LEAGUE OF NATIONS

COMMITTEE FOR THE AMENDMENT OF THE COVENANT OF THE LEAGUE OF NATIONS IN ORDER TO BRING IT INTO HARMONY WITH THE PACT OF PARIS

(Geneva, February 25th to March 5th, 1930)

MINUTES

Geneva, 1930

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COMPOSITION OF THE COMMITTEE APPOINTED BY THE COUNCIL.

Dr. B. W. VON BÜLOW (Germany),
Assistant Ministerial Director and Adviser.

The Right Hon. the Viscount CECIL OF CHELWOOD, K.C. (British Empire).

His Excellency M. Eduardo COBIÁN (Spain),
Former Under-Secretary at the Ministry for Finance; former Deputy.

His Excellency M. Mariano H. CORNEJO (Peru),
Envoy Extraordinary and Minister Plenipotentiary in Paris.

M. Pierre COT (France),
Deputy.

M. N. ITO (Japan),
Counsellor of Embassy; Assistant Director of the Japanese League of Nations Office.

His Excellency Professor Vittorio SCIALOJA (Italy),
Minister of State; Senator; former Minister for Foreign Affairs.

His Excellency M. François SOKAL (Poland),
Envoy Extraordinary and Minister Plenipotentiary; Permanent Delegate to the League of Nations.

His Excellency M. Nicolas TITULESCO [1] (Roumania),
Envoy Extraordinary and Minister Plenipotentiary in London; former Minister for Foreign Affairs.

His Excellency M. UNDÉN (Sweden),
Former Minister for Foreign Affairs of Sweden; Professor at Upsala University.

Dr. WOO KAISENG (China),
Minister Plenipotentiary; Director of the Permanent Office of the Chinese Delegation to the League of Nations.

[1] Replaced by M. Constantin ANTONIADE, Envoy Extraordinary and Minister Plenipotentiary to the League of Nations, and, towards the end of the session, when M. Antoniade was not sitting, by M. V. PELLA. Professor at Jassy University.

FIRST MEETING

Held on Tuesday, February 25th, 1930, at 11 a.m.

Chairman : M. SCIALOJA.

1. Election of the Chairman.

The SECRETARY-GENERAL, in view of the fact that the Council had not appointed the Chairman of the Committee, proposed that the Committee should at once elect him.

On the proposal of Viscount CECIL OF CHELWOOD, M. SCIALOJA *was elected Chairman by acclamation.*

The CHAIRMAN read a telegram from M. Titulesco stating that, as he was detained in Paris in connection with the reparations negotiations, he was obliged to ask the Committee to excuse him from attending at the beginning of the session and to allow his place to be taken by M. Antoniade, who would be assisted by M. Pella as substitute.

The Chairman added that M. Adatci would be replaced by M. Ito.

2. Publicity of the Meetings.

Viscount CECIL OF CHELWOOD urged that the Committee should meet in public. The matter was of considerable importance in so far as public opinion in Great Britain was concerned. A certain amount of anxiety was felt in regard to the proceedings of the Committee, and this would merely be increased if it met in private. He would, therefore, suggest that the Committee should sit in public.

M. COBIÁN and M. CORNEJO supported the proposal of Viscount Cecil.

Dr. VON BÜLOW urged that the practical side of Viscount Cecil's proposal should not be overlooked. It might be better to publish daily reports of the Committee's proceedings. If it met in public, the members would have to be considerably more explicit in their observations than would be the case if the meetings were private, because the Press was not so conversant as the Committee with the subject under discussion. If, therefore, the Committee sat in public, its work would take longer. In those circumstances, Dr. von Bülow would prefer that the Committee should sit in private, and publish a daily report on its work. He would not, however, oppose the majority of his colleagues if they desired the meetings to be public, but he would repeat that the presence of the public, and particularly of representatives of the Press, would inevitably have the effect of prolonging the discussion.

The Committee decided by a majority that its meetings would be held in public.

3. Publication of the Minutes of the Committee.

The Committee decided that the Minutes of its meetings should be published, provided that the Council was ready to provide the necessary funds for the purpose.

4. A. Question of the Publication of the Observations of Governments on the British Amendments.

B. Scope of the Terms of Reference of the Committee.

The CHAIRMAN thought that the Committee should begin by holding a general discussion on the question of amending the Covenant of the League with a view to bringing it into harmony with the Pact of Paris for the Renunciation of War. He made this suggestion in view of the fact that the replies from various States raised a number of questions which should be answered. He would be grateful if the Secretary-General would give the Committee information regarding a number of points.

The first question which arose was to ascertain how many States Members of the League are bound by the Pact of Paris and how many States bound by that Pact were non-Members of the League.

According to information furnished by the Secretariat, the Chairman said that out of fifty-four States Members of the League of Nations, forty-nine are bound by the Pact of Paris, and five are not. Eight States non-Members of the League are bound by the Pact. The Free City of Danzig, with Poland as intermediary, is also bound by it.

The Chairman asked whether the Committee thought that the replies from the Governments should also be published. In his view the Committee had no right to take a decision in this matter The replies from the Governments were their own property. They could be asked to publish them themselves, but it was not possible to decide on publication without having consulted the Governments concerned.

Viscount CECIL OF CHELWOOD thought that, since the Committee would have to base its discussion on the documents before it, it would be unfortunate if some at least of these were not made public.

He suggested moreover that the Secretariat be asked to draw up, in their proper order, a list of the amendments which had been presented. This list, which would be distributed, would render the discussion much more intelligible.

The CHAIRMAN pointed out that a large number of Governments had not proposed any amendments but had confined themselves to commenting on the amendments suggested.

Viscount CECIL OF CHELWOOD said that some States, such as Austria and Greece, which were not represented on the Committee had submitted amendments. Other States had submitted commentaries but not amendments. He proposed that all the amendments submitted should be published. The publication of the commentaries could be left to the discretion of the States which had presented them.

M. CORNEJO thought that the amendments which would be discussed should certainly be included in the Minutes.

M. UNDÉN referred to the precedent created by the Committee on Arbitration and Security which had published the replies received from Governments. In his view, the replies could be considered to be public documents since they had been sent to the Secretariat.

The CHAIRMAN did not think it possible to rely on the precedent quoted by M. Undén. In his view, no tradition yet existed in this respect, and to publish the observations of Governments might cause them to be more reserved in their replies in the future. The Committee could certainly decide to ask the Governments to authorise the publication of their replies, but it could not take the sole responsibility for doing so.

M. SOKAL thought that it would be possible very rapidly to obtain the necessary authority from the Governments. He proposed therefore that all replies should be published whether or not they contained amendments.

Viscount CECIL OF CHELWOOD thought that the Committee would experience considerable difficulty if it had no list of the amendments to each of the relevant passages of the Covenant. He was anxious for the Committee not to fall into a morass of discussion in which the members would inevitably lose the point at issue. At the close of the general discussion, therefore, he would suggest that the Committee should deal with the subject point by point. To do so, a marshalled list of amendments was essential in order that the Committee should know, at any moment, exactly what it was discussing.

The CHAIRMAN replied that it would be easy to draw up a list of the amendments proposed, but that the question of the publication of the observations of the Governments was more delicate.

M. CORNEJO thought that the Committee must be careful not to confuse the general considerations put forward by the Governments and the amendments they had submitted. An amendment was a definite text which should be immediately published. On the other hand, the publication of the commentaries of the various Governments would only become necessary on the eve of the Assembly. Publication at the present time would further have the great disadvantage of giving final form to the opinions of the Governments, which would find it difficult subsequently to modify them. In his view, only the Minutes of the Committee should be published, the documents submitted to it being only published for the use of the Assembly.

The CHAIRMAN agreed with M. Cornejo and thought that the Committee should avoid giving final form to the views expressed by the Governments. It would be preferable, therefore, to let the Governments themselves take the initiative in publishing their observations.

M. SOKAL asked how the observations of the Governments could be taken into consideration if they were not published.

The CHAIRMAN replied that a number of Governments had made proposals, and to publish them would not therefore be betraying a secret. Certain commentaries had been made by Governments, however, with no idea that they would be published. In his view, it would be useful first to publish the amendments separately with a view to their discussion. The Secretariat could prepare this work for the next meeting of the Committee.

M. ITO wished to receive a clear expression of opinion on a general point. The resolution of the Assembly appeared to instruct the Committee to submit a report giving the reasons in favour of a revision of the Covenant of the League in order to bring it into harmony with the Pact of Paris and, should that revision be judged opportune, on the amendments which would have to be made in the text of the Covenant. It was not, therefore, quite clear whether the Assembly had decided to adopt the principle of revision or had indeed decided that that revision should take place. Personally, M. Ito had some doubts as to the desirability of revising the Covenant. His doubts were purely personal, and he was quite prepared to allow himself to be convinced by the arguments of other members of the Committee who were in favour of revision. The question which he had raised was not, he thought, without importance, but the character of the Committee's discussions would change according to the reply made to the point he had raised.

Viscount CECIL OF CHELWOOD was under the impression that the only duty of the Committee was to frame a report showing what amendments to the Covenant were necessary in order to bring it into harmony with the Pact of Paris. It was in no sense called upon to discuss whether

such amendments should in fact be adopted. That was a question of principle which it was for the Council and the Governments to decide.

The CHAIRMAN reminded the Committee of the statements made on this subject. M. Briand had said that no bounds had been set to the Committee's terms of reference and that it had received no instructions from the Assembly. Its duty was to discover whether and how the Covenant of the League ought to be amended in order to bring it into harmony with the Pact of Paris. The only effect of the Assembly's decision had been to give the Council power to appoint a Committee entrusted with this investigation.

M. CORNEJO asked to be allowed to speak on this point in view of the fact that he, himself, had suggested that the Assembly should appoint a Committee to study the amendments to be made in the Covenant of the League with a view to bringing it into harmony with the Pact of Paris. On that occasion already he had explained why it was absolutely necessary to co-ordinate those two instruments. The First Committee of the Assembly, when the question was referred to it, had appointed a Sub-Committee of which M. Cornejo had been a member. That Sub-Committee had discussed the amendments presented by the British Government and had proposed the appointment of a special Committee instructed to propose the modifications necessary to bring the Covenant of the League into harmony with the Pact of Paris. The Assembly therefore had already taken a decision on this point, giving to the Committee large powers of initiative.

In the Council, on the other hand, M. Cornejo had submitted a proposal for the amendment of the Covenant. That proposal had been accepted and he asked that it should be discussed after the British amendment. In his view the powers of the Committee were unlimited in so far as the co-ordination of the two Pacts were concerned. To this end it could propose that the articles in the Covenant which were contrary to the terms of the Pact of Paris, should be changed. It appeared therefore, in his view, useless to begin a general discussion, and he proposed that the Committee should immediately examine the British amendments which had already been considered by a special Sub-Committee of the Assembly. He added, moreover, that every shade of opinion could be expressed during the discussion of the amendments. He would emphasise the uselessness, in his view, of holding a general discussion on the desirability of amending the Covenant, a question which had already been settled.

Dr. VON BÜLOW shared the views expressed by the Chairman. In his opinion, the Assembly had not decided that the Covenant must be amended but had confined itself to stating that it would be desirable to study the possibilities of amending the Covenant with a view to bringing it into harmony with the Pact of Paris. The duty of the present Committee was to present a report on the question, but it was indispensable for it to assure itself beforehand that to amend the Covenant was possible and next to decide in what manner the text should be amended in order to achieve that harmony with the Pact of Paris which the Assembly had thought to be desirable.

M. COT recalled the conditions under which the Assembly had had submitted to it the question of amending the Covenant. That question had been raised in the form of a British amendment. The Sub-Committee entrusted with the duty of studying the problem had realised its great complexity and had made a general report on the matter, which had been submitted first to the First Committee and then to the Assembly.

The essential features of the report could be summarised as follows: the Committee and the Assembly had stated that it would be desirable to amend the Covenant of the League with a view to bringing it into harmony with the Pact of Paris. The problem being a delicate one, the Assembly had decided to appoint a special Committee to study it. It could be concluded that the Assembly had taken a decision in regard to the question of the desirability of revision since it had stated that it would be desirable to draft amendments to the Covenant which would make it possible to incorporate in it the Pact of Paris against war. It seemed, therefore, that the Committee had been instructed not only to report on the amendments to be made in the Covenant but also to draft these amendments. It followed that a general discussion would be inevitable in connection with the proposed amendments.

When the amendments had been drafted, the Committee would have to decide whether it was possible to introduce them into the Covenant of the League and would have to ascertain what would be the consequences. The general discussion would then begin again.

M. Cot thought, therefore, that the Assembly had already taken a decision of principle of a very general nature, regarding the desirability of amending the Covenant of the League. The Committee had therefore been entrusted with the duty of studying the possibility of satisfying the Assembly's desire and the means of doing so. Personally, M. Cot took the view that to amend the Covenant was possible, but a general discussion on that possibility was necessary. In this connection he would refer to the German Government's note, which contained a clear statement on the question.

M. COBIÁN did not fully understand the scope of the discussion. The duties of the Committee had been laid down by a decision of the Assembly. It had been instructed to furnish a report on the amendments necessary to bring the Covenant of the League of Nations into harmony with the Pact of Paris. The Committee had therefore been convened to examine the various amendments and proposals made with a view to the amendment of the Covenant. If among the members of the Committee there were some who were opposed to amending the Covenant, the conclusion would be reached that amendment was unnecessary. He thought it useless, therefore, to hold a previous discussion, since all the contrary opinions would be expressed when the amendments were under consideration. The rejection of the amendments would *ipso facto* mean the rejection of the proposal to amend the Covenant.

The CHAIRMAN shared the views of M. Cobián, but pointed out that the Committee ran the risk of re-opening the general discussion in connection with each amendment it considered. In his view, it would have been preferable to fix a number of points of a general nature which were common to all the amendments. There was, for example, a preliminary question. All the Members of the League had not signed the Pact of Paris and all the signatories of the Pact of Paris were not Members of the League. Was this fact a source of difficulty and what was the gravity of this difficulty if it could be said to exist ? This was a previous question which applied to all the amendments.

M. CORNEJO did not think that a purely legal Committee such as the present one could take a decision which, in his view, was the sole prerogative of the Assembly. The Assembly would determine, on receiving the report submitted to it by the Committee, whether it would be necessary or not to amend the Covenant.

Any general discussion must end in a vote. If, therefore, according to the proposal of the Chairman, the Committee began a general discussion on the desirability of amending the Covenant, it would be compelled to vote on that question, which would be a revision of the decision of the Assembly.

The present Committee was purely technical in character. It was no part of its duty to seek to ascertain which States had signed the Pact of Paris and which had not, nor could it discuss any political considerations. Two texts, the Pact of Paris and the Covenant, had been submitted to it, and it must find the technical means to harmonise them. The British Government had taken the view that it would be possible to obtain this result by means of a simple amendment in the text of the Covenant of the League. Other States had also suggested amendments. The duty of the Committee was obviously to discuss these. It would be for the Assembly to take the final decision, and to accept or reject the proposals of the Committee.

The CHAIRMAN had never thought that a general discussion could lead to a rejection of the proposal that the Covenant of the League should be amended. As, however, the Committee had been instructed to put forward amendments which could be accepted, it must endeavour to avoid difficulties in advance. One of the first difficulties, however, arose from the fact that five States Members of the League of Nations had not signed the Pact of Paris, and that eight States (as well as the Free City of Danzig) which had signed the Pact of Paris did not belong to the League. That was a difficulty which the Committee must examine from the legal point of view.

Viscount CECIL OF CHELWOOD agreed with the views of M. Cot and M. Cobián. A distinction must be made between desirability and possibility. The discussion of the former consideration was not open to the Committee. The Assembly had decided that the undertaking was desirable, if it were possible, and the Committee was called upon to discuss whether or not such was in fact the case.

It might be necessary to have a general discussion on the possibility of harmonising the Covenant and the Pact, though he did not think that general discussions ever led to any great result. He would not, however, oppose such a discussion. All that he was anxious to avoid was a discussion regarding the desirability of amending the Covenant, a procedure which his Japanese colleague had appeared to suggest. Such a discussion would be outside the Committee's competence. If Lord Cecil took part in it he would be placing himself in a false position, as he sat on the Committee, not as a representative of the British Government, but as a lawyer. The desirability of the undertaking must be decided by the Assembly and the Governments. If the Committee discussed it, it would lay itself open to the reproach that it had exceeded its powers.

M. ITO wished to dissipate a misunderstanding. He had never said that he was categorically opposed to amending the Covenant. He had merely asked the views of his colleagues, for he had thought that, in all probability, they would not all be in favour of such a revision. He had also asked, in order to be clear on the point, whether the Committee had been entrusted solely with the duty of studying the possibility of amending the Covenant, or whether it had been called upon also to give its views on the desirability of any such amendment.

The CHAIRMAN thought that the Committee should, in the first place, discuss the interlocutory question : five States Members of the League had not accepted the Pact of Paris and eight States signatories of the Pact were not Members of the League. This was a difficulty which must be dealt with, for there was a danger that five States Members of the League might leave it owing to the resolution which might be adopted. The Committee must therefore make up its mind on this question and seek to solve the difficulty, and make a report to the Assembly, which would take the final decision. This question must, he thought, be discussed before any amendments.

M. UNDÉN thought that the Committee should not allow the difficulties to which the Chairman had referred to impede its work. It was for the Assembly to decide whether it would be necessary, eventually, to postpone taking a final decision regarding the amendments in order to avoid the consequence to which the Chairman had referred.

M. COBIÁN agreed. If the Assembly decided that it was not possible to amend the Covenant without the assent of the five States Members of the League who had not adhered to the Pact of Paris, it was for the Assembly to take a decision in this respect. The fact that such a decision would have to be taken, however, should not overshadow the discussions of the Committee, which must begin its work in the conviction that the amendments which might be proposed would prove acceptable to all the Members of the League.

Viscount CECIL OF CHELWOOD pointed out that some countries might not be prepared to adhere to the Pact of Paris in itself, but would be ready to accept certain amendments in the Covenant which would in fact carry out the provisions of the Pact of Paris. It was the duty of the Committee to discover what those amendments should be. Obviously, they must be of a nature which would make them acceptable to the countries in question, and it was this that the Committee must discuss.

The CHAIRMAN thought it would be useful to know the names of the five States Members of the League which had not adhered to the Pact of Paris, because the influence which they might have on an amendment to the Covenant depended upon their situation. Since the difficulty had been referred to in the memorandum from the German Government, he asked Dr. von Bülow to give his views on that point.

Dr. VON BÜLOW said that, in his view, an organisation of the importance and wide extent of the League, which possessed a Covenant including sanctions which were applicable, under certain conditions, to States not Members of the League, could not introduce into its statutes the amendments in question without affecting the interests of the countries which were not Members of the League, in particular those which were signatories to the Pact of Paris.

M. COT thought that the Committee was right in raising this matter, and that it would be necessary to mention in the report the consequences which any proposed amendment to the Covenant might have. It would be for the Assembly to deal with the question of desirability. The importance which must be attributed to the opinion of the States which had not signed the Pact of Paris, was a political question. It must be ascertained whether it was more in the interests of the League to change its Covenant in order to bring it into harmony with the Pact of Paris, or was it better to pay heed to the susceptibilities of those of its Members which had not signed the Pact of Paris ? The Assembly would have to decide this matter.

A question upon which emphasis should be laid was that the Committee was instructed to study the amendments to be made in the Covenant of the League and not to interpret the Pact of Paris. Its duty was solely to examine the amendments to be made in the Covenant in order to bring it into harmony with the Pact of Paris—a procedure which had seemed desirable to the Assembly. It was important, however, to mention all the difficulties in the report.

M. CORNEJO thought there might be some difficulty in obtaining the adherence of the States Members of the League, which had not signed the Pact of Paris, to an article incorporating the Pact in the Covenant. It would be at the meeting of the Assembly, however, that the various views on this point would be expressed and not in the Committee.

The CHAIRMAN said that the five States Members of the League which had not signed the Pact of Paris were the Argentine, Bolivia, Colombia, Salvador and Uruguay. They were all Latin-American States. Account must also be taken of the fact that two powerful States—the United States of America and Russia—were among those States which had signed the Pact, but which were not Members of the League. The question was not without importance in view of the fact that the Committee must bear in mind both the mutual obligations which the Pact of Paris imposed upon the various States which had signed it and the system of sanctions provided for in the Covenant of the League.

M. COT thought that one of the questions which the Committee would have to settle was that raised in the memorandum by the German Government, in which two methods of including the Pact of Paris in the Covenant of the League had been described. The first consisted in the adoption of the formula contained in the Pact of Paris and its insertion in the Covenant in the form of an Article 17*(a)*. The German Government had pointed out that it would be impossible to be content with such a solution. According to the terms of the Covenant of the League, war was still a licit operation. If, in an Article 17*(a)*, it were laid down that war was impossible, a fundamental contradiction between the various provisions of the Covenant would thus be created. In order to avoid this contradiction, the Committee must agree on a complete system of amendments to make effective the prohibition of war contained in the Pact of Paris. The Committee must therefore first make up its mind to reject the proposed Article 17*(a)*.

The CHAIRMAN referred to another difficulty. The Committee had no right to interpret the Pact of Paris. To make two matters agree, however, it was first of all necessary to discover what they meant. M. Cot had pointed out that the Pact of Paris made war impossible. Personally, the Chairman was not entirely of this view. He wished to be perfectly clear on this point. It had been said that defensive war was still possible. It must not, however, be forgotten that, so far as the belligerent States were concerned, all wars had been wars of defence. No State had ever wished to proclaim itself the aggressor. The first question to discover, therefore, was whether defensive war was admissible.

M. COT thought it was essential to state in the report that, if the Committee was called upon to interpret the Pact of Paris, it did not in the least intend that such an interpretation should be imposed on States not Members of the League. It was probable that, on certain points, the interpretation of the Pact of Paris would be necessary from the legal point of view, if the Committee was to carry out its duties.

Viscount CECIL OF CHELWOOD agreed that it was impossible for the Committee to interpret the Pact of Paris. Only the Permanent Court of International Justice could do so. The Committee could, however, make up its mind as to what it thought the meaning of the Pact of Paris to be, in order that it might be able to propose the necessary amendments for inclusion in the Covenant.

The third paragraph of the Assembly resolution seemed to Lord Cecil to simplify the Committee's work to a great extent. It read as follows :

" The Assembly. . . .

" Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above. "

It was the task of the Committee to discover what amendments must be made in the Covenant in order to remove the right to have recourse to war in cases in which that right had been renounced by the Pact of Paris.

The object was simple enough, though difficulties of drafting might arise. It was not for the Committee to decide what the Pact of Paris meant, but what rights to have recourse to war it had, in the Committee's opinion, withdrawn. When the Committee had made up its mind on this point it must frame the necessary amendments.

The CHAIRMAN recalled the difficulties in the midst of which the Covenant of the League of Nations had been drafted in Paris. The result of that work had been better than anyone could have hoped, precisely because the Covenant was very clear. He wondered whether the Committee was now called upon to perform a similar task.

Viscount CECIL OF CHELWOOD did not think that the right of self-defence would give rise to the difficulties feared. There was no exclusion of the right of defence in the Covenant. What the Covenant forbade was resort to war in certain conditions. It had always been assumed that if one country invaded another, the invading country was not resorting to war in resisting the invader. In the Covenant, machinery had been provided for ascertaining whether resort to war had taken place. In the Pact of Paris no such machinery existed. Neither by Articles 12, 15 or 16 of the Covenant was the right of self-defence withdrawn. All that the Covenant did was to forbid war. It was urged that it might be difficult to discover who had begun a war. That, indeed, had been one of the main objections of the critics of the Covenant. The answer to this, however, was that such a difficulty had never yet in practice arisen, because the Council had always found itself in the position to take various steps which made it plain which country was peaceably inclined and which was not. In practice, therefore, no real difficulty would arise under the Covenant.

He cordially agreed with the Chairman that this had been one of the many anxieties present in the minds of those who had framed the Covenant, but the right of self-defence had been retained in it, though the means of discovering whether that right must be exercised had not been defined, the authors having considered that the circumstances in each case would prove sufficient. That, indeed, seemed to Lord Cecil to be the only possible method which could be followed and he would be most reluctant to make any attempt to define the right of self-defence, for, in theory, this would be very difficult, though, in practice, no difficulties in actual fact arose.

M. UNDÉN recalled that, during the discussions in the Council on the problem with which the Committee was dealing, two opinions had been expressed with regard to its task.

Mr. Henderson had urged that the revision of the Covenant of the League should be confined only to amendments which were necessary in order to do away with the right to have recourse to war. He had added that he would be unable to accept any other modifications of the Covenant in its present form. On the other hand, M. Briand had said that the present Committee should be granted very wide terms of reference which would make it possible for it to study the question in great detail. In the view of M. Briand, the members of the Committee would be compelled to examine problems such as those which had already been placed before the Committee on Arbitration and Security. The German representative had expressed his agreement with M. Briand. These two opinions represented the two methods which might be applied in order to put the Covenant of the League into harmony with the Pact of Paris. Those two methods had been developed in a very interesting way in the German Government's reply.

There were two possibilities open to the Committee. One of them consisted in combining the contents of the provisions of the Covenant with those of the provisions of the Pact of Paris by applying to the latter the methods of execution provided for in the Covenant; this meant that a definition of illegal war would be included, following the example of the Treaty of Locarno, and that the system of sanctions would be broadened in order to include cases in which war broke out after the Council had failed in its efforts to suggest a unanimous solution. By proceeding in this way the Committee would not, however, have succeeded in completely harmonising the two international Pacts, for the Pact of Paris contained neither definitions nor sanctions. To make such amendments in the Covenant of the League would be to accentuate the difference between the two international instruments.

The League of Nations might think that the moment had come for it to proceed to a revision of the entire system of the Covenant. In that case, however, the motive of its resolution was not solely the desire to harmonise two international Pacts. Such a revision would require a long time and would affect a great number of problems which it would be extremely difficult and delicate to solve. These problems had already been examined during past years by other Committees.

The other alternative would be to make drafting amendments in the Covenant which would not lead to any change in the legal position resulting from the co-existence of the Covenant of the League and the Pact of Paris. The main object of this revision would be to emphasise in the Covenant the fact that the Members of the League condemned war and that they had made a declaration to that effect by signing the Pact of Paris. The provisions of the Pact on the one hand and the provisions of the Covenant concerning the peaceful settlement of disputes and the application of sanctions on the other would be unaffected.

An objection had been raised against this method of incorporating the Pact of Paris in the Covenant, namely, that, if this operation were carried out, two separate prohibitions of war would be found in the Covenant. In addition to the present stipulations of the Covenant—which were fairly definite and the violation of which would lead to sanctions—a general principle would also exist condemning all war, but it would not be guaranteed by the sanctions provided for in Article 16. This situation already existed and had been accepted at the moment when the Pact of Paris had been signed. It was clearly evident from previous discussions that intervention by the League had always been contemplated, even in cases of war, in which the application of the sanctions provided was not compulsory. The Members of the League had agreed to consider that the Council should intervene on the basis of Article 11 of the Covenant in cases when the sanctions provided for in Article 16 would not be applied. It had been recognised that action taken by the Council on this basis might still be very effective. The general condemnation of war contained in the Pact of Paris and transplanted into the Covenant would, therefore, to a certain extent be guaranteed by Article 11.

M. Cot recalled, as had already been pointed out by the Chairman, that the strength of the Covenant of the League lay precisely in its clearness. It also lay in the fact that the Covenant was a complete whole. If the various hypotheses which occurred in the life of nations were examined, it would be found that the solution of them all was to be found in the Covenant—recourse to arbitration, recourse to the Council, etc. In this complete system, which was coherent and organic and which was called the Covenant, war played its part and, in this connection, M. Cot would remind the Committee of the observations of Count Apponyi to the effect that war was a bad means, but nevertheless a means, of settling disputes between nations. For that reason it had been preserved by the terms of Article 15 of the Covenant. It was essential to mention in the report the principle that the Covenant of the League must comprise a complete system and, on this point, M. Cot could agree with the ideas expressed in the German memorandum.

Having decided to do away with war, it would be necessary to seek in the Covenant all cases in which war was considered to be legal and to declare that,in such cases,the Members of the League who had reserved for themselves the right to have recourse to war must renounce such a right. It had been objected that such a procedure would weaken the Covenant. It was certainly necessary to decide what should replace recourse to war which was removed from the Covenant. The Greek and German memoranda contained interesting ideas in this connection. The question of the application of decisions unanimously adopted by the Council would also arise, together with the further question of what would happen when the Council was not unanimous. For that reason the proposed system must be complete.

M. Cot hoped that the Committee would not return to the questions of sanctions and the Protocol. He thought, however, that, in cases where the Council had been unable itself to settle a dispute, it should take certain measures to ensure that this was done by arbitration or any other pacific procedure; otherwise, there was a risk that a system lacking in coherence might be established. On this point, M. Cot was in agreement with the German memorandum.

Though the idea of including an Article 17*(a)* must be rejected, for this would lead to contradictions in the system of the Covenant by permitting war in one case and prohibiting it in another, the Committee should not lose sight of the fact that the strength of the Covenant lay in its clearness and in the fact that it was an organic whole. The amendments must not therefore deprive the Covenant of this characteristic and, for that reason, the Committee would probably be led to make suggestions for replacing recourse to war.

M. Cornejo thought that the Covenant of the League owed its success not only to its clearness, but also to the fact that it contained rules of procedure and that its framers had been wise enough not to define merely the principles. In his view, it would not be difficult to harmonise the Covenant and the Pact of Paris. Up to the present the Covenant of the League had had, in certain cases, to leave the door open to war. It was this door which it was now desired to close. It was useless to define defensive war. What should be eliminated was the thing called war which was tacitly accepted as a method of regulating a dispute between two Powers. A defensive war was not a war. It was an act which was always legitimate in order to resist violence.

M. Ito noted that the discussion, while being of a general nature, also concerned the British amendment. In the Pact of Paris, war was renounced as an instrument of national policy. The British amendment, however, seemed to prohibit all wars. In interpreting the first article of the Pact of Paris it was necessary to decide whether or not all recourse to war was to be renounced. This was a question which must be settled before seeking to establish uniformity between the Covenant of the League and the Pact of Paris. The Assembly, in its resolution, seemed to desire that the Members of the League should no longer be recognised to possess the right of recourse to war. The Committee must therefore make up its mind whether the Pact of Paris implied the total renunciation of war or only its renunciation in certain cases.

The CHAIRMAN thought that the Pact of Paris implied the renunciation of war in all cases. It was true that Article II of that Pact referred to the renunciation of war as an instrument of policy. It was in this phrase that the mysterious nature of this Pact was revealed. It would not be difficult to harmonise the Covenant of the League with the Pact of Paris if the Committee knew exactly what the contents of the Pact of Paris meant. The number of States which had signed it seemed to him to show the differences of interpretation to which it could give rise.

Viscount CECIL OF CHELWOOD said it was clear from the discussion that it would be in the highest degree inconvenient not to publish the memoranda submitted by the Governments. Various references had been openly made to the memorandum submitted by the German Government, and there had been guarded references to the memoranda of other Governments. In those circumstances, he would venture to ask whether it would not be better to publish all the memoranda. He felt certain that no Government would have any objection. Such a course was logical, and if it were not followed, the Committee would appear to be anxious to conceal something, whereas in actual fact there was nothing to conceal.

M. SOKAL supported the proposal of Viscount Cecil. The Committee must use the proposals made by Governments. It would be difficult for it, therefore, to publish them without the commentaries attached to them. It was impossible to publish some of those observations and to exclude others. He, therefore, supported the proposal to publish all the documents submitted to the Committee.

The CHAIRMAN instructed the Secretariat to ask the Governments concerned for authority to publish their observations.

M. COT also thought it would be impossible not to publish the documents submitted to the Committee, in view of the fact that the Committee was sitting in public and that constant reference was made to these documents. It was obvious that the Governments would give the necessary authority for publication.

He asked if it would not be possible to publish the documents one by one as authority to do so was received from the Government concerned.

Viscount CECIL OF CHELWOOD doubted whether it was necessary to ask the permission of Governments before publishing their memoranda. Such a procedure would mean delay. If necessary, all that would be required would be to ask the various members of the Committee who were nationals of the Governments concerned whether in their view there would be any objection to publication. He felt sure that both in the case of the German and French memoranda Dr. von Bülow and M. Cot would reply in the negative. In view of the fact that the commentaries had been submitted merely with the object of explaining the views of the Governments which had presented them, there could be no possible objection to their publication. It would be better, therefore, to take the step boldly and to publish all the documents. If necessary, a civil note could be sent to the Governments in question explaining the reasons for the Committee's decision.

The Committee decided that the Governments should be asked whether they agreed to the publication of their observations regarding the British proposals for amending the Covenant.

SECOND MEETING

Held on Tuesday, February 25th, 1930, at 4 p.m.

Chairman : M. SCIALOJA.

5. Question of amending the Covenant of the League of Nations to bring it into Harmony with the Pact of Paris : General Discussion.

Dr. WOO KAISENG stated that the question of amending the Covenant of the League of Nations and of harmonising it with the Pact of Paris, which the Committee had been asked to consider in virtue of a resolution of the tenth Assembly, could be viewed from two different standpoints. It might be considered as a formal question concerning only the adjustment of certain articles of the Covenant, or as entailing the full and practical examination of its various aspects. He proposed to deal with the latter point of view.

Before dealing with the substance of the problem he wished to make a preliminary remark. The two Covenants proceeded from somewhat different conceptions. The Pact of Paris had in view the proclamation of a principle, while the Covenant of the League of Nations established a system. Could the principle and the system be reconciled? *De facto,* the two international agreements had in view the same end—the safeguarding of peace—and the Pact of Paris could, to some extent, be regarded as extending and completing the Covenant of the League of Nations. *De jure,* the question was debatable.

Article I of the Pact of Paris enunciated a general principle—the condemnation of the resort to war for the settlement of international disputes—and imposed on the contracting parties the obligation to renounce war as an instrument of national policy in their mutual relations.

Those two stipulations were, from a legal point of view, of unequal value. The first had a purely moral bearing; at the most it might create, in certain circumstances, moral obligations, such as intervention on the part of the contracting parties in order to prevent the breaking out of unarmed conflict, or in order to put an end to it. The second stipulation constituted, on the other hand, a genuine legal obligation. The States parties to the agreement formally undertook to outlaw war in their mutual relations and, as a logical consequence, acknowledged in Article II of the Pact of Paris that the settlement or solution of all disputes or conflicts, of whatever nature or origin, should only be sought by pacific means. Briefly, the Pact of Paris avowed certain principles while leaving entirely on one side the methods by which they were to be applied.

On the other hand, the Covenant of the League of Nations formed an organic whole—a system, if not perfect, at least logical—in which the ends were subordinated to the means. It was the constructive character of the Covenant which made its amendment difficult, for any partial modification might, unless care were taken, falsify the fundamental principles of the system and decrease its practical value.

The Covenant of the League did not absolutely exclude war as a legal possibility. It simply established a line of demarcation between lawful and unlawful war. Moreover, it laid down a certain number of authoritative rules, with the object of ensuring the maintenance of peace. The Pact of Paris was based on another idea : that of pure law—the outlawry of war, the solemn recognition of arbitration or some similar method for the pacific solution of conflicts.

The tendency of the present day was a desire to introduce into the Covenant of the League of Nations the principles authorised by the Pact of Paris, and the British delegation, supported by various other delegations, had asked at the last Assembly that a new examination of Articles 12, 13 and 15 of the Covenant of the League should be undertaken without delay. Sir Cecil Hurst had put forward suggestions which had received the approbation of the greater number of the States Members of the League of Nations and, in particular, of China, which had declared itself to be in agreement with them in principle.

As, however, Sir Cecil Hurst himself had recognised, his proposal for the revision of the Covenant had a very restricted bearing. Its sole object was to eliminate those provisions which were in too flagrant contradiction with the principle of the condemnation of war as a means of international policy. Would a revision of Articles 12, 13 and 15 of the Covenant in the direction suggested constitute, in the present case, an adequate solution ? Dr. Woo Kaiseng doubted it, and considered that prudence alone had prevented Sir Cecil Hurst from demanding a more extensive remodelling of the Covenant. Obviously, in undertaking an extensive revision of its provisions, there would be a risk of encountering difficulties of which Dr. Woo Kaiseng did not fail to recognise the importance. Would not, however, the balance of the Covenant, so necessary for its satisfactory working, be destroyed by an imperfect solution—that was to say, by broadening the aim of the League of Nations without touching the means ?

It was precisely in the adaptation of means to an end that the difficulty of the problem arose. Organisation and system, authority and justice : the League of Nations could not, without abandoning its fundamental principles remain passive in the face of the patent violation of a law. That was why the principle of the general prohibition of the resort to war could not be inserted in the Covenant of the League of Nations without drawing from it the necessary consequences; that was to say, without organising the prevention of war and without defining the adequate sanctions.

In the first place, it was more necessary than ever to endeavour to prevent conflicts by developing and setting out clearly the procedure for the pacific settlement of international disputes and by codifying, if possible, all the legal rules on that point.

Article II of the Pact of Paris said that the contracting States agreed "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be . . . shall never be sought except by pacific means". It would be natural to suppose that that obligation would find expression in the treaties of conciliation and arbitration concluded since the signature of the Pact of Paris. The position, however, was as follows : Out of 130 treaties of conciliation, arbitration and judicial settlement registered up to December 31st, 1929, by the Secretariat of the League of Nations, only seven were in conformity with the provisions of Article II of the Pact of Paris in submitting to arbitration or judicial settlement *all disputes of whatever nature*. Even taking into account the fact that out of those 130 treaties only 34 had come into existence during the year 1929, that was to say, after the conclusion of the Pact of Paris, it could not be denied that the development of the procedure for the pacific settlement of international disputes was slow. To that statement the objection might perhaps be raised that, up to December 31st, 1929, twenty-three States were bound by Article 36 of the Statute of the Permanent Court of International Justice; the reply to that objection was, however, that, under the terms of Article 36, the jurisdiction of the Court extended only to disputes of a juridical nature.

What of conflicts of a political nature ? The Covenant of the League of Nations laid down in Article 15 a special procedure which did not absolutely exclude resort to war. According to the established procedure, if the Council did not succeed in reaching a unanimous decision, "the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice"; resort to war was therefore possible.

Further, the Council could, on the request of one of the parties to the dispute, declare itself incompetent to decide the matter if it considered that the dispute arose out of a matter which,

by international law, was solely within the competence of that party. From the foregoing, it would appear : (1) that the entry into force of the Pact of Paris had not led to the development of compulsory arbitration; (2) that the insertion of the principles of the Pact into the Covenant of the League of Nations could not be conceived without its corollary : the establishment of a complete system of pacific settlement for international disputes.

Dr. Woo Kaiseng next turned to the no less important question of sanctions. The Pact of Paris had been defined as involving the outlawry of war. That was a pleasing formula, but it might lead to ambiguity for, as that eminent jurist, M. Scialoja, had observed : "To outlaw all crimes did not mean that they were not committed". If a legal rule were to be given its full value, it must have sanctions. It was not enough to decree that any particular act would henceforward be considered as a crime. Sanctions must be provided for the guilty party. The Pact of Paris was dumb on the question of sanctions and left it open to all the various hypothetical possibilities.

The Covenant, on the contrary, thanks to the sanctions provided in Article 16, offered to the Members of the League of Nations a general guarantee against the violation of the prohibition of war contained in Articles 12, 13 and 15. In order constructively to fuse the provisions of the Pact of Paris with those of the Covenant of the League of Nations, the field of application of the sanctions would have to be extended.

War, as such, being banished from international relations, the League of Nations would not need to define its nature before bringing the sanctions into operation. In other words, it was not necessary to know whether its causes were lawful or unlawful. It sufficed that war in fact existed. Given the right of self-defence, it only remained to determine which State was the aggressor.

In conclusion, Dr. Woo Kaiseng was of opinion that the Committee should endeavour to place in a state of equilibrium the two elements of the problem; on the one hand, the prohibition of the resort to war, and, on the other, the methods of realising it : compulsory arbitration and sanctions.

Dr. von Bülow understood that the Committee was about to enter into a debate on the separate amendments proposed by the various countries and the members of the Committee. He would have preferred to see develop out of the previous meeting a discussion of the general principles underlying any amendment of the Covenant. He shared the fears expressed by the Chairman that the same difficulties would crop up again and again with each separate amendment. It might be better to deal with them beforehand on general lines, partly in the sense explained by M. Cot, partly, perhaps, following the headings of the German memorandum : definition, organisation, sanctions. He would not oppose the method suggested, but would reserve his right to propose the other later, if satisfactory results were not obtained.

The task of the Committee had been made quite clear at the previous meeting. The Assembly had declared it to be desirable to attempt an assimilation of the two great Covenants. The Committee had been instructed, in the words of the Assembly resolution, "to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris". That, in his opinion, included not only the formulation of amendments but also the explanation of the juridical consequences of each amendment proposed or accepted by the Committee, and of the whole of the amendments, which could not fail to have a considerable influence on the character of the Covenant. The Assembly expected the Committee to explain the juridical side of those consequences; he quite agreed with the members of the Committee who had said that it could be left to the Assembly to draw its own conclusions as to the political consequences of any amendments that might be suggested.

The moment chosen for the work entrusted to the Committee was particularly opportune. The development of the international peace movement, as characterised by a great number of bilateral arbitration treaties, by the Locarno Treaties, by the work of the Committee on Arbitration and Security and by the Third Committee of the Assembly, had reached a certain culminating point in the Pact of Paris, which, he believed, more or less represented the present state of public opinion as regards the international organisation of peace. Dr. von Bülow also believed it to be true that the Covenant of the League of Nations did not exactly reflect the progress already made. At the same time, it could not be denied that in some respects the Covenant surpassed the Pact of Paris in that it established an organisation for the purpose of carrying out the principles of the League of Nations and prescribed a procedure for making them effective.

To combine the advantages of one and the other treaty was not as simple a matter as it might seem at first sight. Quite a few difficulties would arise from the discussions; one had already been touched upon in a fairly satisfactory way. He referred to the question of the interpretation of the Pact of Paris. Dr. von Bülow considered that the Committee could not avoid interpreting the Pact of Paris for its own purposes. In trying, however, to harmonise the two treaties, there could be no question of giving to the Pact any interpretation that would be equivalent to altering its sense. The Pact would always remain what it was, and the Committee could not, because of any difficulties in harmonising the two treaties, give it an interpretation that would make its own work easier. Whether or not the amendments to the Covenant which the Committee would propose to the Assembly would in any way change the character of the Pact of Paris was a very grave question, but one which could not be discussed for the moment, for the results of the Committee's work were not yet known. It would, however, be necessary, towards the end of the session, to examine the question thoroughly.

There were two matters of special importance in connection with the work of the Committee. Dr. von Bülow was glad to note that most of the Governments which had sent in observations

agreed on the necessity of distinguishing clearly between war as prohibited by Article I of the Pact of Paris and the collective action which might be necessary for the maintenance of international peace and order. He did not propose to go into that question, but would like to illustrate its importance by an example which, to his mind, showed that the British proposals were not in every way satisfactory or sufficient. Let it be supposed that, a political conflict having arisen between two countries, the Council had drawn up a unanimous report. On the basis of the present text of the Covenant, no collective action for making that decision effective was possible. After three months had elapsed, a country could, however, without violating the Covenant, take such measures as it thought fit and could even resort to war in order to enforce the award made in its favour by the Council. That possibility was equivalent to bringing pressure to bear on a State which should comply with the decision of the Council but might hesitate to do so. The British proposal, in removing the possibility of war, removed this pressure without placing any other means of coercion at the disposal of the Council. It would be dangerous to the authority of the Council and the interests of peace to deprive the Council of any means, direct or indirect, of enforcing a sentence given, or at least of inducing a State to comply with its decision.

The second point was of even greater importance. He referred to the connection or balance between the prohibition of war and the means for the peaceful settlement of disputes. Dr. von Bülow thought the Committee would agree that there was a sort of balance between the incomplete prohibition of war and the incomplete means of peaceful settlement appearing in the Covenant. This balance existed also, although in a somewhat different form, in the Pact of Paris, since the prohibition of war and the question of peaceful settlement were similarly dealt with on broad lines without detailed definition and without sanctions, although, from the juridical point of view, the contracting parties were bound by the provisions in the Pact dealing with these two ideas. In endeavouring to apply the methods of organisation of the Covenant to the principles of the Pact of Paris great care would be necessary to ensure that the structure of the Covenant of the League did not suffer and lose the natural inherent balance which it at present possessed.

One of the most difficult tasks would be to fill up the famous loophole left by paragraphs 6 and 7 of Article 15. Under the present wording of the Covenant, questions which could not be satisfactorily settled on the basis of existing rules and the interpretation of existing treaties could be dealt with by the Council under Article 15. That possibility should not be diminished or removed by any proposals for amending the Covenant.

The Committee should examine measures of coercion other than the resort to war. It would also be necessary to draw a line of distinction between isolated measures taken by a State in self-defence and sanctions which could only be applied by collective action on the part of the Members of the League of Nations. He would be glad to see discussed in that connection the question of strengthening the measures for the prevention of war.

Finally, he would suggest that the Committee should not tackle the problems before it in too formalistic a manner, but should consider the question in its totality. Otherwise, he was afraid it would be unable to do lasting work and to make such an exhaustive report as the Assembly doubtless expected. To attain its object the Committee would need to face the problem with all its juridical consequences.

Viscount Cecil of Chelwood was unfortunately unable entirely to agree with Dr. von Bülow's very interesting speech.

Dr. von Bülow had said that the Committee should, as it were, pass under general review the provisions of the Covenant affected by the Committee's discussions, and, in effect, rewrite them. Any enterprise of that kind was doomed to failure.

He would, as a matter of historical accuracy, venture to enter a protest against Dr. von Bülow's conception of the Covenant as a highly scientific document with balances of arbitration, prohibition of war and so on. He would very respectfully assure Dr. von Bülow that nothing could be less like the method by which the Covenant was constructed. The object had been simply to make some provision against war. As President Wilson had said, in a plenary meeting of the Conference, a foundation was being laid on which others would build. It was certainly never contemplated that a scientifically well-proportioned and well-balanced structure was being constructed.

Viscount Cecil ventured to hope that the Committee would proceed in the same spirit. The problem before it was not very complicated, though it was difficult. The Covenant permitted in certain cases what might be called, for the sake of clarity, private war; that was to say, war carried on by individual States or groups of States for their own purposes. The Pact of Paris forbade all such private war. The question was whether that provision of the Pact of Paris could be inserted into the Covenant, and, if so, what modifications would have to be made in the Covenant.

Viscount Cecil was confident that, in order to carry out its duty in a practical manner, the Committee should make as few and as modest amendments to the Covenant as possible. He based that opinion on the ground, not only of general principles, but also because he had in mind the history of the amendments to the Covenant. During its ten years of existence only one amendment of substance had been adopted—namely, that connected with contributions of Members of the League, which became absolutely essential because the method of levying the contributions was inconsistent with justice. Other amendments of substance had been proposed, but had not been accepted. In view of Article 26, amendments had no chance of acceptance unless they could command practically universal assent.

He hoped that the Committee would only suggest those amendments which were considered essential for carrying out its main object of harmonising the Covenant with the Pact of Paris. The only chance of doing useful work was to propose amendments which there was reason to believe would secure something like general assent. The only reason why it was hopeful to deal with the question at all was that the principles of the Pact of Paris had received practically general assent. The Committee had to endeavour to translate that general assent into amendments to the Covenant and not to insert into the latter any doubtful or unconsidered principle which had still to win its way to general acceptance. Amendments should strictly conform to the principles of the Pact of Paris, and in its desire for perfection the Committee should not try to finish off symmetrically any rough corners or edges still existing in the Covenant. It should simply add its contribution to what would ultimately grow, no doubt, to be a complete and final structure for the preservation of peace.

Viscount Cecil hoped Dr. von Bülow would forgive his saying that he took too ambitious a view of the functions of the Committee. The general discussion should not, in Viscount Cecil's view, be prolonged, but the Committee should proceed to consider, in a businesslike and prosaic manner, the actual wording of the various amendments that had been suggested.

Dr. VON BÜLOW wished to say a few words regarding the difference and concurrence of view between Lord Cecil and himself.

He wondered whether the idea of balance had always been quite understood. What he had had in mind was that there was no denying that certain possibilities of war were allowed by the Covenant. He could not, of course, explain what the authors of the Covenant had had in mind, but it seemed clear that they had left in it the possibility of war, because they had seen no means of introducing any other solution. The best known case was that of paragraph 7 of Article 15. If the Council did not reach a unanimous decision, there was no way, under the Covenant, of settling disputes except by reverting to Article 11. As there was no universal denunciation of war, there was no possibility of forbidding war. It was therefore allowed, as a last resort—under Article 15, paragraph 7—if the methods of the League of Nations were not successful. The loop-hole left in the article should be closed. What would happen when the Council reached no unanimous decision could not be left an open question. That was what he had meant in speaking of balance : it was not possible to forbid war, while at the same time leaving the question open, without the possibility of settlement. Some definite end must be foreseen for every dispute submitted to the Council or to the other organs of the League of Nations.

Dr. von Bülow agreed that it would be eminently desirable to introduce very small amendments into the Covenant, but would point out that the Assembly expected the Committee, and no other organ, to examine the matter in all its consequences. There was, in fact, no other organ of the League of Nations which would do so, unless by chance in the Assembly or one of its Committees some Member drew attention to a mistake or omission. He believed that the Assembly relied principally on the Committee to clear up and investigate all the consequences which any proposed amendment of the Covenant might have.

The CHAIRMAN suggested that the Committee should examine the amendments article by article. He wished first, however, to make some remarks of a general nature. He believed that the Covenant of the League of Nations could be reduced to two fundamental ideas. In the first place, for any difference between States there should be a judge, either an international tribunal or the Council of the League of Nations. Secondly, a judgment should be accompanied by sanctions. Those were not, in reality, very strong, but they could not be made stronger. The Pact of Paris involved neither judgment nor sanctions. That was the main difference between the two instruments.

The Chairman wondered whether, for the cases provided for in the Pact of Paris, in addition to those provided for in the Covenant of the League of Nations—for everyone said that the Pact of Paris went further—the Committee could set up judges and sanctions. Eight States signatories to the Pact of Paris had not signed the Covenant of the League of Nations, among them, two of the greatest States in the world. Those States would not recognise the decisions of the judges of the League of Nations. Thus, the Members of the League would be in a less favourable situation than the States non-Members. Not only would they run the risks of war, but those of a condemnation, and they would be subject to the sanctions of the League. That was the most serious aspect of the problem.

The Chairman was of opinion that the League of Nations could insert the Pact of Paris in the Covenant, but in the same poetic manner in which the former had been conceived. If two or more States were on the eve of war, they could be recommended to read the Pact of Paris, but beyond that what could be done ?

6. Examination of the Proposed Amendments to the Covenant of the League.

PREAMBLE.

Amendment proposed by the Swedish Government.

M. UNDÉN explained the meaning of his proposal, which consisted in inserting Articles I and II of the Pact of Paris in the Preamble of the Covenant of the League of Nations before the last paragraph.

[Distributed to the Council and the Members of the League.]

Official No.: **C. 160. M. 69.** 1930. V.
Addenda and Corrigenda

Geneva, August 23rd, 1930.

LEAGUE OF NATIONS

COMMITTEE FOR THE AMENDMENT OF THE COVENANT OF THE LEAGUE OF NATIONS IN ORDER TO BRING IT INTO HARMONY WITH THE PACT OF PARIS.

(Geneva, February 25th — March 5th, 1930.)

MINUTES.

Page 18, under " Preamble ", *instead of :*

" Amendment proposed by the Swedish Government ",

read :

" Amendment proposed by *M. Undén.* "

The amendment proposed to the Preamble by M. Undén formed part of a series of amendments by the same author. The text of these amendments is as follows :

PREAMBLE.

The High Contracting Parties,

In order to promote international co-operation and to achieve international peace and security . . . . . .

. . . . . .

in the dealing of organised peoples with one another,

Solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another,

Recognise that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means ; and

Agree to this Covenant of the League of Nations.

Article 12, Paragraph 1.

1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council. They further agree that they may not proceed to any act capable of aggravating or extending the dispute, either during any proceedings so commenced or, if the report of the Council should not secure the settlement of the dispute, during the three months following the report of the Council.

