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CABINET.

PREPARATIONS FOR THE FIVE-POWER CONFERENCE.

Memorandum by the Secretary of State for Foreign Affairs.

I CIRCULATE herewith the draft memorandum for communication to the French, German, Belgian and Italian Governments as now amended in the light of the views expressed at the meeting of the Cabinet on the 13th instant.

A. E.

November 16, 1936.

NEW WESTERN TREATY.

Draft of Memorandum for communication to the French, Belgian, German and Italian Governments.

(Insertions in this draft are shown in italics and suggested deletions in square brackets.)

IN their memorandum of the 4th November His Majesty's Government in the United Kingdom had the honour to invite the Belgian, French, German and Italian Governments to consider further a number of matters in order to see whether the various views expressed by the five Governments thereon could be reconciled. In that event it would be possible to agree on certain fundamental principles as a basis for the proposed conference. His Majesty's Government added that it was their intention to make known at an early date their own views on these matters.

2. The first of these matters concerns the guarantees to be provided in the new treaty, and in this memorandum His Majesty's Government wish, *for their part*, [in particular,] to deal with the questions of a guarantee to this country by France and Germany [and of a guarantee by Belgium to those two countries.]

3. *On this subject*, [As regards a guarantee to the United Kingdom,] the German Government have suspended a final expression of their views until they have learned those of the other Governments, and the Italian Government have given reasons why they doubt the desirability of extending the non-aggression and guarantee obligations of the new treaty beyond the limits of the Treaty of Locarno.

4. His Majesty's Government see no reason to abandon their view that the United Kingdom should receive guarantees from France and Germany, but they would appreciate a further exposition of the views of the German and Italian Governments on this point. In this connexion His Majesty's Government would

recall that in the discussions on the subject of the proposed Air Pact between the five Powers in the spring of 1935 it was proposed that the guarantees to be given should include one to Great Britain by Germany and France; and His Majesty's Government were then under the impression that this proposal was agreeable to Germany and Italy. It is true that on that occasion only air attack was under consideration; but it is difficult to contemplate an air attack which will not involve the other arms.

[5. The second question arising out of the discussions as to the form of the new treaty concerns a guarantee by Belgium to France and Germany. In their memorandum of the 22nd October the Belgian Government have explained why they consider that it would be undesirable that Belgium should give a reciprocal guarantee to any of her co-signatories. His Majesty's Government observe that the Belgian Government undertake to forbid access to the territory of Belgium, and that they state that Belgium will continue to observe in respect of the obligations of the Covenant of the League of Nations the scrupulous fidelity which she has always shown in the past. His Majesty's Government interpret this as implying the intention of the Belgian Government to forbid access to Belgian territory by land and also the flight across Belgian territory of foreign aircraft to attack a third Power; and, further, their intention to take, should the case arise and in accordance with paragraph 3 of article 16 of the Covenant, "the necessary steps to afford passage through their (Belgian) territory to the forces of any of the members of the League which are co-operating to protect the Covenants of the League."]

6. The third question which it is necessary to consider is whether the proposed non-aggression arrangements would be subject to exceptions, and, if so, what the nature of these exceptions should be. On this point there is a difference of opinion between the views expressed by His Majesty's Government and the French Government on the one hand and the German Government on the other. While the two former Governments considered that certain exceptions would be necessary, the German Government "have no motive for weakening the security for peace which lies in the conclusion of such an agreement for the renunciation of aggression by demanding exceptions of any kind whatever. In case the other Governments concerned should think it necessary to insist on making exceptions of this kind, it would be for them to put forward proposals to this end."

7. His Majesty's Government fully appreciate that the position of the German Government may in this respect differ from that of other signatories to the proposed treaty. Germany is not at present a member of the League of Nations, and is not, so far as His Majesty's Government are aware, a party to any special arrangements for the rendering of mutual assistance against aggression. The other signatories to the proposed treaty, however, are all bound by the provisions of the Covenant of the League of Nations, and some of them have, in addition, arrangements for mutual assistance in certain circumstances with States who would not be signatories to the new treaty. It is obvious that the treaty must not be inconsistent with the obligations resulting from the instruments referred to; it would, for instance, be impossible for His Majesty's Government to become a party to arrangements which might be incompatible with the provisions of their treaties with Iraq and Egypt.

