecture designed a system without the possibility to intervene in an economic or a military manner. In fact the concrete problem would have been facing a too powerful enemy, without the necessary instruments. In the Swedish thought this aspect could have been overcome thanks to the general reduction of armaments.

### *German Project*

The last plan to talk about is the German one, entitled: 'Draft Constitution of the League of Nations'.

It was written by a Committee especially formed with this aim, in September 1918, that is during the same period of the various American and European projects' drafts: the scheme contained thirty-six articles, not divided in sections or parts.<sup>25</sup>

The scope of the organization was to assure a durable peace based on 'Justice', i.e. nurtured by a moral force, in order to protect the sovereignty (independence and territory) of every state, which working together could have enhanced the welfare of mankind.

The list of the League's organs followed: seven bodies, but their tasks were not always so clear.

The first, the Congress, was the assembly of the representatives of the States of the League, the supreme organ gathering at The Hague at least every three years. Then there was a Permanent Committee, composed by the representatives of the States of the League appointed for the purpose, which meant a sort of Secretariat receiving the instructions for its work by the Congress. The Permanent International Tribunal and the Permanent Arbitration Court were formed according to the rules decided at the 1907 Hague Conventions, creating this kind of institutions. The Executive Committee was composed by nine members, selected through a complicated mechanism in which all the Parties would have taken place, including the Neutrals with a role of the umpire played by Switzerland. The International Conciliation Office also followed the rules of the first Hague Convention and its members were chosen from an *ad hoc* list. The International Administrative Council would have served as central office of all the International Unions.

Hereinafter the plan described the function of the League.

The controversies impossible to remove by diplomacy should have been settled by jurisdiction, or arbitration, or by the International Conciliation Office. It meant that there was a Permanent International Tribunal, formed on the model of The Hague institutions, as normal instrument

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<sup>24</sup> LEAGUE OF NATIONS ARCHIVES, *Exposé des motifs. (Extrait du rapport adressé par la commission suédoise au Ministre des affaires étrangères, en date du 21 décembre 1918)*, Shepardson Private Papers, Box 257, Files 16-27.

In English:

"The commissions abstained to introduce in their projects some dispositions related to the international sanctions, in order to use them against the States that could have violated the statute to be created, because they think – and also their governments have the same position - that the initiative in this domain doesn't pertain to the Small States. The issue is linked to that of the international limitation of armaments. The Small States would hesitate in associate them in carrying on international coercive measures, as they would risk to face much more powerful countries. A general reduction of armaments would change this situation. But the initiative to propose provisional measures on this matter is not a task of the Small States".

<sup>25</sup> LEAGUE OF NATIONS ARCHIVES, *German Law Society - Draft of a Constitution of the League of Nations. Drawn up by the special Committee instituted for the purpose on September 21<sup>st</sup> 1918*, Shepardson Private Papers, Box. 257, Files 16-27. Also published in D.H. MILLER, *My Diary at the Conference of Paris*, vol. IV, Privately Printed, New York, Appeal Printing, 1924, pp. 285-295.

to solve disputes and its decisions were pronounced in the name of the League, but it was also adequate to receive all complaints of private individuals against foreign States and Heads of States, after having established that their national Courts were finally incompetent (this rule was near the House plan). Moreover, the Tribunal could have given the right interpretation of the treaties, especially in the domain of private international law (Articles 8 and 9).

The Permanent Court of Arbitration, always formed on the model of The Hague institutions, intervened when a compromise between two countries foresaw its judgement, when a resolution of the International Tribunal assigned a case to it, mainly when a dispute concerned vital interests, the independence and honour of a state, or when an issue was not of a legal nature, but of a political one (Article 10).

The International Conciliation Office would have played a role by virtue of a resolution of the International Tribunal, or if so requested by the Members involved. It should have produced an award accompanied by a statement of reasons, then accepted or rejected by the Parties (Article 11).

But what has to be underlined is that, also in the German plan, a definite Executive Committee was present, composed by nine members selected through a complicated mechanism in which all the Parties would have taken place, including the Neutrals with a role of the umpire played by Switzerland, this composition was different from that of the Executive Council provided in the Italian plan where the Great Powers were fundamental. Nevertheless, it was a restricted body with a relevant task: dealing with the violations of the League of Nations statute and deciding the coercive measures to react. The sanctions were the usual ones: imposition of an indemnity, interruption of diplomatic relations, economic boycott, embargo of vessels. Other supplementary measures might have been decreed to reach a result. The Executive Committee had as basis of its work the rules of International Law and laws of humanity. If for a State it was impossible to execute the coercive measures, since its vital interests were in danger, it could have asked the Executive Committee to address its grave situation (Articles 12, 13, 14, 15, 16, 17, 18,19).

If a State was attacked by military force it could have defended itself in the name of the League. In such a case it was necessary to inform the Permanent Committee on the current situation, and the Executive Committee, summoned as soon as possible, would have verified if self-defence was justified or not.

The only one Article on Disarmament was number 22, completely different in structure from those of the American and European projects, since it focused on the budget available for the military expenditure, and not on the quantity of soldiers and arms permitted.<sup>26</sup> The army and navy expenditure of the States of the League must not exceed an amount equal to 25% of their army and navy budget in 1909.