Article 13, Paragraph 4.

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

Article 15, Paragraph 6.

If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League agree to comply with the recommendations of the report. In the event of any failure to carry out such recommendations, the Council shall propose what steps should be taken to give effect thereto.

Article 15, Paragraph 7.

If the Council fails to reach, as regards the actual subject of the dispute, a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall, if necessary, propose provisional measures intended to safeguard peace. The parties have the obligation to comply with the Council's proposals if they are unanimously agreed to by the members of the Council other than the representatives of one or more of the parties to the dispute.

S. d. N. 850 (F.) 860 (A.) 9/30 — Imp. de la Tribune.

Viscount CECIL OF CHELWOOD observed that there was some difference between the French and English versions of the Preamble. Possibly the French version required amendment. He would have thought it better to leave the matter for the moment until it was seen how the substance of the Covenant would be amended. He was not sure that the amendments suggested did not cut down the obligation not to resort to war rather than emphasise it by giving specific cases of the general obligation already contained in the Preamble.

He would suggest that for the present the Preamble should be left as it stood in the English version, and the word "*ccrtaincs*" be struck out of the French version, in order to make it conform with the English.

M. COT did not think it was possible to translate the words "by the acceptance of obligations not to resort to war" by the words "*d'acccpter l'obligation de ne pas rccourir à la guerre*". Such a text would be equivalent to an absolute prohibition of a resort to war. The Covenant, however, reserved the question of defensive war. Why should not the existing position be left untouched? The articles of the Pact of Paris which M. Undén wished to add would define the obligations in question.

Viscount CECIL OF CHELWOOD had no objection to putting "*obligations*" in the singular, but he would prefer to omit "*ccrtaines*".

He did not consider that the amendments added anything to the obligation not to resort to war, and to include them without other alterations in the Covenant which might explain them, would reduce, instead of emphasise, the obligation not to resort to war.

M. CORNEJO said that the French translation was apparently correct in reading "*accepter certaines obligations*". This phrase was in complete accord with the spirit of the Covenant of the League which might be said to leave the door open to war. In English the plural gave the same impression. As it was now proposed to abolish recourse to war, it seemed to him that the Greek amendment on this point which ran: " . . . by the acceptance of the obligation not to resort to war for the settlement of international disputes", was perfectly clear and he would urge the Committee to accept it.

M. ITO said he could not accept the proposal of Lord Cecil which aimed at strengthening the obligation arising from the Preamble of the Covenant of the League. He could accept, however, the proposal of M. Undén to insert in the Preamble the first two articles of the Pact of Paris, and he could do that for two reasons. First, the Committee had been asked to put the two instruments into harmony. The Pact of Paris prohibited resort to war as an instrument of national policy. It did not prohibit all wars. It would be a different matter to replace the expression "*certaines obligations*" by the expression "*l'obligation*". This would be going further than the Pact of Paris itself and exceeding the instructions of the Committee. Secondly, the insertion of the two articles of the Pact of Paris would render clearer the intention which had given rise to the desire that the two instruments should be brought into harmony.

M. UNDÉN did not follow the argument of Lord Cecil to the effect that the Covenant of the League of Nations would he weakened by inserting the first two articles of the Pact of Paris in the Preamble. The Preamble contained only a consideration. The addition of two conclusions would not weaken that consideration, but would add to it two strictly defined obligations.

M. SOKAL did not think it was desirable to insert the two articles of the Pact of Paris in the Preamble, as this would create a lack of proportion between the two parts composing the Preamble. It seemed to him that the expression "*d'accepter l'obligation*" might be adopted. The objections raised to this change by M. Ito would perhaps be met if, in the text proposed by the Greek Government, the words of the Pact of Paris were textually inserted. In other words, if the obligation "never to resort to war as an instrument of national policy" were inserted.

The CHAIRMAN pointed out that M. Sokal had neglected to mention the second article of the Pact of Paris which was wider in scope than the first. If the Committee desired to fulfil its task it could not stop short at the first part of the Pact of Paris.

Viscount CECIL OF CHELWOOD still thought that the whole balance of the Preamble would be upset. He agreed with what M. Sokal had said as to the two additional paragraphs. The Preamble already stated that the object was to promote international co-operation and to achieve international peace and security, and added, further, that that was to be done by the acceptance of the obligation not to resort to war, which was solemnly condemned. Repetition of what had already been said would only complicate the matter.

He had no objection to the Greek proposal, if it met the views of his colleagues, nor had he any objection to the modification suggested by M. Sokal. It would, however, be a pity to go further, for to do so would be to make the mistake of proposing an amendment for which there was no strong reason.

Dr. WOO KAISENG approved the suppression of the word "*ccrtaincs*" before the word "*obligations*", which indicated that resort to war was possible. Further, according to Article II of the Pact of Paris the contracting Parties recognised that disputes of every kind must be settled by pacific means and that all possibility of war was excluded.

He considered the amendment of M. Undén to be both wise and helpful.

The CHAIRMAN noted that the Committee had before it two distinct proposals. The first was to insert the articles of the Pact of Paris in the Preamble of the Covenant of the League. The second was to modify the second paragraph of the Preamble of the Covenant of the League and to replace the expression *"d'accepter certaines obligations de ne pas recourir à la guerre"* by the expression *"d'acccpter l'obligation de ne pas recourir à la guerre"*, or by the expression *"de renoncer à la guerre"*, since a negative formula might be employed.

M. COBIÁN said he had been struck by what Lord Cecil had said regarding the necessity of not disturbing the balance of the Preamble of the Covenant of the League. He thought it extremely useful, however, to embody in the Preamble the principles of the Pact of Paris. For that reason he proposed to modify the Preamble as follows :

"In order to promote international co-operation and to achieve international peace and security :

"By the condemnation of resort to war for the solution of international disputes,

"By the renunciation of war as an instrument of national policy in their relations with one another,

"By the acceptance of the obligation to seek by pacific means for the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them,

"By the prescription of open, just and honourable relations, etc."

By the adoption of this text the balance was not disturbed and undue importance was not given to the Pact of Paris.

The CHAIRMAN pointed out that M. Cobián, by referring to the condemnation of resort to war in a sentence detached from the rest, was giving to that condemnation a greater emphasis than it had in the Pact of Paris. The Pact was abstract and in the nature of an aspiration. The Covenant of the League of Nations was a practical instrument; a law. If a condemnation were embodied in the Covenant it would immediately be asked what sanction should be attached to this condemnation.

Viscount CECIL OF CHELWOOD agreed with the Chairman. At the same time he would have thought it less likely, when all the nations had agreed not to use war as an instrument of national policy, that any very difficult case would arise under Article 11. In the event of war or a threat of war, one of the nations would have broken its obligation and the signature of the Pact of Paris would make it easier for the Council to apply Article 11.

Amendments proposed by the Greek Government.

The CHAIRMAN read the Greek amendments. The first had just been dealt with in connection with the Swedish amendment. The second was the addition of the words "or any act of violence" after the word "war". This point was somewhat questionable. Acts of violence were acts which a country committed previous to the deliberations with a view to the pacific settlement of a dispute. It followed that they could not be prevented; they could only be punished. Such acts were incidents of daily occurrence.

The Chairman proposed to adjourn the discussion of the amendments to the Preamble, until the Committee had discussed the amendments connected with the articles of the Covenant. He had in mind the Netherlands proposal which did not refer to any article in particular, and he thought that before discussing the amendment to Article 12 it would be wise to see whether any changes were required in Articles 10 and 11. The latter article had given rise to a number of comments and to different interpretations. Some held that if the aggression referred to in this article was of a very menacing character, the Council could order the States Members to intervene with their land and sea forces. Should the door be left open to this interpretation? The Chairman thought it his duty to put the question, although he personally would prefer to keep the present text.

ARTICLE 11.

The CHAIRMAN said that Article 11 was in accordance with the sense which it was desired to give to the Covenant as remodelled, but he wondered whether, in the event of a dispute occurring, the Members of the League would henceforth be entitled to intervene in a war between two non-Member countries. What, for instance, would happen in the case of a war between the United States of Ameica and the Union of Soviet Socialist Republics? Everyone knew the way in which the latter country had already replied to the League.

Viscount CECIL OF CHELWOOD was of the opinion that the Pact made no difference to the matter. Cases might arise—though he was not satisfied that as yet any such cases had arisen—where it would be impossible for the Council of the League to take useful action under Article 11, but the acceptance of the Pact of Paris did not make that possibility any more likely than it had been before.

The CHAIRMAN replied that the outcome would be to form a kind of league of all the signatories of the Pact of Paris and that when the Pact had been inserted in the Covenant, the Pact would have been accepted by the League itself.

Viscount CECIL OF CHELWOOD did not agree. He would be very astonished to hear that the Committee wished to suggest making the League of Nations, as such, a signatory to the Pact of Paris. The Committee was merely considering whether the obligations existing between States Members of the League of Nations required any modification by reason of the fact that

almost all of them had accepted a further obligation with reference to peace. It was further considering what modifications were required to make the two sets of obligations (those accepted under the Pact of Paris and those accepted under the Covenant of the League of Nations) conform with one another, in order not to have two separate—he would not say inconsistent, but not identical—sets of international obligations. He did not follow the intention of the suggestion that to insert the Pact of Paris in the Covenant was to make the League of Nations a signatory to it.

The CHAIRMAN replied that when the Committee had finished its work the Pact of Paris would figure more or less in the Covenant of the League, and thus the spirit of the Pact would become common to the signatories of the Covenant. The League would become a sort of executive organ for the Pact of Paris; it would give to it something which it did not possess at present and which would not, moreover, be applicable to all the signatories of the Pact.

M. UNDÉN said that if the stipulations of the Pact of Paris were inserted in the Covenant, they must be interpreted in the light of the Preamble of the Pact. The signatories of the Pact of Paris which did not conform to it would be deprived of the benefits resulting from it.

The CHAIRMAN pointed out that these benefits were illusory, since they only tended to ensure peace. The question under consideration, on the other hand, was that of people wishing to make war.

M. UNDÉN replied that the third parties would, in that case, be free to ally themselves to the victims of the aggression.

The CHAIRMAN replied that this would be tantamount to provoking a universal war. That was clearly a very radical way of intervening.

M. CORNEJO observed that mention was often made of introducing the provisions of the Pact of Paris into the Covenant of the League. This idea, and the terms in which it was expressed, were inexact. He held that, in actual fact, the introduction in question existed at present, since fifty countries had signed both instruments and it was for this very reason that the Assembly had desired to bring the Covenant of the League into harmony with the Pact of Paris which had already been signed.

He recalled that it had also been said that the States which had signed the Covenant would be in a position of inferiority as compared with the States which had not signed it. This, too, was inaccurate. Article 16 included very effective sanctions against States which, not being Members of the League of Nations might have committed an act of war against the Members of the League. These sanctions, such as the rupture of commercial and financial relations, were effective. As the Union of Soviet Socialist Republics had already been taken as an example, it might be said that, even as regards that country, these sanctions would be comparatively serious.

ARTICLE 12.

Viscount CECIL OF CHELWOOD said that the British amendment was no doubt familiar to his colleagues, as it had been moved by Sir Cecil Hurst during the tenth Assembly and discussed in the First Committee. Its only purpose was to omit the following phrase at the end of the first paragraph :

> " . . . and they agree in no case to resort to war until three months after the award by the arbitrators, *or the judicial decision,* or the report by the Council. "

It was evident that, if resort to war was on no account to be contemplated, it was neither necessary nor right to say that there should be no resort to war until after a certain period.

The Greek Government had proposed a slight drafting alteration to the British amendment, and he was bound to say that he himself preferred the Greek to the British draft, which really only differed from it in that it put more emphasis on the obligation not to resort to war for the settlement of a dispute. If the Committee had no objection, he would like to move the sense of the British amendment in the form given to it by the Greek Government which was as follows :

> " The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, *they will in no case resort to war for the settlement of the dispute.* They undertake to submit the dispute either to arbitration or judicial settlement or to enquiry by the Council. "

The CHAIRMAN preferred the British Government's formula. It was obvious that when a dispute arose, an attempt was made to decide which side was right, whether there was any wish to intervene or not. The dispute would therefore be first submitted to the Council; even if this procedure did not succeed, the engagement not to resort to war would remain.

M. UNDÉN reminded the Committee that he had made a proposal in connection with this article. He had had a twofold object in view.

He wished to keep, so far as possible, the present text, in order to avoid changing the relation between Articles 12 and 16. The adoption of the British amendment would at the same time involve prescribing the obligatory sanctions in all cases. If an arbitral award had been made in favour of a country and that country resorted to war, it would be exposing itself to certain sanctions under Article 16. If, therefore, the Council could not come to a unanimous decision, the sanctions in Article 16 would come into operation automatically. It would be unwise to

extend the obligatory sanctions to cases in which there had been no arbitrary award or unanimous proposal on the part of the Council, Since, in the latter case, there was considerable risk that the Council would not succeed in obtaining an agreement on the determination of the aggressor, the countries would perhaps divide into two camps and the war which would break out would be a war of the old type.

It was of course understood that the Council must intervene in order to endeavour to stop hostilities. It might take action under Article 11, but it would be inexpedient to impose on countries the obligation to take part in the sanctions. M. Undén had preserved the present terms with the interval of three months following the report of the Council, during which time the Power which had recourse to arms would expose itself to the sanctions. After the expiration of this time-limit the automatic sanctions would cease to operate.

M. Undén's second idea was to introduce at this point an idea which now appeared in certain arbitration treaties and in the Locarno Treaty, namely, that the contracting parties must not commit any act which was likely to aggravate the situation either during the conciliation procedure or during a certain specified period following the close of the attempts at conciliation.

The amendment proposed by M. Undén read as follows :

> "The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council. They further agree that they may not proceed to any act capable of aggravating or extending the dispute, either during any proceedings so commenced or, if the report of the Council should not secure the settlement of the dispute, during the three months following the report of the Council."

The CHAIRMAN pointed out that as these provisions did not figure either in the Covenant of the League or in the Pact of Paris, M. Undén was going beyond the Committee's terms of reference.

M. UNDÉN recognised that his proposal was an innovation, but he thought that the Committee should take into account the problems which had been referred to the Committee on Arbitration and Security, and which appeared in what was called the German proposal, since they were closely bound up with the problems which the Pact of Paris was intended to solve.

M. COT shared the opinion of Lord Cecil. He thought that the Greek text was preferable and more logical in order. It would first be desirable to prohibit recourse to war and then conclude by indicating the procedure resulting from that undertaking. There was, however, more than this. The text proposed by the British Government was somewhat categorical, for it excluded resort to war in all cases. The question of a defensive war, which hitherto had always been held to be legitimate, must however be reserved. It would also be necessary to reserve, in M. Cot's view, the enforcement of arbitral awards, which it would be better not to describe as war but, for instance, international police measures.

Finally, the present Committee was not the Committee on Arbitration and Security. That was the best possible reply which could be given to M. Undén. If the Committee on Arbitration took decisions which would make it possible to submit to the Assembly further proposals for amendments, there would always be time enough to consider the matter when that occurred. It was useless to complicate in this way the task of the present Committee.

Viscount CECIL OF CHELWOOD observed that M. Undén had raised two points which were quite separate.

The first, with which M. Cot had just dealt, was whether or not the words ". . . any act capable of aggravating or extending the dispute" should be included. He agreed with M. Cot that it was dangerous to try, in a short formula, to express an opinion as to the obligations of countries parties to a dispute. The matter would have to be discussed in considerable detail in connection with what had been called the German proposal, and it had already been discussed with considerable vigour at the previous Assembly. Everyone was not agreed as to what was wanted, though everyone wanted to do something.

He was afraid that the Committee on Arbitration and Security would find its task still more complicated if the present Committee laid down principles for the amendment of the Covenant which might or might not conflict with the decisions of the Committee on Arbitration and Security. He hoped, therefore, that M. Undén would not press that part of his proposal.

The second point was more important. M. Undén objected to inserting in the article the unrestricted obligation not to resort to war, because that would imply the application to that general obligation of the sanctions provided in Article 16, and it would become the duty of the Members of the League to proceed, if necessary, to the various steps indicated in Article 16 should any country resort to war for reasons other than self-defence or in execution of the obligations of the Covenant.

Viscount Cecil agreed that, sooner or later, this aspect of the matter would have to be discussed very carefully. A most serious question was how far, and in what circumstances, the sanctions of Article 16 could be applied to the Pact of Paris, but that point did not arise at present. For the moment, the Committee had merely to consider the obligations of countries in regard to war as a settlement of international disputes. Hitherto, Article 12 had laid down that resort should not be had to war until after the matter had been submitted to arbitration. In whatever form the Pact of Paris was inserted in the Covenant, it must be made a general obligation on the Members of the League not to resort to war in any circumstances. He would venture to submit that if M. Undén's proposals with regard to the Preamble were accepted, there would be a gross

contradiction in saying in Article 12 that war might not be resorted to, *except under certain conditions*. The question of sanctions, which was a separate matter, could be dealt with later, but Article 12 should contain an absolute and unqualified prohibition.

Viscount Cecil did not wish in any way to anticipate the discussion, but if the Committee accepted M. Undén's proposal it would be tying its hands once and for all in regard to any further discussion of the question. He still preferred the Greek proposal, but hoped that either that or the British draft would be accepted.

M. Undén drew attention to the fact that acceptance of the British amendment would be prejudicial to the question of sanctions, since Article 16 applied to all the cases covered by Article 12. He did not propose a prohibition of war in Article 12, but wished to see the text of the article drafted in a slightly different manner.

The Chairman pointed out that the Committee could always return to an article that had been passed at the first reading.

M. Cornejo drew attention to a discrepancy between the Greek and the British amendments. The Greek amendment was more logical, but the British amendment more complete. The idea of Article 12 of the Covenant was to allow war in certain cases. Recourse should only be had to war after application had been made to the Council and after every other means of peaceful solution had been exhausted. If it had been desired by the Covenant of the League of Nations to condemn war the text would have stated, as the Greek amendment did, that war was forbidden, and it would have passed later to the means for conciliation. It was the solution contained in the Greek amendment which admitted of no recourse to war.

Further, it should be borne in mind that certain countries had had recourse to war, even after the differences existing between them had been settled. A country might consider itself slighted by the manner in which its opponent had viewed the question. There was a striking example in the Franco-Prussian war of 1870 : the question of the succession to the Spanish throne had been settled, and Prussia had agreed not to support the Hohenzollern candidate, when war suddenly broke out. That showed that war was not always caused by differences. Such were the reasons which led M. Cornejo to approve of the British amendment which did away with all recourse to war.

Viscount Cecil of Chelwood thought that M. Cornejo had misunderstood the British proposal. According to the ordinary English rules of construction, it could only be taken to refer to resort to war about the particular dispute in question and no other. The Greek draft made the proposal more clear without changing its sense. He did not propose to go into the historical question raised, though he was not sure that he would agree with M. Cornejo as to the actual facts, but in any case a country did not go to war unless there had been a dispute.

The continuation of the discussion was adjourned to the next meeting.

THIRD MEETING

Held on Wednesday, February 26th, 1930, at 10.30 a.m.

Chairman : M. Scialoja.

7. Examination of the Proposed Amendments to the Covenant of the League (continuation).

Article 12 *(continuation)*.

The Chairman wondered whether, as a result of the amendment made in the first paragraph, it would not be advisable to delete paragraph 2 of Article 12 of the Covenant which was to the following effect :

> " In any case, under this article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute. "

He pointed out that the expression " reasonable time "contemplated for the promulgation of the decision might be admitted when it was a question of a decision by the Council or of an arbitral award. If, however, the procedure of judicial decision were adopted, the procedure could only be that of the Permanent Court of International Justice and it seemed difficult to fix a period of delay for the Court.

Though it was possible with the former system to impose on States, after a decision had been taken, a period of delay of three months, before having recourse to war, it was impossible to do this with the new wording of the first paragraph of Article 12. It might be that the Court, as had several times occurred, would only promulgate its decision after a fairly long period of time had elapsed, without the rights of the parties being affected.

Viscount CECIL OF CHELWOOD said that no definite time-limit was laid down in paragraph 2 of Article 12 in regard to the award of the arbitrators or the judicial decision. All that was stipulated was that they should be promulgated within a reasonable period. Only the report of the Council had to be made within six months after the submission of the dispute.

M. COBIÁN thought that the Committee should only make such amendments in the Covenant as were strictly necessary to bring it into harmony with the Pact of Paris. He asked the Committee, therefore, seriously to reflect on the proposal put forward by the Chairman to delete paragraph 2 of Article 12. The period provided in that paragraph referred, as Lord Cecil had pointed out, only to the decision of the Council. He thought that it should be maintained. Paragraph 2 of Article 12, moreover, contained little more than a recommendation. The decision must be rendered within a reasonable period, that was to say, a period more or less long according to the case in point. The arbitrators or judges must be allowed complete freedom to formulate their decision.

Dr. WOO KAISENG agreed with the Chairman that the expression "reasonable time" contained in paragraph 2 of Article 12 was too vague. It was usual always to fix definitely the length of the period and the Chinese Government in its observations had expressed the view that the award for which provision was made in paragraph 2 of Article 12 ought to be promulgated within a fixed period. Personally, he thought that the moment had now come to amend the Covenant on this point. The word "reasonable" gave rise to dispute and it would therefore be preferable to fix a definite length of time for the period in question.

M. SOKAL was under the impression that the Committee had not reached a final resolution in regard to the first paragraph of Article 12.

As far as the second paragraph was concerned, he agreed with the views of M. Cobián. Only the minimum number of amendments should be inserted in the Covenant. When Article 12 had been revised and the element of judicial decision introduced into it, it had not been thought good to amend the text of paragraph 2. There was no reason, in his view, to amend it in the present case.

M. COT, in reply to Dr. Woo Kaiseng, pointed out how difficult it would be to fix a definite period which could be described as reasonable. The periods varied considerably according to the disputes and conflicts. It would therefore be necessary to adopt the maximum period as the minimum period and this might reach wholly unjustifiable proportions in certain cases.

In support of the observations of Lord Cecil and M. Sokal, he pointed out that it was not the Committee's duty to amend the entire Covenant but to find in its text those provisions which were not in agreement with the Pact of Paris and to try to bring them into harmony with it. Whatever might be the actual wording of Article 12 the Committee should confine itself to ascertaining whether its provisions contradicted those of the Pact of Paris. If the Committee went further it would be exceeding its terms of reference. If it attempted to improve all the provisions of the Covenant, the Committee might have to sit for many months.

The CHAIRMAN explained the reasons why he had proposed the deletion of the second paragraph of Article 12. The provisions of that paragraph logically depended on the contents of the final sentence of paragraph 1. At the end of Article 12, however, the phrase "three months after the award by the arbitrators or the judicial decision or the report by the Council" had been removed. In view of the fact that the first period had been removed there was no reason for not removing the second.

Viscount CECIL OF CHELWOOD thought it better to finish with paragraph 1 of Article 12 before dealing with paragraph 2. The Committee had to choose between the British and Greek amendments. Viscount Cecil proposed the adoption of the former mainly because it involved the least change in the wording of the Covenant. He agreed with the views of the Chairman and M. Cot that the principle to be followed by the Committee should be to make as little change as possible in the Covenant. Therefore, though he preferred the wording of the Greek amendment, he would urge the adoption of the British with the addition of the words "for the settlement of the dispute".

M. COT agreed to this addition.

M. UNDÉN desired explanations in regard to the scope of the British amendment. If the total prohibition of war was introduced into the Covenant, must provision be made for exceptions as had been done, for example, in the case of the Rhineland Pact? Were defensive war, the sanctions imposed by virtue of Article 16, and the collective and individual measures of execution authorised by the Council and the Assembly to be considered as exceptions?

If the British amendment were adopted, what would be the consequence as regards a war of individual execution undertaken without the authority of the Council? In the event of the Council being unable to agree on a recommendation which would ensure the execution of an arbitral award, the party which had won might undertake individual acts of war in order to ensure the carrying out of the sentence. Would not such a war call for sanctions against the State which had resort to it?

Further, M. Undén wondered whether the prohibition of war, in the terms of the British amendment, was compatible with the special provisions in certain treaties which laid down that a particular act, though similar to an act of war, should not be considered as such, or whether, on the other hand, a certain attitude might be regarded as an act of war without constituting in reality a hostile act? Such provisions were to be found, for example, in the Locarno agreements.

Viscount CECIL OF CHELWOOD desired to reply to the interesting points raised by M. Undén. In the first place, under the Covenant, recourse to war was forbidden except in certain conditions. It had never been suggested that that prohibition removed the right of self-defence. If one country went to war against another, the Covenant was broken, and it was the right and duty of the country attacked to defend itself. That country was in those circumstances resisting the resort to war on the part of the attacking country. The principle was in fact the same as that in private law, whereby an individual, if attacked by another, had the right to defend himself. The British proposal maintained that principle as it stood.

In the second place, Lord Cecil would answer in the negative the question whether collective action on the part of States to enforce the Covenant involved recourse to war. Such action would be confined to the settlement of a dispute between two countries. War could still in such circumstances be used for police purposes. He would point out, however, that all these difficulties still existed under the present wording of the Covenant. The British proposal made no change except that it enlarged the time-limit. It did not change the system of the Covenant.

Lastly, M. Undén had raised the case in which a decision adopted either unanimously or by a majority had been given in favour of one party to a dispute. In such a case would action to enforce that decision be regarded as a resort to war ? Lord Cecil would reply in the affirmative, in the sense that the State in whose favour the decision had been given would not be able, as a private right, to have recourse to war in order to enforce that decision. Provisions might have to be inserted, probably in Article 15, making it possible for the Council to take action in such circumstances. That was a matter which required the greatest care and the closest consideration. In passing, he would maintain that the amendment would not affect the Locarno and Rhineland Pacts.

The real point was whether the world had now reached such a stage of development as to make it possible to establish among nations the broad principle that no State, just as no individual, could any longer take the law into its own hands. No longer should it be permissible for a State to seek to remedy the injustices from which it was suffering by employing means forbidden by the laws of the society to which it belonged.

Before the creation of the League, a nation could seek to right a wrong by its own strength. That rule had been vitally modified by the Covenant, which laid down that there should be no recourse to war until every other solution had been tried. Would it now be possible to go further and include in the Covenant the provisions of the Pact of Paris which prohibited all recourse to war as an act of national policy. States must in future wait for the collective action of all countries. The Pact of Paris had made a vital difference in the international situation because the right of private war had been removed. The question now was whether the Covenant should not be amended so as to make it clear that the right of private war had been taken away.

M. CORNEJO thought that the idea of war was so rooted in mankind and in the mentality of diplomatists and lawyers that in the interpretation of all covenants—in that of the Covenant of the League as well as that of the Pact of Paris—there was to be found the unconquerable fear of being compelled frankly to shut the door on war. The whole world seemed to fear the final elimination of the sacred right of war. The belief appeared general that war must necessarily come some day, and when the text of a treaty was discussed there was hesitation in accepting a word which, put in its proper place, could, in itself alone, sometimes suffice to prevent war. Obviously, every State would always keep its right to legitimate self-defence, but this right to defend itself did not render impossible the absolute condemnation of war.

If the notion of war were analysed, it would be found that, in addition to the evils which it brought in its train, it had the disadvantage, as a solution, of not being available for all. Recourse to war was the privilege of the strong but not of the weak, and for that reason M. Cornejo thought that the Committee should not fear, when amending the Covenant, to shut the door completely upon war, while maintaining the principle of the right to legitimate self-defence, because war was not, as it was claimed to be, a solution.

During the discussions which had taken place on the previous day regarding the first paragraph of Article 12, M. Cornejo had, in the first place, been influenced by the logical nature of the Greek amendment. He had subsequently perceived that the British amendment was more absolute in its condemnation of war and he was happy to note that Lord Cecil intended to maintain this form of words, though M. Cornejo regretted that he wished to add the words "for the settlement of the dispute". Personally, he thought they were unnecessary.

M. Cornejo had explained at the previous meeting that a dispute between two countries might be due to distant causes. When, however, the question of the solution of the conflict was raised, there was a risk that reference would be made only to the immediate causes of the dispute. It would be an error to think that self-interest was always the cause of war. There existed what he might call a war psychology originating in pride, national prestige, etc. History showed that wars undertaken not for reasons of self-interest, but because of susceptibilities, were not rare. For that reason, when mention was made of the causes of a dispute these should comprise, not only the material and immediate causes, but also the distant causes which also entered into the field of national policy. The Committee should not be frightened of adopting definite formulæ which should, once and for all, shut the door upon war.

In so far as the second paragraph of Article 12 was concerned, M. Cornejo was of the opinion that the Chairman's arguments were justified. The second paragraph was the logical consequence of the first paragraph, in which provision was made for a period to elapse before a legitimate war could be begun. That period was "three months after the award by the arbitrators, or the judicial decision, or the report by the Council". It was natural therefore that, in paragraph 2,

a reasonable time should be fixed for the promulgation of the arbitral award and six months for the establishment of the Council's report.

Those who had framed the Covenant of the League of Nations had been persuaded of the legitimate nature of war and they had, in consequence, been logical in fixing a period of time after which an appeal to this legitimate measure could be made. The Pact of Paris, however had radically changed the situation and had removed the reasons for authorising recourse to war. It followed, therefore, that a reasonable time and the period of six months were useless. To maintain the word " reasonable " in order to qualify a period could not be admitted, for all time-limits were, in principle, reasonable. If, for example, the Permanent Court of International Justice were given an unlimited period in which to promulgate its award, why was it necessary to limit the period allowed to the Council for the same purpose ? He thought that the Council, too, had the right to benefit from a reasonable period.

Experience showed, moreover, that, in disputes between individuals and especially between bodies of individuals, no better judge than time existed. How many disputes had been settled thanks to the time-factor. Peoples became much agitated over a particular question and showed themselves ready to attack each other out of national pride. To seek a rapid solution for their dispute was pure madness. What was essential was to gain time. It was better, therefore, to postpone the solution and to avoid, in formulating the award, any occasion for wounding one or other party. In his view, to gain time was the most effective part of the Council's task in such cases, and no limit should be fixed to the period granted to the Council in which it would promulgate its decision. To maintain that that period of time should be reasonable amounted, in actual fact, to giving no instructions whatever in regard to it. M. Cornejo urged that the Committee should not hesitate, when drafting the article, to introduce a definite provision which would remove the dangers of war by allowing the Council to wait until national passions had been allayed.

M. Ito agreed with the draft proposed by Lord Cecil for the first paragraph of Article 12. The final draft which he had proposed fully corresponded to Article 1 of the Pact of Paris. He would, however, draw attention to a difficulty of a legal kind. He explained that he raised it solely on legal grounds.

Lord Cecil had pointed out that the consequence of amending the Covenant would be that, in future, there would be no more war. He had, however, admitted that war for self-defence was legitimate and would continue to subsist side by side with the Pact of Paris and the Covenant of the League of Nations. It was here, however, that a legal difficulty arose. Formerly, war had been regarded as legitimate and was governed by certain rules. In future a country which was attacked might offer resistance to violence and in this it would be acting in legitimate self-defence. There was a great difference from the legal point of view. Formerly, once the period laid down had elapsed, licit collision between the two countries occurred.

If the proposed amendments to the Covenant were adopted, acts of violence or hostility would no longer be acts of war. Hostilities, however, had formerly been conducted under the laws of war. The *jus belli* had been adopted for reasons of humanity. This right no longer applied to acts of violence committed in self-defence and the legal consequence of the amendment of the Covenant would be that since war was no longer legal the *jus belli* would no longer exist, and the possibility of those barbarous acts which it had been sought to reduce to a minimum would have to be admitted. This was a legal consequence which M. Ito considered to have a certain importance and in regard to which it would be good to draw attention in the Committee's report.

M. Cot found the views of M. Ito of particular interest. Personally, he agreed with the new draft proposed by Lord Cecil, because he considered that it had great advantages over the former wording which M. Cornejo desired to see adopted. The new draft, in the view of M. Cot, possessed the advantage of giving a reply to the questions raised by M. Undén. The right to wage a defensive war was maintained as well as the reservations in the Locarno Pact. The signatories of the Covenant of the League would not abandon the principle under which coercive measures could be taken on the decision of the Council, nor any of the rights they had reserved when signing the Pact of Paris.

A question, however, arose in connection with the amendment of Article 12. Was it necessary to incorporate the Pact of Paris itself in the Covenant of the League? M. Cot did not think so. He did not share the scepticism of M. Cornejo with regard to the Pact of Paris. On the contrary, that Pact was a great step forward in the field of international law and it would be a starting-point for still more considerable progress. The Pact was sufficiently strong to be able to do without the increase in its authority which would accrue to it by its inclusion in the Covenant of the League. Moreover, the fact that the United States of America did not belong to the League should prevent any desire to incorporate in its entirety the Pact of Paris in the Covenant of the League.

What then was the Committee's task ? Its duty was to take all the texts of the Covenant of the League and to discover whether in any of them was to be found any contradiction to the text of the Pact of Paris. If there were a contradiction, means must be found to remove it.

Article 12 covered a well-defined case, that of a dispute which had broken out between two countries Members of the League. The article contained a number of provisions which were seemingly incompatible with those of the Pact of Paris. It was the Committee's duty to remove these incompatibilities and, in this, M. Cot agreed with Lord Cecil and maintained that the Members of the League, in such a case, would renounce recourse to war for the settlement of their disputes. In consequence, within the limits of the cases covered by Article 12, recourse to war had now been removed. Personally, he preferred this form of the condemnation of war, which was limited to the cases covered by a special article, to the wider formula which M. Cornejo proposed and which M. Cot considered to be somewhat too general.

He was therefore in favour of maintaining the text of Article 12, with the amendment proposed by Lord Cecil and of stating that, in the cases covered by that article, recourse to war was removed and that Article 12 itself provided the necessary procedure to which a State would be required to submit.

M. SOKAL noted that the Committee was agreed to limit the amendments to the strict minimum. Two amendments, a British and a Greek, had been submitted for Article 12. M. Undén had also put forward a number of questions. M. Sokal thought that the replies given had been sufficiently complete to enable him to refrain from intervening in the discussion of these very important questions.

In amending the Covenant of the League it should not be forgotten that it was impossible to do less than had been done by the Pact of Paris, but at the same time it was impossible to do more. Article 12 could be amended in order to bring it into harmony with the Pact of Paris and the passage under discussion could be deleted. Personally, however, he saw no very great difference between the Greek and the British proposals with the addition just made by Lord Cecil.

In M. Sokal's view, in accepting the proposal of Lord Cecil the Committee would keep within the terms of the Pact of Paris and the interpretations of that Pact as communicated by Governments. In the letters from Governments, published in support of the Pact of Paris, all the necessary explanations were to be found. A letter from M. Briand, for example, contained the following declarations :

. . . . . .

"Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defence. Each nation in this respect will always remain free to defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defence.

"Secondly, none of the provisions of the new treaty is in opposition to the provisions of the Covenant of the League of Nations nor with those of the Locarno treaties or the treaties of neutrality.

"Thanks to the clarification given by the new preamble and thanks, moreover, to the interpretations given to the treaty, the Government of the Republic congratulates itself that the new convention is compatible with the obligations of existing treaties to which France is otherwise a contracting party. . . ."

M. Sokal thought that this constituted a reply to the legitimate fears expressed by M. Undén. Further, taking the view that certain questions raised would be more easily discussed in connection with the following articles, he agreed with the interpretation given by Lord Cecil and, basing his attitude on the interpretations of the Pact of Paris which he had just read, he was therefore in favour of the British amendment.

Dr. VON BÜLOW agreed with the new form of the British amendment as suggested by Lord Cecil. The original wording had, he thought, been a little inappropriate since the layman, on reading the first paragraph, might conclude from it that Article 12 went further than the Pact of Paris, in which war was renounced as a national policy, but not in all cases. He hoped that all the members of the Committee could accept the amendment proposed by Lord Cecil. If, however, that were not the case, Dr. von Bülow would prefer the proposal submitted by the Greek Government. Further, he recalled that the Greek Government had suggested the inclusion of a definition of war, and had added that the words "or any act of violence" should be inserted in the article. These words had, however, not been regarded by the Committee as appropriate. Nevertheless, the same idea occurred in the Danish and Finnish proposals.

Dr. von Bülow agreed with the Chairman in thinking that it would be going beyond the Committee's terms of reference to insert a definition of the term "war" in Article 12. To define war, as experience had shown, would be of great value, but the difficulties were considerable. Quite recently, hundreds of persons had been killed and towns bombarded, though such action had not been defined as war. In former days the Hague Conventions had decreed that a formal declaration of war was necessary before a state of war could be said to exist. In all probability such declarations would never be made in future.

His conclusion, therefore, was that the idea expressed by the Greek Government and others should be considered, but solely in connection with the Pact of Paris, more particularly with the last line of Article II, which stated that the "solution of all disputes . . . shall never be sought *except by pacific means*". This phrase was not to be found in the Covenant, and should, he thought, be inserted in Article 12. For that purpose, therefore, he would venture to suggest the following amendment :

"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will in no case resort to war for the enforcement of their claims. They undertake only to seek the settlement of the dispute by pacific means and, with this object, to submit the dispute either to arbitration, or judicial settlement, or to examination by the Council."

In so far as paragraph 2 of Article 12 was concerned, it would be a pity, he thought, to delete it, though those members of the Committee who had proposed that course were acting logically in view of the fact that the final sentence of paragraph 1, upon which paragraph 2 depended, had been struck out. If, however, paragraph 2 were retained in the article, it must be carefully explained in the report that its nature was changed in view of the changes made in paragraph 1.

M. Undén thanked Lord Cecil for the reply which he had given to his questions and said that he agreed in principle with him. He thought, however, that the wording of the amendment was not entirely satisfactory. The phrase used was, in fact, not the same as that used in the Treaty of Locarno or that in the Pact of Paris, in which the expression "war as an instrument of national policy" was used.

He stated, moreover, that he maintained his reservation in regard to the consequences of the British amendment in so far as sanctions were concerned.

If the British proposal were adopted, he thought that it might be necessary to refer to the other articles of the Covenant dealing with common action, for example, the Finnish proposal (document C.A.P.P.5). Despite the prohibition of war now pronounced, the provisions of articles dealing with common action would in that case still be maintained.

Viscount Cecil of Chelwood said that it had not been thought necessary to include in the Covenant such a proposal as that made by M. Undén. The authors of the Covenant had considered that there was no necessity, while the dispute was under discussion, to provide special means for safeguarding the *status quo*. The Covenant stated definitely that, during the discussion of the dispute, no recourse to war was in any circumstances permissible. The real difficulty with which the Committee was faced was that the term "war" was used to indicate two entirely distinct operations: the collective action of a whole community of States when called upon to enforce its decision was called "war" as also was the act of a single State committing an act of aggression upon another, or taking the law into its own hands in order to preserve its rights. To turn to the domain of private law, it was as though the act of the policeman in arresting a criminal were defined as assault, the same definition applying to the act of the criminal for which he was arrested. What was undoubtedly needed was a new term to indicate international police action.

In the case in point, he thought it was unnecessary to seek such a definition because, though confusion might exist in theory, in practice the work of the League had remained unaffected. He had no objection, however, to the proposal of Dr. von Bülow, for it would bring Article 12 more into accord with the wording of the Pact of Paris.

M. Cornejo feared that M. Cot had misunderstood the exact meaning of his remarks. He was in no way sceptical of the Pact of Paris; he had merely wished to say that diplomats and lawyers showed themselves somewhat pessimistic in regard to the results which the Pact might achieve. Personally, he thought, on the contrary, that the Pact was the greatest conquest of international law. He had already had an opportunity of expressing this opinion in the Assembly. He found in it one great quality, which was that it had, in very definite terms, condemned war as an instrument of national policy. It was impossible to find a more comprehensive formula. Politics contained every factor, both objective and subjective, upon which national action could be based. It followed that the Pact of Paris prohibited all forms of war. Any action of a State was a political act, and, without having to define the exact meaning of the word "policy" or "national", it could be said that, by the terms of the Pact of Paris, all war was prohibited from the moment that war was no longer admitted to be an instrument of national policy. This did not exclude operations which might be necessary for the legitimate defence of a territory. In that case it was not a question of war. A man who defended himself against the attacks of a murderer was not fighting a duel.

M. Cornejo thought there was no reason to define a war which was not an act of violence admitted and recognised by other States. It was possible to do away with the notion of war in international law, for its existence was only due to its recognition by neutral States.

In order that war should exist it must be the source of legal provisions. If States were unanimous in not accepting the laws brought into being by war it would disappear; only illegal violence would remain. Unrecognised violence, however, was not a source of law, and consequently could not be war. Personally, M. Cornejo had great confidence in the Pact of Paris. He was not in the least degree pessimistic, but he had confined himself to demonstrating that lawyers and diplomatists appeared always to be afraid of closing the door on war once and for all. He felt sure that the appeal to the conscience of mankind contained in the Pact of Paris would have an incalculable effect. No one, in his view, would feel strong enough to defy the world conscience as voiced by that Pact.

M. Cornejo regretted that Lord Cecil had felt it necessary to amend the text of the British amendment. In any dispute there was a subjective and an objective part. Only the material part, however, constituted the object of the dispute, and the subjective part, that which dealt with national prestige, was outside the dispute. *Amour-propre* and pride also influenced the disputes between States as between individuals, and, for that reason, two factors must be taken into account—the objective and subjective factors.

The first draft of the British amendment, since it provided for the complete prohibition of war, seemed, in the view of M. Cornejo, to be in closer harmony with the Pact of Paris, which did away with war altogether.

M. Undén explained that he had personally made no proposal apart from those contained in the document already distributed, but had confined himself to drawing the attention of the Committee to the Finnish proposal. He supported the proposal of Dr. von Bülow.

M. Cot also supported the proposal of Dr. von Bülow.

The Chairman noted that the general discussion had once more begun.

He wished to reply to the observation of M. Ito, who had held that, since war had become illegal owing to the inclusion of the Pact of Paris in the Covenant of the League, hostilities would in

future escape the operation of the *jus belli*. He was among those who rejected that view, which had already been expressed in various pamphlets on the Pact of Paris. He did not wish that this opinion should become general, for, if it did, a position properly controlled by law would be exchanged for a position from which all law had vanished, with the consequence that the door would be opened to real savagery. It was important that the hostile operations, as well as the relations between neutrals, should be submitted to the *jus belli*.

M. Ito wished to prevent all misunderstanding. At the previous meeting emphasis had been laid on the fact that the discussions of the Committee must be of a strictly legal character. He had therefore wished to draw attention to the legal consequence of the amendment of the Covenant. The condemnation of war involved the exclusion of the *jus belli*. Since war became non-existent, it was logical that the *jus belli* should no longer exist. In his reply the Chairman had, in M. Ito's opinion, gone outside the legal field.

M. Cot thought that agreement might be reached on the following text, should the British proposal not be accepted :

> "The Members of the League recognise that the settlement or solution of all disputes or conflicts, of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means. Accordingly they agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council. They agree that they will in no case resort to war to obtain the settlement of their disputes."

The Chairman noted that Article 12 referred only to three methods for the peaceful settlement of a dispute. There were, however, other methods which it might be useful to recall. These were : diplomatic discussions, mediation, conciliation; the last appeared in recent treaties and constituted a means of peaceful settlement to which States must have recourse before referring to arbitration, the Permanent Court of International Justice or the Council.

Viscount Cecil of Chelwood hoped that Article 12 would not become too complicated. He thought it unnecessary to make any reference to conciliation or mediation. Article 12 was designed to cover the case of disputes leading to a rupture of the peace. In such cases, every possible form of conciliation and mediation would already have been attempted. He hoped therefore that the Chairman would not press for any further addition, for Article 12 was already as complicated as it could well be. The Committee should not run the risk of causing it to become top-heavy.

He would venture to remind the Chairman of his own suggestion to the effect that the Committee must be very careful not to go beyond its strict terms of reference. In view of the fact that no mention was made of conciliation or mediation in the Pact of Paris the Committee should not, when seeking to bring the Covenant into harmony with that Pact, attempt, at any rate for the present, to insert any reference to conciliation.

The Chairman pointed out that the peaceful means of settling disputes referred to in the Pact of Paris were more comprehensive than those found in Article 12. He concluded that it would be necessary to take note of these in the Committee's report.

M. Ito had no objection of principle to the adoption of the new text proposed. He would add, however, a number of secondary considerations. The Committee was instructed to bring the two texts into harmony. A proposal had been made to replace one text by another. In view of the fact that it had been decided to reduce to the minimum the amendments to be made in the Covenant, he thought that such a substitution was an operation which went considerably further than the intentions of the Committee. The British amendment might perhaps achieve a similar result, by merely adding some words to the present text of the article. If the Pact of Paris were introduced textually into the Covenant of the League the chances of securing the adhesion of countries which had not signed the Pact would be diminished.

M. Cot agreed with M. Ito. He had only made his suggestion in order to take account of the proposal of Dr. von Bülow to insert Article II of the Pact of Paris in the Covenant. Personally, he preferred the proposal of Viscount Cecil. He had been much impressed by the arguments of M. Ito.

M. Sokal asked that the text of Dr. von Bülow's proposal should be distributed to the members of the Committee before they took a decision. The text did not seem to him to add anything to Article 12. The British amendment produced exactly the same result. He thought, however, that it was important to diverge as little as possible from the text of the Covenant, but he would reserve his opinion until he had been able to study the text proposed by Dr. von Bülow.

The Chairman pointed out that Article 12 was of very great importance, for it concerned the possible transfer from a state of peace to a state of war, the moment, in fact, when the means of collective action provided for in the Covenant were about to be put into operation. It dealt with the moment when the whole League intervened.

Since the drafting of the Covenant of the League a certain number of general treaties had been concluded in which provision was made for an entirely different pacific procedure—conciliation in the first place, then arbitration or recourse to the judgment of the Court. In view of the fact that war had now been abolished as the final means for putting an end to disputes between nations, he wondered whether it would be sufficient to mention the means for peaceful

settlement provided for in Article 12. M. Scialoja thought that, in conformity with the Pact of Paris, the procedure for peaceful settlement should be strengthened. It would be useful to specify in the text of the article that every possible method of peaceful settlement must be tried before making use of the collective intervention of the League. The question arose, therefore, whether that collective action should take place merely after an attempt at arbitration had been made? In his view, it would be useful to adopt a general formula, including every method for the peaceful settlement of disputes, or else the enumeration of those methods should be inserted. Should a general formula be adopted it would still be necessary to explain what was meant by it.

M. ANTONIADE had been much impressed by the argument of M. Ito. In his view, the first British proposal should be maintained in view of the fact that the Committee had decided to make as few changes as possible in the text of the Covenant, and that Article 12 covered the entire procedure for the peaceful settlement of disputes.

The CHAIRMAN said that there were other means for peaceful settlement which might be more effective than those mentioned in Article 12. Diplomatic discussion and conciliation might very well prevent a war, and the greatest advantage of employing them was that the spirit of peace was preserved. The other means of a legal character had the disadvantage of leaving something over upon which agreement had not been reached. There was a tendency to dispute the justice of an arbitral award or sentence. It would be preferable to regulate the dispute by the other peaceful means, and only to have recourse to those contained in Article 12 in the last resort.

M. ANTONIADE said that the means for peaceful settlement to which the Chairman referred were implicity included in the first paragraph of Article 12. He thought, therefore, that it would be preferable to accept the British amendment.

The CHAIRMAN pointed out that Article 12 in its present form provided for four methods of settlement; arbitration, the judgment of the Permanent Court at The Hague, the recommendation of the Council, and war. It had been decided to suppress the last-named method of settlement. A procedure must be provided to take its place, for its suppression made it more necessary to have the other methods of settlement.

Viscount CECIL OF CHELWOOD felt strongly the importance of causing the amendments to be made in the Covenant to be short and simple. He had been much impressed by the observations of M. Ito and M. Cot. It would be a mistake, he thought, to put in any reference to the Pact of Paris which might make more difficult the acceptance of the amendments by the Assembly.

Viscount Cecil recalled the framework and conception of the Covenant in so far as the methods for dealing with disputes were concerned. The Covenant drew a sharp distinction between disputes likely to lead to a rupture and other kinds of disputes. Article 12 was designed to deal only with disputes likely to result in a breach of the peace. The other kinds of disputes were covered by Article 13 in which it was stipulated that:

> "The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled *by diplomacy*, they will submit the whole subject-matter to arbitration or judicial settlement."

It was this kind of dispute to which the procedure of mediation or conciliation could be applied. He would therefore urge that Article 12 should be maintained as suggested in the British amendment, but that the attention of the Council should be drawn, in the Committee's report, to the fact that the Covenant conceived two very different kinds of disputes, and that the second and less grave kind could be dealt with more satisfactorily by means of mediation and conciliation.

Only disputes which might involve a breach of the peace were covered by Article 12. It would, he thought, be very useful if the Committee were to make this point clear in its report. Such a procedure was, he felt convinced, more effective than any attempt to graft on to Article 12 some reference to mediation, for this would only lead to confusion and would contribute nothing more than was in the article already towards the prevention of an outbreak of war. While, therefore, the amendment of Dr. von Bülow had a great deal of force, Lord Cecil thought it would be better inserted in the report and not in the text of the article itself.

The CHAIRMAN recalled, in support of his proposal, that, in the case of Corfu, which had concerned his own country, hostilities had been prevented by the intervention of the Conference of Ambassadors. This was a peaceful means not provided for in Article 12, but yet it had proved effective in preventing war. In his view, the Committee would certainly not be exceeding its powers in mentioning in Article 12 all the peaceful means available, in view of the fact that it was desired to insert in the Covenant, as far as possible, the provisions of the Pact of Paris, which laid down that every form of peaceful means should be employed.

Dr. WOO KAISENG shared the views of the Chairman, and supported his contention by quoting the case of the negotiations which had prevented hostilities between China and the Soviet Republic.

The continuation of the discussion was adjourned to the next meeting.

FOURTH MEETING

Held on Wednesday, February 26th, 1930, at 4.30 p.m.

Chairman : M. SCIALOJA.

8. Examination of the Proposed Amendments to the Covenant of the League (continuation).

ARTICLE 12 *(continuation).*

Dr. VON BÜLOW regretted that he was unable to withdraw his amendment. As the Chairman had explained, Article 12 did not mention all the methods of pacific settlement. Dr. von Bülow's amendment, however, included all the diplomatic and other means for peaceful solution contemplated in the Pact of Paris, and which had a special importance of their own.

Furthermore, the wishes expressed in the observations made by the Greek, Danish and Finnish Governments should be respected. Governments naturally desired to know what was war in the old sense—now prohibited—and what was police action. A definition of war did not exist, and it was not for the Committee to insert one in the Covenant, however possible or desirable it might be to do so. Nevertheless, the least it could do would be to include in the Covenant the additions made by the Pact of Paris. Article II was just as much a part of that Pact as Article I, and there was no other place in the Covenant in which its vital obligation could be inserted.

As he had already observed, the development of international relations had reached a certain culminating point in the Pact of Paris, and unless the obligation to resort only to pacific means of settlement were inserted in the Covenant, the States signatories would have less than was given in the Pact.

Dr. WOO KAISENG said that the amendment proposed by Dr. von Bülow was in reality an amendment to the British amendment. He desired to insert in that amendment another phrase to the following effect : " they will only seek a solution of the dispute by peaceful means ".

M. Ito had said, at the previous meeting, that if those words were inserted in Article 12 of the Covenant the six Members of the League of Nations which had not ratified the Pact of Paris might not ratify the amendment to the Covenant of the League. This was a pessimistic point of view. It could also be said that there were nine States signatories of the Pact of Paris who were not Members of the League, but which might perhaps feel tempted to enter it if the ideas of the Pact of Paris were inserted in Article 12 of the Covenant. This would make a difference of three members in favour of the new draft. It might be objected that this was merely a hopeful conjecture. Was it not, however, possible to express such a hope ? Since it was the Committee's duty to bring the two Pacts into harmony, Dr. Woo Kaiseng fully agreed with the Chairman that a mention of pacific means should be introduced into Article 12.