8. It appears therefore to His Majesty's Government to be inevitable that the proposed non-aggression arrangements should be subject to such exceptions as may be necessary to make them acceptable by those signatories whose position is as indicated above. If so, the question arises of what should be the basis of such exceptions. In their memorandum of the 17th September His Majesty's Government expressed the view that they should be on the lines which were laid down in article 2 of the Treaty of Locarno. The German Government in their note of the 12th October point out that in article 2 of that treaty the important exceptions are laid down with reference to the Covenant, and in particular to article 16 thereof, and they give reasons which in their view preclude the repetition of the use of this method.

9. In these circumstances, His Majesty's Government desire to suggest for the consideration of the other Governments concerned the possibility of taking as the basis of the exceptions (apart from the case of legitimate self-defence) an act

of aggression by a signatory to the new treaty against a non-signatory which constitutes a violation of some instrument by which the signatory in question is bound. All the proposed signatories to the new treaty are bound by the Pact of Paris, to which almost all the nations of the world are also parties; all of them, except at present Germany, are bound by the provisions of the Covenant of the League of Nations; and any of them may also be parties to non-aggression arrangements with particular countries. It seems to His Majesty's Government entirely legitimate, and indeed necessary, that an attack by a signatory to the new treaty upon a non-signatory, *in violation of an obligation resulting from any of the instruments mentioned above*, [in violation of a treaty which is binding upon both States,] should entitle any of the other signatories to come to the assistance of the victim of aggression without thereby violating its non-aggression undertakings towards the signatory concerned. This appears to His Majesty's Government to be the scheme of the German-Polish declaration of the 26th January, 1934, since it is there stated that the two Governments have decided to base their mutual relations on the principles of the Pact of Paris. If this scheme were adopted, the rendering of assistance in such circumstances to a non-signatory would not bring into operation, on one side or the other, the guarantees to be provided in the new treaty. It appears to His Majesty's Government that an exception on this basis would cover all the cases for which it is proper that provision should be made, and they desire to commend this suggestion to the consideration of the other Governments concerned.

10. The next and fourth question which arises is how a decision should be reached as to whether the non-aggression arrangements in the new treaty have been violated. If these are to contain exceptions, such as those suggested above, this question assumes particular importance, for in order to determine whether the non-aggression arrangements have been violated it might be necessary to determine whether a signatory had attacked a non-signatory in breach of an instrument which was binding between them. It appears accordingly to His Majesty's Government to be of particular importance to provide a method of determining this question which should be efficacious, rapid in its action, and such as to command the confidence of the Governments concerned and of their peoples.

11. *In their memorandum of the 17th September His Majesty's Government expressed the opinion that the best method of determining this question would be to confide the decision to the Council of the League of Nations.* [From this point of view, His Majesty's Government remain of the opinion, which they expressed in their memorandum of the 17th September, that the best method of determining this question would be to confide the decision to the Council of the League of Nations.] In their view the Council, both as regards its composition and the conditions in which it works, would be a more effective body for the purpose in question than any other. In this connexion the following considerations are, in the opinion of His Majesty's Government, relevant. Whatever changes may be introduced in the working of the League it appears probable, and it is certainly the view of His Majesty's Government in the United Kingdom, that the peace-preserving functions of the Council will become even more important than in the past. It is therefore probable, to say the least, that in the event of its being necessary to determine whether a breach of the non-aggression arrangements had occurred, the Council would have been dealing with the case practically from the outset and would be in full possession of the facts; and therefore from the point of view both of the authority which its decision would carry and the rapidity with which such a decision could be given the Council would be a more effective instrument than any other extraneous body.

12. The German memorandum of the 31st March, 1936, proposed such an extraneous body in the institution of an international court of arbitration which would have competence in respect of the observance of the various agreements concluded. This proposal is not repeated in the German memorandum of the 12th October, but His Majesty's Government desire to say that for the purposes of deciding the question now under consideration such a court, which is apparently intended to be an *ad hoc* tribunal and might well be meeting for the first time when it had to decide whether an infraction of the non-aggression arrangements had taken place, would not in their opinion present, from the point of view either of rapidity of decision, full acquaintance with the facts or the authority which its decision would carry, the same advantages as would the Council of the League.