The elaboration of the German project, terminated on the 28<sup>th</sup> of January 1919, was carried on under the supervision of Dr. Theodor Niemeyer<sup>27</sup>, Professor of Law at Kiel University. It is

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<sup>26</sup> The same formulation focusing on the annual expenditure for armaments will be used later, when, during the meeting of the Assembly VI Commission on armaments reduction, held on 11 December 1920, the Norwegian delegate Lange proposed the following resolution: 'Waiting for the initial effects provided by the measures concerning the reduction of armaments foreseen in Article 8 of the Pact, the Commission invites the Assembly to pressure the Council to submit to the exam of the governments the proposal to accept the engagement not to exceed, during the two next financial years following the current exercise, the global amount for the military naval and aerial expenditure foreseen for the same exercise. ...'.

English translation from C. SHANZER, *Sulla Società delle Nazioni*, Roma, Anonima Romana Editoriale, 1925, pp. 57-58.

<sup>27</sup> Theodor Niemeyer defended, during a famous trial, Soghomon Tehlirian, the Armenian murder of Talat Pasha, assassinated in Berlin on the 15<sup>th</sup> of March 1921, since the Ottoman Gran Vizir was thought to have organized the genocide of the Armenians.

possible to give some information on the context in which the plan was built quoting the following passage:

“The establishment of the *Deutsche Gesellschaft für Völkerrecht*’ in January 1917 was warmly supported by the German Foreign Ministry. Its membership ranged from economists such as Lujo Brentano (1884) to the sociologists Ferdinand Tönnies (1855-1936) and Hermann Oncken (1869-1945) and the historian Friedrich Meinecke (1862-1954).

Important members from the public law community included Laband, Smend, Walter Jellinek (1885-1955), and Franz Jerusalem (1883-1970). Although the war had an effect on the themes dealt with, Niemeyer was able to direct its activities to constructive objectives. The first meeting in Heidelberg in October 1917 concentrated on an analysis of the much-discussed contrast between the ‘German’ and ‘English’ concepts of warfare, of which the latter was understood as – unsurprisingly – illegal. Professor Mendelssohn-Bartholdy’s address summarized the difference as one between a ‘heroic’ concept of war as struggle between States and a ‘commercial’ concept of war as struggle between peoples, the difference itself following from the contrasting ways in which statehood was understood in Germany and Britain. The second general meeting was devoted to economic issues, namely to safeguarding the freedom of trade after the war. Although the choice of the topic perhaps implied a criticism of the British ‘*Wirtschaftskrieg*’, the addresses were predominantly directed to the coming post-war economic order. As war fortunes started to turn against Germany, interest in the conditions of the coming peace grew. Many Germans grasped at President Wilson’s proposals as the best available basis for the coming talks. The German population was especially enthusiastic about the proposal concerning a future association of nations. Many Germans were genuinely committed to the idea of an effective ‘*Völkerbund*’. Ferdinand Tönnies, for example, pleaded in favour of the League at the second meeting of the ‘*Gesellschaft*’ in 1918 and, amid cries of ‘bravo’, suggested that it was to be superior to the sovereignty of its members. For others, the League’s principal benefit was that it could be used as an instrument to safeguard German Great Power status after the war.

Thus it was no surprise that Simons, speaking in his capacity as the head of the Foreign Ministry’s Legal Division, proposed in September 1918 that the ‘*Gesellschaft*’ set up a study group to prepare a draft statute for the coming association of nations. The Ministry had already studied such proposals for some time and had come to appreciate the differences of view that reigned in the matter. It was time to be active, Simons said, in order to oppose the Anglo-Saxon concept of a League of victors – that would not be an association but a capitulation. A long applause followed his conclusion that Germany must play a leading role in this work. A study commission was set up under Niemeyer’s leadership which divided itself into eleven sections – two of which were headed by Schücking – that each dealt with a special aspect of the League. A large number of members participated in this work, whose outcome was a detailed draft with commentary on individual articles, adopted in January 1919. All disputes were to be submitted to arbitration or conciliation. Economic and military sanctions were to be decreed by the Executive Council ‘according to the rules of international law and the laws of humanity’ (Art. 16). The Council would also determine whether an individual member was acting in self-defense. International unions were to be united under the League’s administration. There were provisions on disarmament, freedom of international trade, and the administration of colonies. Some of the provisions of the draft found their way into the official German proposal. Otherwise, however, it was lost in the general stream of unofficial proposals on post-war organization. It had no effect on the Allied draft which remained substantially unchanged from February 1919. The Germans had been unrealistic if they had expected that the Allies would see the negotiations as other than implementation of German war guilt. The German Foreign Minister Brockdorff-Rantzau’s theatrical appeal to the ‘law’ of the fourteen points, delivered

sitting down at Versailles on May 7, 1919, did nothing to assuage the Allies and created an atmosphere in which the Germans were compelled to oppose the treaty by the fatal strategy of trying to redeem their national past”.<sup>28</sup>

What has to be noticed is that Germany was convinced to enter the League from the beginning of its existence.

It is just the case to note that Theodore Niemeyer, the head of the commission devoted to write the early German plan for the League of Nations, was also the author of a fundamental work, published in 1928, entitled: ‘Handbuch des Abrüstungs’, i.e. Book of Disarmament. This means that even in Germany, in the period between the two Wars, it was clear that the limitation of armaments manufacture was essential to live in peace.

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<sup>28</sup> M. KOSKENNIEMI, *The Gentle Civilizer of Nations*, Cambridge, Cambridge University Press, 2002, pp. 234-236.