M. UNDÉN could not say what was the scope of Article II of the Pact of Paris, but would recall that several members of the Committee had stated that that article went further than Article I of the same Pact, and than Article 12 of the Covenant of the League. In these circumstances, M. Undén agreed with Dr. von Bülow that, if it were desired to introduce Article I of the Pact of Paris into Article 12 of the Covenant of the League, a provision summarising also Article II of the Pact of Paris would have to be introduced.

M. SOKAL said that Dr. von Bülow, if he had properly understood him, had urged the maintenance of his text, but did not particularly wish that it should be incorporated in Article 12.

Dr. VON BÜLOW replied that this was not exactly his idea. He had wished to say that in this view there would be no place in which to insert it except in Article 12.

M. SOKAL said that he could in that case accept the British proposal for Article 12, but that he was ready to discuss Dr. von Bülow's amendment when the Committee reached Article 13.

Viscount CECIL OF CHELWOOD was willing to leave the British amendment as it stood and to consider the possibility of inserting Article II of the Pact elsewhere. If the British proposal were not adopted he would prefer M. Cot's amendment to that of Dr. von Bülow.

Dr. VON BÜLOW asked M. Sokal whether his intention was to include the obligation that peaceful means should be used only as regards the solution of disputes of a legal nature. Article 13 referred only to these disputes.

M. SOKAL replied that this question had already been raised. Viscount Cecil had said, at the previous meeting, that Article 12 dealt only with disputes which might lead to a rupture. Article 13 referred to all disputes capable of an arbitral or judicial solution. The Committee was not discussing that article at the moment but as, in this connection, it would have to examine the suggestions of the Chairman concerning conciliation and mediation, M. Sokal thought that the moment had perhaps now come to return to the text proposed by Dr. von Bülow.

M. COBIÀN agreed with Dr. von Bülow in thinking that the principles of Article II of the Pact of Paris were the most important part of that Pact. It was precisely for that reason that he had proposed at the last meeting but one that these fundamental principles should be inserted in the Preamble of the Covenant of the League. It was not, in consequence, necessary to insert them in Article 12, for they were to dominate the whole Covenant.

M. Cobián would therefore vote for the amendment of Lord Cecil, which preserved all the terms of Article 12 which were not incompatible with the provisions of the Pact of Paris.

M. COT said that M. Cobián had expressed exactly his own view. If it were desired to introduce into the Covenant of the League the principles of Article II of the Pact of Paris, they must be inserted in the Preamble, which expressed general principles, and not in the body of the Covenant, which included practical and positive provisions. Article 12 applied to well-defined disputes capable of causing a rupture. M. Cobián was also in favour of the British proposal, which was clear and more simple.

Returning to the observations of Dr. Woo Kaiseng, M. Cot thought it indispensable to recall the terms of reference of the Committee. Its duty was not to bring the two Pacts into harmony by inserting all the provisions of the Pact of Paris in the Covenant of the League. Its work was in the nature of a pruning, and consisted in ascertaining whether there was anything in the text of the Covenant of the League which was incompatible with the text of the Pact of Paris. If so, those provisions would be deleted. M. Cot, like Viscount Cecil, was ready to introduce into the Preamble the new formula based on the Pact of Paris which Dr. von Bülow had suggested. It was perfect, and all that was necessary was to recall it at the proper moment.

Dr. WOO KAISENG understood that M. Cot withdrew his own proposal. He was, however, quite ready to accept it.

Dr. Woo Kaiseng did not wish that the entire Pact of Paris should be inserted into the Covenant of the League, but he would urge once more the necessity of referring in Article 12 to a search for peaceful means. At the previous meeting it had been said that Article 12, as at present drafted, laid down four means for solving disputes : the arbitral decision, the judicial decision, recourse to the Council, and war. As it was now desired to do away with the last solution, it must be replaced by something which could be called either peaceful means or means of conciliation.

M. CORNEJO, in view of the fact that the British amendment maintained the limitation to which he had objected at the previous meeting, preferred the draft proposed by M. Cot, which its author had unfortunately withdrawn. He could see no objection to this amendment, which was logical, clear and precise. He would also support the views expressed by Dr. von Bülow at the beginning of the meeting. The logical result of the Pact of Paris was that States must undertake in Article 12 to have recourse to every possible peaceful means for the settlement of their disputes. This was the spirit of the Covenant of the League and was both the spirit and the letter of the Pact of Paris.

To sum up, M. Cornejo was ready to do exactly the opposite of what M. Cot had done, and to vote first for M. Cot's amendment and, if that were rejected, for the British amendment.

M. COT recalled once more that he had drafted his amendment as a subsidiary proposal which would only be discussed if the British proposal were not accepted.

The CHAIRMAN thought it very necessary to insert the provisions of Article II of the Pact of Paris in Article 12 of the Covenant. If this were not done, States, after having exhausted the three solutions provided in that article, would have no other course open to them but war. This would be absurd since, according to the Pact of Paris, no dispute could lead to war and the rupture mentioned in Article 12 could in future be nothing more than a diplomatic rupture.

Viscount CECIL OF CHELWOOD felt strongly that the general settlement contained in Article II of the Pact should be inserted somewhere in the Covenant. The obvious place for it would be the Preamble, for it would then apply to the whole Covenant, and not to any particular kind of dispute. Article 12 dealt only with cases which might lead to a rupture of relations between the parties, and a rupture did not always lead to war. To insert a general statement dealing with all kinds of international relations in an article dealing only with a particular kind of dispute was bad drafting.

Dr. VON BÜLOW was unable to agree with M. Cot that the task of the Committee was merely to prune down the Covenant in order to bring it into agreement with the Pact. It was also the task of the Committee to raise the Covenant to the same level as the Pact, otherwise States Members of the League of Nations which were also signatories to the Pact would have to be referred by the League of Nations to the advantages of the Pact in all instances in which the Covenant did not reach the same level.

In his view, the Preamble was little more than a declaration, and its juridical value was in no way the same as that of the actual text of the Covenant.

Dr. von Bülow was willing carefully to consider M. Sokal's suggestion. It was precisely because Article 12 dealt with the disputes likely to lead to a rupture that it was necessary to insert the obligation to seek a solution by peaceful means.

He would suggest that the Committee should vote on the principle of the insertion or non-insertion of Article II of the Pact in Article 12 of the Covenant. Until the question was settled, however, he could not say whether he would vote for M. Cot's amendment or for his own.

M. Ito recalled that the position which he had adopted that morning was quite clear. He had explained the four reasons why he supported the British amendment. In view of the fact, however, that the Committee had returned to the general discussion, he thought it useful to recall those arguments from a slightly different point of view. There was some confusion in the minds of the members because an endeavour had been made to combine two systems built on a somewhat different basis. To adjust them, therefore, might be a somewhat arbitrary procedure. M. Cot, in his amendment, took a large part of the Pact of Paris and grafted it on to the Covenant of the League. Dr. von Bülow had performed a somewhat similar, though not so great, an operation. As far as the British Government was concerned, however, it confined itself to adding only a small piece of the Pact of Paris to the Covenant of the League. The less the Committee tried to perform the operation of grafting, the less artificial would its work be and consequently the less arbitrary.

In so far as the proposal of Dr. von Bülow was concerned, M. Ito would hesitate to vote for a principle without at the same time voting on a particular form of words. Such a procedure led to confusion and might indefinitely delay the work of the Committee.

The Chairman thought that the arguments of M. Ito affected the substance of the matter. He took, however, an exactly opposite view to that of his Japanese colleague. It must not be thought that, if it were desired to abolish recourse to war, it would be sufficient to suppress all the paragraphs mentioning war. To do so would be to transform the Covenant into a monster. In certain cases the Covenant returned to the possibility of war. If it were desired that the Covenant of the League of Nations should continue to exist, means must be found to substitute for war another final form of procedure.

The provisions contained in Article II of the Pact of Paris constituted the practical part of that Pact. Article I expressed a hope; Article II was a legal provision, an obligation to the effect that the contracting parties undertook to follow peaceful means in the settlement of their disputes. Whenever an article of the Covenant of the League authorised war as a last resort, another solution must be introduced.

The case of rupture covered by Article 12 was so grave that war was allowed, according to the terms of the Covenant, after three months' delay from the date of the decision. When the possibility of war was removed, the rupture became far less threatening. It was, however, still a rupture which would be sufficiently dangerous to the peace of the world.

He did not clearly understand why the two parties to the dispute should be required to have recourse solely to one of the three following means : arbitration, the judgment of the Hague Court, or the procedure of the examination of the dispute by the Council. Disputes could be settled by other peaceful means which might even prove far more effective. It was better to reach an agreement by arguing the case than by submitting it to an award. Why should certain particular means be imposed on States ? The means for finding a peaceful solution were, so to speak, infinite. What was important was to choose the best of those means, having regard to the circumstances. This must be made quite clear in the text. It was not sufficient to put this idea in the Preamble, which was the expression of a hope, whereas the articles constituted the law to be followed. It was necessary, therefore, to reproduce in the articles the only practical stipulation in the Pact of Paris.

M. Ito said that the argument of the Chairman to the effect that, unless the essential part of Article II of the Pact of Paris were introduced into Article 12 of the Covenant of the League, the Covenant would be less strong than the Pact, was certainly a very powerful argument. It contained, however, a weak point. Up to the moment, the term " peaceful means " was not to be found in the Covenant of the League. If it were introduced, the Committee would be obliged to define what were peaceful means and what were not. Should it be maintained that all measures which were not acts of war were peaceful ? He thought this more than doubtful.

The Chairman said that he preferred the amendment of M. Cot and that he was quite ready, if M. Cot withdrew it, to propose it himself.

Viscount Cecil of Chelwood pointed out that the universal rule in all deliberative assemblies was to put to the vote first the amendment which did not exclude the subsequent amendments. He would therefore venture respectfully to suggest that a vote should first be taken on the British amendment.

The Chairman was inclined to think that the Committee should vote first on the amendments which were furthest removed from the original text. He would not, however, press this view and would put the British amendment to the vote.

M. Cornejo pointed out that Dr. von Bülow had also made a proposal.

The Chairman thought that Dr. von Bülow had withdrawn his proposal, which was to the effect that the Committee should vote on a principle. In the Chairman's view, that would be a bad procedure. The principle once voted would haunt the remaining proceedings of the Committee.

Dr. von Bülow thought it would not be necessary to choose between his proposal and that of M. Cot as long as the question of the Preamble remained open. It was not necessary to amend Article 12 in the manner proposed by M. Cot if, as M. Undén desired, the complete text of the Pact of Paris were inserted in the Preamble. If, on the other hand, not one word of the Pact were included in the Preamble, the question assumed a different aspect and the formula proposed by M. Cot was essential.

Dr. von Bülow would therefore propose that the Committee should vote on the principle because, in actual fact, there was only a very small difference between his own amendment and that of M. Cot.

M. UNDÉN suggested that the discussion on this article should be adjourned and resumed when the other articles and the question of the Preamble had been examined. At the present stage, a vote would only lead to confusion. He, personally, would be obliged to abstain, for the reasons he had already given.

Viscount CECIL OF CHELWOOD noted that the Committee was disposed to adopt Dr. von Bülow's proposal to vote in the first place on the principle of inserting Article II of the Pact of Paris in the Covenant of the League. This would not exclude the other proposals. Personally, Viscount Cecil would abstain, seeing that he did not like voting on general principles.

Dr. VON BÜLOW said that he had no objection to voting first on the British amendment.

The CHAIRMAN put the British proposal to the vote. The Committee should understand that this vote was not final and that the matter could be reconsidered during the second reading.

The British amendment was adopted by eight votes.

M. COT agreed with the observations made by Viscount Cecil regarding the vote on the question of principle. He did not think the moment had come to proceed to that vote.

M. UNDÉN recalled that he had proposed the insertion of the first two articles of the Pact of Paris in the Preamble. Since, however, the majority of the Committee had decided in favour of the insertion of Article I of the Pact in Article 12 of the Covenant, he thought he should also accept the opinion of those who wished also to include Article II of the Pact in Article 12 of the Covenant.

The CHAIRMAN reminded M. Undén that M. Cot, the proposer of the amendment to the effect that Article II of the Pact of Paris should be inserted, had said that he would vote against his own amendment if the Committee proceeded to vote immediately.

M. COT recalled that his amendment would only have been discussed if the British amendment had been rejected.

The CHAIRMAN pointed out that Dr. von Bülow had not withdrawn his proposal. Two solutions were possible. Either the Committee should seek a more suitable place in the Covenant for the insertion of Article II of the Pact of Paris, or it should reserve the question.

Viscount CECIL OF CHELWOOD ventured to suggest that the Chairman had not clearly stated the fact regarding Article II of the Pact, which was that signatories would not seek to settle their disputes except by pacific means. In effect, the Committee had already inserted that provision in adopting the British amendment. He was inclined to think it desirable to insert, in a general form, the actual terms of Article II of the Pact somewhere in the Covenant where they would apply to the whole Covenant. Probably the best place would be in the Preamble though, like M. Sokal, he would prefer to reserve his opinion to a later stage. The most important consideration for the Committee was to endeavour to suggest amendments which would be likely to be accepted.

M. SOKAL understood that two solutions were contemplated : either to reserve the question of the place in the Covenant in which to introduce Article II of the Pact of Paris or—and this was the solution proposed by Dr. von Bülow—to insert it in Article 12.

M. Sokal was unable to make up his mind at the moment in regard to the first solution. If, however, the second were put to the vote he would vote against it.

The CHAIRMAN thought it useful to emphasise the following point. To reproduce, in Article 12 of the Covenant, Article II of the Pact of Paris in its entirety was different from merely making a reference to it. He thought that reference should be made to it in Article 12 even though the text might be included in the Preamble. The articles of the Covenant of the League formed the law. They were the only positive part of the Covenant. Even if, therefore, Article II of the Pact of Paris were reproduced in the Preamble, it was indispensable to indicate in Article 12, which laid down practical and concrete provisions, all the means by which a rupture was to be avoided.

Viscount CECIL OF CHELWOOD apologised for having misunderstood the Chairman. He now understood him to say that he was anxious that there should be an obligation on the parties to a dispute which was likely to lead to a rupture to try every method of pacific settlement, and not only the three methods set out in the article. That was a very different proposition, and the best way of dealing with it would be to insert the words " or to some other method of pacific settlement ", and not to embark on the somewhat doubtful and negative phraseology of the Pact of Paris.

The CHAIRMAN pointed out that the Covenant of the League of Nations was meant to provide a practical means of avoiding war, but it admitted certain extreme cases where war was the only solution. To-day, in the light of the progress made by public opinion, it was considered that this recourse to war should be suppressed, but it would be necessary to provide another solution to replace it.

Article 12 was a preface to Articles 13, 14 and 15, which carried on its argument. Previous to the Pact of Paris those States which had submitted their differences to the Council or to a court of arbitration or to the Court at The Hague had had no other remedy than war. Article 12 ought now to provide a number of other solutions to replace that of war.

M. Sokal pointed out that Article II of the Pact of Paris did not insist on the regulation of all conflicts by peaceful means. It said that the solution of all conflicts ought only to be attempted through peaceful means. There must be a fairly important difference between these two theses, since the first had already been discussed at length in 1927, in connection with the Polish proposal.

On the substance of the question, M. Sokal was in entire agreement with Lord Cecil. It might be imagined that the insertion in the Preamble was not of sufficient importance; but he would ask again why it was necessarily in Article 12 that reference should be made to Article II of the Pact of Paris.

M. Cot was in complete agreement with the Chairman in his desire to replace by a new solution all the solutions formerly proposed in the Covenant of the League of Nations which it was intended to suppress. It would only be necessary, however, to mention the recourse to peaceful means in Article 12 if that article, in its existing form, definitely excluded such recourse. No one would maintain, however, that, because Article 12 only referred to arbitral procedure, to judicial settlement and to examination by the Council, complaints could be made if the States in litigation tried to come to an agreement either by conciliation or by diplomatic means. The question would occur again very opportunely under Article 13 and, above all, under Article 15, where the suppression of war would create a veritable lacuna. Article 12, however, under its new form was extremely coherent. The Chairman seemed to imply that Article 12 prohibited peaceful solutions other than those which he had mentioned by name. Would he go so far as to say that two States, between which a serious difference had arisen, would be violating Article 12 if they had recourse to conciliation ?

Viscount Cecil of Chelwood supported M. Cot's suggestion. If Dr. von Bülow's proposal were not accepted, it would be possible for the members of the Committee to move the insertion of some other form of wording. He himself was against inserting Article II of the Pact in Article 12 of the Covenant. He had never imagined that the mention of three pacific methods of peaceful settlement excluded others, but if there was likely to be any doubt on the subject, the wording should make it quite clear that other methods were not excluded.

M. Cot suggested the following wording :

> " The Members of the League agree that . . . *failing any other means of peaceful settlement*, they will submit the matter either to arbitration, etc."

The Chairman was unable to accept this wording, although at first sight it was attractive. Arbitration and judicial settlement were, by their nature, solutions in the last resort, since they resulted in an award. This was not the case in regard to examination by the Council. If the latter's recommendations were adopted only by a majority, they were practically valueless. It was therefore paradoxical to mention last the solution of examination by the Council. These three methods could obviously be mentioned, but as examples presenting an historical interest, since they were the three methods of pacific settlement adopted at the beginning of the League.

M. Cornejo said that, after listening attentively to the discussion which had taken place, he had not heard a single argument showing that there was any danger in introducing the words " pacific means " into Article 12. There was, however, more than this. Lord Cecil, in asking that his amendment should be voted first, had said that the vote should first be taken on an amendment which did not exclude the other amendments. That would not have been the case in regard to M. Cot's amendment, but, as the British proposal did not exclude the others, there was no essential opposition between it and the Chairman's amendment. It appeared that M. Cot shared this opinion. In these circumstances, the discussion which had just been held seemed somewhat Byzantine in character.

It was more logical to impose on countries between which a dispute had arisen all pacific means and then, in the last analysis, the three methods indicated in Article 12 of the Covenant. M. Cornejo accordingly approved the Chairman's idea.

M. Cot thought that this idea did nevertheless involve a certain danger. There were three clearly determined procedures which resulted in one solution with the exception, perhaps, in certain instances, of examination by the Council. The other pacific solutions, if mentioned, would have a preliminary character. If they failed, it was necessary that the countries should still be obliged to submit to one of the three courses indicated in Article 12.

The Chairman replied that, even if an attempt at conciliation failed, the countries, after having had recourse to the three solutions indicated, were still bound, if they thought that they had not obtained satisfaction, to exhaust all pacific means.

M. Cot thought that the discussion had been sufficiently prolonged and asked for a vote on Dr. von Bülow's amendment. He was quite clear that Article 12 must not be overloaded and that Lord Cecil's proposal was the wisest and the most reasonable. The Committee would have an opportunity in connection with Articles 13 and 15 of clearing up the situation further in regard to the questions that had been raised.

M. UNDÉN pointed out that M. Cot's last proposal did not expressly exclude non-pacific means which were not generally described as acts of war. He, personally, considered that the word " war " included all acts of violence. He thought, however, that it would in any case be useful to mention, in the same terms as those employed in the Pact of Paris, the obligation to employ only pacific means. He would not, however, press this point at the moment, seeing that the question could be examined in connection with the Preamble.

The CHAIRMAN reminded the Committee that Dr. von Bülow's proposal was not, in the strict sense, an amendment. It consisted in the adoption of a principle. He added that if he were to put this proposal to the vote he would be placed in the paradoxical situation that, approving the amendment in substance but not in form, he would have to vote against it.

M. COT asked again that a vote might be taken on Dr. von Bülow's proposal as it had been discussed in all its aspects. This would not prevent the Committee from discussing another text at the following meeting if one were placed before it.

The CHAIRMAN said that Dr. von Bülow's proposal appeared to him inadequate and he thought that Lord Cecil, who had appeared to disagree with him, had since come over to his point of view.

Viscount CECIL OF CHELWOOD said that his point of view had not changed. He was still opposed to inserting Article II of the Pact of Paris in Article 12 of the Covenant.

Dr. VON BÜLOW, in view of the fact that the Chairman had proposed postponing the vote to the following day, asked M. Cot to draft his last amendment in writing so as to facilitate the discussion.

M. COT said that his amendment was not by any means in accord with the spirit of Dr. von Bülow's proposal. Speaking for himself, he did not approve the unqualified insertion of Article II of the Pact of Paris, or of any similar formula, in Article 12 of the Covenant, and his amendment indicated this clearly.

The CHAIRMAN said that the Pact of Paris did not say exactly what it meant. He wished to make good an omission in Article 12. As recourse to war had been abolished it must necessarily be replaced by recourse to all pacific means and not only to three. He would have made his proposal even if the second article in the Pact of Paris did not exist.

M. COT replied that, even under the system of the Covenant as unamended and even before the existence of the Pact of Paris, the parties had always had the right to seek for a solution by way of conciliation and that, if this procedure succeeded, they were not under any obligation to have recourse to one of the three procedures mentioned in the article. There was accordingly no change. It was moreover essential that, when conciliation failed, the parties should be obliged to fall back on one of the three solutions enunciated. M. Cot, moreover, was mistrustful of generalities and it was for that reason that he would not vote for Dr. von Bülow's proposal.

The CHAIRMAN put to the vote the proposal to modify the first part of the British amendment.

The proposal was approved by six votes to five.

FIFTH MEETING

Held on Thursday, February 27th, 1930, at 10.30 a.m.

Chairman : M. SCIALOJA.

9. Examination of the Proposed Amendments to the Covenant of the League (continuation).

ARTICLE 12, PARAGRAPH 1 *(continuation).*

The CHAIRMAN submitted a draft amendment to Article 12 drawn up to interpret the vote of the Committee at the previous meeting. It was to the following effect :

" The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will have recourse for its settlement to pacific means only. If no agreement should be reached, they will submit the dispute either to arbitration or judicial settlement, or to enquiry by the Council."

Viscount CECIL OF CHELWOOD was unable to accept the words " If no agreement should be reached ", which would completely reverse the policy provided for in Article 12, by making it possible for either party to say that it was not prepared to go to arbitration in order to settle the matter, but preferred to discuss it further. Would it not be better to compromise by accepting Dr. von Bülow's proposal which gave satisfaction to those who wanted to insert in the Covenant some reference to the Pact of Paris, and had the great advantage of making the least possible change in Article 12 ?

Dr. VON BÜLOW, at the request of the Chairman, read his amendment, which was to the following effect :

" The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will only seek the solution of the dispute by pacific means and will, with this object, submit the dispute either to arbitration or judicial settlement or to examination by the Council. They will in no case resort to war for the solution of the dispute."

M. COT proposed the following change in the wording :

" . . . they will only seek a solution by pacific means."

The CHAIRMAN gave the reasons why he had been unable to accept the proposal of Dr. von Bülow at the previous meeting. His amendment involved the immediate use by the parties of the means indicated in Article 12. He thought, however, that it would be preferable to facilitate recourse first to other means of peaceful settlement. The solution of the dispute should be sought by " all pacific means ". The proposed amendment made no distinction between the means indicated in paragraph 1 of Article 12 and the others. It was necessary, however, to make it possible to use all the means available for the peaceful settlement of a dispute. The practical experience of the Council proved that the best method of regulating a dispute was not a judicial solution, but very often merely a postponement. A judicial solution tended to cause traces of the dispute to subsist, for the parties concerned were not always satisfied with the judgment. This did not occur when the matter was postponed.

The object of the Chairman in proposing the amendment which he had read had been that, should the parties have been unable to reach agreement, and should they refuse to continue negotiations, they should be compelled to submit their dispute either to " the procedure of arbitration or to a judicial decision or to the examination of the Council ". A moment would come in which it was important to compel the parties to follow a particular procedure.

M. COT fully understood the Chairman's reasons and agreed that the judicial solution was not often the best. He would, however, point out that, if the parties did not submit their dispute to judges, they were free to bring it before the Council, which could, if it thought good, adjourn the matter. The Chairman wished the parties to use all the methods of peaceful settlement at their disposal. This right was, however, implicit in Article 12 and it continued to subsist. It would be sufficient to state in the report that it was in no way intended by the procedure indicated to withdraw the latitude left to the parties to reach agreement by other means. Article 12 would lay down the procedure to cover cases when the dispute had become envenomed, and the object of that procedure was to prevent a rupture. In such a case, this was not an optional but a compulsory procedure.

Viscount CECIL OF CHELWOOD did not wish to take away from the Council the power of adjourning its decision. Adjournment was very often the most desirable course, and it was provided for in Dr. von Bülow's proposition. The words suggested by the Chairman, however, would give power to either of the parties to refuse to proceed to arbitration, and their effect might be to keep the dispute alive because one of the parties was waiting for a more favourable opportunity of exerting pressure on the other. The latter ought to have the right to ask for the intervention of some impartial authority. It was for this reason that Lord Cecil hoped the Chairman would not insist on his amendment.

The CHAIRMAN thought that Lord Cecil had not exactly understood his meaning. Article 12 concerned the rights possessed by the parties, the Council remaining free to act as it desired. He thought, however, that the parties must have recourse to all possible means, for example, mediation or conciliation, before having recourse to arbitration, or to the Court. It would, in his view, be dangerous merely to mention this in the report, which would be a secret document. This provision should be inserted in the text of the Covenant, that was to say, in a public document.

Lord Cecil seemed to desire that the parties should have immediate recourse to the means indicated in Article 12 because a rupture was feared. It should not, however, be forgotten that, in the case in point, only differences capable of leading to a rupture were involved, and the danger that a rupture would occur would not in actual fact yet have been encountered. In the case of an imminent rupture, the Council was free to decide what action it wished to take to settle the dispute. In his view, the present text of Article 12 provided three means for compulsory settlement, if States had been unable to achieve an agreement by some other means of peaceful settlement.

Viscount CECIL OF CHELWOOD recalled that he had made every effort to suggest a compromise between the two points of view. He would appeal to other members of the Committee to endeavour to do the same.

M. Sokal noted that the Committee had had submitted to it at the previous meeting the proposal of Dr. von Bülow in regard to which it had been asked to vote. The Committee had accepted it by six votes to five. M. Sokal had been one of the five members who had voted against it. He still remained of the opinion that the proposed addition was superfluous.

A new proposal had been made at the beginning of the meeting. It had been stated that States could choose between three means for settling their disputes. M. Cot had pointed out, on the other hand, that if they did not wish to do so, it was possible for them to use none of these means. This was obvious, and M. Sokal fully agreed with the proposal of M. Cot to insert this statement in the report, for it was too self-evident to find a place in the body of the article itself.

The proposal of Dr. von Bülow would, in his view, be out of place in Article 12. It was drafted in such general terms that it could apply equally well to Article 13. If, therefore, the suggestion of Dr. von Bülow were adopted for Article 12, a reference would have to be made to it in regard to Article 13, and the Committee would also have to explain why it had been inserted in Article 12 rather than in another article.

M. Sokal suggested therefore that the Committee should take no immediate decision on Dr. von Bülow's suggestion, should examine Article 13 and the following articles, and should discover the best place for the insertion of Dr. von Bülow's amendment. It would be preferable to avoid the necessity of repeating the discussion on this point in connection with Article 13.

M. Ito said that if the Committee adopted the views of M. Sokal, he would not put forward his own. The procedure proposed by M. Sokal was, he thought, the most prudent. If it were not accepted by the Committee, M. Ito would have to speak in order to explain his views.

The Chairman thought that M. Sokal desired to return to the idea which had been rejected at the previous meeting. The Committee having taken the vote something would have to be added to Article 12.

M. Sokal explained that he had no observations to make concerning the principle that something should be added to the text. He would prefer, however, to wait in order to find the best place for the insertion of this addition.

Viscount Cecil of Chelwood was in sympathy with M. Sokal's general view. Would it not be possible to insert the words provisionally in Article 12, on the understanding that a better place might be found for them later on.

M. Ito felt obliged to explain his views. He recalled that Viscount Cecil had stated at the previous meeting that, when a dispute was of such a nature as to be likely to lead to a rupture, the parties would no longer have the right to choose the means to settle that dispute, and would be compelled to adopt those which were proposed in Article 12. This was a view which he found difficult to accept, and in that case he would vote in favour of the text proposed by the Chairman.

M. Cobián desired to voice an apprehension which he had felt at the previous meeting. The dispute between two States arose from the fact that one of them had injured the other. These States were asked to settle their dispute by all possible pacific means, but if they did not achieve a solution it became necessary to impose a final solution upon them; for without this the victim State might be condemned to suffer indefinitely, if it were compelled to exhaust every possible procedure for a peaceful settlement. Such a suggestion would in fact be equivalent to putting a premium on aggression, for the aggressor would have every advantage in gaining time. If, therefore, States were unable to achieve a friendly settlement between themselves, they must have recourse to the three procedures laid down in Article 12, which were the only ones which could be imposed upon them.

M. Cornejo could not understand why the Committee discussed this point so long. At the previous meeting there had been grounds for discussion because the various proposals concerning the peaceful means to be used had differed from each other. Since Lord Cecil had accepted the reference to these peaceful means, it would be sufficient to deal with the case in which it had been impossible to achieve agreement between the parties by means of a peaceful method. In that case, a rupture might occur, and the Council would then apply the procedure provided for the case in point. It should not, however, be forgotten that the Covenant was throughout inspired by the idea that the parties should be left free to arrange matters for themselves if it were possible to do so. Should these negotiations fall through, a solution was imposed upon them.

In order that the conversations might be prolonged between the two parties, it was necessary that they agree to such a prolongation, for one or both of them always reserved the right to submit the dispute to the Council. If the dispute were to be submitted to arbitration procedure or to judicial settlement or to examination by the Council, this meant that agreement by ordinary means was considered to be impossible between the parties. It would be possible to maintain that this procedure should only come into force in cases where the negotiations between the parties concerned had not succeeded. To mention this, however, was quite useless, for such peaceful negotiations formed the basis of the Covenant of the League.

M. Undén recalled that the problem had been discussed at length in the Committees of the League of Nations. In his view, two possible cases might occur. Either a convention providing for conciliation might exist between the two parties to the dispute, in which case one of those parties could not interrupt the procedure of conciliation in order to bring the dispute before the Council. If, however, no such convention existed between them, one of the parties could always bring the dispute before the Council and the other could not object on the ground that the

procedure of conciliation had not been observed. Personally, M. Undén hoped that the Committee would carefully avoid anything which might lead to the belief that this exception could be raised.

He preferred the amendment proposed by Dr. von Bülow to that of the Chairman, and suggested that they should meet together in order to draft a common text.

The CHAIRMAN noted that members were agreed on the substance of the matter. The only question was whether the reference to be made should be inserted in the text of the article or in the report. The report should only contain the reasons why the proposals had been made. That was why the Chairman would have preferred to insert frankly in the public document the reference which was under discussion rather than to insert it in the secret document.

The difference between his own proposal and that of Lord Cecil which had been considerable in the beginning had now been reduced to a mere question of form. He agreed with the proposal that the matter should be sent to a Drafting Committee. If the Drafting Committee were unable to achieve agreement on a common text, it would be for the Committee to decide the matter in plenary session.

M. CORNEJO proposed that the Sub-Committe should be composed of the Chairman and Lord Cecil.

Viscount CECIL OF CHELWOOD was in favour of M. Undén's proposal, but would repeat that the matter was one of substance and not merely one of form. He would take a concrete example, and would ask the Committee to assume a controversy between two States in which one was strong and overbearing and the other weak and suffering. The strong State either had done, or was in process of doing, something which the weak State regarded as a great grievance. If the Chairman's amendment were accepted and the weak State desired to appeal to the Council, the strong State would be able to say that it was anxious to settle the matter and had various proposals of a friendly character to make. It would not be clear to the Council that an agreement had not or could not be reached, and it would thus not be entitled to intervene.

The amendment would have the effect of eluding the jurisdiction of the Council until both parties had admitted that there was no hope of agreement. That was a very great danger, and the more outrageous and tyrannical the action of a State might be, the more inclined would it be to prevent the Council from intervening effectively.

The example might be somewhat exaggerated, but surely words on which there was the possibility of putting such a construction should not be inserted in Article 12. The aim of the article was to see that no grave injustice was committed without, at any rate, the opportunity of resort to arbitration or to the Council.

Viscount Cecil would remind the Chairman that the question of conciliation had been very fully discussed at Paris. A decision had ultimately been taken against inserting such a reference in the Covenant, because it had been considered that the Council would do what was necessary. What had been considered important was to have some method which would prevent an actual rupture.

He begged M. Cornejo to consider very carefully whether it was really desirable to introduce into Article 12 words which might possibly have the effect of putting on one side the jurisdiction of the Council.

M. CORNEJO thanked Viscount Cecil for his explanations, and said that he would be fully convinced by his arguments if Article 15 had not existed, for that article explained the procedure to be followed in the case quoted by Lord Cecil, and opened with precisely the same words as Article 12. The first paragraph of Article 15 was as follows :

> " If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."

This article therefore meant that the weaker State had only to inform the Council that the dispute to which it was a party had not been settled, for the measures provided for in Article 15 to come into play. The conversations between the parties to a dispute could not continue except by the desire of the two parties concerned. It was enough if one of them appealed to the Council. In view of the tenor of Article 15 he thought that the Committee need feel no apprehension.

M. COT said that the argument of M. Cornejo was really in favour of exactly the opposite view. If no mention were made in Article 12 of a right already implied in it which the parties to a dispute possessed to undertake negotiations or to appeal to mediation or to conciliation, this meant that of necessity it must be admitted that what was not prohibited was permissible. Direct negotiation was a right which was always recognised by Article 12. Nothing should therefore be added to Article 12, or else a provision should be introduced giving a choice between several means, in addition to the three already indicated. If this course were followed there would be a contradiction between this article and Article 15, for, without it, Article 12 would lose all meaning.

As Viscount Cecil had pointed out, however, Article 12 was of considerable importance, for it affected both Articles 13 and 15. It was important, therefore, to make no attempt to amend it except with the greatest care.

Further, if it were pointed out that when a grave dispute between two nations arose, such a dispute could be settled otherwise than by the procedure provided in Article 12, it appeared to M. Cot that this would show a tendency to weaken the League and to diminish the influence of the Council which, in the present state of international law, was the highest and most qualified authority. M. Cot saw no advantage in maintaining or appearing to maintain the contrary. The Committee must choose. Either it intended to maintain in the article, as the Chairman had proposed, that the parties were free to reach agreement by any peaceful means open to them, in which case this would be tantamount to enunciating a proposal which was so obvious that it was useless, or else an amendment must be introduced which might have a considerably wider bearing than was intended, and be made the object, on the part of one of the States, of an interpretation which might make it dangerous. He asked the Committee to show its prudence in this matter, for either the proposed formula would mean nothing at all or it would contradict Article 15.

M. Cornejo wished to explain that he was not personally the author of the amendment under discussion. He had supported the British amendment, moved at the previous meeting, and had expressed his regret that Viscount Cecil had himself amended that amendment. He had then supported the amendment proposed by M. Cot. Personally, M. Cornejo did not think that it was indispensable to amend Article 12.

He agreed with the proposal that the Chairman and Lord Cecil should be asked to form a small Sub-Committee, with a view to drafting a common text.

M. Ito would accept the arguments of M. Cot concerning Articles 12 and 15, if the question only concerned recourse to the Council, but judicial settlement and arbitration were also involved.

Viscount Cecil of Chelwood observed that this point was already to be found in Articles 13 and 15.

The Chairman noted that the Committee agreed to appoint a Sub-Committee with instructions to prepare a common text.

Dr. Woo Kaiseng recalled that the question of a " reasonable period " had been raised in connection with paragraph 2 of Article 12. He asked if the Committee thought that it should seek a solution for this difficulty also.

Article 12, Paragraph 2.

The Chairman recalled that he had proposed the entire deletion of this paragraph. Such a procedure would be the logical consequence of the suppression of the last sentence of the first paragraph.

Viscount Cecil of Chelwood hoped that paragraph 2 of Article 12 would be maintained without change.

The Chairman asked by what means a period of time could be defined as reasonable. It must be presumed that neither the Council nor the Permanent Court of International Justice would act in an unreasonable manner.

M. Cot explained that the periods of time would vary considerably according to the cases.

M. Cobián recalled that a period was invariably fixed in all arbitration cases.

M. Cot did not think that the second paragraph of Article 12 was of great interest, but thought that the Committee would be wrong in deleting it.

M. Cornejo explained that, in his view, the paragraph in question had no meaning, for the period defined as " reasonable " might be indefinite in length. He quoted cases of arbitration which had lasted more than seven years. On the other hand, the period of six months during which the Council was required to submit its report might give rise to inconvenience. He would, however, not press for any change in this period.

Dr. Woo Kaiseng thought that the importance of deleting in the second paragraph of Article 12 an expression so vague as that of "reasonable time" would be much more clearly apparent to countries which had suffered from recent disputes than to others. Article 12 referred to two limited periods, one of three, the other of six months. The unlimited period, which was described as reasonable, was to be found in the same paragraph. It followed, therefore, that it was possible to get some idea of what was considered as a reasonable period. The removal of the first period of three months would compel the Committee to define what it meant by a reasonable period. An endeavour must be made not only to bring the two Pacts into harmony, but also to harmonise the internal provisions of the same article.

M. Cot thought there would be no advantage in removing the expression " reasonable time ". No one would attempt to regard that provision as a precise obligation. No one wished to discuss the length of the period required by the Permanent Court of International Justice. On the other hand, he thought there was a real advantage in preserving the period of six months during which the Council should produce its report. It was indispensable for the parties which brought their dispute before the Council to know that the matter would be examined within six months. If the Council thought that it should delay the matter it could do so by granting fresh periods, but M. Cot thought it useful for a definite period, during which the Council must produce a report, to be maintained.

The CHAIRMAN pointed out that the report of the Council referred to in paragraph 2 of Article 12 was a report which was final up to the point that, three months afterwards, the States parties to the dispute, could engage in war. It would therefore be preferable to say *a* report and not *the* report, which was equivalent, in the case in point, to the decision of the Council.

Viscount CECIL OF CHELWOOD would renew the appeal which he had made to his colleagues. The task entrusted to the Committee was extremely difficult, and experience had shown that amendments which were not absolutely indispensable had no chance of adoption.

M. ITO supported the proposal of Lord Cecil to the effect that the wording of this paragraph should not be changed.

M. COT and M. SOKAL also supported it.

The CHAIRMAN asked the Committee whether the report should read "*a* report to the Council" and not "*the* report".

Viscount CECIL OF CHELWOOD did not think this amendment indispensable.

M. COT explained that it was not indispensable, for, in view of the fact that the end of the first paragraph of Article 12 had been deleted, the Council was left perfectly free to establish any report which it desired, and it was not stated anywhere that this would be its only report.

Viscount CECIL OF CHELWOOD considered that it was very important, where there was a serious dispute and threat of grave injustice, that the Council should give its decision as soon as possible. To provide a period of six months in the Covenant produced the right atmosphere and made the persistence of unfortunate conditions less likely. Personally, he was of opinion that the paragraph should be left as it stood.

The Committee agreed to retain paragraph 2 of Article 12 unchanged.

ARTICLE 13, PARAGRAPHS 1, 2 and 3.

The CHAIRMAN read the first paragraph, upon which no observations were made.

The Chairman said that the paragraph contained, in part, what he had intended to propose for the previous article. A procedure was there provided which laid down first a method of settlement by diplomatic means. If, at the time when the Covenant had been drafted, there had existed treaties providing for a procedure of conciliation, that procedure would probably also have been referred to in the paragraph. In his view, Article 13 laid perhaps too much emphasis on the procedure to be followed before having recourse to arbitral or judicial settlement.

He read paragraphs 2 and 3, on which no observations were made.

ARTICLE 13, PARAGRAPH 4.

The CHAIRMAN said that several amendments to this paragraph had been suggested.

M. COBIÁN, before discussing the amendments, wished to clear up a point which had occurred to him in connection with paragraph 2. This paragraph, as did the others, provided for the possibility of a licit war. It seemed difficult now to maintain it. He did not understand clearly why an enumeration had been given in paragraph 2, which he thought completely useless since all disputes would henceforth be brought before the Council.

The CHAIRMAN explained that it had been intended merely to give examples, and that the object of paragraph 2 was to establish clearly the difference in competence and jurisdiction between the Council and arbitration. In one case recourse must be had to arbitration and in another to the Council.

British Amendment.

Viscount CECIL OF CHELWOOD explained that the words "and they will not resort to war against a Member of the League which complies therewith" should be omitted because if Article 12 prohibited war, the undertaking in Article 13 not to resort to war was unnecessary. After the words were struck out, the Committee could consider whether compensation should be made in some other place.

Dr. VON BÜLOW supported Lord Cecil's proposal.

In reply to an observation from M. Ito, Viscount CECIL OF CHELWOOD explained that if resort to war were prohibited absolutely, it was unnecessary to prohibit it conditionally in Article 13.

M. SOKAL supported the British amendment which he considered to be the logical consequence of the provisions previously adopted.

The British amendment was unanimously adopted.

Austrian Amendment.

The CHAIRMAN read the Austrian amendment, which was as follows:

"The Council may, in particular, by a unanimous decision, for the purposes of which the votes of the States in question shall not be counted, and after noting the failure to comply

with the Covenant committed by the Member which refuses to carry out the award or decision, authorise the Members of the League of Nations to take against such Member, for the purpose of ensuring that effect is given to the award or decision, such steps as the Council may consider desirable but excluding always resort to war."

M. Cot submitted an amendment which he asked should be discussed at the same time as the Austrian amendment. He had been struck by the considerations contained in the German memorandum. War had been abolished, and the effect of this would be to force the country which had lost its case to execute the judgment. In order, however, to preserve the full force of the Covenant something must be introduced to replace war as a sanction in such a case. For that reason he would propose the following text:

"*Article* 13.

"The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision the Council, acting by a majority, shall determine what measures of every kind should be taken to give effect thereto. The Members of the League undertake to do nothing which could impede the carrying out of such measures."

Commenting on his text, he explained that its object was to give the Council, deciding by a majority vote, the right to have its decisions executed. Being aware, however, that certain States did not wish to see their engagements extended, he had confined himself to stating that the Members of the League of Nations undertook "to do nothing which could impede the carrying out of such measures".

When a decision of the Council had been given, it was indispensable for it to be executed. A period of delay could be granted, but it could not be admitted that the decision should not be executed, because it formed one of the foundations of the laws governing the League. It seemed that the Council must be able to take its decision by a majority vote in regard to the measures to be adopted in such a case.

It would be objected that, if the majority could impose its will, the sovereignty of States would be affected. To that he would reply that the judgment once rendered was compulsory, and that, as a consequence, it in no way affected the sovereignty of States, for no State could refuse to execute it.

It might further be objected that the Council should not be able to involve Members of the League of Nations in the execution of a judgment to which they did not all subscribe. It was in order to reply to that objection that he had adopted the phrase "The Members of the League undertake to do nothing, etc." In his view, that provision would ensure the execution of the judicial decision without engaging any further the responsibility of States.

Viscount Cecil of Chelwood said that M. Cot's amendment was of the greatest possible importance, and that, in dealing with such matters, the Covenant as a whole should be examined carefully. As he understood the Covenant, its fundamental idea was the avoidance of resort to war. Every facility, therefore, should be given to the parties to reach an agreement, and they should be encouraged to resort to arbitration or judicial settlement, and to negotiate with one another. Agreement should not be imposed on them by the Council or by the League, which should not go further than saying, as was said in the Covenant that, subject to the conditions there laid down, States should not go to war. The only coercive part of the Covenant was found in Article 16, and no proposal was made in the Covenant for forcing an agreement on States.

He remembered very well, and probably the Chairman also remembered, the discussions which had taken place when the Covenant was being drawn up. It had been felt that there would not be a sufficient mass of opinion in the world to support the suggestion that an international authority should enforce any particular agreement. At the stage which international affairs had then reached, it was felt that countries could only be warned against taking the law into their own hands and going to war, and that agreement could only be enforced by the immense power of public opinion and the desire of nations to accept any awards given. He would respectfully suggest that those of his colleagues who had gone to the trouble of reading the discussions of the Conference would agree that that was the theory on which the Covenant had been based.

Public opinion had now gone beyond that stage, and it was possible to lay down that in no circumstances should there be resort to war. That was a new state of affairs in which the ultimate remedy was taken away from individual States—if war could be regarded as the ultimate remedy. Personally, he regarded it as a piece of savagery which was no remedy and which did almost as much harm to the victor as to the vanquished. Thus, to take away the right of resort to war would put no one in a worse position than before.

He was doubtful whether there would be general agreement on the desirability of increasing the coercive power of decisions. There was, however, general agreement that war was wrong and should be stopped by every possible means, and that all disputes should be submitted to some form of pacific settlement.

Lord Cecil regretted that he did not see eye to eye with M. Cot, who, in view of the great difficulty of giving the Council executive power, had proposed that this power should be exercised by a majority and not by unanimity. He would ask M. Cot to reflect very carefully whether that tremendous change was desirable.

M. Cornejo observed that the change might be rather useful.

Viscount CECIL OF CHELWOOD replied that it might be useful but, on the other hand, it might be disastrous. Its effect would be to set aside one of the great fundamental principles of international law, according to which all States were equal. It would not be right to impose a decision on any Government by a majority vote. Each had the right to say whether or not it would, in the last resort, agree to accept a decision.

This question had been discussed at great length in Paris, and many people had thought that, if the League of Nations were established on the basis of unanimity, it would be powerless, because it would be open to any one State to veto its decisions. Those, however, who had believed in the League, had believed in the immense power of public opinion. There was the greatest possible guarantee that decisions arrived at by unanimity would be modest and reasonable. There would be no question of party spirit or division of opinion in the Council if a decision could only be taken when all the members were convinced that it was desirable. It was interesting to note that, though considerable differences of opinion had been held with great energy, some means had always been found ultimately of reconciling them and arriving at a unanimous decision. The result had been that the decisions of the Council were accepted by the whole world as reasonable, equitable and straightforward.

Lord Cecil would be very reluctant, as would the Assembly, to make any change in the principle of unanimity. To do so would shock the feelings of a great number of States, and he was satisfied that no such amendment had any prospect of being adopted. He hoped, therefore, that M. Cot would abandon that part of his amendment. He would ask him also to consider, with his usual impartiality and singleness of outlook, whether it was not better, at the present stage, not to attempt to follow up that theoretical difficulty in the Covenant.

Lord Cecil regarded his task in the Committee as merely that of endeavouring to introduce into the Covenant a change which had been accepted by practically the whole world—the change produced by the Pact of Paris. To go further, for the sake of completeness or symmetry, would be to attempt something which public opinion—or, at any rate, a considerable part of public opinion—was not ready to support. He agreed that the Committee's efforts were thus cut down very considerably and it might have to go a little further in some particulars, in order to arrive at a reasonable solution.

There was considerable force in the article in its present form. Lord Cecil did not think there had ever been a case—at any rate in Europe—where two parties which had gone to arbitration had refused to carry out the award, and Article 16 was still a law of the League.

The position was, therefore, that a party which had gone to arbitration and had refused to accept the decision would have against it the full weight of public opinion. That fact was of immense importance.

There already existed the possibility of a meeting of the Council to consider whether any steps could be taken. Above all, there was the stipulation that, whatever happened, States were not to break the peace of the world. That was as far as the Committee could hopefully go at the present stage.

Lord Cecil would add that Article 5 of the Covenant would also require amendment.

The continuation of the discussion was adjourned to the next meeting.

SIXTH MEETING

Held on Thursday, February 27th, 1930 at 4 p.m.

Chairman : M. SCIALOJA.

10. Examination of the Proposed Amendments to the Covenant of the League (continuation).

ARTICLE 13, PARAGRAPH 4 (*continuation*).

M. COT read a revised text of the amendment he had proposed at the previous meeting :

"The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not take any action against any Member of the League which complies therewith.

"In the event of any failure to carry out such award or decision, the Council shall propose (or shall determine) what measures of all kinds should be taken to give effect thereto; the votes of the representatives of the parties shall not be counted."

Dr. VON BÜLOW was unable to follow in all points the proposal of Viscount Cecil, and was of opinion that the starting-point of M. Cot's explanations was correct. The argument that compensation should be given for the right to resort to war was perhaps not the principal one, but it must not be overlooked.

Of much greater importance was the point of view that it was impossible for the Council or other organs of the League of Nations to take final decisions without having the authority or the possibility of carrying them through. Dr. von Bülow did not think it would be sufficient to leave their execution to the good intentions of the disputing parties and to the pressure of public opinion.

If the Council decided against a State and yet protected it, by forbidding war, from any intervention on the part of the State that had received the award, the League was protecting a situation which it had declared to be wrong. The League itself should take over the responsibility of seeing its decisions carried out.

What he had just said did not apply only to legal arbitral awards but to solutions arrived at under Article 15 in political disputes, where decisions might in many cases not be based upon juridical considerations, but on considerations of a political character. One reason for his proposal not to discuss the Covenant article by article had been that the same questions would occur over and over again.

While he agreed with M. Cot's starting-point, he could not follow him entirely, for on one side he went a little too far, and on the other perhaps not far enough. The main objection, however, was that he was burdening the Committee with a task which was not within its competence. Dr. von Bülow, himself, had had the intention of making proposals of a much more modest character and of asking the Committee to consider whether it would not be desirable and necessary to substitute the more definite word "decides" for "proposes" in the phrase "the Council shall propose what measures, etc." Secondly, would it not be necessary to put in an amendment resembling Article 15, paragraph 6, in which it was stated that the votes of the parties concerned did not count in such decisions?

As regards the question as a whole, he hoped that the Committee would adopt the opinion expressed in the memorandum by the German Government and upheld by M. Cot and himself, namely, that the situation had changed. He would suggest that the Committee should state in the report as implicitly as possible why the last sentence of the paragraph was of such importance and possibly what action the Committee suggested.

He himself was of opinion that the question of the way in which the Council could ensure the execution of its decisions could not be settled in a paragraph in the Covenant. The question was too complicated and was not the business of the Committee. What was the use of working out a project in a kind of airtight compartment, without knowing the opinions of the Governments and without any possibility of consulting them? The only way to deal with the matter was to put it before the Assembly, and to invite the Assembly and the Council to study it, so that every Government could express its point of view. On the basis of the discussion which would arise, the Committee or some other body might draw up a protocol or put forward a recommendation or decision showing what measures the Council could and should take to give effect to decisions made under Article 13, as also under Article 15.

M. COT had been extremely interested and impressed by the arguments brought forward by Lord Cecil at the previous meeting, but had not been completely convinced by them. He therefore maintained his amendment.

Lord Cecil had put the Committee on its guard by saying that it was going to do something new. It was not the Committee, however, which was doing something new. It was merely stating that a new factor had arisen. The only question at the moment was that of an arbitral award or of a judicial decision. It could be admitted that a judicial decision should not be carried out. This would amount to the bankruptcy of the League of Nations, under whose authority the decision was taken.

Prior to the Pact of Paris there had existed a means of execution, namely, the right possessed under Article 13 by the country in whose favour the Court had pronounced to execute the award itself, if need be, by force. That was a bad solution, but it had the merit that it existed. In the present circumstances, no country could take justice into its own hands. Must it be said that the award must remain something purely theoretical? Obviously not. The solution which had been eliminated must be replaced by another.

M. Cot recognised that the procedure which he proposed had certain disadvantages, but in this imperfect world it was necessary to be content with the solution which presented the lesser disadvantage. The greater disadvantage consisted in a legal award remaining unexecuted, since this would be a gift to countries which did not intend to keep their word, and to the stronger countries. Every country, irrespective of its geographical or military situation, must know that an award given in its favour would be put into execution.

The disadvantage in M. Cot's proposal, according to Lord Cecil's view, was that it charged the Council to give orders for measures of violence and coercion. That was not the case. Under Article 13 the Council was already charged with the execution of the award. The question now was to see how it would carry out the task incumbent on it. Furthermore, the Committee had already made a very clear distinction between war and the police measures reserved under the Pact of Paris.

There were two dangers to be avoided. First, it must not be possible for a State which did not keep its word to escape with impunity the consequences of the award which had been made against it. On this point, M. Cot was in entire agreement with Dr. von Bülow. If the Council was charged with the execution of the award it must be given the means to do so. Secondly, there was a danger to which attention had been drawn at the last Assembly by Baron Marks

von Würtemberg. The point might be made clear by means of an example. Suppose a State which had been the object of an unjust act on the part of another State submitted the question to arbitrators or to the Hague Court and won its suit. If there were no normal and effective procedure for the execution of the award, would not such a country be led, if it did not wish to lose the benefit of the award, to have recourse to measures of violence? If a country strong in its own right had recourse to such measures, were the sanctions of Article 16 to be applied to it? The position would be a deadlock. Would neutral countries be forced to take part in an operation against any country whose only wrong would be that it was executing an award given in its favour?