13. The German Government now suggest that the decision should be reached by a common decision of the signatories to the treaty who are, in a given case, not directly parties to the conflict. His Majesty's Government do not see that this solution would present any advantages over the course of leaving each guarantor to decide for itself, *and in their opinion it would possess distinct disadvantages as compared with the system of reference to the Council, which the Treaty of Locarno provided for use in the case of both flagrant and non-flagrant violations.* [And it is open to a particular objection which is mentioned in the next paragraph.]

14. In their observations on this question the French Government, the German Government and His Majesty's Government all mention the case, which was dealt with in article 4 (3) of the Treaty of Locarno, of immediate action by the guarantors pending a subsequent decision as to whether a violation of the non-aggression arrangements had taken place. His Majesty's Government note that in the German Government's view "a distinction between flagrant breaches of the treaty and other kinds of breaches of the treaty such as was laid down in the old Rhine Pact will no longer come into consideration in the new pact." In the view of His Majesty's Government, however (and this view is confirmed by the discussions of the proposed air pact which took place last year), it is no less necessary now than it was previously to make provision for cases where a sudden and unprovoked attack (such, for instance, as an air attack) is made in violation of the non-aggression arrangements. In such circumstances immediate action by the guarantors may be essential, and it would not be possible to await a decision of the competent body. It appears, however, to His Majesty's Government to be essential to provide, as was done in the Treaty of Locarno, that guarantors, in deciding to intervene, should know that their decision is subject to a subsequent pronouncement by the competent body, so as to ensure that action without a previous finding by that body would not be taken except in cases where no reasonable doubt can exist. If it is decided to adopt the Council of the League as the body to decide whether an infraction of the non-aggression arrangements has taken place, there would be no difficulty in reproducing the scheme of the Treaty of Locarno in this respect. [If, however, the decision were to be taken, as the German Government suggest, by the signatories to the treaty who were not directly parties to the conflict, the following difficulty would arise. If all the guarantors had immediately intervened to assist the signatory attacked, their decision would not, in fact, be subject to any subsequent control, because they evidently would not concur in a finding that they had acted wrongly. If, on the other hand, some of the guarantors had intervened and others had not, it would seem unlikely that it would be possible for a unanimous decision to be reached at all.]

15. *His Majesty's Government fully appreciate the importance and difficulty of this question as to how a decision should be reached whether the non-aggression arrangements in the new treaty have been violated, and they would not wish, so far as they are concerned, to exclude from consideration any proposal which may be made for dealing with it. But for the reasons stated above they are still of the opinion that the best course would be to entrust the decision to the Council of the League.*

[15. In view of all these considerations, His Majesty's Government remain of the opinion that the best course would be to entrust the decision to the Council of the League.]

16. Lastly there remains the further point raised in His Majesty's Government's memorandum of the 4th November, namely, the point that other matters affecting European peace would, in the words of the communiqué of the 23rd July, necessarily come under discussion if progress could be made at the Five-Power Conference. The German Government, in their memorandum of the 12th October, state that they must reserve, until the result of the Five-Power Conference has been reached, their attitude with regard to the question whether, and if so, which, other problems might later be discussed. His Majesty's Government feel obliged to make it clear that the importance which they attach to the successful outcome of the Conference of the Five Powers is due not only to their wish to see a new treaty take the place of the Treaty of Locarno, but also because they continue to

assume that *if progress can be made at this meeting, other matters affecting European peace will necessarily come under discussion.* [such a successful outcome of the Conference of the Five Powers is intended to lead to the solution of other questions which are of direct interest to the peace of Europe.]

17. His Majesty's Government in the United Kingdom hope that they may receive the views of the Belgian (French) (German) (Italian) Government on the questions dealt with in this memorandum at as early a date as possible.

18. A similar memorandum has been addressed to the French, German and Italian (Belgian, German and Italian) (Belgian, French and Italian) (Belgian, French and German) Governments.