Furthermore, if it were decided that the rule of unanimity should operate, it would be enough for the recalcitrant country to find a single Member on the Council which was favourable to it for the decision to remain unexecuted. This argument was so convincing that the rule of unanimity should immediately be suppressed.

M. Cot did not see what were the serious arguments which could militate against his amendment. There was no question of a decision. The award had been rendered. He fully realised that this matter lay perhaps outside the case contemplated in Article 5. It was nevertheless far more a question of procedure than a question of substance. The point might perhaps be adjourned in order to ascertain the Assembly's view. Nevertheless, it should be indicated very clearly in the report that it was indispensable to confer on the Council the means of executing the awards rendered by it.

M. Undén considered M. Cot's proposal an interesting one. It was in accordance with a tendency, which had been increasing in strength for some time, to reinforce the system of arbitration. He thought that the League should give this problem very serious consideration. He recalled that there already existed a series of measures of execution in Article 419 of the Treaty of Versailles in regard to signatories which did not conform to the provisions relating to the Labour Organisation. That article was worded as follows:

> "In the event of any Member failing to carry out, within the time specified, the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economie character indicated in the report of the Commission or in the decision of the Court as appropriate to the case."

It seemed that if M. Cot's proposal were followed, the Council could, by a majority, decide to order the occupation of the territory of one of the parties to the dispute. Such a measure might possibly involve hostilities. Was it possible to confer such unlimited powers on the majority of the Council?

Furthermore, M. Undén would be prepared to support M. Cot's amendment as amended by Dr. von Bülow. In the latter case, the Council would take its decisions unanimously, the parties to the dispute being excluded from the vote. In conclusion, he suggested that the Council might submit the problem to the Committee on Arbitration and Security which would perhaps have the necessary time to examine it in detail.

M. Cornejo reminded the Committee that Lord Cecil had given an admirable explanation of the fundamental principles which had guided the authors of the Covenant in these questions. The first was that neither the Council nor the Assembly should be endowed with powers of coercion. The second was unanimity. He had further said that to go outside these principles would be to take liberties with the Covenant, which would be dangerous.

M. Cornejo was bound to say that he greatly admired the Covenant of the League. It corresponded in a remarkable degree to the historical and political situation at the time when it had been drawn up. The great Powers which had been successful in winning the war had had the noble-mindedness to adopt President Wilson's ideal. It had been their right and even their obligation to take all precautions for the defence of their entirely legitimate interests. The Covenant was the offspring of a marriage between these interests and the ideal; now, however, the child had grown sufficiently to make it unnecessary to fear that he could be killed even by his own parents.

At the same time, the situation had changed. The Covenant of the League limited war. The Pact of Paris abolished it. There was an enormous difference between the two, and the Committee had to adjust the Covenant to this new situation. The principles of a covenant intended to limit war could not be altogether squared with a covenant designed to suppress it.

M. Cot had brought out two interesting points. In his view, the Council should be authorised to adopt the proper measures to ensure the performance of its task. His argument was a very powerful one. Every award that was rendered must be carried out. M. Cot might, however, be reminded that a number of measures were already stipulated in Article 16 of the Covenant of the League and they appeared adequate to impose the execution of an award.

The second point discussed by M. Cot was that of unanimity, which was embodied in Article 5 of the Covenant. Theoretically, it was defended by very sound arguments. Lord Cecil had said that all the States were sovereign, that they were all equal, and that this was the foundation-stone of unanimity. M. Cornejo, speaking personally, would reply that, paradoxical as it might seem, this principle did not exist in the Covenant of the League. Article 5 was inconsistent with paragraph 10 of Article 15. Unanimity did not exist for all the countries; it had been reserved to the great countries.

According to paragraph 10 of Article 15, the Council could appeal to the Assembly, which was the highest authority in the League. The Assembly decided by a majority, provided that all the countries represented on the Council unanimously appeared in that majority. This was a serious exception, for there was no question here of procedure; such a decision approved

by the majority of the Assembly had the same effect as a report approved unanimously by the Council. This was quite natural. The authors of the Covenant had thought that, when a serious question arose, an appeal must be made to public opinion and to the Assembly In view, however, of the limited membership of the Council it was of no interest to public opinion. The Assembly, on the other hand, would have been impotent if a small country had succeeded in disregarding the decisions of the majority. In order to safeguard the rights of the Powers having permanent seats on the Council it was necessary to have in the Assembly unanimity between the States represented on the Council.

The Council had at that time been composed of the five great Powers, with permanent seats, and four small Powers possessing non-permanent seats. The rule had, therefore, been adopted for the benefit of great Powers, for it was sufficient for one of them not to wish to do something in order to stop the whole procedure. The vote of the four remaining Powers was accidental. Thus, behind that appearance of equality of States there was merely the unanimity of the great Powers. That situation had been perfectly defensible in the post-war period when the execution of the Treaty of Versailles had been the essential task. That period, however, had now been brought to a close. The League of Nations had reached its full strength, and the inequality of the provision in question was no longer justified.

Latin America was disquieted by this situation. The Argentine had already announced at the first session of the Assembly that she could not tolerate such inequality. M. Cornejo did not wish to judge that attitude. He thought that the Argentine had gone very far. He had already said that the precaution taken by the framers of the Covenant of the League seemed to him legitimate. In future, however, while the small Powers, especially those of Latin America, might accept readily the fact of permanent seats, they would see no reason for unanimity. Latin America naturally needed the intelligence, science, culture and art of European civilisation but had no need of its political protection. Latin America could not be attacked, owing to geographical and political circumstances. The smallest Latin-American Power had no reason to fear any great Power. For that reason, he was glad to see that a member of the Commjttee belonging to a great Power had moved the removal of this inequality.

It was rather difficult to understand why a phrase or a word or a provision by which members of the Committee thought to fulfil the claims of justice should be regarded as harmful to the prestige of the League and likely to change events. The whole intellectual world, lawyers and diplomatists had a somewhat naïve tendency to think that they ruled events. In actual fact, events ruled them. It was not the Covenant of the League which had limited war, it was not the Pact of Paris which had done away with it. The Pact had simply noted that war was dead and buried. What had killed it was the great economic development of the world, which required an ever-increasing solidarity between nations. The technical side of war would transform another armed conflict into a final calamity. Finally, it was the fact that there was a continent of America which was unattackable which had prevented Europe from carrying on her quarrels. The world was frightened of war. It was the duty of the League to give it back its confidence.

In conclusion, M. Cornejo reminded the Committee, which was a Committee of Jurists, of its terms of reference. The opinion appeared prevalent that, before taking any decision, Governments must be consulted. This was a mistake. M. Cornejo had proposed the establishment of the Committee. In the Sub-Committee, which had discussed the proposal, it had been asked whether or not the views of Governments should be awaited. Sir Cecil Hurst had wished to discuss immediately the amendments necessary to the Covenant. M. Cornejo had pointed out in reply that a Committee of Jurists might be instructed to study the question and to ask Governments for their views. It was this proposal which had been adopted. The League of Nations therefore possessed two sources of information.

M. Cornejo besought the Committee not to fail in its task. It was impossible for the Assembly to accept all the amendments which would be proposed to it, but it must have before it every possible form of legal suggestion as well as the suggestions emanating from the Governments. The Committee must present a picture of things as they were. Events had killed war. The Pact of Paris noted this fact. These were considerations which made a transformation of the Covenant necessary. It was therefore to be hoped that the Assembly would be wise enough to accept the amendments necessary to put the rights of great and small Powers on the same footing.

M. Ito pointed out that a country had two means of carrying out a sentence pronounced in its favour; it could either carry it out itself or wait for the measures proposed by the Council. M. Ito believed that, everything taken into consideration, when a country had recourse to armed force to carry out a sentence, it was not committing itself to an act of war such as was condemned by the Pact of Paris. Indeed, according to the Pact, the contracting parties renounced war as an instrument of national policy for the settlement of their disputes. When a Power executed justice by armed force, it was not resorting to war to settle a dispute, for disputes properly so called no longer existed, because of the judgment.

Further, he wished to make a remark on the proposal of M. Cot. Evidently, if the Council did not propose adequate measures for the execution of judgments, an incentive would be given to bad faith. The amendment proposed by M. Cot would introduce new ideas into the article which would make a serious examination of it necessary. Speaking personally, M. Ito thought these ideas were outside the competence of the Committee. The Pact of Paris had not organised means of execution derived from the engagements made by the signatories, and contained no mention of sanctions. Moreover, since the present problem was to harmonise the Covenant of the League of Nations with the Pact of Paris, was it right to leave this point on one side?

Viscount Cecil of Chelwood had looked very carefully at M. Cot's interesting and valuable proposals. He could not, however, even after listening to the eloquent speech of M. Cornejo,

feel any doubt that it would be wrong to make an exception in the rule of unanimity for such a case.

The question concerned the execution of an award. M. Cot conceived of an award being given which the unsuccessful party refused to obey. But that situation was so improbable, at any rate in Europe, that it need hardly be considered. No doubt the same could be said of other parts of the world. A country which accepted—for it would have accepted by hypothesis—the idea of an award and then refused to carry it out, would be a very desperate country, one determined to enforce its own will, irrespective of all the claims of right and justice. Therefore, the strongest measures against it would have to be contemplated, even, if necessary, military or naval measures.

Was it seriously to be suggested that a majority of the Council should be able to direct the armies and fleets of the world to take military or naval action against a country which refused to accept an award? He had before him the names of the fourteen countries now on the Council. Suppose there should be a minority composed of Great Britain, France, Italy, Germany, Poland and Czechoslovakia, and a majority composed of Japan, Spain, Cuba, Venezuela, Canada, Persia, Peru and Finland. Could such a majority really enforce an award in the way suggested? Obviously, it would be impossible.

The doctrine of the equality of States was sound if it was properly understood, but if pressed to the point of saying that all States in fact were equal in power and strength, it became an absurdity. They had equal rights, but they had not equal duties. The realities of the situation must be remembered; it would be impossible for the less powerful nations to order about the more powerful nations of the world. He regretted that in order to make the matter clear he was obliged to put it so crudely.

He was utterly against putting forward any claim which, though it might have some theoretical arguments in its favour, was not practical, and he would venture to ask M. Cot to consider carefully whether it was possible to go beyond Dr. von Bülow's proposal. He himself had always held that it must have been by some accident that the rule in the Covenant providing that unanimity should not comprise the parties to the dispute had only been enacted in certain cases. Obviously, if it were the right rule, it should be applied to all cases of dispute, and he was in favour of taking the opportunity of suggesting that course.

With regard to Dr. von Bülow's other proposal, Lord Cecil preferred "propose" to "determine" because the Council had no power to compel.

As to M. Cot's final clause, he would prefer to leave the Council free to make suggestions, trusting to the fundamental and essential condition of the existence of the League—the loyal and frank co-operation of the Members. To take away the one blot on the rule of unanimity by laying down that the votes of the parties to the dispute should not be counted in estimating unanimity was a reasonable and moderate proposal.

He would not follow up M. Cornejo's eloquent philippic against the great Powers, but would merely point out that M. Cornejo appeared to have misread the final clause of Article 15, which stated that where a dispute was referred to the Assembly—which of course consisted of fifty-four Members—it would be enough to secure a real majority, including the votes of the Members of the Council. The reason for this was obvious. The Council consisted not only of the representatives of the five great Powers but of nine elected Powers representing the whole body of the smaller Powers, whose interests they might be trusted to guard. The unanimity of such a body would ensure that nothing very outrageous would be proposed, and it was therefore unnecessary to ask that all fifty-four Members of the Assembly should be in agreement. He could assure M. Cornejo that no such fantastic doctrine as the desire to oppress the smaller Powers had ever entered for one moment into the minds of any who had been engaged in formulating the Covenant.

He would add that the nature of M. Cornejo's speech, its very wide range and the opening up of the question of unanimity as against majority, showed how unwise the Committee would be to put before the Council and the Assembly, as its considered view, an amendment which raised vast questions far outside the harmonising of the Pact and the Covenant.

He hoped M. Cot would once again consider whether he could not accept Dr. von Bülow's suggestion.

M. Cornejo thought that M. Cot's statement had opened a controversy on the very conception that ought to be taken of the League of Nations. Two of the members of the Committee had taken part in the work of the Peace Conference and had collaborated in drawing up of the Covenant. To-day, as then, Lord Cecil maintained the thesis according to which the League of Nations, while taking care not to be a super-state, ought to be an instrument of conciliation and mediation, relying primarily on public opinion. That might be called the Anglo-Saxon thesis. M. Cot supported an opposite idea, according to which the Council, if it took in hand the duty of making decisions in the disputes between States, ought to have the means to carry out its decisions. That thesis had been defended formerly by M. Léon Bourgeois.

To-day, it was important to limit the subject and to try to come to an agreement. All the members of the Committee had the same end in view. They wished to enable the League of Nations to develop to the utmost and to give it the widest power possible. Article 13 dealt with conflicts which could be settled by an arbitrary or a judicial decision. It was clear that the Committee must agree with M. Cot that if, under Article 12, all Members of the League were asked to submit to a decision of this kind, it was necessary to guarantee in return that such a decision would be carried out.

Public opinion played a prominent part in the Anglo-Saxon countries, and Lord Cecil, relying on this fact, declared that the pressure of public opinion would ensure that a judgment passed by the Hague Court or by arbitrators would be carried out. That was an opinion which could be called in question. It was open to doubt whether it was even applicable to all the countries of Europe. It was impossible to rely on the goodwill of the losing party for the execution of such sentences, just as in daily life it was impossible to convict an individual and leave him free to pay his fine at his pleasure.

M. Cot, in reply, said that the steps necessary to carry out the sentence ought to be taken by the Council on a majority vote. The problem was a very serious one.

M. Cornejo was not certain if this step might not affect other articles of the Covenant. The problem was all the more serious because Dr. von Bülow wished it to be said that the Council "shall determine what steps . . . " instead of "shall propose what steps . . . ". That simple substitution could have enormous consequences.

The Committee had to find practical solutions and there were two : (1) to confine itself to the British proposal for paragraph 4 of Article 13, at the same time pointing out in its report that the matter was extremely serious, that the proposal of M. Cot deserved full attention and that immediate steps ought to be taken to allay misgivings; (2) to take advantage of the fact that the Committee on Arbitration and Security was to meet at the end of March to submit the question to it in virtue of the right that the Council had conferred upon the Committee for the Amendment of the Covenant. Moreover, M. Briand had, at the last Assembly, drawn attention to the importance of this work of co-ordination.

The Chairman said that, in his opinion, this question could not be settled before Article 16 had been discussed. Consequently, he proposed that the discussion on this subject should be adjourned.

He was in complete agreement with Lord Cecil. There was no doubt that, as Dr. von Bülow had thought, it had simply been by an oversight that it had not been said that the votes of the interested parties should not figure in calculating unanimity. As for the rest of the matter, the Committee had not the right to decide that the decisions of the Council could be taken by a majority, and the Chairman thought that, even if the Committee had the right, the change would not be opportune. Indeed, it was most important that the Council should exercise considerable authority and it would have this authority if its vote were unanimous, whereas a majority decision would not be sufficient to arrest the parties concerned. They would begin to weigh the relative importance of the majority and minority, and in the end that would almost deprive the Council of its power. On the other hand, the question was a constitutional one, and the Committee would be abusing its powers if it dealt with it. All that remained, therefore, was to see what the Council could do. According to the actual text—and the British amendment preserved these provisions—the Council could do all that was opportune. When examining Article 16, the Committee would see what means it could employ.

The Chairman, however, was doubtful regarding the difference between the consequences of an arbitral decision and those of a judicial decision. When the Court at The Hague had taken a decision, no appeal could be made to anyone against that decision. When the arbitrators had spoken, just as in private affairs, their decision could be called in question. If appeal were made against the substance of a decision there was no remedy; but if the question to be decided was whether the arbitrators had exceeded their powers, it would be essential that the question could be discussed. However, there was no superior authority capable of doing so. The Chairman wished, however, to draw attention to the Finnish proposal, according to which, under such circumstances, recourse could be had to the judgment of the Permanent Court of International Justice. This was not a question for the Committee to decide, but it ought to bring it to the notice of the Council and the Assembly, especially since arbitration was destined to take a more and more important place in the future.

M. Cot asked to be allowed to reflect, until the next meeting, on the consequences of his own proposal, which appeared so serious to Lord Cecil.

He observed that M. Undén had expressed anxiety, and rightly so, concerning the means of coercion to be conferred on the Council. The Chairman had rightly replied on this point that the Council must be given the greatest latitude. M. Undén had also asked if it would be possible to contemplate that the Council could order the occupation of a territory. Obviously, it could not do so except in a case where the Hague Court had decided that the territory did not belong to the country which was in possession of it at the time of the judgment. Occupation as a means of coercion must, it appeared, be eliminated.

There remained the famous question of unanimity. It was with no great pleasure that M. Cot had proposed a perversion of the rule of unanimity, but the situation, he would repeat, was a serious one. When an award was rendered, either it must be executed or, alternatively, the only deduction could be the failure of the League. It would suffice for a single Member of the Council to oppose the measures of execution for the award to remain unexecuted. As M. Sokal has said, goodwill was not a universal characteristic and, if it existed, it could be paralysed by special circumstances. It was in order to remove this dilemma that M. Cot had proposed that the measures of execution should be taken by a majority vote of the Council, but he was prepared to consider any other solution.

He must confess that he had been struck, if not entirely convinced, by M. Ito's last observation. M. Ito had said that the Pact of Paris was not opposed to the private execution of the award. M. Cot was not prepared even to consider the question since the interpretation of the Pact of Paris was not within the terms of the Committee's reference, but it was obviously

unquestionable that the country which had won its suit retained the right to secure by pacific means the execution of the award rendered in its favour.

It was for this reason that M. Cot suggested two possible new wordings for his amendment. Either :

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered. In the event of any failure to carry out an award, the Councill will determine what measures of all kinds should be taken to give effect thereto. All the Members of the League agree to do nothing which might impede the execution of the foregoing measures nor to take any action against any Member of the League which complies therewith";

or :

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered. If a State Member of the League is unable to ensure the execution of the award with its own resources, the Council shall propose . . . "

In this way, the winning party would preserve the right to endeavour to obtain, with its own resources, the execution of the award. It would only come before the Council after it had failed in this individual action, and the Council would determine, in accordance with the general rule laid down by Article 5, the measures to be taken.

The CHAIRMAN said that it must not be thought that in a case where unanimity was necessary it would be easy for one State to oppose the others from pure caprice. If it ventured to take any measure on its own initiative, the question would be submitted to the Assembly and if the vote it had given from caprice caused a scandal, the State concerned would be obliged to render account to the Assembly and would soon see that, if it were in the wrong, its conduct would place it in a very bad light. The cases in which the Council had not voted unanimously were extremely rare. Countries, like private persons, did not compromise their dignity light-heartedly.

M. CORNEJO wished to make a simple correction. Lord Cecil had described his intervention as a philippic against the great Powers. That was not an accurate description. M. Cornejo had said that it had been not only the right but also the duty of the great Powers to act as they had acted. If he had attended the Peace Conference, he would have signed the Covenant without any objection and, moreover, when he had had to uphold it in the Peruvian Parliament, he had said that, allowance being made for the circumstances, the Covenant was perfect.

It was none the less true that the question of unanimity was an irksome one. Lord Cecil had taken an entirely improbable hypothesis, that of all the great Powers being in a minority on the Council. It was improbable, because the small Powers would never be so mad as to oppose all the great Powers simultaneously.

Moreover, M. Cornejo thought that the rule of unanimity gave the Council great prestige and moral force. But that did not prevent him from considering that a privilege was conferred on fourteen States, whereas in principle it was supposed that all the Powers were equal.

Viscount CECIL OF CHELWOOD replied that the privileges of the Council or the Assembly could not be discussed in the present Committee.

M. CORNEJO said that he adhered to his proposal that, in the Assembly, the clause concerning the unanimity of the Members of the Council should be modified.

The continuation of the discussion was adjourned to the next meeting.

SEVENTH MEETING

Held on Friday, February 28th, 1930, at 10.30 a.m.

Chairman : M. SCIALOJA.

11. Appointment of Rapporteurs.

On the proposal of the CHAIRMAN, M. COT, M. UNDÉN and Dr. VON BÜLOW *were appointed Rapporteurs.*

12. Examination of the Proposed Amendments to the Covenant of the League (continuation) : Article 13, Paragraph 4 (continuation).

M. COT explained that, in view of the almost general opposition of the Committee, he had given up his original proposal that the decisions of the Council should be taken by a majority in the case laid down in Article 13.

He accordingly proposed the following text for Article 13, paragraph 4.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not take any action against any Member of the League which complies therewith.

"In the event of any failure to carry out such an award, the Council shall, by a unanimous decision, propose what measures of all kinds should be taken to give effect thereto. The votes of the representatives of the parties shall not be counted in calculating unanimity."

M. Cot added that, in his first wording, he had drafted the beginning of the second paragraph as follows :

"If the Parties are unable by their individual action to ensure the carrying out of the award . . ."

He had preferred to abandon this wording as a result of the observations which had been made to the effect that it would be preferable not to lay special emphasis in this way on individual action by a country, such action always remaining open.

He had furthermore indicated that the Council should propose measures of all kinds. This phrase was a wide one, but he thought that the action of the Council must not be restricted, and that the Council must be trusted in its wisdom to ensure the execution of the award by the best means. The wording which he proposed for paragraph 4 of Article 13, while making it possible for one of the parties to the dispute to ensure the execution of the award, reserved the right of execution, in the last analysis, to the Council, which took all appropriate measures with this object.

M. Ito, referring in the new text to the words "Members of the League agree . . . that they will not take any action against any Member of the League", reminded the Committee that, when he had asked for an explanation of the meaning of such an undertaking, Lord Cecil had replied by giving an example and had said that, if one had forbidden someone to go out, it was useless later to say that he must not go out if the weather was fine. The wording proposed by M. Cot contained more or less the same terms as those of which he had requested an explanation. He wished to know exactly what was meant by the words " will not take any action against any Member of the League which complies therewith". Since recourse to war was abolished, what could such action be ? If a certain sense were given to the term "action", the text might go further than the terms of the Pact of Paris.

M. Cornejo observed that he was not the author of the proposal to break with the rule of unanimity in the Council's decisions. As M. Cot had submitted his proposal, M. Cornejo had desired to point out that the rule of unanimity in the Council's decisions constituted a positive privilege conferred on the great Powers who held permanent seats on the Council, and he had also wished to refer to the generous action of one of these privileged countries in consenting to surrender its privilege. He had added that the conception of equality between the countries had made great progress, and that, at the present time, all Members of the League believed themselves to be equals, so that the Latin-American nations did not hesitate to claim that they were the political equals of any European or other country. He had returned to this point, because the reproduction of the words he had used on the previous day, if isolated from their context, might give rise to a certain misunderstanding.

He accepted M. Cot's amendment, for he was convinced that the privileges possessed by certain countries would probably disappear, not as the result of force, which everyone condemned, but by the voluntary surrender of those holding them. The possession of privileges became, in the long run, a disaster for those who held them and were imprisoned by them. In his opinion, the wording of the first paragraph of the amendment was perfectly clear. It was essential that the parties should comply with the award rendered. In his view, however, this wording was still inadequate, since, in an ordered society, it would seem strange to assume that a member of that society should contemplate the opposing of the execution of the award by the party which had lost the suit. If the condemned party complied with the sentence, how could it be supposed that another country could prevent it from doing so?

In his view, it was not a negative obligation incumbent upon all the Members of the League which should be inserted in the first sentence of paragraph 4 of Article 13, but a positive obligation under which they would be required to facilitate the action of any Member carrying out the judgment once awarded. There was a large number of means (economic, political, etc.) which would make it possible for the nation which lost its case to execute the award.

M. Cobián had no objection to the proposal of M. Cot which had been drafted with the assent of a large number of members of the Committee. He wished, however, to make two observations which should be inserted in the report.

In connection with the word "unanimity", which was to be found in the amendment, he recalled that he had not been in favour of the proposal that the Council's decisions should be adopted by a majority vote. On the other hand, he was not in favour of inserting the word "unanimity" in the paragraph, for he thought that the questions dealt with should be settled by the general principles of the Covenant, that was to say by Article 5.

The measures of which the Council might contemplate the adoption in order to ensure the execution of an award might perhaps be mere measures of procedure. For example, the Council might decide to appoint a committee of enquiry. According to the text proposed for paragraph 4, the Council could not decide upon an enquiry except by means of a unanimous resolution, whereas a general provision in the Covenant made it possible for the Council to take such a decision by a mere majority. In his view, the greatest latitude should be left to the Council in the

accomplishment of the difficult task entrusted to it and that latitude would be limited by introducing the word " unanimity " into paragraph 4.

In the second paragraph of the proposed text, which reproduced the original text of paragraph 4 of Article 13, were to be found the words " the Council will propose the measures, etc." This expression seemed to him, henceforth, to be out of place, for the Council would sometimes have to do more than propose measures. To propose meant to submit an opinion to others. Who would those others be? The parties to the case, probably. He quite understood the difficulty of changing the term, but he wished to leave the greatest possible latitude to the Council. In that case the word " propose " should be replaced by another word, such as " determine ", " lay down ", etc. Without wishing to assume the responsibility of changing a text drawn up by the Drafting Committee, he wished, however, that his observations should be noted.

Viscount Cecil of Chelwood was in favour of M. Cobián's amendment.

M. Cornejo had objected to the phrase " will not take any action against any Member of the League which complies therewith ". That objection had occurred to Lord Cecil. At the same time, it was desirable to ask States, not only to undertake to carry out the award in good faith, but also to agree not to undertake as a kind of reprisal any action which would be against the interest of the party which had obtained the award. It would be deplorable, for instance, if the defeated party, being very indignant at its failure, proceeded to inflict great tariff disadvantages on the other party. It would be even more deplorable if sympathisers also took the opportunity of wreaking vengeance on the successful party. That was not very likely to happen, but it was a possibility, and the smaller countries in particular should be protected against it.

M. Cornejo wanted to go further and to oblige countries to facilitate the execution of an award, but that might raise considerable difficulties. If, for instance, a large sum of money were awarded to one country, it would be necessary, according to M. Cornejo's suggestion, for all the other countries to facilitate a loan to the defeated country in order to enable it to discharge its debt. He saw no reason why they should be compelled to enter into a financial transaction of that kind. In his view, M. Cot had adopted the right compromise.

M. Cobián disliked " unanimous " because it might cut down the right of the Council to appoint a committee by a majority, but Lord Cecil did not consider that the use of that word would interfere with the general proposition that, in matters of procedure, the ordinary rule would still prevail, though the decision itself must be unanimous.

M. Cobián also disliked the word " propose ". It was possible that some other word would be better, but after all the Council could not order anyone to do anything. It could propose measures, and the loyalty of the Members of the League would no doubt compel them to accept its proposals.

He agreed that the report should explain that it was intended that the Council should have the right of proposing to all the Members of the League whatever steps it considered necessary, with the ordinary consequences entailed by such a proposal. He would also be in favour of making it clear that the use of the word " unanimous " was not meant to upset the ordinary rules of procedure.

M. Cobián thanked Lord Cecil for his explanation. He would confine himself to making his previous statement clearer. He was still convinced that as few changes as possible should be made in the text of the Covenant, but, if the proposal he had made was not altogether consistent with that intention, he nevertheless was obliged to maintain it, since the word " propose " related to a situation other than that which was created by the incorporation of the Pact of Paris in the Covenant. In the case under discussion, it would henceforth be for the Council not merely to propose but to decide, and, if it were desired to bring the two instruments into concordance, the word " propose " must be changed.

M. Sokal thought that M. Cot's idea had been to emphasise that, with the modification made by the British amendment in the wording of Article 13, paragraph 4, it was essential, henceforth, to ensure a mode of execution for the arbitral awards and judgments of the Council in the event of their not being executed voluntarily by the defeated party. The discussion seemed now to be concentrated around the word " propose ", and he thought he was expressing the Committee's opinion in saying that the award containing the decision of the Council was a matter for which the Council itself must be entirely responsible, so that the Council must henceforth not propose but, on the contrary, act. Various other articles in the Covenant contained terms which might perhaps advantageously be substituted for the word " propose ". In Article 16, for instance, the Council had the duty of " recommending ", an expression which clearly underlined the necessity of the Council's taking a definite attitude. He shared M. Cobián's opinion that the incorporation of the Pact of Paris involved the adoption of an additional provision stipulating certain measures to be taken by the Council in the event of the arbitral decision or judgment not being executed. The actual alteration in the wording he would prefer to leave to M. Cot.

The Chairman thought M. Cobián's observation entirely correct. Certain words in Article 13, paragraph 4, and M. Cot's amendment would have to be modified. In the first place, the word " unanimity " must be removed. Due regard must be paid to the rule that the votes of the parties to the dispute did not count either in calculating unanimity or in calculating the majority.

Furthermore, the word "propose" must, if possible, be replaced by another word to take into account the comments to which the former term had given rise. Certain articles contained the word "recommend", which was somewhat weak in the present context, since the Council's deliberations sometimes had an influence which might be decisive. A reprimand might, for instance, suffice to put an end to a dispute. Everything depended on the opposition of the condemned party to compliance with the award.

M. SOKAL stressed the point that the essential thing was to make it clear that henceforth it would be the duty of the Council to take the necessary measures.

The CHAIRMAN and M. COBIÁN suggested, in turn, the terms "advise upon the means" and "determine the means".

M. COT proposed the following formula taken from Article 11 :

"The Council shall take any action that may be deemed wise and effectual to ensure the execution of the award, without regard to the vote of the parties."

Viscount CECIL OF CHELWOOD would have preferred the word "propose", but if the Committee desired to change it, he could accept "*pourrait recommander les mesures*".

M. COT thought any expression which made it clear that the Council was no longer confined to giving an opinion but had henceforth a positive duty would suffice. It was for this reason that he would prefer the expression "the Council will determine", which indicated that the Council assumed responsibility for fixing the means of ensuring the execution of the award, the actual application remaining subject to the general rules of the Covenant.

Viscount CECIL OF CHELWOOD was anxious to avoid the use of different words for the same idea, because that inevitably involved difficulty when a case came before a court. M. Sokal had been right in referring the Committee to paragraph 2 of Article 16, and he was prepared to accept its wording : "It shall be the duty of the Council in such cases to recommend . . ." Apart from that he still preferred M. Cot's original draft.

M. ANTONIADE could also accept the expression used at the beginning of Article 16 and the deletion of the word "unanimity" in M. Cot's amendment.

M. UNDÉN pointed out that, except in the case of a decision taken by the majority, the general rules of the Covenant applied. It was, therefore, unnecessary to say "unanimity".

The CHAIRMAN replied that the decision taken by the Council might be the decision of a simple majority, as M. Cobián had pointed out. In any case, the votes of the parties to the dispute did not count in calculating the vote.

He would, moreover, urge that the phrase taken from Article 16, as proposed by M. Sokal, should not be adopted for Article 13, paragraph 4. The cases were entirely different. In Article 16, paragraph 2, the Council recommended certain Governments to take measures of a military nature. It was not required to seek for the means of execution. The situation was a quite exceptional one, the Council confining itself to recommending the adoption of certain measures, a recommendation, moreover, with which the countries were not fully bound to comply. In this case, there was therefore a possibility of opposition between the Council and the individual country, and the Council could not exact obedience. In Article 13, paragraph 4, on the contrary, the Council was obliged to seek for the best means of ensuring the execution of an award and it had complete freedom in doing so. It might happen that it would even find it necessary to take a hand itself, either by taking action or by any other means at its disposal, it being its duty to use these means in order to obtain the desired result, that was to say, the solution of the dispute by the execution of the award rendered.

Article 10 said :

"The Council shall advise upon the means by which this obligation shall be fulfilled."

Viscount CECIL OF CHELWOOD observed that there appeared to be little difference in meaning between "propose the measures" and "advise upon the means". It would be a great pity to change the wording where no change of meaning was intended.

M. SOKAL thought that all members agreed on what should be placed in paragraph 4 of Article 13. As, therefore, the question was now merely one of drafting, he proposed that the text should be referred to the Drafting Committee.

Dr. VON BÜLOW agreed with M. Sokal. The members of the Committee had now clearly explained their ideas, and the matter could be left to the Drafting Committee.

At the same time, he could not agree with Lord Cecil regarding the scope of the modification made in the text by the terms proposed. The change was that the responsibility of the Council was increased and it was in order to emphasise the importance of this responsibility that he had suggested substituting for the word "propose" a more imperative term. He would be content if the importance of the change could be emphasised in the report. As, however, the majority of the Committee seemed to be in favour of introducing a new term into the Covenant, it might be better to leave the matter in the hands of the Drafting Committee.

The CHAIRMAN referred to Article 10 in which a similar case was mentioned : namely, the reluctance of a State to accomplish its duties as a Member of the League. He thought that the same expression, " The Council shall advise upon the means, etc. ", should be adopted.

Dr. WOO KAISENG agreed with the Chairman's proposal that the word " unanimity " should be deleted, in view of the fact that the votes of the parties did not count in calculating the majority nor in calculating unanimity. He also agreed with Dr. von Bülow in thinking that the Committee could choose between two means. Either explanations should be given in the report or else the Drafting Committee should be instructed to find a text fulfilling the desires expressed.

M. COT shared the views of the Chairman in regard to the expression " advise upon the means ", which was to be found in Article 10. He would point out, however, that the English translation of that expression did not perhaps possess the whole weight of the French expression. " *Avise aux moyens* " in French meant " choose the means " or " determine the means ".

Viscount CECIL OF CHELWOOD observed that it was unfortunate that the translation of the Covenant into French was not very well done. The distinction, however, between " propose " and " advise upon the means " was very slight.

He would respectfully protest against Dr. von Bülow's view. No substantial difference was being made in the functioning of the Council, which was guided by the Covenant as it stood. The Council had to advise, in the event of failure to carry out an award, what steps should be taken to give effect to it. It was clear that the parties had no right to resort to war after an award. He was still in favour of leaving the words as they stood, apart from the question of unanimity. It would be enough to explain the situation carefully in the report.

Dr. VON BÜLOW replied that the amendment to which he alluded was the result of the changes made in the text of Article 12.

The CHAIRMAN noted that the Committee agreed to submit the text to the Drafting Committee.

M. CORNEJO did not think that the Committee had exhausted its discussion of the question of substance. He would take the opportunity of explaining the proposal which he had made at the beginning of the meeting, of which he desired note to be taken in the report. The explanation given by Lord Cecil regarding the possibility of using, for example, a tariff wall to retaliate upon a Member of the League of Nations following a judgment rendered would, he thought, be possible only in theory. It should not be forgotten that the sentence to be found in the amendment of M. Cot was designed to replace the allusion to a recourse to war in the original text. It was possible for a State, after the sentence had been promulgated, to have recourse to war to protect its interests, but, since recourse to war had been eliminated, he thought that only in theory could States adopt measures which would prevent a State from conforming to a judgment rendered. Naturally, the case could not concern measures adopted against the nation in whose favour the award had been given. The only possible hypothesis was that of measures adopted to hinder the losing State in carrying out the award to which it conformed. That supposition could not be accepted. For that reason he had proposed an amendment in the wording of the phrase.

The arguments put forward by Lord Cecil, he thought, supported his own view. It might well be that not only should the State which had lost its case be protected against the hindrances in the execution of the award to which another Member of the League, might expose it but such execution should be facilitated. For that reason he had urged that the article should contain a clear and positive obligation to be assumed by the States Members of the League. The means for facilitating the execution of a State's engagements in such a case were numerous. For example, the United States had facilitated a German loan for the execution of the " Dawes " plan. Personally, he took the view that everything possible must be done to remove from the present Covenant that element of distrust which was still to be found in it and to embody in it the idea of confidence and co-operation between nations. This was the object of the amendment he had proposed.

Dr. VON BÜLOW wished to refer to a remark made by M. Ito on the previous day. He was not sure whether M. Ito had proposed that the private execution of an award by a State should not be regarded as involving a case of war prohibited by the Pact, or whether he had merely raised the question. Personally, he was opposed to the theory that private execution by means of war was compatible with the Pact and would urge the importance of mentioning the point in the report. He believed that this was one of the cases in which the Committee could not avoid the obligation of giving an interpretation, seeing that, at the same time, the rights and obligations existing under the Covenant were involved. It would appear to be quite clear that a national purpose remained a national purpose, even when it was endorsed by an award of a court or by arbitration. The question had already been discussed in the Assembly, and, in his speech on September 6th, Mr. Arthur Henderson had stated :

> " After an award or a decision or a report has been made and after three months have gone by, a party to a dispute is free under the Covenant to resort to war unless the other party has accepted the award. Under the Covenant they still have this freedom, but under the Pact they have no such freedom; they have relinquished it."

That was exactly the case put by M. Ito, and Dr. von Bülow was of the same opinion as Mr. Henderson.

It was absolutely necessary to leave it to the Council, and not to the party concerned, to decide in its wisdom what should be done to ensure the execution of an award. Otherwise there would always be the danger of a lack of relative proportion between the objects to be attained and the means employed.

The question was of some importance, not so much for the particular question under discussion, but for the parallel case of Article 15, to which allusion had already been made. In that connection, he would refer to the Austrian amendment to Article 13, which read as follows :

> " The Council may, in particular, by a unanimous decision for the purposes of which the votes of the States in question shall not be counted, and after noting the failure to comply with the Covenant by the Member which refuses to carry out the award or decision, authorise the Members of the League of Nations to take against such Member, for the purpose of ensuring that effect is given to the award or decision, such steps as the Council may consider desirable, but excluding always resort to war. "

The Austrian suggestion was not, in his opinion, derived from the Pact of Paris, International action—police action as Lord Cecil had termed it—was compatible with the Covenant, and the Austrian suggestion would introduce an innovation which went beyond the scope of the assimilation of the Pact to the Covenant.

It should be pointed out in the report that the Committee could not accept the Austrian amendment because it raised the new question whether or not the Council could resort to measures of war to enforce an award.

If the Committee failed to draw attention to the matter, it might possibly be overlooked in the Assembly. It was one of the tasks of the Committee to point out all the difficulties, doubts and complications resulting from the attempt to harmonise the Pact and the Covenant.

The CHAIRMAN pointed out that, if the Committee adopted the amendment submitted by M. Cot, the Austrian proposal would *ipso facto* disappear, as its meaning was exactly the contrary to that of M. Cot's amendment.

M. COT agreed with Dr. von Bülow. He hoped that the Council would never have to use force. It was important, however, to state clearly that the Pact of Paris could not prevent the Council from having recourse to force if it thought it necessary to do so. He agreed with Lord Cecil that States would always accept a sentence once rendered, but the extreme case of a State which deliberately violated the judgment must not be forgotten. In that case the last word rested with the law and the Council must have the power to have recourse to force for imposing the law.

M. CORNEJO said that the Austrian amendment very clearly expressed the idea that an appeal must be made to all means, except recourse to war. In his view that proposal was based on the Pact of Paris as a whole. When reference was made to force used to execute a judgment, this did not mean war. The police measures used against a Power which refused to accept an arbitral award were not measures of war. The operations would in such cases be of a strictly limited character. Their object would not be to reduce the armed resistance of the adversary. A mere occupation, for example, of the territory in dispute would suffice. He had already had an opportunity of pointing out that war was a kind of contract and for that reason it was brought to an end by a contract of peace. It was impossible, therefore, to represent the Council as endorsing what was prohibited by the Pact—that was to say, war. In view, however, of the fact that, in this case, police measures would be admitted, the Austrian amendment was, in his view, fully in conformity with the provisions of the Pact of Paris.

M. SOKAL wished to raise a question of procedure. The Committee had asked that a list of amendments should be submitted to it. He thought, however, that the rule which had been adopted was that, if amendments came from Governments not represented on the Committee, such amendments would not be discussed unless one of the members of the Committee had taken it upon himself to submit them as his own, in the absence of the Government concerned. If no one took such a course, the amendment would not be discussed. For that reason, he questioned the usefulness of attacking an amendment submitted by a Government not represented on the Committee.

He added that, in default of following the rule to which he had alluded, the Committee would be obliged to discuss all the amendments. Some of them were extremely interesting, and they had not, however, been discussed—the Finnish amendment, for example. He insisted, consequently, that it should be laid down concisely that no amendments submitted by Governments not represented on the Committee and which were not sponsored by a member of the Committee, should be discussed.

On the other hand, he would point out that it had been agreed that no attempt should be made to interpret the Pact of Paris, but it seemed to him that it was exactly an interpretation of this Pact that had just been given by Dr. von Bülow.

The CHAIRMAN was not in complete agreement with M. Sokal on the procedure that he had indicated. The Committee was a committee of investigation, and it had at its disposal a certain number of amendments that had been submitted for consideration by certain Governments. It was impossible to pass over them in silence merely because the Governments that had submitted them happened not to be represented on the Committee. In his opinion, the Committee ought

to study all the amendments and pronounce on them, even negatively. If he had not considered that the Austrian amendment had been disposed of by reason of the vote of the Committee, he would have certainly called attention to it during the course of the discussion.

Dr. von Bülow, moreover, had expressed a personal opinion and it was only to support this personal opinion that he had quoted the Austrian amendment. Each member of the Committee was free to do this, and it was therefore no infringement of the rule which laid down that personal discussions should be avoided.

Coming at last to the question of the Pact of Paris, he remarked that, while the Committee maintained that it had the definite intention of giving no interpretation of this Pact, it would nevertheless find itself continually in a position where it was obliged to make some sort of interpretation.

M. SOKAL declared that he was satisfied by the reply of the Chairman. He concluded that it could be considered that the Finnish amendment to Article 12 had been covered by the discussion on that article.

13. Article 12, Paragraph 1.

The CHAIRMAN read the text proposed by the Drafting Committee for Article 12, paragraph 1, which read as follows :

> " The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will have recourse for its settlement to pacific means only.
>
> " If the disagreement continues, the dispute shall be submitted either to arbitration or judicial settlement or to enquiry by the Council. The Members of the League agree that they will in no case resort to war for the solution of their dispute."

The text was adopted.

EIGHTH MEETING

Held on Friday, February 28th, 1930, at 4 p.m.

Chairman : M. SCIALOJA.

14. Examination of the Proposed Amendments to the Covenant of the League (continuation) : Article 14.

The CHAIRMAN observed that this article need give rise to no discussion. It would merely fall out.

15. Article 15, Paragraph 1.

M. CORNEJO recalled the following amendment which he had proposed :

> " If none of the parties informs the Secretary-General of its dispute, and if the President of the Council considers that it endangers peace, the President shall inform the parties that he will bring the dispute before the Council and that the parties are bound to comply with the provisions of the following paragraph : "

This was rather an addition than an amendment and he regarded it as absolutely essential. All the lawyers whom he had consulted had agreed there was a gap to be filled in here. In actual fact, the President of the Council, without having any explicit authorisation under the Covenant, had, on numerous occasions, been obliged to intervene when international disputes had threatened to become serious. M. Briand, when President of the Council, had, by his energetic intervention, stopped a conflict between Bulgaria and Greece. On another occasion, the President of the Council, who had at that time been the representative of China, had been forced to intervene in connection with certain Hungarian questions owing to the pressure of public opinion. At the beginning he had not intervened, for the very reason that there appeared to be nothing in the Covenant authorising him to do so. In the past year again, M.Briand had intervened in the dispute between Bolivia and Paraguay on his own authority.

The authors of the Covenant had thought that the initiative in bringing disputes to the Council should be left to the parties to the dispute or to the Members of the League. That was not enough. In critical international situations, as in disputes between individuals, there was one party which felt itself strong and took the initiative by measures of force or intimidation. The other party was anxious to submit the question to a judge but might be held back by *amour-propre,* since the world was naturally inclined to think that the country which had recourse to pacific procedure was frightened of war and nobody wished to give an appearence of being frightened of a conflict.

The intervention of another Member of the League as mediator was a delicate matter, being an act that engaged the responsibility of the Government that undertook it. In all cases the Council, once it had been asked to deal with a dispute, must discuss the matter before appealing to the parties to the dispute and its President would first ask them to refrain from any hostile act. This was a procedure which, in practice, had yielded excellent results. He was convinced that the President of the Council would act upon this article only in response to the expressed or tacit desire of, at any rate, one of the parties. He thought, too, that, being explicitly authorised by the Covenant, the President would find it easier to intervene and would be less likely to be too late in doing so if he did not wait until the Council had discussed the matter.

This new article did not therefore seem to present any danger and it was definitely in accord with the spirit of the Pact of Paris since, if war was outlawed, preventive intervention on the part of the League was more necessary than ever.

M. SOKAL drew M. Cornejo's attention to the fact that the drafting of his article was not altogether perfect.

M. CORNEJO willingly admitted the fact. He was prepared to acquiesce in any modified form of words which would express his thought better.

Viscount CECIL OF CHELWOOD observed that the interventions in the cases mentioned by M. Cornejo had taken place under Article 11. The jurisprudence of the League elaborated in connection with Article 11 had operated extremely well, and it would be a mistake to interfere with it. Even if the provision suggested by M. Cornejo were desirable, it would be well to insert it in Article 11 and not in Article 15, which dealt with disputes, and the conception of which was that the Council should be invoked by the parties to settle those disputes.

He trusted that the amendment would not be accepted. It was, to his mind, seriously open to doubt whether it could be said that it was designed to bring harmony between the Pact and the Covenant.

M. CORNEJO was surprised that Lord Cecil did not consider his amendment pertinent to Article 15.

Article 15 was divided into two parts—initiative and procedure. Initiative corresponded to the fact that one or other or both of the parties submitted the dispute to the Council; procedure began with the collecting of the documents, a task entrusted by the Covenant to the Secretary-General. Initiative could be elucidated, modified, restricted and amplified, just as procedure could be elucidated, modified, restricted or amplified. He thought that the effect of his amendment would be to extend initiative since it authorised intervention by the President of the Council. Why not insert it in Article 15 since the latter dealt with initiative? There was an analogy in private affairs. In the case of a simple offence, it was the injured party who made a charge, but when a crime had been committed affecting the rights of society itself, a Government official, the Procurator of the Republic or another, might also start proceedings. International disputes were far more important than individual disputes since they led, in the last resort, to a threat of war. Why, in that case, should the right of calling the attention of the Council to the matter be left to the parties alone? In this respect, Article 11 said clearly that the League was to take all suitable measures to safeguard the peace. That was a vague and unsatisfactory formula. It was necessary to say what should be the authority to intervene at the outset. If the possibility of war was excluded, it was essential to strengthen the procedure intended to safeguard peace.

Dr. WOO KAISENG thought that there were two points to be considered, the case where a dispute arose between two countries which were not Members of the League, in which event the League could not deal with the matter and the possibility of war existed, and the case mentioned by M. Cornejo, where the parties to the dispute were Members of the League but did not see fit to acquaint the Secretary-General with the events. What should be the attitude of the League ? Obviously, if the Council could not intervene on its own initiative, the possibility of a war existed. He thought that there was a hiatus here and that M. Cornejo's proposal deserved careful study.

Dr. VON BÜLOW was very much impressed by the remarks of M. Cornejo and Dr. Woo Kaiseng. At the same time, what Lord Cecil had said had also impressed him greatly. The Committee's object was to harmonise the Pact and the Covenant and not to reinforce the pacific means of settlement, however desirable that might be. If the latter came within the scope of the work of the Committee, it could only be at the end, when the results were being summed up. It might then prove desirable to suggest to the Council that the means of pacific settlement ought to be reinforced. Meanwhile, he would suggest adjourning the discussion of M. Cornejo's amendment until the other amendments necessary for harmonising the Covenant with the Pact had been settled.

Viscount CECIL OF CHELWOOD thought that this point might be decided at once. Article 11 provided for the case which M. Cornejo had in mind, and it was, therefore, undesirable to make the amendment which he proposed. If, however, the Committee desired to discuss the question, it would be better to adjourn its consideration to a later stage.

M. COBIÁN thought that the most serious objection which could be made against M. Cornejo's amendment was that it perhaps went beyond the competence of the Committee. It was not strictly indispensable in order to bring the Covenant into harmony with the Pact of Paris. He thought, however, that, in the report, an allusion should be made to this suggestion. The Council and Assembly might perhaps find a new solution which would give general satisfaction.

Viscount CECIL OF CHELWOOD had no objection to this suggestion.

M. ITO said that he had not spoken since the beginning of the previous meeting because he considered that the entire discussion dealt with questions which were not within the Committee's purview. The discussion would only be admissible if the Committee had been instructed to make a general revision of the Covenant and not to undertake the precise task which had been entrusted to it.

Dr. WOO KAISENG replied that the Committee's terms of reference might be taken in a wide sense or a narrow sense. If they were taken in the wide sense, that was to say, if it were held that the Committee should take into account the spirit of the two instruments, the discussions which had just been held were not out of place. If it were desired to limit the Committee's work to a word-for-word adjustment, he was in agreement with M. Ito.

The CHAIRMAN thought that it was not on account of the Pact of Paris that the Committee need adopt M. Cornejo's proposal, which might be a good one. He thought that it would be preferable to mention it in the report. If it were to be inserted in the Covenant, he would have a good deal to say on the subject.

M. ITO urged the Chairman to ask the Committee to keep strictly to its terms of reference.

M. CORNEJO agreed with the suggestion of Dr. von Bülow, as well as with that of the Chairman, to the effect that his amendment should be inserted in the report, together with the reasons which had led him to propose it.

He thought, however, that M. Ito held a narrow and curious view of the duties of the Committee instructed to amend the Covenant. That conception was not founded on the history of the Committee. M. Cornejo recalled that it was he himself who had proposed its establishment, that he had belonged to the Sub-Committee of the Assembly instructed to study the matter, and, finally, that he had been a member of the Council when the Committee had been appointed. Consequently, he was fully qualified to speak on the matter. He had discussed the question with M. Adatci, who did not seem to him to be of exactly the same opinion as M. Ito.

The Pact of Paris confined itself to forbidding war as an instrument of national policy. If it were desired to limit the work of the Committee to bringing into harmony the words of the text of the two Pacts, such a task was beyond his intelligence. To bring the two texts into harmony it was necessary to go beyond them and to examine their spirit. It was a question of replacing a Covenant which limited war by a Covenant which definitely did away with it.

Naturally, he agreed with the Chairman and with Lord Cecil that the Committee was not instructed to revise the Covenant in its entirety, but he did not think that its task was merely to bring into agreement two texts which were different in spirit.

He would ask in conclusion that members of the Committee should be allowed to remain perfectly free to fulfil their duty as they understood it.

16. Article 15, Paragraph 6.

The CHAIRMAN asked the Committee to consider the following amendment submitted by the British Government :

> "If a report by the Council is unanimously agreed to by the Members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that, *as against any party to the dispute that complies with the recommendations of the report*, they will *take no action* which is inconsistent with its terms."

The Chairman added that the Austrian Government proposed to complete the new text of paragraph 6 of Article 15 by the following words :

> ". . . reserving at the same time to the party that complies with the recommendations, as against the party or parties that do not comply therewith, the right to take such action as it shall consider necessary for the maintenance of right and justice other than a resort to war."

The Greek Government proposed the following text :

> "If the report of the Council is unanimously agreed to, the Members of the League undertake to comply with the recommendations of the report and, in default of such compliance, the Council shall propose what steps should be taken to give effect thereto."

The Finnish Government proposed the following text :

> "If a report by the Council is unanimously agreed to by the Members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree to comply with the recommendations of the report. If a recommendation is not carried out, the Council shall take steps to give effect thereto."

The Danish Government proposed the following text :

> "The Council may at any moment invite the parties to refer the dispute to judicial or arbitral settlement. Such reference is obligatory if one of the parties consents thereto. In the contrary case, the Council shall resume examination of the dispute. If the Council then reaches a unanimous report, the parties agree to comply with the recommendations of the report."

Viscount CECIL OF CHELWOOD explained that some amendment to paragraph 6 was evidently necessary, for the agreement of the Members of the League not to go to war with any party to

the dispute which complied with the recommendations of the report of the Council was a limited agreement, whereas an unlimited agreement was now necessary.

A considerable difficulty arose. What could be done with respect to a decision by a unanimous vote of the Council or by an arbitral or judicial court, if such an award were not fully accepted? The British Government considered that the proper plan would be for the Members of the League to agree that, as against any party to the dispute that complied with the recommendations of the report, they *would take no action which was inconsistent with its terms*. The old obligation was that they *would not go to war*.

The new proposal amounted in fact to an undertaking by the parties to obey the report and by the other Members of the League to do nothing to impede the execution of that undertaking.

He would not for the moment discuss the Austrian, Greek and Finnish proposals which went further, but would first ask the Committee to accept the British amendment.

M. UNDÉN said that, according to the original Covenant of the League, there was a very marked difference between the unanimous report of the Council and a report adopted by a majority. He did not quite understand what could be the difference if the British amendment were adopted. It was true that, in paragraph 6, the situation covered was not the same as that referred to in paragraph 7. Paragraph 6 dealt especially with the relations between the parties to the dispute and a third party, and paragraph 7 with the relations between the parties to the dispute. He thought that, by the terms of the British amendment to Article 6, the parties to the dispute would not be compelled to submit to the report.

Viscount CECIL OF CHELWOOD said he understood paragraph 6 to apply to the parties to the dispute as well as to the other Members of the League.

M. UNDÉN asked whether, in that case, it would not be better to state definitely that the parties undertook to conform to the conclusions of the report. He had made a proposal to this effect which was similar to the Finnish proposal.

Viscount CECIL OF CHELWOOD saw no objection to M. Undén's proposal.

M. COT thought that the Committee need do no more than adopt the draft proposal of M. Undén, in so far as the first sentence was concerned, and leave the last sentence to the Drafting Committee. The idea expressed was the same as that in Article 13.

Viscount CECIL OF CHELWOOD agreed that the words of the Finnish amendment, " . . . the Members of the League agree to comply with the recommendations of the report ", were clearer and simpler than those of the British amendment, which were " . . . the Members of the League agree that, as against any party to the dispute that complies with the recommendations of the report, they will take no action which is inconsistent with its terms " and was prepared to accept them.

The last sentence of the Finnish amendment had not yet been considered, and he hoped that the Committee would discuss separately whether a report of the Council should be treated on exactly the same lines as an award of a court.

M. ITO, after having carefully re-read the British amendment, thought that, if it were adopted, no difference would any longer exist between the report of the Council and an arbitral award. The special value of the Council's intervention, however, lay in the fact that its decisions were different from those of an arbitral tribunal. If the Council became purely and simply an arbitrator, legally it would have no further reason for existence. He also thought that, in adopting this amendment, the Committee would considerably weaken the prestige of the Council, for that prestige depended upon its political elasticity.

Viscount CECIL OF CHELWOOD considered that there was much force in what M. Ito had said. How to deal with paragraphs 6 and 7, which constituted the really difficult part of the Committee's task, had given the British Government, and himself personally, great anxiety.

He felt very strongly the importance of not treating the Council's decisions in exactly the same way as an award. They were to be in the nature of conciliatory dispositions rather than judicial decisions.

On the other hand, being for the present purpose primarily a lawyer, he looked at the framework of the two paragraphs and saw that the Covenant drew a considerable distinction between a unanimous and a non-unanimous decision of the Council.

M. Ito would agree that a unanimous decision had to have something like the same degree of force as a judicial decision, and in that sense ought to be treated as a final settlement of the dispute. Taking the Covenant in its present form, no party was to go to war against such a decision, and the defeated party was not to resort to violence in resisting it.

When the British Government formulated its amendments, it saw no use in keeping alive that state of affairs, when the power of going to war was to be taken away altogether. The draughtsmen of the amendment, therefore, had replaced the prohibition against going to war by a prohibition to take no step against the decision of the Council. The result was, in effect, as M. Ito had said, an obligation to comply with the decision, for to take no step against compliance was the same as to comply. In effect, the decision was made definite and positive.

The only other course would be to say that, in the case of such an decision not being accepted, the Council would itself consider what was to be done. That, however, would put the successful party in a very much worse position than at present when it had, at any rate, the definite under-

taking that no one would resist by force the decision of the Council in which it was successful. It was right therefore to say that a decision of the Council should be accepted. Whether sanctions should be provided in case it was not accepted was a different matter, and one which he hoped would be discussed later.

M. Ito said that he was ready to admit this view if a distinction were made between a report agreed to unanimously and a report accepted by a majority vote. If Article 15 were amended in such a way that, in calculating unanimity, the votes of the parties to the case were not entirely excluded, he would accept the British amendment.

M. Sokal recalled that there were two cases under examination : that in which the Council took a unanimous decision and that in which it took its decision by a majority. The British amendment referred to the first case. A discussion had arisen in connection with it. It had been pointed out that, since recourse to war was no longer possible, it was necessary for Members of the League of Nations to realise that, by the terms of Article 15, they were compelled to accept the unanimous report of the Council.

M. Ito had at that moment raised the question of the nature of the Council. Should that body be an organisation for conciliation or for arbitration? M. Ito had said that it should be an organisation for conciliation. This was a grave question, and he would confine himself to pointing out that, in this respect, there were two completely different points of view in the Committee. Some thought that the moral force of the League would be sufficient. If the Council had adopted a report unanimously, it might be taken for granted that there would be no means of escaping the consequences of that decision, since the Council was the most important political body in the world.

Others said that moral force was not sufficient, and maintained that, if the decision of the Council were not executed, provision for the application of sanctions must be made.

If the first view were accepted, the British amendment must be adopted without change. If the second view were approved, the Committee must go the whole way and establish sanctions.

He would not decide either for or against either plan. His decision depended on the views of the Committee in regard to the following articles.

M. Cot agreed with M. Sokal as to the desirability of being logical. He did not, however, fully agree with M. Sokal as to the method to be followed in this case. Two questions were before the Committee : first, whether a compulsory character must be given to the unanimous recommendation of the Council; secondly, whether any particular organisation should be entrusted with the duty of executing the Council's recommendation. These were two important questions which were undoubtedly bound up with each other. They could, however, be studied separately. He would confine himself to the examination of the first question.

M. Ito had said that there was a fundamental difference between an arbitral or judicial decision and the recommendation of the Council unanimously voted. While M. Ito was entirely ready to make the first kind of decision compulsory, he was reluctant to recognise that the unanimous recommendation of the Council should be regarded as compulsory.

What exactly was the problem? Hitherto, it had been possible for the parties to the dispute to accept or not the decision of the Council. If the parties agreed not to accept it, war was legitimate. Now, however, the solution by means of war had been removed. In order that the removal of this possibility should have practical consequences, in view of the organic provisions of the Covenant, some new principle must take its place. It was here that he disagreed with M. Ito, for he thought it indispensable that a compulsory character should be given to the Council's report. In his view, this was the only possible solution. If M. Ito had another one to propose he was ready to examine it, for, if a difference could be established between arbitral or judicial decisions and the decisions of the Council he, as a lawyer, would be very glad. Until, however, he had received more information he would agree to the proposal of M. Undén.

M. Cot added that, even if a compulsory character were given to the unanimous decision of the Council, there would be a difference between that and other decisions due to the nature of the case and to the fact that the Council was a body composed of politicians, and was, therefore, more supple in its views than were lawyers, who would probably have recourse to a somewhat slow procedure—a procedure of which the Chairman and M. Cornejo had already vaunted the efficiency.

M. Undén called the attention of M. Ito to the fact that the part played by the Council, even if its decisions were compulsory, was very different from the part played by the arbitral or judicial tribunal, for its procedure was not in the least degree similar. Generally, the Council was aware in advance that the parties to the dispute would adopt the recommendation it proposed. In any case, the Council always sought to achieve this result.

He would observe to M. Sokal that Lord Cecil's explanations showed that there was no great difference between the British amendment and his own.

Viscount Cecil of Chelwood regretted that he had misled M. Undén on one point. On re-reading the British amendment he found that it only applied to a case where one party had agreed to the report. It would therefore not apply where both parties disagreed. He did not, however, on that account withdraw his acceptance of M. Undén's proposal.

M. Cornejo was somewhat surprised to learn that the compulsory character of the Council's resolution, when adopted unanimously, could be called into question. In the long discussion to which Article 12 had given rise, it had been constantly repeated that war, as a final solution, must be replaced by another solution. Emphasis had been laid on the fact that mention must be made of conciliation before recourse to arbitration or to a tribunal or to the Council. Several members had said that these three procedures were solutions compulsorily imposed on the parties

once all others had failed. What would the removal of the compulsory nature of the Council's decision now mean?

Obviously disputes submitted to arbitration or to judges were not generally of the same kind as those submitted to the Council. There were differences between the three solutions arising from the state of mind of the States parties to disputes and the nature of their controversies. The Council was primarily a political body, and in many cases a State preferred to have recourse to it because it was not quite sure of its legal position and because it placed greater reliance on the political judgment of the Council. It was this difference which made it necessary to give the Council's decision a compulsory character. The questions submitted to the Council were usually the most dangerous. They were those which had in former days led people to adopt the hated solution, war, which it was now desired to eliminate. To deprive the solution recommended by the Council of its obligatory force was to open the door to conflict and, in a way, to authorise it.

If the Committee adopted any other view, he would not hesitate to maintain that it had failed in its task. He regretted that a negative form had been given to the prohibition contained in the British amendment and he much preferred the Finnish amendment. He thought that the moment had come to say that the Council must contemplate every possible means of solution. The Committee should leave the detailed examination of those means to a later stage.

He would submit, at the proper time, an amendment connected with the question of the Council's decision adopted by a majority vote.

Dr. von Bülow was ready to accept the Finnish proposal down to the last sentence. He did not see, however, any way of expressing an opinion on the last sentence until it was clearly seen what was to be done under Article 15, paragraph 7. He did not intend to discuss the question of execution, but, in order to make his meaning clear, would have to refer to it.

As jurists, all of whom had had some political experience and some of whom had sat on the Council, the members of the Committee would be able to imagine the feelings and doubts of members of the Council when they were treating a case. An attempt at conciliation had been made ; Article 15, paragraph 3, had been tried without result. Article 15 next provided for a settlement by the Council without the assent of the parties. He did not think the members would easily be able to agree on a solution. To his mind, if it were easy to find one, it would already have been found by way of conciliation. Any solution found would have its drawbacks.

The members of the Council would therefore always be in a position of having to accept or not accept a solution with which they did not entirely agree—choosing the lesser evil. It was essential for a member of the Council to know what consequence his dissenting vote would have in regard to the treatment of the case and the Committee, too, should know what it proposed to arrange under paragraph 7 before taking a definite decision on paragraph 6.

Whatever settlement was found, however, for paragraph 7, paragraph 6 should be binding on the parties to the dispute and upon the Members of the League to comply with the recommendations of the report. He was therefore willing to accept the first part of M. Undén's amendment.

M. Cobián said that he entirely approved the views of M. Cot. He wished to give a number of explanations regarding the character of arbitral procedure, judicial procedure and the intervention of the Council. The differences between them rose from the persons involved and the nature of the procedure. A judge confined himself to applying the law. An arbitrator must take account both of law and of the principles of equity. The main duty of the Council was to take account of the political aspect of the questions. The three procedures were, however, identical in so far as their starting point and their object were concerned. The starting point was the existence of a dispute; the object was the final settlement of that dispute. It was impossible, therefore, to give one of the three procedures less force than that given to the two others.

M. Ito said that the reason why he had not referred to the political aspect of the question was because he desired to speak only as a lawyer. From that point of view he was unable to accept the opinion of M. Undén. M. Undén had maintained that the procedure for recourse to the Council differed from arbitral procedure in that, in the latter procedure, a third party, instructed to find a solution, intervened. Was not this, however, the same in regard to the Council? The members of the Council were third parties who discussed the dispute. From the legal point of view, this difference was not therefore admissible and he would repeat that, if M. Undén's proposal were accepted, from the legal aspect the Council would have no further reason for existence. He had a very great respect for the Council but he could not avoid pointing out that, during the ten years of its existence, it had several times drawn up reports whose recommendations had not been fulfilled to the letter. He could not therefore go any further than the British amendment.

Dr. Woo Kaiseng thought the amendment of M. Ito to be of great interest. He was ready to support it or to support the Finnish proposal.

Viscount Cecil of Chelwood hoped that M. Ito would allow him to correct the impression he appeared to have derived from his intervention on November 25th. He could assure M. Ito that nothing would have given him greater pleasure than to listen to his discussion of the desirability of the change. His reason for saying that the Committee did not need to consider the desirability of harmonising the two documents was that this question had been settled by the Assembly. He did not, however, mean that the Committee was never to consider the political aspect of the question. Obviously, it could not leave all political aspects out of the question in considering what amendments were desirable.

As he understood M. Ito's difficulty, it was that the effect of making a unanimous decision

of the Council enforceable would be to assimilate the Council to a Court of Arbitration and to destroy part, at any rate, of the value of the Council. That was not quite accurate. There were immense differences, juridically, between a court of arbitration and the Council. The Council admittedly did not act by any rigid rules. Its business was of an equitable character. It had to suggest the decision which was on the whole desirable in the interests of the world. It had also much larger and wider powers of adjourning the discussion and asking the parties to reconsider their position, of seeking, by all means, a conciliatory and mediatory decision. Finally, it might well be—the point had not yet been discussed—that the nature of the sanctions of a decision of the Council would differ very seriously from the nature of the sanctions of a Court.

Whatever was done in the matter, the Council's characteristic function of trying to find a solution which was just, indeed, but which was also acceptable to the two parties, would probably be left untouched. It was only in the last resort, when every other attempt had failed, that the Council was called upon by the Covenant, as it stood, to see whether it could or could not arrive at a unanimous decision. It was recognised in the Covenant that such a unanimous decision, if arrived at, was of the same nature—though it did not carry the full consequences, or the same consequences—as the decision of an arbitral court.

M. Ito would forgive him for pointing out that he had failed to answer the question put by M. Cot. If a decision were not to be made compulsory, what would be done? That was an extremely difficult question because there was the possibility of a unanimous decision of the Council on behalf of a small Power against a great Power not being carried out. That danger was very remote, but it was possible. Was the Council to say that it could not order the great Power to carry out the decision, but that it was for the great Power to consider whether or not it would do so. Surely when a unanimous decision had been given it was the duty of the Members of the League, including the parties to the dispute, to carry it into effect. That was for the moment the point under discussion. He agreed that the further question of what sanctions should be attached required serious consideration.

With Dr. von Bülow, he considered that it would be better to postpone the discussion of paragraph 6 until a decision had been taken regarding paragraph 7.

The CHAIRMAN had no doubt as to the compulsory nature of decisions adopted unanimously by the Council. He must, however, confess that he had entertained doubts in regard to their application in the past. He would quote as a striking example of this the case of Mosul. The Council, which had been appointed by the Treaty of Lausanne to decide the State to which Mosul would belong, had been faced with a grave difficulty. Turkey, which was not a Member of the League, and which had been called upon to appear before the Council, not under the Covenant but under the Treaty of Lausanne, had not been subject to the obligations undertaken by Members of the League. The Rapporteur to the Council, who had not been a lawyer, had imprudently referred on several occasions to recommendations. Obviously the case in point had been one for arbitration. The Turks, however, had taken the opportunity to inform the Council that it was unable to make a recommendation. They had then gone on to say that they would not obey such a recommendation. He had on that occasion been President of the Council, and he had then proposed that the Permanent Court should be asked to define what were, in its view, the powers of the Council. The Court had naturally concluded that the Council had, in that case, been a court of arbitration and that Turkey was consequently not able to refuse to fulfil her obligations, since it was obvious that, whatever might arise, the decision of the Council must have a compulsory character.

He would point out that, apart from the cases provided for in Article 15, the Council might make non-compulsory recommendations. This, however, did not concern the Committee. It was for the Council to decide the matter and it would base its decision on the character of the dispute. The Committee was now, however, considering the case in which the Council was placed on the same footing as an arbitral tribunal or as the Court of International Justice by virtue of the provisions of Article 12.

There was not the least doubt that the compulsory character of the Council's decisions involved a system of sanctions.

He would emphasise this fact, but he willingly agreed with M. Ito in thinking that it would be very useful for the Council to give decisions which were not compulsory.

NINTH MEETING

Held on Saturday, March 1st, 1930, at 10.30 a.m.

Chairman : M. SCIALOJA.

17. Examination of the Proposed Amendments to the Covenant of the League (continuation) : Article 13, Paragraph 4 (continuation).

M. COT read the following text which had been adopted by the Drafting Committee for paragraph 4 of Article 13 :

> "The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not take any action against any Member of the League which complies therewith.

"In the event of any failure to carry out such award or decision, the Council shall propose (or shall determine) what measures of all kinds should be taken to give effect thereto; the votes of the representatives of the parties shall not be counted."

He explained that the term "propose" had been kept, because it appeared in the original text of paragraph 4 of Article 13, but the measures in question were definitely measures the execution of which could not be refused.

18. Article 15, Paragraph 7.

The CHAIRMAN read paragraph 7 of Article 15. He pointed out that the wording of paragraphs 6 and 7 would have to be co-ordinated.

M. UNDÉN recalled the wording of the British amendment to Article 15, paragraph 7, which read as follows :

"If the Council fails to reach a report which is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice *other than a resort to war.*"

It seemed to him that the solution proposed in this amendment was, for psychological reasons, inacceptable. This point was connected with the celebrated hiatus in the Covenant, that was to say, the case in which the Council did not succeed in coming to a unanimous decision and the States were free to take individual action. Although the British amendment contained the restriction "other than a resort to war," it appeared that it left the parties free to take dangerous individual measures. Personally he thought that it would be better for the Council, if it could not adopt a unanimous report, to keep the question in its own hands and reserve its right to continue to study it. It was for that reason that he would prefer to introduce into this paragraph a stipulation based on the contents of Article 11, under which the Council could always take measures to safeguard peace. It would, he thought, be desirable to have a reminder of this fact in Article 15, paragraph 7.

In order to strengthen Article 11 to meet this circumstance, he proposed the following amendment, which he had already submitted :

"If the Council fails to reach, as regards the actual subject of the dispute, a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall, if necessary, propose provisional measures intended to safeguard peace. The parties have the obligation to comply with the Council's proposals, if they are unanimously agreed to by the members of the Council other than the representatives of one or more of the parties to the dispute."

M. COBIÁN considered that the Committee had reached the most difficult point in its task. The only method of solving the difficulty, in his opinion, would be to revise the order in which the three methods of pacific settlement enunciated in Article 12 were enumerated. The procedure to be followed by the States, therefore, was, in the first place, an appeal to the Council. If the Council did not succeed in settling the dispute by a unanimous decision, the parties must compulsorily come before a court of arbitration or before the Permanent Court of International Justice. He would draw attention, in this connection, to the danger which might arise from the refusal of one of the parties to take the dispute before a court of arbitration. If, after a refusal, the Council failed to reach a unanimous decision on the case submitted to it, there would be a danger of the entire structure collapsing, since the Council remained the supreme judicial authority.

Viscount CECIL OF CHELWOOD did not feel that M. Undén's proposal carried the matter much further. If the Council could not be unanimous on the merits of the dispute, it was very probable that it would not be unanimous on the question of what steps ought to be taken to safeguard peace.

A more formidable objection, however, was that the powers sought in M. Undén's proposal were already given in Article 11. Those powers had been defined by the Council on the advice of a small committee, in a series of very useful suggestions and decisions, and it would be a mistake to interfere with a procedure which had been elaborated on several occasions and found to work extremely well. The effect might indeed be to hamper the already well-established practice of the Council.

The British amendment was itself open to criticism, and its only merit was that it did not depart very far from the existing wording of the Covenant.

He looked, however, to the acceptance of the General Act of Arbitration as the real solution. As President Hoover had himself said, the system of international arbitration must be elaborated. The British Government had taken a most desirable step when it had accepted the Optional Clause. It was now examining the General Act, and he hoped and believed that there was every prospect of its being accepted in the near future. That was the true line of advance and the ultimate way out of the difficulties of paragraph 7.

The CHAIRMAN wondered whether it would not be better to make the opinion of the Permanent Court of International Justice obligatory in the event of a division in the Council. This was a method which, in his opinion, could not fail to have certain advantages, since the difficulty which arose in paragraph 7 was not an isolated case. Paragraph 9, for instance, introduced recourse to the Assembly, a somewhat unpractical method, since a decision by the Council was required in order to bring the case before the Assembly, and the difficulty would, in the last analysis, only be postponed. On the contrary, recourse to the Permanent Court of International

Justice presented certain advantages; in particular, that of keeping the discussion going, and as everyone was aware, in international matters temporisation was often the best way of coming to an agreement. The opinion of the Court would probably be decisive in almost all cases.

M. Undén thought the Chairman's suggestion a very interesting one. He wished, however, to reserve his opinion in order to have time for reflection.

In reply to Lord Cecil, he agreed that he had not made any very audacious or very novel proposal, but he thought that the opinion he had expressed was reasonable, for he had been impressed by the dangers which the adoption of the British amendment would be likely to involve. It would be unwise to proclaim in an explicit rule that, in cases where international tension was such that the Council itself was divided, the parties to the dispute were free to take the matter into their own hands and to do whatever they held to be in accordance with the law. It might, he thought, be useful to adopt a provision recalling that the Council had other means at its disposal and he would remind the Committee that the report by the Committee of Three had emphasised the great importance of Article 11. The amendment which he had himself proposed was based on Article 11. It seemed possible, in the case of paragraph 7 of Article 15, to say that the Council should take all the measures laid down in Article 11.

Speaking for himself, he would be perfectly prepared to agree to the entire deletion of paragraph 7 of Article 15, which, in his view, had no meaning, since all recourse to war had been abolished. In default of deletion, he considered the amendment which he had submitted preferable to the British amendment, more particularly by reason of the last sentence which strengthened still further the contents of Article 11. It seemed to him more desirable, in order to meet a case of international tension, to introduce into paragraph 7 a reference to Article 11 rather than explicitly to invite the parties to act as they thought fit.

M. Sokal thought that the Chairman's suggestion that the opinion of the International Court of Justice should be made obligatory in the case where the Council arrived at no unanimous decision on the dispute submitted was of particular importance. It was obvious that the Council might only appeal to the Court in order to elucidate points of law.

The question raised by paragraph 7 of Article 15 was a most delicate and complicated one. That was the "gap" in the Covenant that had already been pointed out as being the most dangerous, but, in practice, it was seen that the cases in which the Council was unable to arrive at complete unanimity were extremely rare. It was necessary, however, to make allowance for them.

It would be a mistake, he thought, to believe that every dispute submitted to the Council ought to be settled immediately. Naturally, the Council would do all in its power to settle the difference by every means possible. It might happen that the dispute demanded an immediate solution, but it might also happen that it could be prolonged. The solutions that had so far been proposed to the Committee seemed to take as their point of departure the fact that disputes submitted to the Council should be settled with the briefest delay possible. In his opinion there were certainly disputes which might he prolonged without serious inconvenience. To demand an immediate solution from the Council might even, in certain cases, run counter to the normal development of a dispute that could quite well be settled by the passage of time.

Personally, he did not think it was possible to introduce in paragraph 7 of Article 15 a universal solution applicable to every case that might arise, because such exceptional cases would never fail to arise.

All the members of the Committee agreed in wishing to enlarge the system of pacific solutions. But the essential condition to the procedure of pacific settlement was that, if there were a decision, there ought to be corresponding sanctions. The solution proposed by Lord Cecil was inspired by the General Act of Arbitration, and it was an extremely desirable one. It should be remembered, however, that the General Act offered no perfect solution, since it still allowed the possibility of reservations even in the case of universal adherence to the principle of arbitration. Consequently the reservations would remain, and it would become impossible to guarantee that in every case recourse could be had to the provisions of the General Act of Arbitration. However, he would vote in favour of the British amendment for want of a better one.

M. Cornejo was glad to note that the amendment proposed by himself was for the most part in conformity with the indications given by the Chairman. His amendment ran as follows :

"If the Council fails to reach a report which is unanimously agreed to by the Members thereof, other than the representatives of one or more of the parties to the dispute, it shall request an advisory opinion from the Permanent Court of International Justice.

"The Court's advice shall be asked only upon those points of law which are raised by the majority and by the minority of the Council respectively, those points in particular being selected which have given rise to the disagreement.

"The Permanent Court of International Justice shall give its reply as rapidly as possible.

"When it has received the Court's opinion, the Council shall endeavour to reach unanimity.

"If the Council fails to reach a new report which is unanimously agreed to by the Members thereof, it may either submit the case to the Permanent Court of International Justice or refer the dispute to the Assembly.

"A majority decision shall be sufficient for submitting the case to the Permanent Court of International Justice.

"In order to refer the dispute to the Assembly, it shall be necessary that the Council shall be unanimous save for the votes of the representatives of the parties to the dispute.

"The Assembly shall proceed in accordance with paragraph 10 except that it shall not be necessary that the representatives of the Members of the League represented on the Council shall unanimously concur in the vote of the majority."

M. Cornejo did not hope to win over all the Committee to his proposal. It was his opinion, moreover, that, on the fundamental question which was under discussion, it would be all the more difficult for the Committee to draw up a single proposal, since it had to take into consideration the proposals of the various States. That was why he thought that, on this point, the report ought to be as comprehensive as possible, and should give an outline of the opinions that had been expressed, including those of the different Governments, leaving to the Assembly the decision in the last resort.

The principal defect of all the proposals that had been made, including the British proposal, was that they accepted quite naturally, quietly and passively the fact that the vote of the Council would not be unanimous. It seemed that the first thing to do in such a case was to look for the reason of the divergence of opinion in the Council. In England and America it was necessary that cases of social order should be decided by a unanimous jury, and this unanimity was always obtained. Why should it not also be obtained in the Council?

It was necessary to take into consideration the fact that the study of the matter in the Council would be subject to all the reactions that arise from human shortcomings. The members of the Council were the direct representatives of their Powers, and had to obey the instructions that they had received. That was exactly their principal shortcoming. Each followed its national line of conduct in a question of international policy. The natural sympathies that existed between nations, the fact that Powers might have other Powers dependent upon them, the various jealousies and enmities of the Powers themselves, as well as personal passions, had all to be taken into account. The obstinacy of a member who wished to be right at all costs, or of a jurist who defended his theories stubbornly might give rise to all sorts of divergencies. Personally, he thought that, if the Council could not come to a unanimous decision, it would have to be cured of this weakness, and the remedy would be to appeal to the bodies which had been so wisely created by the Covenant of the League of Nations, especially the Permanent Court of International Justice.

Why not in that case make use of the Court, as the Chairman had proposed? The first advantage would be that the case would be removed from the atmosphere of political and personal prejudice and considered from the legal aspect. His proposal accordingly required that, if the Council was not unanimous, it should ask the Court for an advisory opinion, to cover not the dispute as a whole, but the legal points on which the members of the Council disagreed. The majority and minority points of view would be expounded before the Court with the legal arguments on which they were based. As the Court would not have to study the dispute in its entirety, it would be able to give judgment within a very short time. As soon as the Council had received the Court's advisory opinion, it would examine the question again, and he thought that there would then be ninety-nine chances to a hundred in favour of unanimity, since all minor arguments would disappear at sight of the Court's reply on a question put in juridical form. This procedure would have the advantage of preserving the League's prestige, which would certainly suffer from the prolongation of a state of division in the Council.

Suppose, as was always possible, that, notwithstanding the consultation of the Court, the question was so serious that the division in the Council persisted; his amendment presented two solutions. The first, and, in his view, the most logical, would be the reference of the entire dispute to the Court, which would give a judgment that would be binding on all parties. He considered that the time had come to accustom the nations, like individuals, to have recourse definitely to courts of justice.

During the transition period, when the memories of the great world cataclysm were still quite fresh and mistrust was the normal state of mind among the peoples, he could understand that certain precautions had been taken in the Covenant, and that reference had been made to arbiters, jurisdiction by the Council, etc. But, in the future, when the nations had acquired a conviction that the peace was stable, it was probable that the cases brought before the Council would become increasingly rare, and that it was to the Court of International Justice that the appeal would be made, just as private persons quite naturally brought their cases before the courts.

He thought that a majority of the votes on the Council would suffice to refer a dispute to the Permanent Court of International Justice. He thought this proposal preferable to the appointment of an arbiter, as proposed by Denmark, since the same difficulty would occur in the Council in regard to the designation of the arbiter. There would be an arbiter designated by the majority, and another designated by the minority. The enormous importance which the designation of arbiters might have in certain cases must not be overlooked, and he would mention the case of a dispute between Colombia and Peru, which had recently been settled by direct agreement as to delimitation, but which had previously been for a long time in suspense, because the two countries had not succeeded in agreeing on the choice of an arbiter. It was for that reason that he thought reference to the Court preferable to submission to arbitration, and urged that, in this case, the Council should decide on reference to the Court by a majority.

In cases where the Council thought that the dispute was not of a purely juridical character, and that the Court could not take into account all the serious interests at stake, he would favour an appeal to the Assembly, and, on this point, he agreed with the Covenant of the League. He would, however, observe that the Assembly would still judge the case by a majority and that, under Article 10, the votes of the members of the Council would be counted in calculating this majority. In this case there would be the danger that the disagreement which had divided the Council might persist in the Assembly. For this reason, while he agreed that unanimity in the Council was essential for a dispute to be brought before the Assembly, he would urge in return that the majority in the Assembly need not necessarily include the Members of the League represented on the Council. The advantage of recourse to the Assembly was that the question was submitted to public opinion. Public opinion could exercise enormous pressure and bring the parties to consent to arbitration or to the judgment of the Court or to some form of conciliation.

Viscount CECIL OF CHELWOOD asked that speeches should, as far as possible, be limited to five minutes, in order to keep the debates within reasonable length.

The CHAIRMAN was unable to restrict the time allowed to each speaker to five minutes, but would request them to be as brief as possible.

M. COT noted that the Committee agreed that it was indispensable to fill in the hiatus in paragraph 7 of Article 15 of the Covenant. This was the real crux of the difficulty of the Committee's task. In agreement with M. Undén, he considered the British solution inadequate, since the parties might commit certain dangerous acts if their hands were left free. M. Undén's proposal also seemed to him inadequate, since it merely consisted of proposing the putting into operation of the measures stipulated in Article 11. As Lord Cecil had observed, the reference to Article 11 was useless. Furthermore, there was an enormous difference between the cases visualised in Article 11 and those visualised in Article 15. In Article 11, the Council was instructed to take measures to preserve the peace. In Article 15, it was confronted with a dispute and was required to settle it. There was no question of taking measures to prevent war, but of finding a solution to a dispute. In such circumstances the essential solution was a unanimous recommendation on the part of the Council; but should the Council fail to reach unanimity on a decision, he would support the Chairman's opinion and consent to the reference to the Court of the legal questions involved.

The juridical difficulties having been elucidated by the Court, the dispute would return to the Council, which would very probably succeed in reaching unanimity once the legal question had been settled. Here, however, he would go further than the Chairman, and urge that, if the Council were not unanimous on the decision to be taken, the parties should be required to submit to arbitration as arranged by the Council. In his opinion, the best solution, as Lord Cecil had pointed out, would be the signature by all the members of the League of the General Act of Arbitration, but it seemed that the different countries had hitherto shown very little enthusiasm in adhering to the General Act. England and France were on the point of doing so, but they were still practically alone. Furthermore, the admission of reservations to the General Act would open a new fissure. He proposed that, without going into details, the Committee should agree on a principle, and should leave it to the Drafting Committee to formulate this principle in the most adequate manner possible. The principle which he proposed was a unanimous recommendation by the Council, if possible, or, otherwise, an obligation for the Council to submit the legal difficulties to the Court of International Justice. Following the opinion of the Court, the Council would proceed to a fresh examination. In the case of failure to reach unanimity, it would refer the dispute to a court of arbitration, the sentence in this case to cover not the legal question which had already been settled by the Court, but the other questions.

The Court could not be asked, as M. Cornejo had proposed, to give an opinion on the whole of the dispute, since its domain was strictly juridical. It was difficult, furthermore, to adopt the solution of reference to the Assembly which would decide by a majority, for there was reason to fear that certain countries might succeed in imposing on the Assembly the adoption of solutions which might not invariably be the best. He accordingly hoped that the solution adopted would be one which combined the Chairman's proposal with the Danish proposal.

The CHAIRMAN was glad to note that M. Cornejo agreed on the principal point in his proposal. Before admitting division in the Council on a question, it was important to explore all possible means of achieving unanimity, and there was no better means than an advisory opinion by the Court of International Justice. It was, however, difficult to formulate the principle of reference to the Court by a majority decision without settling the question of other cases of reference, either by direct arguments or by indirect arguments.

Viscount CECIL OF CHELWOOD said he would be reluctant to make a proposal to the Counci and the Assembly which had no chance of acceptance. Much as he was attracted, therefore, as a jurist by M. Cot's proposal—and indeed by M. Cornejo's proposal—he did not consider them practical at the moment. The Members of the League had shown, by their reluctance to sign the General Act, that they were not at present in every case prepared to accept compulsory arbitration. Any amendment which did not express something like the unanimous wish of the Members of the League would fail. The justification for trying to put the Pact of Paris into the Covenant was that there was something like unanimous opinion on the matter, but unfortunately there was as yet nothing like unanimous opinion in favour of universal compulsory arbitration.

He himself was an adherent to the idea, but it was necessary to take things as they were. He even felt a little doubtful whether it would be possible to go as far as the Chairman desired and to compel the Council to ask the opinion of the Court on legal questions. The Council should certainly consider whether that was not a desirable course, and no doubt, if any considerable section of the Council was of opinion that such action offered a chance of peaceful settlement, it would be taken.

He would, for the moment, prefer a solution of a more modest kind, which he quite admitted was not a complete solution, and would suggest the following wording :

> "If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Council shall consider again what other steps may be open for the settlement of the dispute and for the maintenance of right and justice such as action under Article 11, reference to the Permanent Court or other tribunal, but in no case shall either of the parties resort to war."

That would not be a satisfactory conclusion, and, as a jurist, he would avoid it, as far as possible, but it was not a fatal solution. An immense number of international disputes had remained open for years and had not produced war. There was a dispute, for instance, over the Newfoundland fisheries between France and Great Britain, which had lasted for about a century. It was unfortunate that it should have lasted so long, but it produced no serious tension between the two countries.

The wisdom of the Covenant of the League lay in the fact that it had been very careful not to go beyond what public opinion would support, and by public opinion he meant practically universal opinion. It was necessary, in international matters, to go slowly in order to go surely.

It was disagreeable to him to have to advise the Committee not to seek a perfect solution but only to proceed a certain way in the direction of a solution. Nevertheless, in his judgment, the point reached was—*the elimination of war*—provision for which the Assembly desired to have inserted in the Covenant. Possibly the consequent provisions for the settlement of disputes should also be inserted. It would, however, be wiser, for the moment, not to seek a complete and perfect solution but to suggest to the Council the kind of steps which should be taken in case it was not unanimous (those steps were broadly speaking, the steps suggested by M. Cornejo, M. Cot and the Chairman). It would be unwise to make them obligatory on the Council, which should be left to exercise its discretion.

M. Cot agreed with Lord Cecil that the Committee must formulate proposals which were calculated, so far as possible, to receive the assent of the Council and the Assembly. He did not think, however, that the Committee should allow itself to be guided solely by this exigency. The Committee was a Committee of Jurists. It must seek the requisite methods for avoiding all possibility of recourse to war. If the Council and the Assembly held that world opinion was not yet sufficiently ripe to accept all the reforms proposed by the Committee, it was for them to judge, but it was for the Committee to indicate clearly that, war being abolished, the point was to seek for other methods of international settlement to replace it.

Even if it thought that its suggestions would not be adopted in their entirety by the Assembly, the Committee must, he thought, formulate them all the same, since the opinion which it put forward would nevertheless be authoritative. If, for instance, its discussions made it clear that only arbitration could furnish the required solution, it would be possible to work on public opinion in this sense. While making allowance for what might happen—and he had made allowance in the text which he had proposed for paragraph 4 of Article 13—he thought that the Committee must not be timid and confine itself to indicating that the Council could ask for the advisory opinion of the Court on legal difficulties. In that case paragraph 7 of Article 15 would be useless, since the Council was bound to settle the dispute by all pacific means. The Committee must suggest a juridical solution, which would make it possible to fill in the gap in Article 15, which was meaningless if recourse to war were regarded as possible. It must clearly indicate that several steps would have to be taken and that it would be for the Assembly to decide which among them it was prepared to take in the direction indicated.

The first step had been indicated by the Chairman and M. Cornejo. It was that the Permanent Court should be asked to give an advisory opinion on the points of law involved. He hoped that it would become compulsory for the Council to make this request if one of the parties demanded it. He hoped that this course would be taken on the initiative of the Council or of one of the parties. Further, he wished the report to mention that, in the view of the Committee, the Council ought, after having received the opinion of the Court, to proceed to a fresh examination of the case. If that procedure were followed, there would be 99 chances in a hundred of obtaining unanimity on the Council. In a case, however, in which the Council was still divided, every means must be used to prevent reopening a situation in which the possibility of war was admitted. He desired therefore that the Committee should draw up a text which would make it impossible for the dispute ever to reach a stage in which it could not be solved. For every dispute there must be a solution. Let every precaution be taken, every delay allowed, a wise deliberation in procedure be followed. But, whatever might happen, sooner or later a decision must be reached. He recognised the reluctance of States to bind themselves in advance, but the difficulty would be still greater if, after attempting to bring into harmony the Pact of Paris and the Covenant of the League of Nations, the Committee were still faced with the possibility that there might be a dispute for which no solution could be found. For that reason the Committee must not hesitate, in his view, to formulate clearly the only solution which seemed possible and leave it to the Council and to the Assembly to take what decision they thought possible in the present state of international public opinion.

M. Ito reminded the Committee that the proposed solutions had already been discussed in 1924 when the Protocol was under consideration. As Lord Cecil had pointed out, the consequences of the proposals that had just been made would be to render compulsory the jurisdiction of the Court and the procedure of arbitration. This might perhaps prove difficult of acceptance in the case of certain countries. In so far as it was a solution of a legal nature, he would not oppose it.

He would, however, point out one difficulty. If the Council were under the obligation to request an opinion from the Permanent Court and to have recourse to compulsory arbitration, he thought that other means were *ipso facto* excluded. The Council, however, might think it preferable to offer its mediation to the two parties. The wording of the amendment to paragraph 7 would also give rise to considerable difficulties because the Committee must avoid imposing the two methods proposed as the only possible solutions. Every method of settlement must be admitted.

The Chairman pointed out that, by the terms of the Covenant, it was always possible for the Council to use any means of settlement it thought good, but, in the present situation, if it

were not unanimous, it would be impossible for it to obtain the advisory opinion of the Court. It was now suggested that that possibility should be given to it, the remainder of the matter being only a question of procedure which had already been provided for.

M. Undén was a convinced supporter of the principle of compulsory arbitration. He hesitated, however, to agree with the proposal of M. Cot.

The Assembly had admitted the principle of the Compulsory Arbitration Act but it had nevertheless left the door open to reservations, in order to avoid a check such as that which had been experienced in regard to the Geneva Protocol. M. Cot had proposed that the report should clearly show the necessity of accepting the principle of compulsory arbitration, although the Act itself had, up to the present, only been accepted by five or six Powers. In his view it would be preferable not to insert in the report a solution which it was known in advance would only be accepted with difficulty.

M. Cot did not share the pessimism of M. Undén. When the Act of Arbitration had been submitted to Governments, the Pact of Paris had not been in existence. The situation had therefore been different. The system of the Covenant of the League had now become incoherent for the possibility of recourse to war had now been removed. Compulsory arbitration seemed for the moment to be the logical consequence of the Pact of Paris. In his quality as Rapporteur on the Pact of Paris to the French Chamber he had explained that the consequence of having signed the Pact must be the signature of the General Arbitration Act. On the very day on which the Pact had been accepted by the French Chamber, M. Briand had laid on the table a Bill for the accession to the General Arbitration Act. In M. Cot's view, if the Committee thought that compulsory arbitration was the only possible method, it should not hesitate to say so and thus make it easy to define the principle of compulsory arbitration.

Viscount Cecil of Chelwood said that, on one point, he was in entire agreement with M. Cot. The members of the Committee were jurists and nothing they said or did would bind their Governments. The various Governments would have to consider later what attitude they would take in reference to the Committee's proposals. If he, or any other member, put forward a view on juridical grounds, it did not at all follow that that would be the view he would take on political grounds. It was evident that, when the whole of the proposals were considered from the point of view of whether they ought or ought not to be made part of the Covenant of the League, very serious questions of a political character would arise. The whole political situation, the whole League situation, the position of disarmament, the position of security—all those political questions would have to be considered before it was decided whether the time had arrived when any advance at all could be made. It was not right for the Committee to bear them in mind at all. He mentioned that in order that there should be no misunderstanding as to the attitude of any member of the Committee.

If, then, he was reluctant to go as far as M. Cot it was because he was afraid that, if the Committee tried to present propositions which, quite apart from political grounds, went further than public opinion in the widest sense—the public opinion of all nations and not of some only—would permit, there would be a risk of doing nothing at all. That was the danger which, in the very critical questions raised by paragraph 7 of Article 15, he would beg his colleagues to keep in mind. "*Fiat justitia, ruat cœlum*" was a very fine statement, but he had always wondered whether it was good sense. In a general catastrophe, justice did *not* prevail.

How far did public opinion at present go? In his judgment it went as far as the Pact of Paris inclusively. It was possible to forbid resort to war, and to do everything that was the inevitable and necessary consequence of that prohibition. Was it wise to try to do more? He doubted it, and particularly in the matter of obligatory arbitration.

Was it not clear from the position of the General Act that public opinion was not yet ready to accept the adoption of general arbitration? It might do so in a year's time. He hoped that when France—and if he might say so, Great Britain—had accepted it, a considerable effect would be produced on public opinion. In that case, the purpose of any amendment put into Article 15 would be reached, for there would then be a general obligation on the nations of the world to seek a pacific solution of every dispute. Until that time was it wise to attempt an amendment in that sense? Was it not true that amendments to the Covenant of the League should follow public opinion and not precede it.

To say : "Let us at any rate recommend it as jurists" was a fine proposition. If that could be done in such a way as to enable the Committee's report to be adopted, even though the particular proposition under discussion were not accepted, he would not object. It might, for instance, be included as an alternative proposal. If, however, the Committee made its whole recommendation depend on obligatory arbitration, there would be a risk of final disaster.

The General Act contained a large number of qualifications and prudent suggestions and, above all, the faculty to make reservations to meet the particular difficulties of particular cases. He would cite the well-known difficulty of the British Government : the difficulty of a composite Empire, each part of which was a Member of the League. Could it be hoped by a single sentence or two in the Covenant to meet every complicated and difficult case? Would it not, in point of fact, turn out to be impracticable ?

He ventured to suggest that the difficulty would best be met by the complicated, careful and cautious provisions of the General Act, and he hoped that it would be possible later to go forward and amend the Covenant so as to include the General Act, just as it was proposed to amend it by the inclusion of the Pact of Paris. That appeared to him to be the true course of

prudent advance, and he would very earnestly beg his colleagues to think once—and twice—before they committed themselves absolutely, irrevocably and without alternative, to a solution which would not be accepted by the Assembly.

M. COBIÀN thought that the statements made during the discussion had been of particular interest for they had all emphasised the importance of the problem.

The problem was now before the Committee which agreed on the necessity of finding a solution for it. It was the gravest problem which had arisen in connection with the Covenant of the League. He agreed with the views of the Chairman, of M. Cornejo and of M. Cot, though he understood the difficulties explained by Lord Cecil and M. Undén. In view of the fact that the Committee had reached an agreement of principle in regard to the first step to be taken, he urged that it should adopt a resolution suggesting the necessity of making this first step. This meant the adoption of the proposal of Lord Cecil. The Committee should express in its report its desire ultimately to achieve the object intimated by M. Cot. In that case the question was merely one of drafting and could be sent to the Drafting Committee.

M. CORNEJO was happy to note that the Committee was nearly unanimously in favour of his proposal in regard to the necessity of asking for an advisory opinion from the Court should the Council not be unanimous regarding the points of law connected with a dispute.

He was somewhat astonished to find lawyers of such eminence discussing the question of compulsory arbitration and urging its advantages without reference to its disadvantages. Compulsory arbitration was, in his view, a very grave matter, for it really meant that one party could compel the other to bring the dispute before an arbitrator. The parties, however, had already accepted the jurisdiction of the Council, and from that moment the dispute escaped their control. The Council, since it was dealing with the matter, had the right and the duty to find a solution. This was no longer, therefore, a question of compulsory arbitration. It was a question purely of the steps taken by the Council to achieve unanimity within itself.

He saw no reason for abandoning the proposal which he had made that recourse should be had to the Court in cases when the Council could not, after it had examined the matter for a second time, achieve unanimity. It could choose between the appointment of arbitrators and the submission of the question to the Court. M. Cornejo would, however, emphasise the danger underlying the appointment of arbitrators, for in regard to this matter, too, there would be opposition between the majority and the minority.

He saw no reason, further, for depriving the Council of the possibility of appealing to the Assembly for he thought that his own proposal showed a practical means whereby this appeal could be made. He urged, therefore, that the Council should be left the right of choosing between arbitration and the judgment of the Court and that provision should still be made for an appeal to the Assembly.

M. COT was quite ready to accept the proposal made by Lord Cecil that two drafts should be included in the report and that the Committee should say that it preferred one of these two solutions. He thought that the consequences of not accepting that solution should also be indicated.

TENTH MEETING

Held on Monday, March 3rd, 1930, at 10.30 a.m.

Chairman : M. SCIALOJA.

19. Examination of the Proposed Amendments to the Covenant of the League (continuation) : Article 15, Paragraph 7 (continuation).

M. PELLA recalled the discussions which had taken place in the previous meeting in regard to the manner in which it would be possible to amend paragraph 7 of Article 15 of the Covenant of the League of Nations. He would submit for the consideration of his colleagues certain observations which he thought it necessary to make before the Committee reached agreement upon the solution of this question.

Comparing the various proposals made, without intending to express any view as to their respective importance from a political point of view, he thought it would be difficult at the moment to achieve a formula which would go very far beyond the scope of the amendment proposed by the British delegation at the last Assembly.

The only consequence of the Pact of Paris, in so far as the Members of the League of Nations who had signed it were concerned, was that those Members had renounced the right to have recourse to war in cases where the Covenant of the League still admitted war as a means of settling international disputes. This result would be achieved even if the Covenant of the League were not amended.

In those circumstances, it might well be asked what were the reasons which militated in favour of an amendment to the Covenant of the League? In his view, the question to be solved was how to prevent certain Members of the League from interpreting the Pact of Paris, in certain circumstances, in a manner which would be contrary to the spirit which had presided over its framing. Such interpretations and applications might arise in connection with the case covered by paragraph 7 of Article 15 of the Covenant of the League of Nations. It should not be forgotten

that the Preamble of the Pact of Paris merely stated that any signatory Power which sought to develop its national interests by recourse to war should be deprived of the benefit conferred by that Pact, while the Note of the Government of the United States, dated June 23rd, 1928, added that the violation of a multilateral treaty against war by one of the parties automatically liberated the other parties from their obligations contracted towards the State which had violated the Pact.

From this the following results might be noted : (1) each Party which had signed the Pact, of Paris was free to decide for itself, single-handed and in the exercise of its sovereign rights, which was the State which had violated the Pact; (2) in such circumstances, each Party regained its entire liberty of action and had the right to deprive of the benefits of the Pact the State considered to be guilty of having violated it. It had the right, therefore, to go to war against that State.

To take an example, it could be said that though hostilities might have broken out between State A and State B, it might well happen that States C, D and E, which were also parties to the Pact against war, considered that State A had violated the Pact, while other States, F, G and H, also parties to the Pact, thought, on the contrary, that State B had violated it. According to the Pact of Paris, States C, D and E, would be able to consider themselves free from their obligation not to make war upon State A, while States F, G and H, might consider themselves right in making war on State B.

In case, therefore, of a dispute between two or more States, the other States could, according to certain interpretations, take advantage of such a dispute to declare war also, relying for their justification on the rights conferred upon them by the Pact of Paris. It was precisely to this case that paragraph 7 of Article 15 of the Covenant of the League of Nations might also apply. Paragraph 7 of Article 15 was applicable, however, only if unanimous agreement did not exist between the members of the Council of the League, or when it had been impossible to attain the requisite majority in the Assembly for a solution of the dispute. Consequently, it had been maintained that, if one of the parties to the dispute had recourse to war, the other Powers would regain their liberty of action, both by the terms of the Covenant of the League and of the Pact of Paris.

Taking account, however, of the fact that such an interpretation might contradict the spirit which had presided over the elaboration of the Pact of Paris, it was necessary, at any rate in so far as the Members of the League who had also signed the Pact of Paris were concerned, that the principle of the outlawry of war should be laid down in texts which would give rise to no dispute. From that point of view the amendment submitted by the British delegation would give satisfaction, because it stated all that was necessary to define the principle of the Pact of Paris, and at the same time possessed the advantage of not saying anything further.

In regard to the other suggestions made during the previous meeting, the following remarks could be made : So far as the amendment of M. Undén was concerned, it might, for example, be asked what solution M. Undén would propose for cases in which the proposals of the Council had not been accepted unanimously. The text of the British delegation's amendment still imposed an obligation. That obligation was not to have recourse to war. Such an obligation, however, was not formulated in categorical terms in M. Undén's amendment.

The amendment of M. Cornejo regarding the establishment of a legal system, the object of which would be to prevent war and to settle disputes, gave rise to certain questions which it would be difficult to solve at the moment, since it was doubtful whether, in their political aspect, such questions were ready to receive the solutions proposed by M. Cornejo. M. Cornejo had suggested that, in cases where unanimity had not been achieved on the Council, the Council should be compelled to ask the advisory opinion of the Permanent Court on the legal points connected with the dispute. To ask such an opinion, was it necessary for the Council to be unanimous or to vote by a majority ?

It should not be forgotten that the Council, in conformity with the provisions of Article 15, might be called upon to deal with certain complex questions which it was difficult to divide according to their political and legal aspects. Should there be disagreement on this point among the members of the Council, ought it to be necessary, to solve the difficulty, for members to be unanimous, or merely for the decision to be taken by the majority ?

The members of the Committee, as lawyers, were asked to find formulæ whereby the Covenant of the League might be perfected, having due regard to the realities of contemporary international politics. They could not, therefore, deny that to abandon the principle of unanimity in other cases than those actually provided for restrictively in the Covenant of the League was opposed to the fundamental principles upon which a contractual association like the League was built.

The fate of the proposal made two years previously at the ninth session of the Assembly, to the effect that the Council should request an advisory opinion of the Permanent Court at The Hague by a mere majority vote, must induce the Committee to show special prudence in regard to the proposals made by it concerning this matter. It was important that the same fate should not be reserved for such proposals at the next session of the Assembly. The question became all the more delicate if it were remembered that the United States of America had reserved its rights in respect of any requests addressed to the Permanent Court of International Justice for advisory opinions.

Another solution could obviously be suggested ; namely, to compel the Council, by the terms of the Covenant, to ask for the views of the Court in cases covered by paragraph 7 of Article 15. This meant that, every time the Council was not unanimous in regard to the substance of the matter, the Permanent Court would deal with its legal aspect.

To this an objection might be made which would have a certain force in so far as the final part of the amendments proposed by Lord Cecil and M. Cot were concerned. These amendments, without providing for automatic reference to the Permanent Court at The Hague, would nevertheless give the Council the right to submit the dispute to the Permanent Court or to any tribunal. In this connection, it must, however, be pointed out that the case covered by paragraph 1 of

Article 15 would arise. That was the case of a dispute which had not been submitted to the procedure of arbitration or to judicial settlement provided for in Article 13.

If paragraph 1 of Article 13, even for disputes contemplated in the article—which, in the majority of cases, were disputes of a legal character—provided for an agreement between the parties that the dispute should be submitted for judicial settlement or arbitration, it was all the more necessary that, for disputes contemplated in Article 15, there should be an agreement between the parties that a dispute should be referred by the Council to the Permanent Court or to another tribunal.

The Members of the League had, in Article 15 of the Covenant of the League, agreed to submit to the Council any disputes which were likely to involve a breach of the peace.

The Council, which was a political body, was alone competent to settle the disputes mentioned in Article 15, these disputes, in the majority of cases, being such as might assume a political aspect.

In other words, the Members of the League had subscribed to an obligation to bring the dispute before the Council, but they had not recognised the right of the Council itself to bring the matter before the Permanent Court at The Hague or any other tribunal, without the consent of the parties to the dispute.

The adoption of such a solution would be equivalent to creating obligations which did not exist, even in the Pact of Paris.

Article II of that Pact compelled the signatories not to have recourse to war, and, if they wished to find a solution to a dispute, to find it only by peaceful means. The Pact of Paris had created an obligation, incumbent upon the signatories, to refrain from doing something and not an obligation to do something. In other words, they were required not to have recourse to war, but this did not mean that compulsory arbitration was to take the place of war.

For that reason, the British delegation's amendment was the only proposal which did not go beyond the scope of the Pact of Paris. This amendment only added to the existing obligations assumed by Members of the League the obligation imposed by the Pact of Paris, *i.e.*, to have no recourse to war.

In conclusion, M. Pella thought that, though individual members might welcome the various suggestions which went further than the Pact of Paris, it would be preferable for the Committee to deal only with solutions which it considered to be strictly necessary to bring the Covenant of the League of Nations into harmony with the principles of the Pact. The other solutions which had been proposed might be included in the report. Those solutions, however, should be mentioned as proposals submitted individually by members of the Committee; not as solutions which the Committee had adopted and not as solutions which it presented in the form of alternative amendments to those proposed. It would be for the Assembly of the League to decide whether, from a political point of view, some of the proposals moved in the Committee should be accepted and, above all, if it was necessary to go further than the Pact of Paris.

M. Cobián thought that the conclusion to be drawn from the observations of M. Pella was very dangerous for the work of the Committee. He agreed that the Committee should only study the questions submitted to it for examination. In so far, however, as it was a Committee of Jurists, it should accomplish more effective work than this.

He would point out that, in the example chosen by M. Pella, State B, the victim of agression caused by State A, was, in the first place, prevented from having recourse to war in order to defend its rights. If the Council was unable to adopt a unanimous decision, and, finally, if State A refused to have recourse to arbitration, State B, suffered far more considerable harm. For that reason he took the view that, if the Committee amended the Covenant by taking as a basis the outlawry of war, and if at the same time, it did not provide means for solving all disputes which might arise, it would have done bad work and would have achieved a result which might well be described as the height of injustice.

M. Cot thought that the Committee had larger duties and less powers than those which M. Pella thought it possessed. It had less powers in that it was not to seek to interpret the Paris Pact but only to adapt it to the Covenant of the League. It had larger duties in that it would merely weaken the coherent and complete system established by the Covenant of the League if it confined itself to suppressing the recourse to war without putting anything in its place. To make a comparison, it would be as though the Committee constructed a motor from which certain parts had been removed without replacing them by others, and still expected the motor to work. He would point out to M. Pella that the Committee had already been unanimous in agreeing that its task did not consist merely in doing away with the word "war" wherever it was to be found in the Covenant.

The case quoted by M. Pella as an example would not be very likely to occur in practice. Another case must be contemplated which would occur far more frequently. Two States in dispute did not wish to have recourse to war; to what means must they have recourse? This was a question which the Committee could not avoid.

Before the Pact of Paris had been concluded, a gap had existed in paragraph 7 of Article 15. That fact was regrettable, though it was admissible. The gap no longer existed, and it was indispensable to know what solution should replace recourse to war which had been eliminated. Should it be arbitration or some other method? He could not agree to a course which consisted in making no proposal, the Committee merely contenting itself by stating that it had withdrawn recourse to war as a solution without putting anything in its place.

He took the view that, if the arbitration solution were not admitted, the Council must be recognised to possess the right to ask an advisory opinion from the Court, for this would facilitate the solution of the dispute. Suppose the dispute were of a political nature. In every political dispute there might be certain points of law, the preliminary solution of which would much facilitate the final solution.

He would next oberve that the reason why he had proposed a change in the amendment which he had proposed for paragraph 7*bis* of Article 15 was because it had been pointed out to him that a small difficulty arose, owing to the manner in which the Statute of the Permanent Court of International Justice had been drafted. It was laid down that the United States of America reserved the right to oppose a request that the Court should be asked to give an opinion. If the Committee desired to make it possible for the Council to settle questions of law, it must be in a position to have recourse to a Committee of Jurists in cases when recourse to the Permanent Court of International Justice was impossible. The report must insist upon the fact that this Committee would not be on a footing of equality with the Court, and it must be clearly laid down that its services would only be requested in cases in which the United States of America opposed recourse to the Court.

To sum up, he thought that the task of the Committee was, above all, not to weaken the Covenant of the League. He agreed with M. Cobián that the Covenant would in fact be weakened if nothing was put in the place of that which had been removed.

M. Cornejo observed that Article 15 of the Covenant of the League of Nations was an article that dealt with procedure and, consequently, was textually completely foreign to the question whether, in principle, war was, or was not, a means of ending certain disputes. The Assembly had already studied the question when it considered the problem of compulsory arbitration, but it had not succeeded in getting all the States to accept the solution which it had proposed. He had proposed that the Permanent Court of International Justice should be asked to give an advisory opinion, and this proposal had been adopted by the Chairman of the Committee and by M. Cot. M. Pella had just said that it might be asked whether the request for this advisory opinion should be made upon a decision of the Council taken unanimously or only by a majority vote. A dispute might, of course, be a political one; but in every dispute there were legal points at issue and it was these legal points, for which a solution agreeable to all the Members of the Council could not be obtained, which ought to be submitted to the examination of the Court. Both the majority and the minority views of the Council should be referred to the Court.

He himself believed that it was not the duty of the present Committee to discuss the question of compulsory arbitration, which implied that a State should have the right to force another to accept arbitration. This question was at present under consideration by the Arbitration Committee, which would find a solution. The proposal to the effect that the points in regard to which the majority and the minority of the Council were in disagreement should be submitted to the Permanent Court of International Justice was outside the question of compulsory arbitration and had no relation to that question. The object of the proposal of M. Cot was to remedy the disadvantages which might result from a lack of unanimity in the decisions of the Council. The intention of the proposal of M. Cot was to avoid the inconveniences which arose from lack of unanimity in the decisions of the Council. In cases where recourse to the Permanent Court of International Justice was impossible, he agreed with M. Cot in recognising that recourse to a Committee of Jurists would be fully justified.

He asked the Chairman to put to the vote one of the numerous proposals which had been presented. The others could be mentioned in the report for purposes of reference.

Dr. von Bülow said he had followed the main lines of M. Cot's argument but he had not reached quite the same conclusions. He could not see that it was possible to insert Article I of the Pact of Paris in the Covenant and to leave out Article II, which had the same value. In an organic construction like the Covenant, definition, organisation and sanctions should be put in agreement with both Articles I and II of the Pact. There was here something of a vicious circle, because to strike out the resort to war was to augment considerably the force of the obligations under Articles 16 and 17 in regard to sanctions, not only as applicable to Members of the League in case they should resort to war, but also as applicable to non-Members of the League and those who had not signed the Pact of Paris. The only remedy was to augment the methods of peaceful settlement as provided and already accepted by all the Members of the League.

He was very much in favour of the employment of all methods for the prevention of war, but, if they were indefinite, they did not help much. At the same time, he was opposed to settlement outside the Covenant, by way of the General Act or any similar means. The closing of the fissure to which M. Cot and others had repeatedly referred should be done inside and not outside the Covenant.

Moreover, it was not known what would be the fate of the General Act or similar agreements, and there was a risk of confusion. There already existed the Covenant with one set of signatories, and the Pac with another. Then there would be the General Act, which was not a simple agreement but an indefinite series of agreements, for every reserve made to the General Act meant a different arrangement. Thus, there might be fifty different arrangements for the preservation of peace, and it would be impossible to say, without very intricate study, what the position really was.

He was also in favour of asking the Permanent Court of International Justice for an opinion, but the opinion of the Court would not be a definite solution, nor would it lead in every case to a settlement of the question, because the juridical side of the question might not be the most important.

Attention had already been drawn to the Protocol signed in September 1929. He would point out that, under this Protocol, the United States of America had reserved a right for intervention. Appeal to the Court might therefore put the League in a very intricate and difficult position. Mediation had also been mentioned—that was an excellent course, but in no way final. He would warn the Committee against suggesting new means of settling disputes unless they were quite definite. The gaining of time was sometimes necessary though not always, and both

the Council and the Assembly were not unprovided with means enabling them to postpone a settlement.

In many cases, however, a rapid solution, or at least the possibility of a rapid solution, was essential, and he would draw attention to the psychological importance of the feeling of security that resulted from such a possibility. That feeling would be lessened if a gap were left and if it were possible to look down an endless perspective of courts, conciliation, arbitration and committees. The public, including the Governments, would want to see a sure solution at the end of all the ways and means provided under Article 15.

He did not think use could be made of the Assembly for the closing of the fissure, because nothing definitive would result unless a majority vote of the Assembly were obligatory, and all that had been said regarding majority votes of the Council applied to the Assembly. Paragraphs 9 and 10 of Article 15, as he understood them, envisaged cases in which the Council, for special reasons—for instance, if the majority of its members were involved in a conflict—felt unable to use the rights given to it under the Covenant, and had to hand them over to the Assembly. Those paragraphs could not therefore be used to solve the difficulties of paragraph 7.

To his mind, the principal difficulty was that, in considering the Committee's proposals, the Assembly and the Governments would have in mind only cases of special importance. The Committee should therefore envisage the difficult cases, and those cases would for the most part need extreme measures. The cases in question would not always be purely juridical or even partly juridical, and all solutions on the lines of the General Act or arbitration in general had the great drawback that they did not always guarantee an adequate solution of cases of this character. The question had already been discussed, and he would read a declaration made by the German delegate in the First Committee of the Assembly, regarding Article 28 of the General Act, which put the matter in a nutshell :

> " Article 28, which gave the rules on which the tribunal must base its decision, showed that there were certain disputes that remained outside the scope of that entire procedure. The Sub-Committee had been led to word Article 28 in such a way that, even in non-legal disputes, the tribunal would apply the rules of substance indicated in Article 38 of the Statute of the Court, and that it would only be able to decide *ex æquo et bono* if there did not exist any such rules applicable to the disputes in question.
>
> " It was clear that there might arise disputes which were due precisely to the existence of a legal position which could not as such be questioned. Such disputes could not be solved by the application of Article 28; that being so, the procedures laid down in the Covenant, as, for instance, that under Article 15, would accordingly remain applicable even if the two parties might have adhered to the General Act in its entirety.
>
> " It might therefore be said that the General Act did not embrace every imaginable category of dispute. He (Simson) did not mean to say that this was a flaw, for it would be difficult in an instrument dealing exclusively with judicial and arbitral procedures to establish detailed rules in regard to those disputes to which he had been referring. This point, however, should be noted."

It should be remembered that often it was not only the interests of the parties that were in question, but the interests of the whole world or of a great part of the world. The Council had therefore the most extensive right, under Article 15, to find the solution that it considered adequate. Any solution based on arbitration and intended to close the gap in paragraph 7 of Article 15, should leave to the arbitrators rights similar to those of the Council; otherwise there would necessarily in many cases be an inadequate settlement of the matter.

The last point to which he would draw attention was that there might be a temptation for non-Members of the League who were members of the Pact to intervene. The League would have to dispute with Powers outside its organisation for the settlement of the dispute, and would be in a very difficult position if its own means for settling it were inadequate, while Powers outside the League were able to go further and to propose solutions which the League had as yet not admitted in its Covenant.

He thought that the fissure in Article 15, paragraph 7, should be closed in some way, and he saw no other way than arbitration—arbitration, however, with the reservation that the arbitrators must have the full powers given to the Council under Article 15, paragraph 4. Otherwise the solution would not in the end be satisfactory, and would only lead to inadequate settlements in the most important cases.

He was not in favour of proposing to the Assembly any measures which were not of a definite character and which would postpone the working out of a solution for several years. To his mind, there should be a certain balance between the amendments proposed, and if a question of such vital importance as that under discussion were omitted, he did not see how that balance could be achieved, nor how the Assembly could realise the importance of the Committee's suggestions.

Viscount Cecil of Chelwood was not sure, after listening to Dr. von Bülow, whether the latter favoured any particular solution, though he had said it was absolutely essential to find one. That was the consequence—if he might be permitted to say so—of trying to do too much. A complete solution was not at the moment within the Committee's reach, and that was why he himself was driven to be so prudent.

Dr. von Bülow had said that, in the end, arbitration was essential, but that the arbitrators should have the power given under Article 15, paragraph 4. What was that power? It was the power not to come to any decision, so that in the end the arbitrators would merely have the same

power as the Council, namely to publish their decisions without arriving at a final conclusion. That was surely not a very successful effort to arrive at a complete solution.

He was immensely attracted by M. Cot's proposals, both on account of their clearness of thought and of the brillant way in which they had been expounded, but he disagreed on two fundamental points. In the first place, he did not agree that the present condition of the Covenant gave a solution of all the difficulties, or that the permission to go to war in certain cases was any solution at all. The Covenant did not attempt to set up a new international system so much as try to avoid the outbreak of war. That was its fundamental purpose. The fact that in certain cases it was unable to find a solution did not mean that it was complete. On the contrary, it meant that there was a gap. To take away the right to go to war might not be a complete solution, but it was a more complete solution than the Covenant originally provided, and to suggest that to take away the right to go to war was to destroy the symmetry of the Covenant was, if he might say so, a worship of symmetry gone mad. If similes were to be employed, the Covenant might be regarded as providing the means of extinguishing a fire if it broke out in the body politic of the nations, but as leaving one particular wing unprovided for. If, in that wing, an ineffective method of extinguishing the fire were provided, completion would at least be nearer than if no means were provided at all.

To take away the right to go to war was in itself a step towards completion. It was not weakening the Covenant but strengthening it, though it would probably be necessary later to strengthen it still further.

Dr. von Bülow had said that Article II of the Paris Pact should not be forgotten. Article II, however, should be read very carefully. The parties did not there agree to settle all disputes by pacific means. They agreed not to settle their disputes except by pacific means. Article II left, and intentionally left, open the alternative that the dispute might not be settled at all.

The League of Nations had been engaged for some months, indeed for some years past, in examining the possibility of providing a complete system of arbitration, and had elaborated the General Act. It was an extremely complicated proposal, and it provided, as Dr. von Bülow had reminded the Committee, for the possibility of reservations by each country which accepted it. That was not ideal, but it was necessary owing to the fact that the General Act had to deal with an extraordinarliy complex and difficult problem, and an attempt had to be made to provide a solution in the direction of arbitration which would be acceptable, in one way or another, to fifty-four nations. The ingenious and practical solution of permitting the insertion of reservations was therefore adopted.

There had been comparatively few acceptances of the General Act, but even those had contained reservations, while the example of the Optional Clause had shown that in practically every case reservations were necessary.

What did that mean? It meant that the nations were not prepared for a simple and symmetrical solution. They had shown it in the clearest possible manner in reference to the General Act. To suggest such a solution was to fly in the face of the actual facts of international life. It was necessary to be reasonable as well as juridical, and he himself did not think it possible to accept so simple a solution as that proposed by M. Cot.

To take an example, M. Cot had said that the Council, if it could not settle the dispute, should send it to an arbitral tribunal, of which the Council would fix the composition, the powers and the procedure. In other words, it would be left to the Council, acting presumably by a majority, to settle for every dispute and for every nation the extent of the arbitration, the powers of the arbitrators and the procedure to be employed. No reservations would be permitted. The procedure would be the same for every country, whether its situation was extremely complicated, as in the case of Great Britain, or whether it was simple. Could such a solution succeed? To illustrate the kind of differences that might arise, it had often been said in reservations that the Optional Clause and the General Act should not apply to past disputes. According to M. Cot's proposal, it would entirely depend on a majority of the Council whether arbitration was or was not applied to past disputes. Again, it had universally been said in regard to the Optional Clause and the General Act that arbitration should last for a limited time. It would be for the Council, according to M. Cot's proposal, to say whether arbitration should be for a limited time or whether, if the dispute happened to be continuous, it should continue for ever.

Those appeared to be fatal objections. So far as concerned Great Britain, there were objections of so formidable a nature as to be, in his view, insuperable and he was satisfied that M. Cot's proposal did not offer a juridical solution.

What could be done? The only possible line of action was to ask the Council to do the best it could in the circumstances, and to use all its powers to reach a solution. It had considerable powers under Article 11 of the Covenant. It had the power of taking the advice of the Permanent Court of International Justice, it could use mediation, appoint Commissions, and so on. If it used all its powers, it would succeed in 999 cases out of a thousand, and the thousandth case would probably not arise. That was a practical and businesslike solution which he would strongly recommend to his colleagues. If a theoretical solution, which did not take account of the actual difficulties of the international situation were suggested, the whole attempt to insert the Pact into the Covenant would fail.

He would be glad to see a complete solution—and in course of time such a solution might be possible—but in the actual state of the international situation it would not be acceptable. He

strongly recommended his own amendment as a practical solution, and ventured to think that, if the Committee accepted it, it would be doing a great work in advancing the cause of peace. He did not overlook the difficulties pointed out by M. Pella, but they could probably be met by drafting alterations after the principle had been adopted.

He was quite willing that the report should contain a statement to the effect that the Committee recognised the incompleteness of the solution but did not at present consider it possible to go further, and that it hoped that, whether by the acceptance of the General Act or in some other way, a complete system of arbitral conciliation for all international disputes would shortly be accepted by all the Members of the League.

M. Sokal believed that it would be necessary to concentrate on all the part of the previous discussion which had been of such a nature as to reconcile the different points of view of the members of the Committee, and to leave on one side all on which they could not agree. It was obvious that these points of view would always remain at variance so far as they dealt with the role played by the Covenant of the League of Nations; but in a concrete case such as paragraph 7 of Article 15 and the suppression of the recourse to war, he believed that an agreement might be realised. He believed that Mr. Henderson had said at the last Assembly that the object of the British amendment was to cut away the dead wood from the Covenant, that was to say, all those things that remained in it but which were without practical utility.

The strong opinion had been expressed by certain members of the Committee that it would be necessary to replace the solution of recourse to war by precise measures. He, on the contrary, agreed with Lord Cecil that no parallel could be established between the suppression of the recourse to war and the substitution of other measures. His opinion was that, if all members agreed to suppress war but could not make up their minds as to what pacific methods should take its place, it would be better not to worry about finding such methods, so that the Committee should not be compelled at the end of its work to declare that, as it had been unable to find another solution, it would be necessary to keep the recourse to war.

He was in favour of recourse to the Permanent Court of International Justice. The Council would perhaps find it necessary, in certain cases, to get legal questions settled by the high judicial authority of the Court; but, while leaving the Council the right to ask the Court for an advisory opinion in the case of a very serious dispute, for the solution of which the Council could hardly hope to come to a unanimous agreement, he believed that it would be necessary to add that, although the matter had been referred to the opinion of the Court, the Council ought still to go on looking for a solution to the question by the various means that the Committee had not yet defined.

Above all, he did not necessarily agree that recourse to war should be replaced by some other solution in the text of the Covenant. He thought that the first thing was to suppress war, before the Committee should concern itself with the measures that should take its place in the Covenant.

Dr. von Bülow regretted that there was so much difference between his point of view and that of Lord Cecil and M. Sokal, and that there was a misunderstanding concerning his observation on Article 15, paragraph 7. As an indication of his views he was prepared to accept the amendment of M. Cot, as far as paragraph 6 was concerned. To express his idea it would be sufficient to add to paragraph 7, according to the proposal of M. Cot, a sentence to the following effect:

> "The Council shall, at the same time, determine the composition, powers and procedure of the tribunal in such a manner as will, in its opinion, conduce to the obtaining of the most equitable and appropriate solution for the particular case."

M. Ito said that two theses had existed for a long time, and would exist for a long time to come, on this question. They had been upheld with eloquence in the present Committee. Speaking personally and as a jurist, he would prefer to see M. Cot's proposal adopted, but he recognised that in the light of actual circumstances Lord Cecil's proposal would find easier acceptance.

Like M. Sokal, he considered that a compromise solution must be adopted. Such a solution was to be found in Lord Cecil's proposal which endeavoured to meet M. Cot's point of view so far as was possible. In his opinion, if the Committee attempted to go further than Lord Cecil's proposal, it would come to no solution at all. For this reason, he would adopt Lord Cecil's proposal concerning paragraph 7 of Article 15.

Dr. Woo Kaiseng thought that Lord Cecil's proposal gave the Council too full authority and too complete freedom. M. Cot's proposal explained very clearly what should be the content of Article 15 and provided, moreover, a method of settling all disputes by laying down that the Council, if it could not succeed in settling the dispute, would refer it to a court of arbitration. Lord Cecil had held that this method was too complicated, and Dr. von Bülow had accordingly immediately suggested a modification. The whole of the discussion dealt solely with legal questions. Methods to meet cases in which purely political matters were at stake had not been considered. M. Cornejo had proposed the reference of such disputes to the Assembly. In such cases the Assembly would presumably meet in extraordinary session.

He agreed with M. Ito and M. Cornejo that it was now time to close the discussion, and that a decision should be taken by putting to the vote one of the proposals which had been submitted.

M. Undén said that he was prepared to accept M. Cot's new proposal for paragraph 7*bis*.

In regard to paragraph 6, he would accept a wording in accordance with Lord Cecil's and his own proposals, which differed only textually. Personally, he preferred the drafting of his own proposal.

The CHAIRMAN agreed with the previous speakers that a conclusion must be reached. He pointed out that, so long as the Council failed to agree, it must endeavour to achieve agreement by all possible means. At the present time there existed many means for doing so, other than recourse to the Permanent Court of International Justice, for which unanimity was required. For this reason, he considered that the Committee's report should say that the Council might ask the Court for an advisory opinion, even if its members did not unanimously agree to this procedure. He believed that, in almost all cases, it would be possible, given time, to obtain unanimity, if it could not be secured at the beginning.

In any case, the Committee could not study all the methods which might be substituted for war. The best method, without any doubt, was to play for time. It might even be said that it was the only one, apart, of course, from a declaration of war and the constitution of an army comprising contingents supplied by all the States Members of the League. He considered accordingly that mention must be made in the report of the solution which consisted in asking the Permanent Court of International Justice for an advisory opinion. This solution had been opposed on the ground that the United States of America would be hostile to it in certain cases. He would, however, point out that, on the Special Commission, Mr. Root had said that the United States would not misuse this right. It followed that, in ninety-nine cases out of a hundred, recourse to the Court would be feasible.

It had been proposed that, should the United States be opposed to recourse to the Permanent Court of International Justice, disputes should be brought before a committee of jurists. He considered that, as the Committee intended to say in the new wording of Article 15 that the Council could use all the means at its disposal, it would be unnecessary to make particular mention of recourse to a committee of jurists. It would be enough to allude to it in the report for purposes of illustration. To sum up, Lord Cecil and M. Cot were fundamentally of the same opinion, but an attempt must be made to use more general terms and not to refer specifically to the means which the Council might employ.

M. COBIÁN thought that all members of the Committee would agree that a solution must be reached on the lines of that proposed by M. Cot, but many considered that, for the moment, this would be going too far. He would suggest that M. Cot, M. Undén, Lord Cecil and Dr. von Bülow should join the Chairman with a view to agreeing on a formula to be inserted in the report, indicating that the Committee considered that it was desirable to go further than it had done, but that for the moment it had kept to a compromise solution.

The CHAIRMAN was not opposed to this suggestion. He thought that the Committee proposed by M. Cobián might meet the same evening before the ordinary meeting.

ELEVENTH MEETING

Held on Monday, March 3rd, 1930, at 5.30 p.m.

Chairman: M. SCIALOJA.

20. Examination of the Proposed Amendments to the Covenant of the League (continuation) : Article 15, Paragraphs 6 and 7 (continuation).

M. COT read the following text proposed by the Drafting Committee :

"*Paragraph 6.*—If the report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will comply with the recommendations of the report. If the recommendation is not carried out, the Council shall propose suitable measures to give it effect."

"*Paragraph* 7.—If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall examine the procedure best suited to meet the case and recommend it to the parties."

"*Paragraph* 7bis.—At any stage of the examination the Council may, either at the request of one of the parties or *ex officio*, ask the Permanent Court of International Justice for an advisory opinion on points of law relating to the dispute. Such application shall not require a unanimous vote by the Council."

M. PELLA said that he must make every reservation as to the last part of paragraph 7*bis* of Article 15, which gave the Council the right to ask for advisory opinions from the Permanent Court at The Hague by a majority vote. He had already explained his objections of substance to the majority principle at the previous meeting. He would refer also to the observations made on this subject two years ago in the First Committee of the Assembly during its ninth session. He felt that, so far as advisory opinions of the Court were concerned, special account must also be taken of the peculiar situation of the United States of America.

The CHAIRMAN said that this was not a general provision, The effect would be, by applying the argument *a contrario*, that this provision would only apply in the case covered by paragraph 7*bis*.

M. CORNEJO accepted the Drafting Committee's text, but asked that the amendment which he had presented should be inserted in the report as well as the reasons which he had put forward to justify it. He proposed to defend his amendment when the matter was discussed by the Assembly.

*The text proposed by the Drafting Committee for paragraphs 6, 7 and 7*bis *was approved.*

21. Article 15, Paragraph 8.

M. ITO pointed out that, though much had been said in regard to the first article of the Pact of Paris, there was also Article II, by the terms of which the contracting parties were required to seek a solution for their disputes only through peaceful means. If this negative formula were literally interpreted, it would be seen that the contracting parties were not compelled to achieve any solution at all. In some cases one of the parties might prefer to leave the question in suspense. This would not be contrary to the letter of Article II of the Pact of Paris. Paragraph 8 of Article 15 of the Covenant, however, covered a similar case. Was there not, therefore, strictly speaking, a contradiction between the two texts? In view, however, of the fact that the Pact of Paris, in Article I, withdrew from the contracting parties the right to have recourse to war, it should be considered what would happen in a case such as that covered by this paragraph. Mention had been made of a gap in the Covenant in connection with paragraph 7. The same observation could apply to paragraph 8.

Without wishing to make any definite proposal, he would be grateful if reference could be made to his observations in the report.

M. COBIÁN thought that paragraph 8 of Article 15 did not cover a real dispute but only the case in which a nation protested against a measure adopted by another State, which, according to international law, belonged to the exclusive competence of the party which, had taken the decision. For that reason, he did not ask that paragraph 8 should be amended. Nevertheless, if this interpretation were not correct, he would support the request of M. Ito.

The CHAIRMAN said that paragraph 8 referred to a simple declaration of fact on the part of the Council. There was, in such a case, no question of a dispute. The matter concerned the internal law of States. In course of time, such a matter might eventually come under international law. In the present circumstances, he did not see how any amendment could be made in the paragraph.

The Committee agreed.

Paragraph 9. Paragraph 9 did not give rise to any discussion.

22. Article 15, Paragraph 10.

M. CORNEJO thought that paragraph 10 contained something entirely illogical which had evidently escaped the framers of the Covenant of the League. Paragraph 9 laid down that it was possible for the Council in all cases to submit the dispute to the Assembly. Paragraph 10 laid down that the procedure to be followed by the Assembly would be the same as that followed by the Council, except that the Assembly would take its decision by a majority vote, provided that all the States represented on the Council were to be found among that majority. This provision, in its strict significance, seemed to him excessive.

If the matter which the Council brought before the Assembly was considered a question of procedure, the Council might decide by a mere majority vote to submit it to the Assembly. Since the rule of unanimity had been laid down for the Council, it was perfectly logical to ask that all the votes of the Council should be included in the majority. If, however, the Council decided unanimously to bring a dispute before the Assembly, that was to say, if it wished to abandon the dispute, it was inexplicable to require that the Council should be unanimous a second time when voting in the Assembly. This provision not only conferred a right of veto on each of the States represented on the Council, but also interfered with their liberty. They would be bound by their first decision.

Sometimes in a dispute the parties went so far as to say : " Either I shall gain everything or nothing." When, however, they submitted their dispute to arbitrators, to the Court of Justice, or to the Council, by the very fact of doing so they showed that they preferred to lose the case rather than to see the dispute continued indefinitely. Each member of the Council, when studying the question, might desire the triumph of one or other of the parties. Why, however, should it be thought that the members of the Council would be more obstinate than the parties to the dispute and that, if they could not form an opinion, they would prevent any decision from being taken ? Why not assume that they would prefer to find a solution, even if it were not the solution which they favoured ?

The question was placed before the Assembly when the Council was not unanimous. Each member of the Council, however, would, in the Assembly, have to abide by the position which he had taken up; first, because he would think it to be his true opinion and would not desire to depart from it; secondly, because he would not wish to betray the party in whose favour he had originally given his vote. It could, therefore, be maintained that the Powers represented on the Council were the prisoners of their decision. The worst of this provision was that this obligatory vote would prevent a solution being reached, probably against the wishes of those who voted. For that reason, he asked that, if the Council unanimously decided to submit a dispute to the Assembly, it should not be necessary for all the votes of the members of the Council to be included in the majority of the Assembly for the decision to be valid. This proposal did not affect the powers of the Council, for it would be enough for one of its members only to oppose any proposal to transfer the question to the Assembly to stop the whole procedure. He asked that the power of the Council should be increased and that it should be enabled to abandon the question, if it so desired, and leave it entirely to the Assembly.

Viscount CECIL OF CHELWOOD said that M. Cornejo did not seem to realise that the proviso in Article 15 did not stand alone. It was also contained in Article 26, which concerned the necessary steps for the ratification of amendments to the Covenant by the Members of the Council and by a majority in the Assembly. In submitting questions to an Assembly which at present contained fifty-four members, it was necessary to take some precaution that decisions of importance should not be upset by trivial incidents. Much thought and time had been given to the discussion of the question in the Commission that had drawn up the Covenant. Many devices had been suggested; but ultimately it had been agreed that the present proviso was the best. The unanimous vote of the Council, which consisted partly of permanent and partly of non-permanent members, would be a guarantee against any hasty solution and was better than decisions by a majority, for such numerical solutions (a two-thirds or three-quarters majority) were purely arbitrary and open to criticism.

M. Cornejo was not right when he said that a matter could not be referred to the Assembly without the unanimous vote of the Council. Paragraph 9 of Article 15 laid down that a dispute could be so referred at the request of either party.

There was a double advantage in consulting the Assembly : it might be desired to give the question in dispute greater publicity, or the Council might wish to fortify itself with the full weight of the Assembly's authority. Consequently, he hoped that no change would be made.

M. CORNEJO thought Article 26 to be perfect. If Lord Cecil was responsible for it, M. Cornejo would desire to congratulate him warmly. He was opposed to any change in the article.

It was perfectly right to require, when an amendment of the Covenant was voted, that, in the majority of the Assembly, should be found all the members of the Council. He had not wished, however, to raise the question of Article 26. The question which he raised was entirely different.

The paragraph which he was proposing laid down in substance that the Council, if it judged necessary, might unanimously decide to bring a dispute before the Assembly, and that, in such a case, its members, since they had not reached a solution, might voluntarily renounce their right of veto and accept in advance the solution proposed by the Assembly. Such a provision not only maintained the powers of the Council, but completed them, since it authorised it to accept another solution by a unanimous decision. The members of the Council could hardly do otherwise, from motives of personal dignity, than vote in the Assembly as they had voted in the Council, and from this very fact the Assembly in all cases would remain impotent. The same difficulties would arise in the Assembly as had already arisen in the Council. There was here a situation inconsistent with paragraph 8, which the Committee had just approved and which stipulated that the Council should endeavour to seek a settlement of disputes by all possible means. One of these means, and in his opinion the best, was that the Council should retire in favour of the Assembly as it retired in favour of the Permanent Court of Justice.

The CHAIRMAN said that the authors of the Covenant had drafted these provisions well knowing what their consequences would be. The dispute remained within the competence of the Council, even though it were submitted to the Assembly. For that reason, it had been laid down that the Council could not be deprived of the dispute. This was simply in order to obtain a stronger guarantee that the dispute was submitted to the Assembly.

Further, M. Cornejo appeared to be under the belief that in every case in which a dispute was brought before the Assembly, the Council would already have voted a decision. The Council, however, might submit the matter to the Assembly at the beginning without having expressed any opinion. It might have discussed the dispute at length, without taking a vote.

It was going too far to believe that members of the Council or members of the Assembly would have the same opinion as their Governments. A country might be represented on the Council by one person and in the Assembly by another. Those two persons might very well vote differently. The Committee was well aware how often Governments did not ratify decisions unanimously adopted by the Assembly.

The provisions against which M. Cornejo was arguing were entirely normal and were based on reasons of a constitutional kind. The Assembly's majority must comprise all the members of the Council when the matter concerned a dispute in regard to which, in normal times—that was to say, if the question had not been submitted to the Assembly—the unanimity of the Council would be necessary. To change these provisions would be to upset the constitutional basis of the League, which was founded on the Assembly and on the Council.

Dr. VON BÜLOW drew attention to the fact that the modification of paragraph 6 involved the modification of paragraph 10. Paragraph 10 laid down that the report of the Assembly was of equal value with the report of the Council when adopted unanimously. There was also a gap in paragraph 10, because it was not certain that the Assembly would always take a decision one way or another. Dr. von Bülow supposed, however, that in such a case the question would once more return to the Council which would deal with it according to the procedure laid down in paragraph 7.

Viscount CECIL OF CHELWOOD thought that Dr. von Bülow was wrong on the last point. He quoted from paragraph 10 of Article 15 :

> "All the provisions of this article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly."

M. CORNEJO wished to make a simple remark. He did not desire to change paragraph 10. It was precisely for that reason that he had presented his amendment to paragraph 7.

He agreed that the unanimity of the members of the Council should be necessary in cases where the Assembly took a decision by a majority for all cases except that in which the Council

voluntarily decided to renounce that provision. It seemed absurd to anticipate that, if the Council did not achieve unanimity and for that reason referred the matter to the Assembly, it would achieve in the Assembly the unanimity which it had lacked when endeavouring to settle the dispute for itself.

The CHAIRMAN did not consider that it would be impossible for the Council to refer a dispute to the Assembly, even in the case provided for in paragraph 7. It nearly always happened that, when the members of the Council felt that they were not in agreement, they abstained from voting and simply referred the question to the Assembly, where their countries were usually represented by other persons than themselves.

M. COT thought M. Cornejo's observations very interesting. The terms of paragraph 7, however, were very general, for they ruled that the Council should resort to the most appropriate procedure. It was useless to include reference to the Assembly among the methods provided, as M. Cornejo desired. Moreover, the rules of procedure were not within the competence of the Committee.

23. Article 16.

M. UNDÉN recalled that he had pointed out at the beginning of the Committee's discussions that the question of the extension of sanctions was raised by Article 12, since Article 16 referred to that article. He had made a reserve on the drafting of Article12, adopted at a previous meeting, in view of the consequences which would arise in regard to the application of sanctions as a result of the insertion in that article of the absolute prohibition of war.

He was not in favour of such an extension of sanctions, at any rate at the present time. According to the British amendments, the Members of the League of Nations would not only undertake to apply sanctions against the State which resorted to war in spite of the obligation to submit every dispute to pacific settlement and to conform to the award given or to a unanimous report of the Council; they would also undertake to apply them against the State which resorted to war when the Council had not succeeded in settling the dispute by a unanimous recommendation and after a delay of three months. In such a case, there would obviously be strong differences of opinion in the Council, and in consequence, it was possible that, if war broke out, it would be a private war, and not collective action in conformity with the spirit of Article 16. He did not consider it desirable to compel Members of the League of Nations to intervene by means of sanctions in such a war. If it were required, with reason, of a loyal citizen that he should assist the police against wrongdoers, that did not necessarily imply that he should intervene in civil war, even though each party requested his assistance on the ground that the other party was in the wrong.

Moreover, the conclusion of treaties of arbitration would automatically extend the field of application of the sanctions, since, in view of the present wording of Articles 13 and 16, the State which resorted to war, contrary to its obligation to carry out an arbitral award, always laid itself open to sanctions.

He was aware of the motives behind the British proposals, particularly those set out in the speech made during the Assembly by Mrs. Swanwick, as delegate of Great Britain. He had been under the impression that an extension of sanctions was not among the principal ideas which inspired the British initiative. He also considered that the Covenant could very well be adapted to the Pact of Paris in such a way as to leave intact the existing rules regarding sanctions. If the Committee were in agreement, it would not be difficult to find an appropriate form of drafting. It might perhaps be possible to lay down in Article 16 that the sanctions were applicable when a State resorted to war contrary to the undertaking to submit the dispute to one of the methods provided under Article 12 and to conform to the award given or to the unanimous report of the Council.

He would put forward a solution. In the document which he had distributed at the first meeting of the Committee, no amendment to Article 16 would be found. As Article 16 provided sanctions for the cases of war foreseen in Article 12, he had proposed that Article 12 be changed as little as possible and that the Pact of Paris be inserted in the Preamble. The cases of war mentioned in Article 12 and covered by the sanctions embodied in Article 16 would then be those coming within the present terms of the Pact.

He would first submit to the Committee the question of principle. Should an extension of sanctions on the occasion of the putting into harmony of the Covenant with the Pact be avoided or not? If the Committee replied in the affirmative, it would be necessary to consider the drafting of Article 12, and he would return to that article.

Viscount CECIL OF CHELWOOD thought that M. Undén had raised points of the greatest importance, but he was certainly not right in saying that the British representative had overlooked the question of sanctions. This question, he remembered, had been distinctly mentioned by Sir Cecil Hurst in connection with the British amendment.

M. Undén had proposed that no change should be made in the articles of the Covenant but that the Pact of Paris should be put in the Preamble. He would point out that that was not in accordance with the directions of the Committee to harmonise the Covenant with the Pact of Paris. If M. Undén's proposal were carried out, the consequence would be that the Preamble and the body of the Covenant would give rise to two sets of obligations, the first enforced by Article 16 and the second not so enforced. That was not the way to get rid of war. If it was really thought that war was an international crime, it was a strange thing to say that war should only be prevented by the League of Nations in certain cases. Wrongdoers would think that

so long as they did not go too far, they could resort to war; that would be disastrous and equivalent to the repeal of the Pact of Paris.

He agreed that no one wished to increase the part of Article 16 dealing with sanctions. During the last ten years he himself had been convinced that Article 16 was essential to the peace of the world. It never had been enforced and he hoped that it never would, but its very existence was a deterrent of the highest value. He valued Article 16 because it was a preventive article. It was not their wish to punish, but to prevent, any breach of peace.

It had been said that the Committee was making considerable extensions to Article 16. Personally, he thought they were quite inconsiderable, and that there had been almost no alteration in the practical effect of the article. Article 16 would now apply to every resort to war within six or nine months, as had been envisaged under Article 15, and that was, in his opinion, sufficient. Any war that was going to break out would almost certainly do so within the six or nine months; for a country determined to break the peace was not likely to give warning and then wait more than nine months before actually going to war.

He would emphasise that the measures the Committee was taking were only preventive. The provisions it had drawn up allowed for disputes to receive full consideration, for the Council to take measures to dispose of them, and, if they were still unsettled, for their further reference to the International Court of Justice at The Hague. The Committee hoped to add in its report that, even so, its work was incomplete, and that it hoped that, in future, every dispute of any kind would receive a solution. In that case, the sanctions would also apply to every dispute. At the present time resort to war was so dangerous that no country could possibly be allowed to break the peace of the world. Should war break out, every country would be affected. Surely it was not going too far to say that the provisions of Article 16 applied to nearly ninety-nine per cent of the kinds of breach possible?

M. Cot associated himself with Lord Cecil and explained why he was unable to vote for the proposal of M. Undén.

He agreed with Lord Cecil that there could not be two kinds of obligations. In an organised society every obligation should be accompanied by sanctions. The fact that an obligation could be violated with impunity would proclaim the failure of that society. Moreover, he could not imagine any State being able to escape from its duty in regard to international solidarity.

M. Undén, who certainly shared that opinion, believed that a State should not contract obligations that it would be unable to carry out in view of the condition of its military forces or its public opinion. M. Cot would at once reply that the modifications introduced by the Committee would not result, in his view, in increasing the practical field of application of the sanctions. The Committee had perfected the means at the disposal of States for settling their disputes and had multiplied the chances of peace. That conferred on Article 16 the purely theoretical character which it should have and which, indeed, it had. If Article 16 were brought into action, there would be war—a just war but, nevertheless, war.

If it were desired to ensure that the obligations which the Committee had just set out would be respected, it was necessary to support them with adequate sanctions.

Could it be said that there had been an extension of Article 16? The Committee had not imposed new obligations; it had modified the existing obligations. Suppressing the delay of three months before resort to war, it compelled States to resort in all cases to pacific methods. In reality, it had modified the sphere of application of the sanctions and not extended it.

M. Undén stated first, that he would accept the amendments which the Committee considered desirable, under reserve of his amendment to Article 12. He would accept, in particular, the amendments to Articles 13 and 15. In order to make the situation clear, he would read Article 12 as it would be drafted if the principle which he had outlined were accepted.

> "The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter to pacific settlement. If the disagreement continues, the dispute shall be submitted either to arbitration or to judicial settlement or to examination by the Council.
>
> "They agree further that they will not proceed to any action likely to aggravate or extend the dispute during the course of such procedure, and, should the Council not reach a solution of the dispute, for a period of three months after the report of the Council."

M. Undén admitted that his proposal would involve the existence of a double jurisdiction. That would perhaps be undesirable from the logical point of view. Nevertheless, it should be recognised that it was necessary to provide for two very different cases, that in which the Council was unanimous, and that in which it had been unable to arrive at a solution. In the latter case, he did not consider it essential to have obligatory sanctions. It had been said that that would involve the failure of the League of Nations, but in reality the States signatories to the Pact of Paris, a pact without sanctions, which were Members of the League, had already accepted the idea that there might be certain wars subject to sanctions and other wars which were not liable to them. It was unnecessary to extend the field of application of sanctions in order to put the Covenant of the League of Nations into harmony with the Pact. Moreover, Article 11 had always been regarded as giving considerable guarantees.

M. SOKAL understood that M. Undén did not wish the sanctions provided under Article 16 to apply to the cases covered by paragraph 7 of Article 15. He would draw M. Undén's attention to the fact that his proposal would result in destroying the value of the work done by the Committee on paragraph 7, and also to the fact that legal war would be reintroduced into the Covenant. He did not know whether the field of application of Article 16 would be extended. If it were extended, the chances of applying its sanctions would be decreased. If the sanctions became universal, there would be no doubt that they would never be applied, for the danger to the aggressor would be too great. Thus the Committee should not risk destroying the value of its work by providing two kinds of sanctions. The sanctions to be applied in case of necessity should be those of Article 16.

M. ITO stated that, as a result of the amendments adopted by the Committee, there was a theoretical possibility of the extension of the sanctions provided under Article 16. In view, however, of the fact that the Pact of Paris did not provide a system of sanctions, though it condemned resort to war, it was probable that the States which had signed it would not, in refusing to accept the extension of the system of sanctions, be violating the Pact of Paris in any way.

The amendment of M. Undén, put to the vote at the request of Viscount Cecil of Chelwood, was rejected.

TWELFTH MEETING

Held on Tuesday, March 4th, 1930, at 10.30 a.m.

Chairman: M. SCIALOJA.

24. Examination of the Proposed Amendments to the Covenant of the League (continuation): Article 17.

The CHAIRMAN observed that an amendment in the following terms had been submitted by the Finnish Government to Article 17:

> "If a State which is not a Member of the League resorts to war against a Member of the League before it has been invited to accept the said obligations, Article 16 shall be applicable to such State so long as it does not comply with the measures taken by the Council for the re-establishment of peace."

Dr. VON BÜLOW was not in favour of the Finnish proposal. On the other hand, he was of the opinion, expressed on a previous occasion by M. Undén, that the obligations of Article 16 would be increased by the proposed change in the Covenant. He realised that he and M. Undén were in a minority. He hoped, however, that the occasion would be taken to point out to the Assembly that the obligations laid on the League of Nations under Article 17 were greatly increased by the extension of the field of application of Article 16 and that it would be for the Assembly or the Council to consider the political question whether or not those obligations should be made appropriate to the situation. That was all the more necessary in view of the possibility of the Pact of Paris clashing with the measures taken by the League of Nations against non-Members of the League.

Viscount CECIL OF CHELWOOD pointed out that Article 17 was worded extremely cautiously. Paragraph 1 applied only to cases where a party not a Member of the League accepted the invitation to accept the obligations of membership in the League. No difficulty would arise in that connection. Paragraph 2 merely provided for an enquiry.

Dr. VON BÜLOW observed that paragraph 2 was strongly worded, for it laid down that the Council should immediately institute an enquiry.

Viscount CECIL OF CHELWOOD replied that there could be no objection to instituting an enquiry to see what had happened and to recommend what action could best be taken. The Council had, in fact, always acted with the greatest caution in dealing with countries that were not Members of the League.

The only part of Article 17 that might perhaps be amended was paragraph 3: ". . . the provisions of Article 16 *shall be* applicable . . ." Personally he would prefer to say "*may* be applicable", because it would be better to leave the Council free to say what should be done.

He saw no objection, however, to calling the Council's attention to the fact that the matter had been brought to the Committee's attention, but that it did not consider it within its province.

M. CORNEJO thought the Finnish amendment very interesting, because it contemplated a case for which there was no provision in Article 17, namely that in which a country was attacked by a non-Member State, before the Council had been called upon to agree on the measures to be taken. According to the present wording of Article 17, the sanctions laid down in Article 16 only became applicable if the Council had invited the non-Member State to submit to the

obligations of the League and not if the war began by a sudden attack. The amendment was still more interesting by reason of the existence of the Pact of Paris, since the aggressor might be a signatory of the latter. In this event he would be committing a breach against the Pact of Paris and it might be necessary to contemplate, in that case, the application of the sanctions laid down in Article 16.

He did not know whether this question came within the Committee's terms of reference, but he was inclined to think that it would be well if the report were to call the attention of the Assembly to the case mentioned in the Finnish amendment but not provided for in the Covenant of the League.

Viscount CECIL OF CHELWOOD thought that it would be unwise to take up this question.

M. SOKAL pointed out that the Finnish amendment to Article 17 proposed the addition of the words " before it has been invited to accept the said obligations ". There was here no question of a country which refused to reply to an invitation to accept the obligations of the Members of the League, since that case was already covered. The case to which the Finnish amendment drew attention might be of interest, but it was a purely theoretical interest. The Council, when confronted with a case of this kind, would find itself obliged to regard it as a refusal to comply with the invitation to accept the obligations imposed on the Member States and the prescribed sanctions would become operative.

M. Sokal fully realised the considerations which had weighed with the authors of the amendment, but he thought that Article 17 might be left unchanged without inconvenience.

M. COBIÁN shared Lord Cecil's and M. Sokal's opinion. He would, however, draw attention to the fact that paragraph 4 must be regarded, if it were not modified, as referring to two non-Member States, since, in the reverse case, it would be possible to deduce from it that it was admissible for a Member State to refuse to fulfil its obligations. If, therefore, the wording of paragraph 4 were not amended, it must be definitely stated in the report that it was considered that this paragraph applied to non-Member States.

M. PELLA noted that, according to certain interpretations, Article 17 also contained certain gaps which would, in certain circumstances, allow of recourse to war. The question had been discussed at the time when the British proposal had been submitted to the Assembly. It had been raised by M. Limburg, who had pointed out that Article 17 might have to be altered if the British proposal were accepted. The question was complicated still further if considered in its political aspect. For this reason he supported the proposal that the difficulties arising under Article 17 should be mentioned in the report.

M. COT wished to reply first to M. Pella. A choice must be made between two possibilities. Either Article 17 contradicted the Pact of Paris—and in that case it would be necessary to indicate to the Council the way to put an end to this contradiction and propose an appropriate amendment—or it was not incompatible with the Pact of Paris, and in this case the Committee had nothing to say. Speaking personally, M. Cot saw no contradiction between Article 17 and the Pact of Paris. If that were so, there could be no adequate reason for changing the text. It would, however, be for the Council to see whether it thought fit to change it for other reasons.

In agreement with M. Cobián, he was in favour of stating in the report that paragraph 4 could only refer to non-Member States, between whom the Council must endeavour to obviate any possibility of recourse to war. This, furthermore, was quite clear from the present wording of paragraph 4. The paragraph therefore had no need of change.

The Finnish amendment was, to his mind, extremely interesting, but it was not, he thought, directly connected with the Pact of Paris. Seeing, moreover, that it did not bring out any incompatibility between the Covenant and the Pact, he did not think that it was for the Committee to make proposals in the sense indicated in the amendment. To do so would give the appearance of ascribing to the League a function which did not belong to it, that of supervising the application of the Pact of Paris generally. That was not a duty of the League and such an interpretation might be opposed to the intentions of the adherents to the Pact of Paris.

He therefore saw no reason for changing Article 17 but concurred, nevertheless, in the proposal to mention in the report that the question had been raised and that the Committee had considered that it was not within its purview. It would be for the Council to consider whether it thought an amendment necessary.

Dr. VON BÜLOW agreed with this proposal.

The CHAIRMAN pointed out that the system laid down in Article 17 should be supplemented by Article 10, which instituted the defence of the right of possession. The case to which M. Cobián had alluded was therefore covered by Article 10. It followed that it was unnecessary to make any change in Article 17.

25. Article 18.

The CHAIRMAN drew attention to the Peruvian amendment concerning the registration of treaties of peace following on a forbidden war.

The Peruvian Government proposed to add a new paragraph to Article 18 as follows :

> " The Secretariat of the League of Nations may not register any treaty of peace imposed by force as a consequence of a war undertaken in violation of the Pact of Paris. The League of Nations shall consider as null and void any stipulations which it may contain, and shall render every assistance in restoring the *status quo* destroyed by force."

Viscount CECIL OF CHELWOOD wondered whether this proposal could be brought within the Committee's terms of reference.

The CHAIRMAN replied that, in his opinion, it did not come within the terms of reference but that, as the proposal had been put forward, he was bound to submit it to the Committee.

M. CORNEJO observed that he was the author of the proposal. It was reproduced in the Minutes of the third meeting of the January session of the Council (January 14th, 1930) and had been referred by the Council to the Committee for study. He read the relevant passage in the Minutes of the Council and reminded the Committee that he had submitted this proposal to the Assembly at the time when the setting up of the Committee had been proposed. He had spoken on it again in the First Committee of the Assembly and finally had submitted it to the Council, which had referred it to the Committee. He considered, therefore, that, as the proposal had been referred by the Council to the Committee, it logically came within the latter's terms of reference.

He had consulted the qualified authorities on this proposal and they had all given a favourable opinion. The comments of the Press had also been favourable. It was thought that the proposed addition was in accordance with the spirit of Article 18. It was part of the League's duty to register treaties. It was clear that treaties which were the outcome of a war undertaken in violation of Articles 12, 13 and 15 and in respect of which the sanctions laid down in Article 16 had been taken, could not, regardless of the stipulations of the Pact of Paris, be registered by the Secretariat of the League. It was impossible to imagine that the League, having forbidden a war and applied sanctions to the belligerent, should recognise a treaty which was the outcome of the violation of the Covenant. This obligation had been clear, even before the signature of the Pact of Paris. It had now become absolutely necessary. If there was any case in which the Covenant should be brought into harmony with the Pact, this was most certainly one of them, since from the prohibition of war there followed as a necessary consequence the nullity of a treaty imposed by means of the war prohibited.

The Pact of Paris having prohibited war, it was considered necessary to complete the system of pacific means of settlement for disputes between States which were henceforward unable to go to war. Lord Cecil, on the other hand, had stated on the previous day that Article 16 was, above all, of a preventive character, and that its object was to avoid war rather than to remedy it. That, however, was the essential character of his own amendment. It was preventive and designed to hinder the violation of the Covenant and the Pact by annulling in advance its results. All wars had some interest in view, admitted or secret : conquest, colonial or economic expansion, prestige, etc. If the peoples knew beforehand that victory would be profitless it would be a definite blow against the spirit of war. It appeared that the Pact and the Covenant should be in agreement on that point.

On the other hand, the amendment had the advantage of affirming a moral principle : that the States should not hope to profit from the employment of prohibited methods. The legislation of all countries accepted the principle that the murderer could not inherit from his victim. The case of international law was analogous, and it was that point of view that he had desired to embody in his amendment by declaring a peace treaty resulting from a war in violation of the Pact of Paris to be inadmissible by the League of Nations.

M. COBIÁN noted that M. Cornejo's amendment contemplated an exception to the principle of Article 18 regarding the registration by the Secretariat of the League of Nations of all international engagements. Personally, he approved M. Cornejo's idea to some extent. It might be doubted whether the question came within the Committee's competence, but in view of the fact that the proposal submitted to the Council had been referred to the Committee, it would be difficult to refuse to discuss the matter for reasons of incompetence. If the Committee decided that no alteration to Article 18 was necessary, he would suggest that a recommendation be inserted in the report to the effect that henceforward the State which had failed in its duty and had resorted to war should be unable to profit by the advantages which would be given to it by a treaty of peace resulting from that war, such treaty not having been registered by the League of Nations.

M. PELLA recognised the interest of M. Cornejo's proposal. He recognised also that arguments both for and against it could be put forward. It might be objected that the stipulation suggested implied the acknowledgment by the League of Nations of the possibility of recourse to war as a means of settling an international dispute, that solution being admitted in a treaty. It would seem, however, inconceivable that a treaty could sanction the results of the violation of the Pact against war.

Among the arguments in support of the amendment was that provided by studying Articles 18 and 20 together. Article 20 stated :

> " The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof."

If the obligations arising from treaties previous to the Covenant of the League of Nations were regarded as *ipso facto* abrogated in the event of their being incompatible with its terms, there was all the more reason for contesting the validity of treaties resulting from a violation of its provisions.

The registration by the Secretariat of the League under Article 18 of the treaty resulting from a war prohibited by the Covenant would be equivalent to an approval by the League of Nations of the crime of war which it was its mission to prevent and even to suppress.

The amendment put forward by M. Cornejo was thus based on Article 20, and though it was true that analogies between international law and internal law were sometimes dangerous, the comparison which arose in the present instance might, on the contrary, be regarded as very just.

In internal law if, for the conclusion of a contract, the consent of one of the parties had been obtained by methods which involved the violation of a penal law, or even by methods which were less serious, the contract was null or might be annulled. There was all the more reason for regarding a treaty as non-existent in international law if it were imposed as the result of a war prohibited by the Covenant of the League.

He would add that M. Cornejo's idea had a high moral significance, and deserved to be considered by the Committee and at least mentioned in its report.

M. Sokal said he would, in principle, have approved the amendment of M. Cornejo if M. Cornejo had declared that all treaties which were not in conformity with the Covenant should not be registered, although, even in this form, the amendment would have been superfluous as it was precisely this category of treaties which was covered by Article 20 of the Covenant. Any addition in regard to this matter would accordingly be useless.

To introduce the amendment of M. Cornejo into the text of Article 18 would be equivalent to despairing of the League of Nations, for it would be equivalent to admitting that war might take place; that events might go so far as to involve a treaty imposed by violence, in spite of the fact that all the measures laid down by the Covenant had been put into action. The power of the League of Nations would only be able to make itself felt at the moment of the registration of that treaty! That would mean the expression of a point of view so pessimistic that, in spite of the generous idea which had inspired its author, he could not support the amendment of M. Cornejo.

In conclusion, he thought that the amendment of M. Cornejo went beyond the instructions of the Committee, which were to harmonise the Pact of Paris with the Covenant of the League of Nations.

Dr. Woo Kaiseng said that, as a matter of principle, he agreed with the proposal of M. Cornejo concerning Article 18. That amendment had already been submitted to the Assembly at its last session and consequently it ought to be taken into consideration by the Committee. He thought that it was in conformity with the spirit of the Pact of Paris. It was agreed, that, in order to suppress war, it was necessary to suppress the causes of war. Consequently, it was most important to suppress those treaties that had been imposed by violence at the end of a war. In private law a man could not be allowed, if he had killed another, to claim the wife and property of his victim. Would what was forbidden among individuals be admitted between nations? He therefore supported the proposal of M. Cornejo.

Turning to the text of Article 18 he read there that " every treaty or international engagement shall be forthwith registered with the Secretariat ", etc. To meet the Peruvian proposal, he would propose that the text be modified in the following manner : " every treaty or international engagement *validly* entered into hereafter. . . ." That would permit of the exclusion of treaties or engagements imposed by force, and such a modification would do away with all the difficulties raised by the amendment of M. Cornejo.

M. Cot agreed with the idea of M. Cornejo and found it extremely interesting, but did not see how it could be put into practical effect. In fact, it seemed to him impossible to make a direct reference in the text of the Covenant of the League of Nations to the Pact of Paris. Since it was not the duty of the League of Nations to see that the Pact of Paris was carried out, it should be enough to say that the Committee thought it necessary that the Secretariat should not register treaties concluded in contradiction to Articles 12, 13 and 15 of the Covenant.

On the other hand, if the right to refuse registration was allowed, what would be the authority to decide that the treaty did not fulfil the conditions necessary for it to be registered? It would probably be the Secretariat of the League, but the Secretariat was simply a body of registration, and it would be difficult to entrust it with the task of examining a treaty and of seeing if it was drawn up under sufficiently free conditions. Registration was a matter of procedure which did not in the least imply the revision of the treaty registered. Consequently, it would first be necessary to revise the text of the amendment of M. Cornejo in order to make it applicable.

On the other hand, it might be said that it was the duty of the Council to decide whether or no the treaty could be registered, but in that case the Council would have to be given considerable powers and authority to verify treaties. Would not that attitude be distinctly inconsistent with that adopted by the Committee in dealing with Article 15? If the treaty happened to be contradictory to the provisions of Articles 12, 13 and 15, the Council would already have intervened and put into action the system of sanctions. It would thus be admitted that, in such a case, the Council had shown itself powerless to exercise a decisive influence on the events. That was not admissible.

According to the other hypothesis, namely that of a war, arising consequent on the incapacity of the Council to come to a unanimous decision, one of the nations party to the dispute having taken the affair into its own hands and acted in consequence, if it was declared that the treaty resulting from these hostilities should not be registered, the Committee would find itself obliged to return to the text of paragraph 7 and to declare that there were no cases in which the Council was not bound to impose a peaceful solution for disputes or the execution of its decisions.

Viscount Cecil of Chelwood agreed with the conclusions arrived at by M. Cot and M. Sokal. It would be a serious mistake for the Committee to discuss the question. He had looked carefully at the record of the Council's proceedings to which M. Cornejo had alluded and he had noted that,

though M. Cornejo had asked to have the matter referred to the Committee, the Council did not appear to have taken any decision to that effect. It had merely asked the Committee to frame a report as to the amendments of the Covenant necessary to put it into harmony with the Pact. For that purpose the amendment suggested by M. Cornejo was not necessary.

His objection, however, went further. Everyone accepted the principle of the amendment, but it was already enshrined in the Covenant. Under Article 10 it was the duty of the League " to *respect and preserve* . . . the territorial integrity and existing political independence of all Members of the League ". The Council was directed to take whatever measures it found practicable for that object.

The same principle was enshrined in Article 20, which said that any obligation not in conformity with the Covenant was abrogated, and that all the Members undertook *not to enter into any engagements inconsistent with the Covenant.* If they adhered to the Covenant, therefore, they could not enter into any treaty which was inconsistent with the obligation under Article 10 to respect and preserve the territorial integrity of all Members of the League.

The real question for the Committee to consider was whether the actual machinery proposed by the amendment was desirable. He agreed with M. Cot that it would be very unwise to charge the Secretariat with the duty of deciding on the validity of treaties. Such a question was of the highest political importance, and if it had to be decided at all it should be by the highest authorities of the League : the Council or, if necessary, the Permanent Court of International Justice.

His objection went still further. Article 18 was an extremely valuable article of the Covenant. It was inserted in order to secure publicity for international engagements, and was never intended to be used to censor, modify or supervise them. To use it for such a purpose would be to make it much less effective and would be a serious blow at the universal publicity of engagements. There would obviously be a tendency for countries to withhold an engagement from registration if they were not sure that it would be accepted.

He would beg his colleagues not to adopt a provision which, as M. Cot had observed, went further than the most extreme suggestion made with regard to Article 15.

The CHAIRMAN pointed out that the publicity given to treaties by their registration with the Secretariat of the League was a necessary condition for the authority of those treaties. Without such publicity they were not compulsory. He would emphasise the strength of this stipulation. It was quite certain that States might always consider treaties, even when not registered, to be compulsory in so far as they themselves were concerned, but, legally speaking, treaties not registered with the Secretariat of the League were only draft treaties What, therefore, would be the consequence of the non-registration of a treaty of peace? It would mean that the war would never come to an end and thus the object desired would have been entirely missed.

The idea forming the basis of the proposal of M. Cornejo seemed to have been imperfectly expressed in his amendment. The object pursued was peace. It might be, however, that treaties containing conditions imposed by violence were concluded. In virtue of the new international law, the admission of such conditions might be refused. In this case something would occur which had happened several times. Since third States did not recognise the treaty, a congress for its revision would be summoned and instructed to correct those provisions considered to be contrary to the principles of international law. Such a procedure, however, was based on the supposition that such a treaty was in existence. If, therefore, the treaty were not registered, it could not be criticised, for in theory it did not exist.

It might be possible to maintain that changes of territory, oppressive obligations imposed by a State as a result of violence, were inadmissible from an international point of view, and it would then be for the League to intervene. It was however, difficult to lay down anything else than principles because the League would usually be faced by a concrete case. The Committee must be careful not to push the logical argument too far, for it would then be compelled to maintain that, if the war had been unjust, the resulting peace was also unjust. The war might be unjust but the peace putting an end to it might be just. If that peace contained intolerable conditions, other States would be called upon to intervene. In any case the treaty of peace should be registered in order to put an end to war.

M. PELLA observed that there was here a vicious circle. A plausible though rare case had been put forward, namely, that of a conflict between two States Members of the League of Nations which had not been capable of settlement under Article 15. Article 12, as modified by the Committee, provided that even in that case there should be no resort to war. Suppose, however, that the States resorted to war and that the other Members of the League of Nations, or, at any rate, the Members of the Council had not been able to agree on the question which of the two States was legitimately defending its interests. What would be the position ?

In the case of such disagreement it was inconceivable that there should be any co-ordinate action under paragraph 1 of Article 16. In the event of disagreement between the members of the Council, paragraph 2 of Article 16 also remained inoperative.

If, confronted with such a divergence of opinion, the Members of the League of Nations had the prudence to refrain from intervening in order to avoid generalising the conflict, and if the war continued between the two States, only one sanction could conceivably be contemplated in such circumstances, namely the refusal to recognise any validity in the treaty resulting from such a war.

In such circumstances there was no question of conferring upon the Secretariat or any other organisation of the League of Nations the right in any form to revise treaties.

The League of Nations had absolutely no call to appreciate the facts. It must confine itself to noting that the treaty was a violation of Article 12 of the Covenant and refuse to register the treaty.

In conclusion, he, nevertheless, recognised that it was more prudent for the moment not to amend Article 18. He would propose that reference should be made to the suggestion of M.Cornejo in the report. It would be for the Assembly to appreciate the desirability of such a proposal, whose high moral significance could not be in any case ignored.

M. Ito noted that, in connection with the amendment of M. Cornejo, Articles 10, 18 and 20 had been successively quoted. It had been said that the proposal of M. Cornejo was implicitly contained in the Covenant. Personally he doubted whether the Covenant contained a provision which was in conformity with the final part of the Peruvian proposal :

> " The League of Nations shall consider as null and void any stipulations which it may contain, and shall render every assistance in restoring the *status quo* destroyed by force."

He was opposed to that amendment, for he thought that it would carry the League of Nations much too far. To accept it might have grave consequences.

M. Cornejo thanked the members of the Committee who had supported his proposal and emphasised the paradox which would result in following the arguments of the Chairman to their final conclusion. It had been said that war would in future be illicit. War, however, undertaken with the object of conquest, ended by a treaty of peace and that treaty would be considered as sacrosanct and would have to be registered immediately. Would not the case be similar to that in which in a law court the murderer maintained that in killing his victim he had delivered him from the cares of life and consequently deserved to be acquitted? The Covenant, and particularly Article 10, had been violated. The League had had recourse to sanctions without effect, and yet it was still desired that the treaty born of such a state of affairs should be recognised by the League. The Chairman had referred to a congress to be summoned to modify the treaty. This was a direct allusion to European events, particularly to the Treaty of St. Stefano, revised by the Congress of Berlin under threat of force, which might be regarded to some extent as the origin of the catastrophe of 1914. It was to avoid the repetition of such mistakes that his amendment should be accepted. To maintain that, despite all covenants, there would still be treaties imposed by force and congresses held under the threat of force to keep the balance of power, was a very reactionary view.

The arguments submitted against his proposal seemed to him, on the contrary, really to support his view. If Article 10 laid upon the Members of the League the duty to respect and maintain against all external aggression the territorial integrity and independence of the other Members of the League, he thought that the League should consider as null and void in advance any treaty which sanctioned the violation of this undertaking. It should also consider as null and void any treaty stabilising the results of a war undertaken in violation of Articles 12, 13 and 15.

M. Sokal had argued that to admit the possibility of war would be to recognise the failure of the League. He would point out, however, that it had been thought necessary to provide financial assistance to be accorded to a State victim of an aggression.

It was also said that this proposal would give considerable power to the Secretariat. In his view this would not be the case, for the Secretariat would only be fulfilling a mere formality. The war, being declared by the Council, which had been unable to prevent it, to be contrary to the Covenant, it would be sufficient, in order to refuse the registration of a treaty, to note that it had been concluded as a result of that war. Further, it had been maintained that the Council might be led to intervene in every possible kind of dispute. Article 17, however, already laid down that the Council should deal with threats of war even between States which were not Members of the League. His conclusion was that no final argument had been brought against his proposal, which was that the Committee should state clearly something which was obviously in conformity with the spirit of the Covenant.

Returning to the circumstances which had led to the presenting of his amendment in the Assembly and in the Council, he recalled that his report had been regarded as approved by the Council, as it had not been discussed. He himself had then proposed that, according to the procedure adopted in the case of the British amendment, his own amendment should be forwarded to the Committee. He read the following passage from the Minutes of the Council's meeting:

> " M. Cornejo wished to take the opportunity to ask, on behalf of his Government, that the draft amendment reproduced above should be subjected to the same procedure as the British delegation's proposal, namely, that it should be brought to the knowledge of the different Governments and studied by the Committee which the Council would appoint."

He would recall that an accusation had frequently been made against the League, which he in no way supported, for he had great confidence in the League and in the good faith of its Members, that, behind its parade of universality, only privileges were granted to certain States, the others being permitted only to play a spectator's part. In his view, it was important to repeat clearly what was found in the Covenant, namely, that any treaty imposed as the result of war was contrary to the Covenant of the League and consequently null and void. This principle had been accepted by the Assembly. He asked now that it should be inserted in the Covenant of the League and that its discussion should not be avoided on the grounds that the Committee's terms of reference were limited.

The Chairman called upon the Committee to vote on the amendment of M. Cornejo.

The amendment was rejected.

M. CORNEJO asked that his amendment should be mentioned in the report.

The Committee agreed.

26. Preamble.

M. UNDÉN said he had proposed an addition to the Preamble. In view, however, of the fact that this amendment was bound up with the amendment he had proposed to Article 12 and that it had been rejected as the result of the Committee's vote, he would not press it.

Viscount CECIL OF CHELWOOD thought that the only amendment to be made in the Preamble consisted in replacing the words " by the acceptance of obligations not to resort to war " by the words " by the acceptance of *the obligation* not to resort to war ".

M. SOKAL considered it would be useful to introduce a number of expressions borrowed textually from the Pact of Paris. He proposed in consequence that the corresponding paragraph of the Pact should be inserted in the Preamble.

The CHAIRMAN thought it would be preferable to keep the expression " obligation not to resort to war " contained in the Covenant, for the Covenant sometimes went, in his view, further than the Pact of Paris.

The Chairman noted that the Committee had ended its work.

The Committee, on the proposal of M. CORNEJO, *adopted a vote of thanks to the Chairman.*

THIRTEENTH MEETING

Held on Wednesday, March 5th, 1930, at 4.30 p.m.

Chairman : M. SCIALOJA.

27. Examination of the Preliminary Draft Report on the Work of the Committee. [1]

The CHAIRMAN regretted that M. Cobián and M. Cornejo had been unable to attend the meeting.

M. COT, Rapporteur, read the preliminary draft report.

M. SOKAL observed that in the second paragraph of the report too much emphasis was laid on the purely juridical side of the Committee's work. It could not be said that the Committee had only considered the legal aspect.

Article 13, Paragraph 4.

Viscount CECIL OF CHELWOOD, referring to the explanation given in regard to Article 13, paragraph 4, insisted that the text should clearly indicate that war was forbidden except for purposes of self-defence and the application of international sanctions. In a word, a State had no right to resort to war.

The CHAIRMAN emphasised the danger of neglecting to define the significance of the word " war " which might have two meanings. The result would be that, when an act of force did not have the character of war, the Pact of Paris might be found inapplicable.

M. COT insisted on the difficulty of taking up a position on this question and concluded that the employment of a negative formula was desirable.

M. SOKAL wondered whether any explanation was necessary to the effect that States which had renounced war as an instrument of national policy might resort to force in executing awards given in their favour.

M. UNDÉN thought, on the contrary, that it was necessary to give an explanation, seeing that the Committee had adopted a new interpretation of Article 13. He would suggest " provided, in conformity with Article 12, that States should not resort to war ".

Viscount CECIL OF CHELWOOD observed that, since resort to war was forbidden in Article 12, it would be fantastic to say that in certain circumstances war might be admitted. M. Undén's phrase was satisfactory to him.

M. ITO accepted the conclusions of Lord Cecil.

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[1] It appeared unnecessary to print as an annex this preliminary draft report, which was adopted by the Committee with a few changes. In the present document, only passages which were deleted or changed are reproduced.

M. SOKAL noted that the thesis of M. Undén was developed in paragraph 2 of the section of the report on Article 13, paragraph 4. He considered, moreover, that the sentence in paragraph 1 : " The Members of the League undertake to refrain from any action against a State which complies with any award or decision that has been rendered ", meant that a State would have the right itself to enforce awards given in its favour, provided that it did not resort to war.

The Committee agreed that the sub-paragraph 2 of paragraph 1 of the section on Article 13, paragraph 4, should read as follows :

> " The proposed text obviously secures to States the right themselves to proceed with the execution of awards or decisions given in their favour without, however, leaving them the right to resort to war." [1]

Sub-paragraph 3 should be omitted. [2]

Viscount CECIL OF CHELWOOD, referring to sub-paragraph 2 of paragraph 2 of the same section, drew attention to the following phrase : " The Committee . . . affirmed the need of ensuring the execution of decisions or awards rendered by a judicial or arbitral authority ". If that phrase stood alone, he would have no great objection to it, but it was part of a general thesis contained in the report with which he was unable to agree. Nothing should be put into the amendments which was not already contained in the Pact of Paris or the Covenant. It was quite plain that the forcible execution of awards was not part of the Pact of Paris, nor did he think it was part of the Covenant. He had always read the Covenant in the following manner : that it forbade resort to war except in certain cases; that it provided a complete machinery for the settlement of disputes without going to war; that it encouraged in various ways the use of that machinery; but that it did not undertake to enforce awards. That was the great distinction always drawn in the old controversy as to whether the League was a super-State, whether it had the right to over-rule the sovereignty of States, or whether its function was to promote the agreement of States and, in doing so, to forbid resort to war, which was the one thing fatal to agreement.

The Covenant, as it stood, had taken a very clear line, and the words used were carefully chosen. To suggest that it was the business of the League to enforce awards absolutely, whether they were awards by the Council or by an arbitral tribunal, would be to make a profound revolution in its procedure. He looked upon the suggestion with grave apprehension.

He would add that he had received a variety of messages from his own country, some of which had appeared in the Press and elsewhere, and others of a more authoritative character, expressing great apprehension as to whether the Committee was not trying to go a great deal further than harmonising the Pact of Paris and the Covenant, and endeavouring to set up an entirely novel system of dealing with disputes. The theory was set out with the greatest clearness and force later in the report, and he must ask the Committee to come to a decision on the matter.

M. COT represented that the Covenant, in its original form, required the Council to propose measures for the execution of decisions. He thought the formula used in the report might be attenuated.

Viscount CECIL OF CHELWOOD pointed out that the difficulty to which he had already referred arose four paragraphs later on. The main object of the League was not to carry out sentences, but to procure agreements. He could not accept the following sub-paragraph :

> " Finally, the Committee directs the attention of the Assembly and Council to the necessity of giving effect to awards or decisions in all circumstances whatsoever. The whole authority of the League of Nations might be hopelessly compromised if, after a State had obtained a judicial decision or arbitral award in its favour and had asked the Council to give effect thereto, the latter had to confess itself powerless. In the first place an indisputable right derived from an award or decision, which was legally final and binding, would be violated. In the second place the Council would have to admit that it was unable to fulfil the role of international authority with which it has been invested."

M. COT said that the drafters of the report had confined themselves to taking into account the course of the discussion and had thought that it was necessary to reinforce the argument adopted. Their task had been to summarise the debates of the Committee, and he believed that the Committee had decided that the carrying out of sentences was essential. It had thus been necessary to mention that opinion in the report. Otherwise, Article 12 would have

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[1] In the preliminary draft report, this sub-paragraph 2 read as follows :

"The proposed text obviously secures to States the right themselves to proceed with the execution of awards or decisions given in their favour. But is the extent of this right without limit, and can a State that has not obtained satisfaction have recourse to war?"

[2] Sub-paragraph 3 read as follows :

"The Committee emphasises the importance of this problem, but does not consider itself qualified to solve it. The solution depends directly on the interpretation of the Pact of Paris. The question is whether, in renouncing war as an instrument of national policy, States have also renounced the right of executing by means of force the awards given in their favour."

to be re-examined. Personally, he did not consider it desirable to give the impression in the report that the Committee had adopted the opinion of Lord Cecil. If such a statement were suggested, he would himself have to reserve the right to insert his own rejected proposals.

Viscount CECIL OF CHELWOOD said he had not understood that such was the decision of the Committee. He did not wish to alter the wording of the amendment which the Committee had accepted. The explanation, however, appeared to him to give to it a definite interpretation to which he personally had never agreed and to which he did not believe the Committee had agreed. He had understood that the sense of the article was not being altered except in one particular: that the right of the parties to fight was withdrawn.

In his judgment the interpretation now suggested was one which had never been given to the article in the whole ten years of the League's existence. So to interpret it was to suggest an entirely new view of the powers given under Article 13, paragraph 4, and he was obliged most respectfully to object to it. He would be content to leave the amendment to speak for itself without any explanation.

He was satisfied that the Council should have the right to propose any measure for the purpose of giving effect to the decision. The case was exactly the same in Articles 13 and 15. In the former there was involved an arbitral award accepted either under a general arrangement such as the Optional Clause or by a special agreement. He could agree that Article 15, paragraph 6, should be substantially on the same footing as Article 13, paragraph 4.

What explanation should be given? To his mind, the meaning of the phrase used in the Covenant was clear, but it did not go as far as that used in the report. He did not ask the Committee to accept his view; on the other hand, he should not be asked to accept their view. The reason why he was content to leave the amendment as it stood, without explanation, was that he did not believe that the necessity for the enforcement of awards or unanimous decisions would ever arise. If it did so, the case would be so rare that it was unnecessary to consider it at present.

He had argued over and over again that the League of Nations was not a super-State, and this fact was very well understood in his own country. He could not agree to putting his name to a phrase which to his mind implied that it was a super-State.

M. SOKAL agreed with Lord Cecil that the difficulty arising out of the interpretation of Article 13, paragraph 4, would arise in regard to the interpretation of Article 15. Whilst it could be avoided, however, in Article 13, the same could not be said of Article 15.

The report, as it was intended for the Assembly, should contain a summary of the Committee's discussions, but the inclusion of a number of reserves would weaken it and make it incoherent. In his opinion, it would be preferable not to include in the report any explanations which would lead to the re-opening of a discussion in the First Committee of the Assembly. He hoped and believed that it was the desire of all his colleagues that the Assembly should adopt the modifications suggested. The report should contain an expression of the common desire of the members of the Committee, but, where there was disagreement on an interpretation, it would be better not to mention it.

Viscount CECIL OF CHELWOOD agreed with M. Sokal that, if it were desired to have the amendments accepted, it would be madness to put upon them an interpretation which would not be accepted by a considerable section of the Assembly. Where the Committee was in agreement, commentaries might be helpful, but where it was not in agreement they would only stir up opposition.

M. COT did not think it was a question of interpreting the Committee's decision. The Committee had considered it essential to refer these difficulties to the Council and the Assembly; that was obvious from the Minutes of previous meetings. This was a fact which could not be ignored. He had withdrawn his own amendment because it was understood that the report would draw the attention of the Council and the Assembly to the matter. He would propose, in order to give satisfaction to Lord Cecil, to omit the following sentence in sub-paragraph 6 of paragraph 2:

> "The whole authority of the League of Nations might be hopelessly compromised if, after a State had obtained a judicial decision or arbitral award in its favour and had asked the Council to give effect thereto, the latter had to confess itself powerless."

Viscount CECIL OF CHELWOOD regretted that he could not consent to anything that would lead to the supposition that he had agreed to statements that were against some of his fundamental beliefs with regard to the League of Nations.

M. COT said that, since all the members of the Committee were in agreement, with the exception of Lord Cecil, the paragraph might begin: "Finally *the majority of the members* of the Committee . . ."

The Committee adopted the following drafting for the paragraph under discussion:

> "Finally, the majority of the members of the Committee desired that the attention of the Assembly and the Council should be called to the necessity of ensuring that effect be given to awards or judicial decisions in all circumstances whatsoever. The whole authority of the League of Nations might be gravely affected if an indisputable right, derived from an award or judicial decision which had become legally and finally binding, could continue to be violated with impunity."

Article 15, paragraph 7bis.

Viscount CECIL OF CHELWOOD, referring to the section of the report on Article 15, paragraph 7*bis*, regretted the unfortunate necessity of having to raise serious objections.

The question of majority had given him a great deal of anxiety. He saw several reasons why it might turn out to be a very dangerous provision. In the first place, it was not certain that it was necessary to refer to it at all. There was a considerable body of opinion that the Council had already the right to take such action by majority. Secondly, he thought many people would resent it. There had been one express reserve on the subject, and the matter was certainly outside the direct competence of the Committee. Thirdly, if it were rejected as a result of the discussions of the Assembly, a very unfortunate effect might be produced on the general question of what were the rights of the Council on such a subject.

He feared, moreover, that this provision, although it certainly did not affect the protocol of accession of the United States to the Court Statute, might nevertheless raise difficulties in the United States.

M. SOKAL thought that, since the text had been voted, the only thing that remained was to adopt the report and not go back upon the vote. The Committee had opposed the majority vote by the Council in cases where an advisory opinion was requested from the Permanent Court of International Justice. At the moment of the discussion he had made certain reservations, but when it had come to a decision, he had withdrawn from his position although he had supported the suggestion that the vote of the members of the Council should be unanimous. Perhaps the Rapporteur would be able to find a formula for the report that would show that the question had been studied by the Committee.

M. ANTONIADE said he was very glad to hear the observations which Viscount Cecil had just made. None of the misgivings expressed had escaped his notice when he had formulated explicit reservations during the discussion of paragraph 7*bis*.

He would be quite ready, so far as he was concerned, to go back upon the vote if that course were possible. In any case, he must insist that the reservations made during the present meeting should be mentioned in the report.

M. COT pointed out that he had put forward a different scheme. It might be possible subsidiarily to have recourse to a committee of jurists; but, for his part, he was unwilling to return to the subject now that the vote had been taken.

Viscount CECIL OF CHELWOOD said he would agree to insert " or a committee of jurists " after " ask the Permanent Court of International Justice ".

The CHAIRMAN believed that the institution of a committee of jurists would be very desirable for the cases where it was impossible to ask the Permanent Court for its opinion.

M. SOKAL pointed out that all that remained was for the Committee to examine the report. He did not think that it was possible to return to texts that had already been adopted, especially as two of the members of the Committee were absent, having left Geneva in the belief that the texts on which they had voted were definitely approved. Concerning the institution of a committee of jurists, he declared himself quite unable to admit that such a committee should be placed on an equal footing with the Permanent Court of International Justice.

M. UNDÉN said that there need be no apprehension as to the attitude of the United States of America, in view of the fact that, during the discussions on the adherence of the United States to the Statute of the Court, the possibility had been contemplated of an interpretation of the Covenant which would admit of a request for an advisory opinion made as the result of a majority vote of the members of the Council.

M. COT insisted that it was impossible to return to a motion once it had been voted upon and passed. He agreed with M. Sokal that the committee of jurists contemplated by other members of the Committee and by himself should not be placed on the same footing as the Court. Consequently, he proposed to leave the text as it was, and to insert a reference in the report.

Viscount CECIL OF CHELWOOD observed that the suggestion offered a happy solution.

The CHAIRMAN agreed that a committee of jurists could not possibly be placed upon an equal footing with the Permanent Court of International Justice. Even if the decision of the Court were open to criticism, it was binding upon all parties; but it would be quite different with the decision of a committee of jurists.

Viscount CECIL OF CHELWOOD represented that the English translation of the text of the report should he brought into strict agreement with the French text.

The report was adopted with the amendments indicated above.

28. Work of the Committee : Observations of Viscount Cecil of Chelwood.

Viscount CECIL OF CHELWOOD read some observations which he proposed to communicate to the Press.

He emphasised in these observations that the members of the Committee had attended in their personal capacities and did not in any way represent their Governments, which remained free either to accept or reject any of the proposals which had been made. The British Government might not feel it possible to go further than it had been prepared to go during the session of the Assembly in 1929. It would have to be guided not only by legal considerations, but by considerations of international and domestic policy and would, in particular, have to consider the condition of the disarmament question, which necessarily had a great effect on all proposals relating to international security.

Personally, he was in favour of the proposals which the Committee had framed, and believed that the solution suggested was sound and workable.

The Committee raised no objection to the publication of the observations of Viscount Cecil.

ANNEXES

ANNEX I.

RESOLUTION ADOPTED BY THE ASSEMBLY ON SEPTEMBER 24TH, 1929 : BRITISH PROPOSAL AND PERUVIAN PROPOSAL.

I. Resolution adopted by the Assembly on September 24th, 1929, on the Proposal of the First Committee.

The Assembly,

Taking note of the resolution submitted to it on September 6th on behalf of various delegations that, in view of the large measure of acceptance obtained by the Pact signed at Paris on August 27th, 1928, whereby the parties renounced war as an instrument of national policy in their relations with one another, it is desirable that Articles 12 and 15 of the Covenant of the League of Nations should be re-examined in order to determine whether it is necessary to make any modifications therein ; and

Taking note also of the resolution proposed by the Peruvian delegation on September 10th recommending that a report should be obtained as to the alterations which were necessary in the Covenant of the League in order to give effect to the prohibitions contained in the Pact of Paris :

Declares that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris referred to above ;

Instructs the Secretary-General to communicate to all the Members of the League a copy of the amendments to the Covenant of the League which have been proposed for this purpose by the British Government, together with such further papers as may be necessary ;

Invites the Council to appoint a Committee of eleven persons to frame a report as to the amendments in the Covenant of the League which are necessary to bring it into harmony with the Pact of Paris. This Committee should meet in the first three months of 1930, and in the course of its labours should take intoaccount any replies or observations which have been received from the Members of the League by that date. The report of the Committee will be submitted to the Members of the League in order that such action as may be deemed appropriate may be taken during the meeting of the eleventh ordinary session of the Assembly in 1930.

II. Amendments to the Covenant proposed by the British Delegation.

Article 12, *Paragraph* 1, to be amended to read as follows :

" The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree that they will in no case resort to war."

Article 13, *Paragraph* 4, to be amended to read as follows :

" The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

Article 15, *Paragraph* 6, to be amended to read as follows :

" If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that as against any party to the dispute that complies with the recommendations of the report they will take no action which is inconsistent with its terms."

Article 15, *Paragraph* 7, to be amended to read as follows :

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war."

III. Declaration addressed to the Council by M. Cornejo, Representative of Peru, containing a Proposal for an Amendment of Article 18 of the Covenant.

[*Translation.*]

The Peruvian delegation was among those which took the initiative at the last session of the Assembly in raising the question of the amendments to be made in the Covenant of the League of Nations to bring it into line with the spirit and the agreements of the Pact of Paris.

I had the honour of stating my Government's point of view during the discussion in the First Committee, in the Sub-Committee appointed to draft the modifications and, lastly, at the Assembly, when the First Committee's report was discussed. I laid special stress on the importance of recognising that the condemnation of war as an instrument of national policy implies that a country must not be able to derive advantage from a warlike enterprise carried out in violation of the Pact of Paris by imposing the will of the victor on the vanquished country through a peace dictated by it.

As I mentioned to the Assembly, I then intended to submit the text of a new paragraph to be added to Article 18 of the Covenant. This text is as follows :

> " The Secretariat of the League of Nations may not register any treaty of peace imposed by force as a consequence of a war undertaken in violation of the Pact of Paris. The League of Nations shall consider as null and void any stipulations which it may contain, and shall render every assistance in restoring the *status quo* destroyed by force."

The First Committee approved the Sub-Committee's report, which asked it : (1) to propose the appointment by the Council of a committee to study the proposed modifications, and (2) to ask the different Governments for their opinion on these modifications.

The Assembly approved the First Committee's report.

I take this opportunity of asking, on behalf of my Government, that the draft amendment reproduced above should be subjected to the same procedure as the British delegation's proposal, *i.e.*, be brought to the knowledge of the different Governments and studied by the Committee which the Council is to appoint.

ANNEX II.

OBSERVATIONS OF THE GOVERNMENTS TRANSMITTED TO THE COMMITTEE OF JURISTS.

Twenty-two Governments replied to the Secretary-General's communication of October 15th, 1929, by which the Members of the League of Nations were invited to state their views upon the question of amending the Covenant in order to bring it into harmony with the Pact of Paris.

India and Yugoslavia stated that they had no observations to make.

Luxemburg and Uruguay stated that they would formulate their observations at a later date.

The present annex reproduces the text of the eighteen other replies, namely :

1. South Africa.

Geneva, February 19th, 1930.

I have the honour to inform you, by direction of the Honourable the Prime Minister, that the Union Government approves of the amendment proposed by the British delegation at the tenth Assembly in Articles 12 (paragraph 1), 13 (paragraph 4) and 15 (paragraphs 6 and 7) of the Covenant of the League of Nations.

(Signed) F. F. Pienaar.

2. Germany.

[*Translation.*] Berlin, February 13th, 1930.

I.

Before setting forth certain considerations which it deems to be of fundamental importance in regard to adaptation of the Covenant of the League of Nations to the Pact of Paris, the German Government desires to make two observations touching the nature and structure of the Pact of Paris. The first of these bears on the relation existing between the several parts of the Pact of Paris, and the second on the method by which the execution of the Pact is to be ensured.

Although, when the Pact of Paris is publicly discussed, attention is mainly focused on the principle of the renunciation of war as an instrument of national policy, as laid down in Article 1, equal importance is attributable to the principle set out in Article 2, which makes it the duty of the signatory States to seek the settlement or solution of all disputes, without any exception, by pacific means only. The fundamental conception of the Pact, from the point of view of the development of international law, lies precisely in the combination of the two articles mentioned above. This conception is not concerned with the political objects which may be pursued by the several States. The Pact of Paris makes no claim to prohibit one State from securing the legal rights which it may consider itself entitled to assert against another State, nor to interfere with the settlement of pure conflicts of interests and thus to require the signatory States to uphold all existing conditions. In reality, the object of the Pact is only to modify the methods recognised by international law for the settlement of all differences and disputes. While, under the conception previously held by civilised States, war constituted a means resort to which was allowable for the settlement of international disputes, it must from now onwards be rejected as a method to this end and must give place to pacific means which, for the future, may alone be employed. The German Government repeatedly pointed out, during the discussions in the League of Nations on the question of security, that war cannot be prevented by providing measures against the aggressor unless at the same time, and this is of special importance, pacific measures are arranged for the settlement of all international disputes without exception. The same principle necessarily applies to the outlawry of war, and it is important to observe that this point of view is taken into account in the Pact of Paris itself and that the idea of the renunciation of war is indissolubly connected with that of the pacific settlement of disputes. The inevitable conclusion is that any systematic development of the conception of the renunciation of war can only be carried through *pari passu* with the examination and, if necessary, the systematic development of procedure for the pacific settlement of disputes.

The second fundamental observation relates to the method by which the Pact will be executed. While, under the Covenant of the League, an organisation has been set up to give effect to the stipulations of that instrument concerning the means of safeguarding peace, and sanctions are provided against the covenant-breaking State, no such provisions are found in the Pact of Paris. What steps should be taken to supersede war, which is henceforth unlawful, by pacific procedure for the settlement of international disputes is a question which, under the Pact of Paris, is left to the circumstances of each case as it arises. The question of the action which should be taken when a signatory State is guilty of an infraction of the prohibition to resort to war, contained in Article 1, also depends on the exigencies of the individual case. Intimately connected with the foregoing is another fundamental difference between the Pact of Paris and the Covenant of the League. Whereas the latter draws a clear legal line of demarcation between unlawful and lawful war, the Pact of Paris merely postulates a general legal principle and deliberately refrains from distinguishing in precise terms between lawful and unlawful war. The absence of legal definition and delimitation is indeed an essential feature of the Pact of Paris ; although it is beyond question that the Pact legally binds the signatory States, the guarantee for the execution of the Pact rests, in conformity with the spirit with which it is imbued, mainly on the moral value attaching to a general prohibition which is intelligible to all, and which would be weakened rather than strengthened by legal definition and delimitation.

The conception on which the Pact of Paris rests is clearly indicated in Mr. Kellogg's note of January 27th, 1928, to the French Ambassador at Washington. As regards the question of defining a war of aggression, the note contains the following passage :

> " If, however, such a declaration were accompanied by definitions of the word ' aggressor ' and by exceptions and qualifications stipulating when nations would be justified in going to war, its effect would be very greatly weakened and its positive value as a guarantee of peace virtually destroyed. The idea which inspires the effort so sincerely and so hopefully put forward by your Government and mine is arresting and appealing, just because of its purity and simplicity."

Still clearer is the fundamental rejection of legal definition and delimitation contained in the note of June 1928, in which the American State Department, in reply to a number of Powers, proceeds to examine the suggestion that the principle of the lawfulness of wars of self-defence should be expressly embodied in the Pact. The note states that :

" Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defence. If it has a good case the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defence, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defence, since it is far too easy for the unscrupulous to mould events to accord with an agreed definition."

All the Powers signatories of the Pact of Paris took cognisance of these statements and raised no objection thereto.

II.

It will be seen from the foregoing that the inclusion of the fundamental conceptions of the Pact of Paris in the Covenant of the League of Nations would be attended by serious difficulties. While the essential characteristic of the Pact of Paris is the absence of any organisation and any scheme of sanctions, and the omission of any precise delimitation and definition of the prohibition to resort to war, the Covenant of the League of Nations mainly relies on these factors. The difference between the two instruments is not merely one of degree ; it is fundamental. While the Covenant of the League is not conceivable without its carefully worked out machinery, the strength of the Pact of Paris lies in the fact that it merely enunciates a single weighty principle to which no legal or organic structure whatsoever is attached, and — this is a point of great practical importance — its restriction to enunciation of a general principle is one of the main causes of the great political success which the Pact has achieved. One of the reasons, and not the least important, why almost all countries in the world, including several which are not Members of the League of Nations, have acceded to the Pact of Paris is that the fundamental conception of that instrument — a conception which is inseparable from the material content of its provisions — differs from the conception underlying the Covenant of the League of Nations. If the full extent of the political and legal difficulties of the problem are to be faced, account must be taken of the point of view thus held by Powers signatory to the Pact of Paris but not Members of the League of Nations.

For its part, the German Government considers that the adaptation of the Covenant of the League to the more comprehensive principles of the Pact of Paris would be desirable in the interest of the League. Two methods might be considered for this purpose. The first would consist in incorporating the provisions of the Pact of Paris, the essential characteristics of which would be maintained (no organisation, no sanctions, no definitions) in the Covenant, side by side with the actual provisions of the latter but without establishing an organic connection between the provisions of the Pact of Paris and those of the Covenant. The other method would consist in amalgamating the contents of the provisions of the Covenant with the provisions of the Pact of Paris, substantially enlarging the provisions of the Covenant in order to agree with the Pact of Paris and at the same time and in consequence applying to the provisions of the Pact of Paris the methods of execution laid down in the Covenant (organisation, sanctions, definitions). The adoption of the first method would, it is true, allow the underlying idea of the Pact of Paris to be preserved intact, but that of the Covenant would be changed. By employing the second method, the Covenant would be logically expanded ; but, in the case of the signatory Powers Members of the League of Nations, the rules of the Pact of Paris would be made to depend upon executive regulations which differ fundamentally from the conception on which the Pact has hitherto rested. The German Government is of opinion that there is no third method which could represent a compromise between the two already mentioned. The provisions of the Pact of Paris cannot be organically combined with those of the Covenant without applying to the provisions of the former the system of organisation and sanctions laid down in the Covenant, and without framing a precise definition of unlawful war.

III.

The first alternative, *i.e.*, to insert the provisions of the Pact of Paris in the Covenant without any modification of the essential character of the former instrument (no organisation, no sanctions, no definition) was discussed briefly when the subject was dealt with in the tenth Assembly. The suggestion was made that the actual terms of the stipulations of the Pact of Paris might be embodied in the Covenant. These stipulations would then appear as Article 17*bis* and would immediately follow the part of the Covenant which contains the essential clauses on the means of preventing war and on the pacific settlement of disputes. In this way the provisions of the Pact of Paris and those of Articles 12 to 17 of the Covenant which relate to the prohibition to resort to war and the pacific settlement of disputes would both remain unaffected. The procedure under Article 15 before the Council and the Assembly in the case of disputes would, under these circumstances, be pursued as at present ; the sanctions contained in Article 16 would only operate on the occurrence of an infraction of

Articles 12 to 15 in their present form ; and, since the wider terms of the Pact of Paris would not be affected by the organisation provided for in the Covenant or the sanctions contemplated therein, there would be no occasion for any precise definition of the prohibition to resort to war which is laid down in the Pact of Paris, and which would appear in the new Article 17*bis*.

In so far, however, as the system established by the Covenant and the application of the Covenant are concerned, this method would necessarily mean that, in future, the Covenant would contain two different prohibitions to resort to war. In the first place, there would be the prohibition covered by Articles 12 to 15. This prohibition would be accurately defined and its execution would be ensured by the organisation of the League and the system of sanctions contained in the Covenant. But, side by side with this prohibition, there would be another of wider scope, which would merely be prescribed as a general principle. It would not be accurately defined and would not be guaranteed either by the organisation or by the sanctions of the League. Any war entered upon as an instrument of national policy would constitute an infraction of the Covenant. The League could only have recourse to sanctions, however, if the case came under the special provisions relating to unlawful war contained in Articles 12 to 15.

It is doubtful whether the existence of a guaranteed prohibition to proceed to war, side by side with a non-guaranteed prohibition, is compatible with the uniformity of the Covenant of the League, and whether the employment of such a method would not render the Covenant so complicated as to be unintelligible to public opinion at large.

IV.

The German Government is of the opinion that the disadvantages of the method just indicated can be avoided only if the provisions of the Pact of Paris are embodied in the Covenant in such a way that they would be subject to the methods (organisations, sanctions, definitions) laid down in the Covenant. This method, it is true, would necessitate a revision of the most important parts of the Covenant, a procedure which would raise the gravest problems. In that case all the provisions of the Covenant relating to the prohibition of resort to war and the pacific settlement of disputes (Articles 12 to 15) would have to be re-examined to see whether they are in harmony with the fundamental conceptions of the Pact of Paris, and, should this not be the case, appropriate modifications would have to be made in order to bring them into line with the Pact. In doing so, account would, in particular, have to be taken of a fact to which reference has been made. The Pact of Paris in no way claims to interfere with the attainment of legal rights or with the settlement of disputes relating to interests, but merely seeks to substitute for the old method, by which international disputes were settled by resort to war, the method of pacific means.

The German Government believes that the following principles should be observed in applying this method of adaptation :

(a) *Definitions.*

It has already been stated that the Covenant in its present form draws a clear line of demarcation between a war which it considers as lawful and a war which is unlawful. For example, war is prohibited, in general, under Article 12 unless the matter in dispute has been submitted for pacific settlement to a court of arbitration, or the Permanent Court of International Justice, or the Council, and until the expiration of a period of three months after the termination of the proceedings in question. Moreover, if a court of arbitration has given an award or the Permanent Court of International Justice has given a decision, the Members of the League agree, under Article 13 — and here there is no restriction whatever as to time — not to resort to war against a Member which complies with the award or decision. In addition, war may not be declared under Article 15, paragraph 6 — in this case also there is no limit of time — against a Member of the League which complies with the unanimous recommendations of a report by the Council. Again, war is allowable in certain circumstances ; for example, if an award has been given by a court of arbitration or a decision rendered by the Permanent Court of International Justice or a unanimous report drawn up by the Council, against a State which does not comply with the award or decision or the unanimous recommendations of the report, provided three months have elapsed since the termination of the procedure. War is, moreover, permitted under certain circumstances, if a dispute has been submitted to the Council without the latter being able to draft a unanimous report and if a period of three months has thereupon elapsed (Article 15, paragraph 7). Other cases of permissible war are theoretically conceivable under the definitions given in the Covenant. This precise delimitation between lawful and unlawful war is essential for the purpose of the system laid down in the Covenant ; in the absence of such delimitation, the procedure which is provided for the case of an infraction of its provisions and which is designed to bring the sanctions into operation would rest on no sure foundation. If, in accordance with the provisions of the Pact of Paris, the boundary between lawful and unlawful war is carried further back, the considerations already mentioned make it essential to fix the new line of demarcation with precision.

In particular, it will then be necessary to distinguish clearly between war as an instrument of national policy and war as a means of international action which may be considered necessary for the maintenance of order in international life.

Whether warlike means may, notwithstanding the prohibition in its extended form, be employed to give effect to arbitral awards, decisions and reports which have been given or drawn up in the course of a pacific procedure is a point which will have to be decided, and, if such means are allowable, the extent to which they may be employed. The fact must be taken into account that the logical consequence of renouncing war as an individual measure designed to enforce national claims is to increase the necessity of international action for rendering the procedure for the pacific settlement of disputes really effective. An effort will therefore have to be made to develop the provisions of the Covenant on this matter, the development being a necessary step following upon the adaptation of the provisions of the Covenant prohibiting resort to war to the principles of the Pact of Paris.

(b) *Organisation.*

If, for the moment, we set aside the question of sanctions, the organisation of the League and its procedure are of special importance as regards the pacific settlement of international disputes referred to in Article 2 of the Pact of Paris. It has already been stated that a systematic development of the prohibition to resort to war which is found in the Pact of Paris necessarily calls for a systematic development of the pacific means for the settlement of disputes. Especially noteworthy in this connection are the provisions of the Covenant relating to the pacific settlement of disputes of a political nature. In point of fact, not only does the Covenant make no mention of any explicit obligation imposed on the Members of the League to accept the conclusions of a report which has been unanimously agreed to by the Council, nor of any concerted action by the League, but even where no report has been unanimously agreed to by the Council the Covenant makes no provision whatever for any pacific procedure for the settlement of the dispute. On the contrary, it lays down that States are empowered " to take such action as they shall consider necessary for the maintenance of right and justice ", and thus, should they think it desirable, to resort even to war (Article 15, paragraph 7).

If it is intended by means of the adaptation of the Covenant to the Pact of Paris absolutely to exclude war from the Covenant as a means of enforcing national rights, no gap must be left in the regulations dealing with the pacific settlement of disputes. The only settlement which can offer prospects of success and permanence is one which establishes stable relations between the prohibition to resort to war and the pacific settlement of disputes. Both the Covenant in its present form and the Pact of Paris rely on a nice adjustment of these two factors. While the incomplete character of the prohibition to resort to war contained in the Covenant is intimately connected with the absence of a complete system for the pacific settlement of disputes in the Covenant itself, the method employed in the Pact of Paris for prohibiting war, which consists in merely laying down a general principle while leaving all other matters to the exigencies of the particular case, is closely related to the employment of a similar method in regard to the provisions for the pacific settlement of all disputes and conflicts. The equilibrium which has thus been established, though in different ways, in the two treaties must be maintained when the Covenant is adapted to the Pact of Paris. This view is supported, apart from all considerations relating to the development of international law, by the fact that the Covenant, with the aid of the system of sanctions laid down in Article 16, provides a general guarantee against infraction of the prohibition to resort to war which is found in Articles 12 to 15. There would be a grave defect in the structure of the League of Nations if, under certain circumstances, the latter was compelled to punish infractions of the prohibition to resort to war, but at the same time to disregard the question as to which State really had right and justice on its side.

It will be seen from the foregoing that, when steps are taken to supply the omissions in the prohibition of resort to war contained in the Covenant, the inadequate stipulations for the treatment of political disputes contained in that instrument should also be replaced by satisfactory rules corresponding to the fundamental conceptions of Article 2 of the Pact of Paris. This problem is closely connected with that of the treatment of disputes which arise from the fact that treaties have become inapplicable, or that there exist international conditions whose continuance might endanger the peace of the world.

(c) *Sanctions.*

If the prohibition to resort to war contained in the Covenant is made to correspond to Article 1 of the Pact of Paris, such extension of the prohibition logically leads to a considerable widening of the field of application of the sanctions provided for in Article 16 of the Covenant. It is accordingly necessary to consider the system of sanctions both from the legal and the political points of view.

Legal elucidation is particularly necessary in regard to the question of self-defence. In the exchange of notes which took place between a large number of Powers when the Pact of Paris was being prepared, it was stated that a war entered into for self-defence was lawful under Article 1 of the Pact of Paris, and that each signatory Power was absolutely free to decide the circumstances in which it could have recourse to war in self-defence. If a State is itself attacked, it must, even under the Covenant, be regarded as possessing the right to take up arms at any time in defence of its frontiers. On the other hand, if another Member of the League is attacked and if the State concerned feels itself threatened only indirectly, the

Covenant simply provides for concerted action in the form of sanctions within the framework of the League organisation. Apart from the very special case of Article 4, paragraph 3, of the Locarno Rhine Agreement, the Covenant regards as unlawful any isolated military action taken by one State in the event of an attack on another State. If the provisions of the Pact of Paris are to be combined with those of the Covenant, it would be desirable to make sure that this legal situation, which affects the very basis of the League, is maintained.

From the political point of view, it should be noted that the widening of the field of application of the sanctions imposes new responsibilities and burdens on the Members of the League. In practice, these disadvantages may to some extent be counterbalanced by the possibility of methodically developing the means of preventing war. On the other hand, the increased importance conferred on the League's system of sanctions by the incorporation in the Covenant of the more extended prohibition contained in the Pact of Paris, makes it essential to remove obstacles which at present stand in the way of the operation of that system with absolute certitude. Before it can be employed against every State with absolute assurance of success, the enormous disproportion existing at present between the armaments of the various countries, particularly in Europe, must first be removed, as this disproportion renders the system of sanctions a weapon which can only be used by powerfully armed States against weak States.

The German Government merely desires at present to indicate the above considerations, which it regards as of special importance. The above observations are not intended to represent the final attitude of Germany in regard to the problem of the adaptation of the Covenant to the Pact of Paris, nor to mark out definite lines for the work of the Committee which has been set up to consider the question. The German Government will examine impartially any proposal put forward by the Committee, and will not define its position until it has received the report prepared by the Committee and is aware of the attitude of the other Governments.

3. Austria.

[*Translation.*] Vienna, February 8th, 1930.

The Austrian Federal Government has studied with the greatest attention the draft amendments to the Covenant of the League of Nations proposed by the British delegation. The Federal Government is happy to observe that it finds itself in complete agreement with the idea underlying these proposals, namely, that of incorporating in the Covenant of the League of Nations the obligations contained in the Pact of Paris of August 27th, 1928. It desires above all to observe that the text of the amendments proposed by the British delegation has, in its opinion, the advantage of giving a more clear and precise formulation to the renunciation of war. Although in the view of the Federal Government the amendments add nothing to the obligations resting on the signatories of the Pact of Paris, they state these obligations in a more easily understandable manner and show that the States which at the moment of drafting the Pact of Paris still showed a certain hesitation in entering upon a new course of fundamental importance, to-day consider condemnation of war to be a principle accepted by civilised peoples and do not hesitate to confirm this principle by adopting a new obligation as strict as it is solemn. If it cannot be said that the amendments to the Covenant constitute a further step towards proscription of war, it is none the less true that the advance made two years ago and still marked by traces of hesitation will thereby be rendered a definite and assured advance.

The Austrian Federal Government is accordingly prepared to accept in their entirety the amendments proposed by the British Government. Nevertheless, it feels that these amendments required to be completed by two further amendments, of which the text is given below. In proposing this addition, the Federal Government is guided by the following considerations.

The Covenant of the League of Nations, the Pact of Paris and a large number of multilateral and bilateral agreements made since the great war are due to the ardent desire and firm determination of Governments and peoples to substitute right and justice for force in international relations. This purpose has a double aspect : on the one hand, there are efforts to suppress the employment of force and to avoid and even abolish war ; on the other hand, there are efforts to develop and organise methods of pacific settlement on the basis of right and justice. Great progress has been realised in the pursuit of this purpose in its two-fold aspect. The Federal Government does not hesitate to recognise that the British amendments constitute real progress from the point of view of the first aspect; but it cannot but say that, considered from the second aspect, the amendments seem to it hardly calculated to strengthen the possibilities of pacific settlement of disputes, on the basis of right and justice, unless they are completed by the provisions which the Federal Government ventures to propose.

Under the Covenant of the League of Nations, as it is to-day in force, war remains lawful in certain cases. It is, for example, lawful in the following cases :

1. Two Members of the League of Nations having, in accordance with the obligations of the Covenant, submitted their dispute to arbitration or judicial settlement, the award having been given and one of the two Members refusing to comply with the award, the other Member may, after a period of three months, resort to war to obtain justice for itself (Article 12).

2. Two Members of the League of Nations having submitted their dispute to examination by the Council, and the Council having reached a unanimous report, war is lawful, after a period of three months, as against the party which fails to comply with the recommendations of the report (Article 15, paragraph 6).

3. Two Members of the League of Nations having submitted their dispute to examination by the Council and the Council having failed to reach a report which is unanimously agreed to, the two parties remain free to have recourse to war.

In the two former cases, the State refusing to comply either with the arbitral award or judicial decision or with the unanimous recommendations of the Council, clearly stands under the threat of a war which is both lawful and legitimate. It need hardly be said that the importance of such threat varies according to the force at the disposal of the parties to the dispute, and that in some cases the threat may remain purely theoretical. On the other hand, it may in many cases exercise a strong influence upon States, rendering them doubtful as to the desirability of refusing to carry out the award or decision or accept the solution recommended by the Council. The possibility of a war in which the justice of the enemy's cause would have been recognised in advance by the entire world cannot be lightly contemplated by any State, however great may be the disproportion of strength in its favour.

Under the British amendments, however, this threat, which exercises an influence upon the decision of a State hesitating to comply with the award or decision or the unanimous recommendation of the Council, would disappear, since, even in such a case, war would be unlawful. The position of a refractory State would thereby be sensibly alleviated. It would know that the party which had gained its cause under the award or decision was ready to accept without reservation the unanimous recommendations of the Council, and could not have recourse to force without exposing itself to the sanctions provided by Article 16. Such an improvement of the international legal situation of a refractory State can certainly never have been intended by the British Government, and does not appear to be desirable in the interests of maintaining stable peace on the basis of right and justice. It is desirable, therefore, in the opinion of the Federal Government, to examine whether this consequence of the amendments cannot be counterbalanced by other provisions.

Examining the means which the Covenant of the League of Nations, in its present form, provides for ensuring the execution of an arbitral award or judicial decision, or compliance with the recommendations of a unanimous report, we reach the following result :

In the first of these cases (arbitral award or judicial decision), the Council, in the event of any failure to carry out such award or decision, is to propose what steps should be taken to give effect thereto (Article 13, paragraph 4). The existing text furnishes no indication as to the effect or nature of the Council's proposals. It does not say whether and to what extent the Council's proposals would be obligatory for the party in question and it does not determine the consequences which might result if the State in question should show itself as refractory towards the Council's proposals as it has shown itself towards the award or decision. It leaves open the question whether and to what extent the Member of the League whose rights are violated by the attitude of the refractory State, and the other Members of the League, might be able to take action against the State in question for the maintenance of right and justice. In the opinion of the Federal Government, it appears necessary, if war is excluded as a lawful method of constraint, to render more definite and to reinforce the other methods of ensuring respect for an award or decision which has been rendered. The Federal Government accordingly proposes to add to the fourth paragraph of Article 13, modified in accordance with the British amendment, the following provision :

" The Council may, in particular, by a unanimous decision — for the purposes of which the votes of the States in question shall not be counted — and after noting the failure to comply with the Covenant by the Member which refuses to carry out the award or decision, authorise the Members of the League of Nations to take against such Member, for the purpose of ensuring that effect is given to the award or decision, such steps as the Council may consider desirable, but excluding always resort to war."

In virtue of this text, the Council of the League of Nations would possess effective means for giving effect to an arbitral award or judicial decision. If the proposals which it made for the purpose of ensuring respect for the award or decision remained without result, it could gradually bring into operation methods of pressure the most effective of which would evidently be that of rendering lawful the employment by the injured Member of the League and the other Member appealed to by the Council of all methods of pressure falling short of war.

It is to be understood that the Members of the League of Nations would continue the sole judges of the question whether they will or will not avail themselves, against the refractory State, of the authorisation given by the Council. The proposed amendment is not, therefore, intended to effect an extension of the obligations of the Members of the League in regard to application of sanctions, but merely to give those Members who desire to give their assistance to ensure the execution of an arbitral award or judicial decision the possibility of acting with this object in conformity with the intentions of the Council, and to give the Council the possibility of appealing to their goodwill.

As regards the case contemplated in Article 15, paragraph 6, the change effected by the British amendment in favour of the State which does not comply with the unanimous recommendations of the Council is still more striking. It is true that, under the amended text, the Members of the League would undertake " that, as against any party to the dispute that complies with the recommendations of the report, they will take no action which is

inconsistent with its terms ". It seems, however, doubtful — particularly if one considers the English wording " to take no action " — whether this text makes it possible for the purely passive attitude of a State which simply refused to do what the Council recommended, and thereby rendered the Council's recommendations ineffective, to be assimilated to " action against any party to the dispute that complies with the recommendations of the report ". Nor is the text sufficient to settle what consequences such an attitude might have for the State which adopted it. Has such State violated the Covenant ? Under the law in force to-day, the answer is certainly in the negative. Under the British amendment, the question is doubtful. By what means can the recommendations of the Council be made effective, and what are the measures which the State complying with the recommendations of the Council is entitled to take in order to obtain the advantages which those recommendations confer upon it ? The new text says nothing on the subject, since it is limited to the purely negative obligation of taking no steps against the party which complies with the recommendations of the report. It must also be noted that the amended text of the article does not even give to the party complying with the recommendations the right which the following paragraph, as amended, grants to both parties, even to a party whose cause has been supported only by a small minority or even a single Member of the Council. While it may be supposed that this right must, *a fortiori*, belong to the Member of the League which complies with a unanimous recommendation as against a Member which does not comply therewith, it would, nevertheless, be desirable to say this in express terms. For all these reasons the Federal Government proposes to add to the new text of paragraph 6 of Article 15 the following words :

" . . . reserving at the same time to the party that complies with the recommendations, as against the party or parties that do not comply therewith, the right to take such action as it shall consider necessary for the maintenance of right and justice other than a resort to war."

Such a text would clearly establish the right of the party which accepts the Council's recommendations to take such action as it considers necessary for the maintenance of right.

Finally, the Federal Government feels that it should also call attention to the second paragraph of the Preamble to the Covenant of the League of Nations reading as follows :

" . . . by the acceptance of obligations not to resort to war."

It considers that this text ought eventually to be modified, so as to bring it into conformity with the other amendments made in the Covenant.

4. Belgium.

Brussels, January 13th, 1930.

[*Translation.*]

I have the honour to inform you that the Belgian Government desires to confirm the statement I made at the meeting of the League Assembly on September 5th, 1929, concerning the bringing of the Covenant of the League into harmony with the Pact of Paris by mutual adaptation.

The Belgian Government feels that the revision of the provisions of the League Covenant which relate to the prohibition of resort to war has become necessary, both from a moral and from a juridical standpoint.

In this connection, the British Government has put forward certain proposals which the Belgian Government would be quite prepared to accept as they stand, though it readily admits that other formulæ might be equally satisfactory.

The Belgian Government is of opinion that, in any case, it is essential, for the moral authority and satisfactory working of the League and for the consolidation of peace, that the rules prohibiting resort to war, as defined in the Covenant, should not fall short of those laid down in the Pact of Paris, so that, as far as Members of the League are concerned, the more comprehensive mutual pledges of non-aggression may be placed under the authority of the Council and guaranteed by the penalties which the League has power to impose.

I hope that the discussions of the Committee of Jurists, which is to meet soon in Geneva, will lead to satisfactory conclusions which may in the near future be embodied in the Covenant.

(Signed) Hymans.

5. Chile.[1]

Brussels, February 28th, 1930.

[*Translation.*]

My Government maintains the point of view expressed by it at the tenth Assembly when, in concurrence with the delegations of the British Empire, France, Italy, Belgium and Denmark, it presented the draft resolution of September 6th, 1929. It feels, in the words of the Assembly's resolution of September 24th, " that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris."

As regards the detailed amendments which it will accordingly become necessary to introduce in the Covenant of the League of Nations, the Government of Chile has no doubt that, in view of the complexity of the problem, these amendments will form the subject of an extended exchange of views between the Governments of the Members of the League of Nations.

(Signed) Valdés-Mendeville.

[1] As these observations were received only towards the close of its session, the Committee did not have an opportunity of considering them in the course of its discussion of the proposed amendments.

6. China.

Geneva, February 18th, 1930.

I am instructed by the Ministry for Foreign Affairs, Nanking, to inform you that the Chinese Government is in favour of the amendments proposed by the British Government.

In connection with Article 12, however, with a view to expediting the work of the arbitrators or the judicial authorities, the Chinese Government considers it desirable that their award or decision, provided in paragraph 2 of that article, should be made within a fixed period instead of " within a reasonable time " as the present text reads.

(Signed) Woo Kaiseng.

7. Denmark.

[*Translation.*] Geneva, February 17th, 1930.

The Danish Government unreservedly concurs in the idea of amending the Covenant of the League of Nations in order to bring it into concordance with the Pact signed at Paris on August 27th, 1928, and it also feels that the British draft amendments are entirely suitable as a basis for work on this problem. The Danish Government has not failed to notice that there exist between the system of the Covenant of the League of Nations and that of the Pact of Paris certain divergencies of principle which lie outside those divergencies which the British proposals aim at eliminating.

In this connection it must, in particular, be pointed out that, as appears from the diplomatic negotiations anterior to its signature, the Pact of Paris condemns war as such, whether the war be one of aggression or not (see the Note of the Secretary of State for Foreign Affairs of the United States to the French Ambassador at Washington, dated January 11th, 1928), whereas the system established by the Covenant of the League of Nations (Article 16) forbids war only when it occurs in violation of obligations contained in the Covenant.

In order, therefore, to give expression to the principle of condemnation of war, the Danish Government proposes the insertion of an express declaration on the subject in the Preamble of the Covenant of the League of Nations.

The Danish Government has the following observations to make upon the British proposals :

Article 12, Paragraph 1.

The second phrase should be drafted as follows :

" . . . and they agree that they will in no case resort to proceedings which are not pacific."

This amendment to the original British proposal is intended to give expression to the fact that, under the Pact of Paris, States renounce, not merely the right to make war, but also, in accordance with Article 2 of the Pact, that of resorting to other methods of coercion which cannot be considered as pacific.

Article 13, Paragraph 4.

The Danish Government agrees with the British proposal.

Article 15, Paragraph 6.

A prohibition of the employment of non-pacific methods being already contained in the new draft of Article 12, the Danish Government considers it unnecessary to repeat the idea in Article 15. The Danish Government considers that it is not perfectly clear what is the meaning of the provision of the British draft under which " the members of the League agree that . . . they will take no action which is inconsistent with its terms ". The Danish Government feels that the rule on this point should be formulated more precisely as follows :

" The Council may, at any moment, invite the parties to refer the dispute to judicial or arbitral settlement. Such reference is obligatory if one of the parties consents thereto. In the contrary case, the Council shall resume examination of the dispute. If the Council then reaches a unanimous report, the parties agree to comply with the recommendations of the report."

Article 15, Paragraph 7.

The Danish Government feels that, where the Council fails to reach a unanimous report, it would be preferable to follow the method prescribed for this case in Article 4, paragraph 4, of the Protocol of Geneva of 1924.[1]

Supplemenlary Observalions.

As regards the question of sanctions against war under the provisions of Article 16 of the Covenant, the Danish Government feels that the enlargement of Article 12 must have, as its logical consequence, under the actual drafting of Article 16, a corresponding enlargement

[1] This paragraph reads as follows :

" If the Council fails to reach a report which is concurred in by all its members, other than the representatives of any of the parties to the dispute, it shall submit the dispute to arbitration. It shall itself determine the composition, the powers and the procedure of the Committee of Arbitrators and, in the choice of the arbitrators, shall bear in mind the guarantees of competence and impartiality referred to in paragraph 2(*b*) above."

of the field of sanctions. In other words, sanctions must apply in all cases where war is resorted to, since all cases of war become illegal under the new text of Article 12. The Danish Government has no final objection to make to this extension. While, however, the question of enlarging the field of application of sanctions may thus be taken into consideration, it would not be proper to enlarge the content of the provisions regarding sanctions as provided for at present in Article 16. The Danish Government would, however, propose one change of pure form in the first paragraph of Article 16. This change must necessarily follow from the British proposals for amending the preceding articles. It consists in suppressing the reference to Articles 13 and 15. The new Article 13 will cease to deal with the question of war and this will also be true of Article 15, if that article is amended as proposed above.

(Signed) W. Borberg.

8. Estonia.

[*Translation.*] Tallinn, February 14th, 1930.

I have the honour to inform you that the competent Estonian authorities consider it to be desirable in principle that the Covenant of the League of Nations should be amended, in accordance with the Assembly's resolution of September 24th, 1929, in order to bring it into harmony with the Pact signed at Paris on August 27th, 1928, and dealing with the renunciation of war as an instrument of national policy.

They feel, at the same time, that the Committee appointed by the Council in execution of the above-mentioned resolution of the tenth Assembly should, in drawing up its proposals for amending the Covenant, take account of the texts put forward for the purpose at the Assembly by the British delegation and also of the suggestions and remarks formulated by the representatives of several Governments in the course of the discussions in the First Committee and at the plenary meetings of the Assembly.

(Signed) J. Leppik.

9. Finland.

[*Translation.*] Helsinki, February 7th, 1930.

Being of opinion that it may be desirable, since the question has been raised, to redraft certain provisions of the Covenant of the League of Nations in order to bring them into harmony with the Pact of Paris, provided that there can be found appropriate formulæ calculated to develop and strengthen the existing system of the Covenant, the Government of Finland ventures to make the following observations :

The British Government has proposed amendments to Articles 12, 13 and 15 of the Covenant. One might possibly also contemplate a special amendment to the Covenant containing in their entirety the provisions of the Pact of Paris. While recognising in principle the possibility of such an amendment, and without desiring on the present occasion to enter upon a detailed analysis of the problem, the Finnish Government thinks it necessary to point out that, in order to attain the contemplated purpose and secure results justifying the efforts which will be necessary, it would seem, in any event, indispensable that the relevant articles of the Covenant should be amended so as to ensure the efficacy of the prohibition contained in the Pact of Paris.

As regards the amendment of particular articles, the Finnish Government accepts the amendments to Article 12, paragraph 1, proposed by the British delegation. It should, however, be observed that the proposed draft does not appear to take sufficient account of Article 2 of the Pact of Paris, since it deals explicitly only with the prohibition of war, whereas under the terms of the Pact of Paris the solution of international disputes is never to be sought except by pacific means. One might, therefore, be led to the conclusion that, under Article 12, measures of coercion are compatible with the system of the amended Covenant, even though they would have to be considered as warlike measures. Without desiring to enter at present upon the very complicated question as to what measures of coercion ought respectively to be considered as pacific and as non-pacific, the Government of Finland ventures to propose the addition of the following provision to the first paragraph of Article 12 :

> " They also agree to refrain from any measure of coercion which would be contrary to the principle laid down in Article 10 of the present Covenant."

Furthermore, in order to avoid all possible ambiguity, it would be desirable to add a new paragraph 2 to Article 12. The paragraph might run as follows :

> " Without prejudice to the preceding provision, the provisions of Articles 10, 13 (paragraph 4), 16 and 17 shall be fully operative."

The Finnish Government accepts the change in Article 13, paragraph 4, proposed by the British delegation.

As regards Article 15, paragraphs 6 and 7, it would, in the opinion of the Finnish Government, be preferable to give to a unanimous report of the Council the effect of an award. Should this view be shared by the Members of the League, paragraph 6 of Article 15 might be drafted as follows :

> " If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League agree to comply with the recommendations of the report. If a recommendation is not carried out, the Council shall take steps to give effect thereto."

In like manner, in the case of paragraph 7 of Article 15, *i.e.*, where unanimity is not secured for the Council's report upon the actual subject of the dispute, one might contemplate the possibility of giving binding force to various provisional measures proposed unanimously by the Council and intended to prevent hostilities. The provision on this matter which might be substituted for paragraph 7 of the present text of Article 15 might eventually take the following form :

" If the Council fails to reach, as regards the actual subject of the dispute, a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall, if necessary, propose provisional measures intended to safeguard peace. The parties have the obligation to comply with the Council's recommendations, if they are unanimously agreed to by the members of the Council other than the representatives of one or more of the parties to the dispute."

If the rules set out above for giving obligatory force in certain cases to recommendations of the Council do not succeed in securing general acceptance from the Members of the League, it would perhaps be possible to contemplate, for the case where the report is not accepted by all the parties, the adoption of the principles of the Protocol of Geneva concerning the reservation to every party of the power to secure a judicial or arbitral settlement of the dispute or to have it submitted to a conciliation commission. From this point of view, the Finnish Government ventures, as an alternative, to propose that the new draft of paragraphs 6 and 7 of Article 15 should run as follows :

" If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, and if the parties declare themselves ready to accept the report, the recommendations of the report shall have the same force and effect as an arbitral award. Should the report not be accepted by all the parties, any party shall, at the request of any other party, be bound to submit the dispute either to proceedings for judicial or arbitral settlement or to a conciliation commission, of which the composition shall be determined by the Council acting by a majority vote of its members other than the parties to the dispute. In case the dispute should fail to be settled within a reasonable period after the Council has made its report, the Council shall resume examination of the case, on the understanding that any party which refuses to comply with a unanimous decision of the Council shall be regarded as menacing by its attitude the maintenance of peace and good understanding between nations.

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the recommendations of the report shall have the force of a recommendation capable of being taken into consideration by all the Members of the League and by any tribunal before which the dispute may be brought."

Furthermore, the Government of Finland ventures to observe that, in case Articles 13 and 15 of the Covenant are altered, a change in the drafting of Article 16 so as to suppress the reference to Articles 13 and 15 would seem necessary, for Articles 13 and 15 in the form which is proposed above no longer speak of resort to war.

As regards Article 17 of the Covenant, the Government of Finland, in view of the fact that the present text stands in close connection with the provisions of Articles 12, 13 and 15, believes that it would be highly desirable and convenient to consider on the present occasion whether the article should not also be amended. As it reads at present, Article 17 contains no provision for the case in which a State which is not a Member of the League resorts to war against a Member of the League before it has been invited to accept the obligations of membership. The Finnish Government therefore proposes that, simultaneously with the other amendments to be made in the various articles of the Covenant, there should be inserted in Article 17 a new paragraph 4, which might eventually run as follows :

" If a State which is not a Member of the League resorts to war against a Member of the League before it has been invited to accept the said obligations, Article 16 shall be applicable to such State so long as it does not comply with the measures taken by the Council for the re-establishment of peace."

If this amendment is made, the present paragraph 4 will become paragraph 5.

(Signed) PROCOPÉ.

10. FRANCE.

[*Translation.*]

Paris, February 12th, 1930.

The French Government desires, first of all, to reaffirm the entire concurrence which, from the outset, it has given to the initiative taken by the British delegation at the last session of the Assembly. As I had personally the opportunity of stating at the last session of the Council, it feels that the two Pacts, so far from constituting different systems, are in reality destined to complete each other. The general condemnation of aggressive war solemnly expressed in the Pact of Paris merely confirms the progress which the spirit of peace has made in the past ten years, a progress for which humanity is to a great extent indebted to the League of Nations.

The French Government could not, therefore, but regard with favour the proposal to introduce into Article 12 of the Covenant of the League of Nations the principle of renunciation of war. It must nevertheless observe that it considers it necessary in this connection to make it clear, as it did itself when signing the Pact at Paris, that this affirmation of a principle refers to aggressive war and must not prejudice either the right of legitimate self-defence or collective action by the Members of the League acting in accordance with Article 16 of the Covenant. If a misunderstanding on this fundamental point should lead public opinion to condemn equally the obstacles which the system of the Covenant places in the way of the aggressor and the aggression itself, it is clear that the resulting consequences would run counter to the aims which the British delegation has sought to obtain by its proposal.

The French Government considers that the most effective method of preventing war is to be found in measures taken to ensure more effectively the pacific settlement of disputes, to increase the authority of the decisions of international authorities having jurisdiction in regard to such disputes and to secure the ultimate execution of such decisions by providing appropriate sanctions. These considerations have particular weight when it is a question of adapting the declaration of principle, of which the Pact of Paris consists, to the complicated mechanism of the Covenant of the League of Nations, which has to ensure its effective application and must in this connection cover with all possible precision the various eventualities which may arise.

The authors of the Covenant of the League of Nations, while restricting recourse to war, nevertheless recognised war to be possible in certain cases. Ten years ago, at a date when opinion and international law still permitted war, they undoubtedly felt that, in the absence of any other solution, war might constitute a method of settling conflicts which in some sense was legitimate. To attempt more at that date would have been ambitious. We find ourselves to-day in face of a new situation ; the Pact of Paris has condemned war and has provided in its second article that "the settlement or solution of all disputes or conflicts" shall never be sought except by pacific means. It is desirable to take advantage of all consequences which are involved in this new situation.

The French Government must in particular ask whether the moment is not come to re-examine certain provisions of Article 15 of the Covenant. Paragraph 7 of that article deals with the case in which a dispute has arisen between two States, and the Council has failed to take a unanimous decision upon the dispute. In such case, the Members of the League — after the lapse of a certain period — recover their full liberty of action, and this liberty of action may even produce war.

The General Act of Arbitration no doubt provides the means for avoiding this extreme consequence and reaching a pacific settlement of the dispute ; but the General Act is not at present binding upon the Members of the League of Nations. It is merely open to acceptance by the various States and binds each State only in respect of the other States which accede to it on the same terms as such State. In these circumstances, it would, in the opinion of the French Government, be highly desirable that the Committee of Jurists, which will require to have regard to the earlier work of the Committee on Arbitration and Security, should study a problem which, now that the Pact of Paris has been signed, urgently requires to find a solution.

The Committee of Jurists will equally require to remember that the Covenant of the League of Nations, in the case where there exist unanimous resolutions of the Council or arbitral awards, exposes the State which does not comply therewith to a risk that war may be made upon it by the other Members of the League of Nations. The warning thus given to the State contravening the Council's resolutions or the award was explicable so long as the prohibition of resort to war was not a quite general prohibition ; it was even unavoidable. The Pact of Paris having suppressed the threat of war, there must be substituted measures of collective action calculated to prevent any State from entertaining the intention of infringing unanimous resolutions of the Council and arbitral awards. The French Government accordingly feels that the Committee of Jurists ought to submit for the approval of the Governments some system capable of ensuring the faithful observance of the provisions of the Covenant of the League of Nations.

The French Government is, however, convinced that the problems to which it has called attention, if examined in their entirety, are capable of finding a solution which will make it possible to bring the two pacts into harmony, while at the same time respecting the general structure of the Covenant of the League of Nations and ensuring the efficacy of the League's action in all possible eventualities. If pursued in this spirit, the work initiated by the British delegation at the last Assembly may mark a decisive step in the path of the organisation of peace.

(Signed) BRIAND.

11. GREECE.

Berne, February 14th, 1930.

[*Translation.*]

I am instructed to inform you that the Hellenic Government, after studying the whole question of the adaptation of the Covenant of the League of Nations to the Pact of Paris, and considering most carefully the amendments proposed by the British delegation, feels it should present the following observations.

The British proposal relates only to Article 12 (paragraph 1), Article 13 (paragraph 4), Article 15 (paragraph 6) and Article 15 (paragraph 7). It leaves on one side the first paragraph (*a*) of the Preamble, reading as follows :

" The High Contracting Parties, in order to promote international co-operation and to achieve international peace and security *by the acceptance of obligations not to resort to war, etc.*"

The last phrase of this text is, however, not now in conformity with the provisions of the Pact of Paris. The Hellenic Government accordingly proposes to amend paragraph (a) of the Preamble as follows :

" The High Contracting Parties . . . *by the acceptance of the obligation not to resort to war for the settlement of international disputes, etc.*"

Article 12, Paragraph 1.

The British amendment would apparently agree more closely with the spirit which has inspired the revision of the Covenant if it took the following form :

" The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will in no case resort to war for the settlement of the dispute. They undertake to submit the dispute either to arbitration or judicial settlement or to enquiry by the Council."

This draft emphasises and, so to speak, gives predominant importance to the obligation not to resort to war.

Article 13, Paragraph 4.

The proposed amendment is agreed to by the Hellenic Government.

Article 15, Paragraph 6.

The British amendment appears to be incomplete. It does not cover the following cases : (*a*) the case of a Member of the League taking action against the party applying the Council's recommendations, and (*b*) the case of one of the parties not complying with the unanimous recommendations of the Council.

In order to make good this omission, the Hellenic Government proposes the following draft, which is analogous to the amendment to Article 13, paragraph 4 :

" If the report of the Council is unanimously agreed to, the Members of the League undertake to comply with the recommendations of the report and, in default of such compliance, the Council shall propose what steps should be taken to give effect thereto."

Article 15, Paragraph 7.

The British amendment to Article 15, paragraph 7, in its present form, appears tacitly to recognise the right of the Members of the League to resort to any measure of constraint, however violent, provided that it does not go so far as to be capable of being described as war. This is not in conformity with the spirit of the League of Nations or with the present tendencies of law and international politics. The Hellenic Government, desirous of preventing such a state of affairs, proposes the following amendment to Article 15, paragraph 7 :

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of their rights other than resort to war or to any act of violence."

Should this point of view be adopted, it would be necessary to express it also in the Preamble and in Articles 12 (paragraph 1), 13 (paragraph 4) and 15 (paragraph 6), by adding in these articles also the words " or to any act of violence " after the word " war ".

(Signed) R. Raphael.

12. Hungary.

[*Translation.*]

Geneva, February 15th, 1930.

I have the honour, on instructions from my Government, to inform you that the Hungarian Government has not failed to examine carefully the question raised by the above-mentioned resolution of the tenth Assembly and the various proposals on the subject which have been put forward during and after the Assembly.

Since, however, the preparatory work of co-ordinating the principle laid down in the Pact of Paris and the various provisions of the Covenant of the League of Nations has been entrusted to the special Committee which the Council has recently appointed, the Hungarian Government feels it preferable not to express its opinion, or set out its views on the substance of the problem, until the Committee of Eleven has reported on the amendments necessary to bring the Covenant of the League of Nations into harmony with the Pact of Paris and this report has been submitted to the Members of the League, including the Government of the Kingdom of Hungary.

(Signed) Zoltân Baranyai.

13. Irish Free State.[1]

Geneva, March 3rd, 1930.

The Irish Government, in the belief that the Covenant of the League of Nations, as embodying the actual rule of conduct among Governments, should be, and must be, continually amended according as the progressive development of public opinion throughout the world results in the extension and strengthening of the laws governing international relations, have given earnest and sympathetic consideration to the proposals made by the British and Peruvian Governments that the Covenant of the League should be amended so as to mark the progress achieved in the organisation of peace during the first decade of the League's existence.

The Pact signed at Paris on August 27th, 1928, imposing on its signatories the renunciation of war as an instrument of national policy and the undertaking to have recourse only to pacific means for the settlement of their disputes, constituted an epoch-making advance in the development of international relations. It is important that the text of the Covenant should take account of this advance lest it should appear to the peoples of the world that the Covenant is obsolete and that the League itself belongs to a stage in the development of international relations which has passed away.

Accordingly, satisfied that some amendment of the Covenant is now desirable, the Irish Government have addressed themselves in the first place to the consideration of the question whether the objects in view can better be achieved by verbal amendments of the text of the Covenant such as those suggested by the British and other Governments, or by the more far-reaching revision of the Covenant apparently contemplated by the draft resolution proposed by the Peruvian delegation at the tenth Assembly. In connection with the latter proposal, the Irish Government have noted with interest the views expressed by the Norwegian delegate at the First Committee of the tenth Assembly, as to the difference in the conceptions upon which the systems of the Pact of Paris and of the Covenant are respectively based ; that, whereas the Covenant is based on a collective principle, the Pact of Paris rests on an individualistic conception, inasmuch as it leaves it open to any signatory State, in case of war between any other two signatory States, to resort to war against whichever of the other two has, in its opinion, violated the Pact of Paris. The two conceptions, while not in conflict, mark different stages in the evolution of international society, and the Irish Government are not satisfied that an attempt to reconcile them by revising the Covenant so as to bring it into conformity with the Pact of Paris, whatever its possibilities of success, would be a step in the right direction.

Moreover, the Irish Government do not consider that any such fundamental revision of the Covenant is necessary in order to achieve the purposes of the proposal that the Covenant of the League should be brought into harmony with the Pact of Paris. Certain articles of the Covenant permit States Members to have recourse to war in circumstances in which they have renounced resort to war under the Pact. In the view of the Irish Government, it is necessary only to amend the wording of these articles in order that the provisions of the Covenant and of the Pact should be in harmony on this point.

In conformity with these principles, the Irish Government consider that the text of Article 12, paragraph 1, which permits recourse to war three months after the award by the arbitrators, or the judicial decision, or the report by the Council, should be replaced by a text under which the Members of the League would agree that they will in no case resort to war. This undertaking would be complementary to the opening provisions of Article 12, paragraph 1, namely, that disputes likely to lead to a rupture should be submitted to arbitration or judicial settlement or to enquiry by the Council, just as Article 1 of the Pact of Paris is complementary to Article 2. The Irish Government take the view that any amendment of Article 12, paragraph 1, would be incomplete which did not take account of the present restricted scope of the opening provisions of that article, as compared with the provisions of Article 2 of the Pact of Paris. The difficulty of determining at what stage a dispute becomes one likely to lead to a rupture is avoided in Article 2 of the Pact, which, moreover, allows to States a wider choice of the methods by which they may seek a peaceful settlement of their controversies, and takes account of the increased and increasing variety of those methods available.

Accordingly, the Irish Government would be prepared to consider favourably an amendment of Article 12, paragraph 1, of the Covenant on the following lines :

> " The Members of the League agree that, if there should arise between them any dispute, of whatever nature or of whatever origin it may be, they will either submit the matter to arbitration, judicial settlement, or to enquiry by the Council, or seek a solution by other pacific means, and they agree that they will in no case resort to war."

Similar considerations — the elaboration of new methods of pacific settlement and the desirability that disputants should be at liberty to choose the method of settlement most likely to be productive of success — appear to apply to Article 13, paragraph 1, which, the Irish Government suggest, should be amended to read as follows :

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[1] As these observations were received only towards the close of its session, the Committee did not have the opportunity of considering them in the course of its discussion of the proposed amendments.

" The Members of the League agree that, whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by other pacific means, they will submit the whole subject-matter to arbitration or judicial settlement."

With regard to Article 13, paragraph 4, the Irish Government are prepared to consider favourably the amendment suggested by the British and other delegations, the article being amended to read as follows :

" The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."

The distinction between paragraphs 6 and 7 of Article 15 of the Covenant as at present worded appears to lie in the fact that, in the case of a unanimous decision of the Council, the Members of the League, including the parties to the dispute, retain freedom of action short of recourse to war against any disputant not complying with the Council's recommendations; whereas, in the case of a majority decision, the Members of the League, including the parties to the dispute, reserve to themselves *complete* freedom of action.

If, therefore, in consequence of the amendment of Article 12, paragraph 1, the Members of the League undertake in no case to resort to war, the distinction between the case where the Council is unanimous and that in which there is only a majority decision, appears to vanish. All that is necessary in order to bring Article 15 into harmony with the Pact of Paris appears to have been done when the implied right of recourse to war has been eliminated from the terms of paragraphs 6 and 7. The amendment of Article 15, paragraph 6, proposed by the British delegation, however, creates a new distinction in place of that which has been removed, by limiting the freedom of action of States Members in the case of a unanimous vote, to action not inconsistent with the terms of the Council's report, and raises the question whether it is necessary to re-introduce a distinction at all. On this point, the Irish Government feel that everything should be done to facilitate parties to a dispute who comply with the recommendations of a unanimous report of the Council, and that this purpose can be achieved by a form of words which would define the attitude to be adopted by Members of the League *vis-à-vis* of a disputant who complies with the recommendations of such a report, without at the same time suggesting that their action should be dictated by the terms of the report itself. With these considerations in mind, the Irish Government have the honour to propose the following paragraph in substitution for Article 15, paragraph 6 :

" If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will take no action against any party to the dispute that complies with the recommendations of the report."

The Irish Government are prepared to consider favourably the amendment of paragraph 7 of Article 15 proposed by the British delegation, as follows :

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war."

The extension of the obligations of Members of the League in consequence of the proposed amendment of Articles 12, 13 and 15 of the Covenant must, in the view of the Irish Government, involve an extension of the system of sanctions under Article 16. The Irish Government are, however, confirmed in the belief that the closing of the " gaps " in the Covenant, though it may render the system of sanctions theoretically more extended in scope, will, in practice, reduce to a minimum the occasions upon which its application may be found to be necessary.

The Irish Government have given earnest consideration to the points raised in the declaration made to the Council by the representative of Peru on January 14th, 1930, including the text of the new paragraph proposed by M. Cornejo as an addition to Article 18 of the Covenant.

The Irish Government are entirely in accord with the views expressed by the representative of Peru in so far as they import the proposition that it should not be open to any country to derive advantages by means of a treaty of peace imposed by force, from a war undertaken in violation of its obligations under the Covenant of the League or the Pact of Paris. If, however, Article 12, paragraph 1, of the Covenant is amended to contain an agreement by the States Members of the League that they will in no case resort to war, any Member of the League who undertakes a warlike enterprise will violate Article 12, paragraph 1, and, by so doing, will become liable to the sanctions of Article 16. Happily, the system of sanctions has yet to be tried in operation, and experience has yet to show to what extent it

can effectuate in practice the guarantees of peace and justice afforded by the Covenant. But the Irish Government is not prepared to contemplate a situation in which the League should so fail in its duties under the Covenant as to render it possible for the victor of a warlike enterprise carried out in violation of the Covenant to impose a dictated peace upon the vanquished, and, for that reason, they hesitate to support an addition to the Covenant the terms of which appear to suggest that the League might become so futile that those duties would not be effectively discharged.

Quite apart, however, from the consideration that, in consequence of the proposed amendment of Article 12, paragraph 1, any war undertaken by a Member of the League would constitute a violation of the Covenant, a further objection may be urged against the terms of the paragraph which it is proposed to add to Article 18. It is a characteristic of the Pact of Paris that each signatory State may decide for itself which of two or more signatories involved in a warlike enterprise has violated the Pact. The question, therefore, whether a treaty of peace is one imposed by force as a consequence of a war undertaken in violation of the Pact of Paris must be decided by the individual judgments of the signatories, each deciding the question for himself. The Pact does not provide any machinery which might be charged with the task of rendering authoritative decisions in cases of alleged violations and, in the view of the Irish Government, this task is not one which could properly be imposed upon the Secretariat. For these reasons, the Irish Government are not disposed to favour the addition to Article 18 of the paragraph proposed by the Peruvian delegation.

(Signed) Sean Lester.

14. Norway.

[*Translation.*] February 22nd, 1930.

I have the honour to inform you that the Norwegian Government is of opinion that it can, in general, associate itself with the idea of bringing the Covenant of the League of Nations into harmony with the Pact of Paris in such manner that the Covenant may also contain a general prohibition of war. The Norwegian Government also considers it to be desirable that the Covenant of the League of Nations should contain a general prohibition, corresponding to Article II of the Pact of Paris, against seeking the solution of international disputes otherwise than by pacific means.

On the other hand, the Norwegian Government must strongly advise against any simultaneous enlargement of the obligations which the Members of the League have, under the Covenant as actually in force, to participate in sanctions against a State which resorts to war. The Norwegian Government would feel that it would be a cause of serious anxiety for Norway to assume an obligation to apply sanctions under Article 16 of the Covenant outside the cases of war to which under the present system the provisions of that article are applicable.

For the Minister :

(Signed) Aug. Esmarch.

15. Panama.

[*Translation.*] Panama, November 18th, 1929.

The Government of Panama has duly noted the amendments proposed by the British delegation to Article 12 (paragraph 1), Article 13 (paragraph 4), and Article 15 (paragraphs 6 and 7) of the Covenant, and has no observation to make on the subject. These amendments exactly fulfil the very desirable object proposed, namely, to bring the two agreements into harmony and to exclude absolutely from the vast field of international relations the terrible menace of armed conflict.

(Signed) Morales.

16. Netherlands.

[*Translation.*] The Hague, February 14th, 1930.

The Netherlands Government, having examined the question of the conformity of the two instruments with one another, is of opinion that, now that the large majority of the Powers have agreed by the Pact of Paris to condemn war, the opportunity should be taken for amending those articles of the Covenant of the League of Nations which appear to recognise war to be legitimate in certain cases. The Government of the Queen of the Netherlands desires to raise the question whether, when amending these articles, it would be desirable to follow too literally the terminology employed in the Pact of Paris. The use of this terminology would leave open doubts as to how far account ought to be taken of the interpretations contained in the Notes which were exchanged before the Pact was signed. For this reason, it seems preferable to treat the amendment of the Covenant of the League of Nations as a separate question.

In this connection, the Netherlands Government is able in principle to support the amendments proposed by the British Government. It does not fail to recognise that those amendments are capable of rendering more onerous the obligations contained in Article 16 of the Covenant of the League of Nations. The preponderating importance of eliminating war as a legitimate method of settling conflicts is, however, in its opinion, a sufficient justification for an extension of those obligations.

The Netherlands Government does not leave out of sight the consideration that the absolute prohibition of recourse to war contemplated by the amendments in question would not be accompanied by the establishment of a complete system for the pacific settlement of disputes. The procedure of conciliation before the Council of the League of Nations under the

provisions of the Covenant does not necessarily lead to a positive result which will be binding on the parties. The Netherlands Government would be entirely ready to examine proposals for perfecting the articles of the Covenant which deal with the solution of conflicts by pacific means. Valuable material for the study of this problem might be found in Article 4 of the Protocol of Geneva and also in the passage of the report of the Third Committee dealing with the subject.

When expressly renouncing war as a method of settling conflicts, it would seem appropriate simultaneously to strengthen the means available for preventing war The present, therefore, would be a suitable occasion for examining the possibility of reaching an agreement in this connection with regard to the provisions contemplated by the draft Convention, which was based upon the suggestions made by the German delegation in the Committee on Arbitration and Security.

It will, perhaps, further be well to examine the desirability of inserting in the Covenant of the League of Nations a new provision, drafted as follows :

> " The Members of the League of Nations undertake that the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall be sought by pacific means."

Finally, the Netherlands Government would observe that it would be logical simultaneously to alter, in the Preamble of the Covenant, the words " by the acceptance of obligations not to resort to war ". These words, which appear to be in contradiction with the principle of the Pact of Paris, should be replaced by the phrase " by the acceptance of the obligation not to resort to war ".

(Signed) BEELAERTS VAN BLOKLAND.

17. POLAND.

[*Translation.*] Geneva, February 19th, 1930.

1. The proposal made by the British delegation at the last Assembly for bringing the Pact for the Renunciation of War and the Covenant of the League of Nations into concordance is welcomed by the Polish Government with all the more sympathy since that Government, in August 1928, had thought it might be desirable to submit this question to consideration by the ninth Assembly. The only reason why the Polish Government felt it well not to take the initiative at that date was because a preliminary exchange of views with various Governments convinced it that it would perhaps be premature to raise this important problem before the Pact of Paris had been ratified by all the signatory States and entered into force. The Polish Government has, however, always remained faithful to the view which it took in 1928 as to the desirability of bringing the two pacts into concordance, and it is happy to support to-day the British initiative.

2. The Polish Government is accordingly ready to accept any amendments to the Covenant of the League of Nations which may appear necessary for the purpose of incorporating therein the principle of prohibition of war as an instrument of national policy which is contained in the Pact of Paris.

3. As regards the sense in which the prohibition of resort to war which is to be introduced into the Covenant of the League of Nations must be understood, the Polish Government considers it to be its duty to point out :

> (1) The prohibition must not prejudice the right of legitimate defence which every State possesses ;
>
> (2) Every State resorting to war as an instrument of its national policy would be deprived of the protection conferred on it by the acceptance of the prohibition by the other States; that is to say, in such a case, the State would be *ipso facto* considered as having committed an act of war against all the Members of the League of Nations ;
>
> (3) There is no incompatibility between the prohibition and all or any of the rights and obligations which the Covenant of the League of Nations gives to the Members of the League.

4. It must be recognised that, so soon as war, as an instrument of national policy, ceases to be capable of being considered as a lawful method of settling disputes, and as soon as the States have bound themselves never to seek the settlement of any dispute except by pacific means, the situation becomes particularly favourable for the development of the system of compulsory arbitration.

5. But, if arbitration is to be a real instrument of peace, it must, in addition to the moral force which it possesses, be based upon effective force — that is to say, upon sanctions. From this point of view, an extension of the principle of arbitration — within the framework, for example, of Article 15 of the Covenant — ought to be accompanied by the introduction of more detailed provisions as to the system of sanctions, which are contemplated by Articles 10 and 13 (paragraph 4), as well as by Articles 16 and 17 of the Covenant of the League of Nations.

(Signed) F. SOKAL.

18. Siam.

Bangkok, February 10th, 1930.

. . . I have the honour to inform you that His Majesty's Government has examined the proposed amendments to the Covenant of the League of Nations and that it approves thereof both as to the substance and form.

(Signed) Phya Srivisar.

ANNEX III.

TABLE OF THE AMENDMENTS PROPOSED BY VARIOUS GOVERNMENTS IN THEIR OBSERVATIONS.

Preamble.

I. *Present Text.*

The High Contracting Parties,
In order to promote international co-operation and to achieve international peace and security . . . by the acceptance of obligations not to resort to war . . .

II. *Proposed Amendments.*

Greece.

The Greek Government asks that the second paragraph of the Preamble be drafted as follows :

" . . . by the acceptance of the obligation not to resort to war for the settlement of international disputes, etc."

The Greek Government also asks that the words " or any act of violence " should be added after the word " war " (both in the Preamble and in Articles 12 (paragraph 1), 13 (paragraph 4) and 15 (paragraph 6).

Netherlands.

The Netherlands Government asks that the second paragraph of the Preamble of the Covenant should be drafted as follows :

" by the acceptance of the obligation not to resort to war."

Denmark.

The Danish Government asks that an express condemnation of resort to war should be formulated in the Preamble.

Austria.

The Austrian Government asks that the second paragraph of the Preamble should be brought into harmony with the other amendments made in the Covenant.

Proposal not relating particularly to any Article.

Netherlands.

The Netherlands Government proposes the following provision for consideration :

" The Members of the League of Nations undertake that the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them shall be sought by pacific means. "

Article 12.

I. *Paragraph 1: Present Text.*

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

II. *Paragraph 1: British Amendment.*

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree that they will in no case resort to war.

III. *Other Proposals.*

Greece.

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will in no case resort to war for the settlement of the dispute. They undertake to submit the dispute either to arbitration or judicial settlement or to enquiry by the Council.

Denmark.

The second phrase of the text proposed by the British government should be drafted as follows :

" . . . and they agree that they will in no case resort to proceedings which are not pacific. "

Finland.

The text proposed by the British Government should be supplemented as follows :

" They also agree to refrain from any measure of coercion which would be contrary to the principle laid down in Article 10 of the present Covenant."

Further, the following should be added to the second paragraph :

" Without prejudice to the preceding provision, the provisions of Articles 10, 13 (paragraph 4), 16 and 17 shall be fully operative."

Article 13.

I. *Paragraph 4: Present Text.*

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

II. *Paragraph 4: British Amendment.*

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

III. *Other Proposals.*

Austria.

Austria proposes to add to paragraph 4 of Article 13, modified in accordance with the British amendment, a paragraph drafted as follows :

" The Council may, in particular, by a unanimous decision, for the purposes of which the votes of the States in question shall not be counted, and after noting the failure to comply with the Covenant of the Member which refuses to carry out the award or decision, authorise the Members of the League of Nations to take against such Member, for the purpose of ensuring that effect is given to the award or decision, such steps as the Council may consider desirable, but excluding always resort to war."

Article 15 (paragraph 6).

I. *Paragraph 6: Present Text.*

If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

II. *Paragraph 6: British Amendment.*

If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that, as against any party to the dispute that complies with the recommendations of the report, they will take no action which is inconsistent with its terms.

III. *Other Proposals.*

Austria.

The Austrian Government proposes to add to the text of Paragraph 6 of Article 15 the following words :

" . . . reserving at the same time to the party that complies with the recommendations, as against the party or parties that do not comply therewith, the right to take such action as it shall consider necessary for the maintenance of right and justice other than a resort to war."

Greece.

The Greek Government proposes the following text :

" If the report of the Council is unanimously agreed to, the Members of the League undertake to comply with the recommendations of the report, and in default of such compliance the Council shall propose what steps should be taken to give effect thereto. "

Finland.

The Finnish Government proposes the following text :

" If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League agree to comply with the recommendations of the report. If a recommendation is not carried out, the Council shall take steps to give effect thereto. "

Denmark.

The Danish Government proposes the following text :

" The Council may at any moment invite the parties to refer the dispute to judicial or arbitral settlement. Such reference is obligatory if one of the parties consents thereto. In the contrary case, the Council shall resume examination of the dispute. If the Council then reaches a unanimous report, the parties agree to comply with the recommendations of the report."

Article 15 (paragraph 7).

I. *Paragraph 7: Present Text.*

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

II. *Paragraph 7: British Amendment.*

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice other than a resort to war.

III. *Other Proposals.*

Greece.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of their rights other than resort to war or to any act of violence.

Denmark.

The Danish Government feels that, where the Council fails to reach a unanimous report, it would be preferable to follow the method prescribed for this case in Article 4, paragraph 4, of the Protocol of Geneva of 1924.

This paragraph reads as follows :

" If the Council fails to reach a report which is concurred in by all its members, other than the representatives of any of the parties to the dispute, it shall submit the dispute to arbitration. It shall itself determine the composition, the powers and the procedure of the Committee of Arbitrators and, in the choice of the arbitrators, shall bear in mind the guarantees of competence and impartiality referred to in paragraph 2 (*b*) above."

Finland.

The Finnish Government first proposes the following provision :

" If the Council fails to reach, as regards the actual subject of the dispute, a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall, if necessary, propose provisional measures intended to safeguard peace. The parties have the obligation to comply with the Council's recommendations, if they are unanimously agreed to by the members of the Council, other than the representatives of one or more of the parties to the dispute."

The Finnish Government further proposes the following provision :

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the recommendations of the report shall have the force of a recommendation capable of being taken into consideration by all the Members of the League and by any tribunal before which the dispute may be brought."

Note. — In order to follow the sense of these proposals, it is necessary to read the actual text of the Finnish observations.

The Finnish Government also puts forward the following new text for the whole of paragraphs 6 and 7, Article 15 :

" If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, and if the parties declare themselves ready to accept the report, the recommendations of the report shall have the same force and effect as an arbitral award. Should the report not be accepted by all the parties, any party shall, at the request of any other party, be bound to submit the dispute either to proceedings for judicial or arbitral settlement or to a conciliation commission of which the composition shall be determined by the Council acting by a majority vote of its members, other than the parties to the dispute. In case the dispute should fail to be settled within a reasonable period after the Council has made its report, the Council shall resume examination of the case, on the understanding that any party which refuses to comply with a unanimous decision of the Council shall be regarded as menacing, by its attitude, the maintenance of peace and good understanding between nations."

" If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the recommendations of the report shall have the force of a recommendation capable of being taken into consideration by all the Members of the League and by any tribunal before which the dispute may be brought."

Article 16.

I. *Paragraph 1: Present Text.*

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

II. *Paragraph 1: British Proposal.*

The British Government proposes no amendment to this article.

III. *Other Proposals.*

Denmark.

The Danish Government proposes to suppress the reference to Articles 13 and 15.

Finland.

The Finnish Government also proposes the suppression of the reference to Articles 13 and 15.

Article 17.

Finland.

The Finnish Government proposes to insert between paragraphs 3 and 4 a new paragraph, reading as follows :

" If a State which is not a Member of the League resorts to war against a Member of the League before it has been invited to accept the said obligations, Article 16 shall be applicable to such State so long as it does not comply with the measures taken by the Council for the re-establishment of peace."

Article 18.

Peru.

The Peruvian Government proposes to add to the Article a new paragraph reading as follows :

" The Secretariat of the League of Nations may not register any treaty of peace imposed by force as a consequence of a war undertaken in violation of the Pact of Paris. The League of Nations shall consider as null and void any stipulations which it may contain, and shall render every assistance in restoring the *status quo* destroyed by force."

ANNEX IV.

PACT OF PARIS : POSITION OF THE VARIOUS STATES WITH REGARD TO THAT PACT.

I. Text of the Pact.

The President of the German Reich ; the President of the United States of America ; His Majesty the King of the Belgians ; the President of the French Republic ; His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; the President of the Republic of Poland ; the President of the Czechoslovak Republic ;

Deeply sensible of their solemn duty to promote the welfare of mankind ;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated ;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty ;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavour and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilised nations of the world in a common renunciation of war as an instrument of their national policy ;

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries :

. . . . . .

who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles :

Article I.

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Article II.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be which may arise among them, shall never be sought except by pacific means.

Article III.

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with

a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

IN FAITH WHEREOF the respective Plenipotentiaries have signed this Treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

DONE at Paris, the twenty-seventh day of August in the year one thousand nine hundred and twenty-eight.

[Here follow the signatures.]

. . . . . .

II. POSITION ON MAY 1ST, 1930.

(According to the information officially communicated to the Secretariat.)

A. STATES BOUND BY THE PACT OF PARIS.

The Pact of Paris entered into force on July 25th, 1929.

On May 1st, 1930, the Pact of Paris had received 58 ratifications or definitive accessions, as follows :

1. *Members of the League of Nations:*

Abyssinia, Albania, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Cuba, Czechoslovakia, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Great Britain, Greece, Guatemala, Haiti, Honduras, Hungary, India, Irish Free State, Italy, Japan, Latvia, Liberia, Lithuania, Luxemburg, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Persia, Peru, Poland, Portugal, Roumania, Siam, South Africa, Spain, Sweden, Switzerland, Venezuela, Yugoslavia.

Total 49.

2. *Non-Members of the League of Nations:*

Afghanistan, Costa Rica, Free City of Danzig, Egypt, Iceland, Mexico, Turkey, Union of Soviet Socialist Republics, United States of America.

Total 9.

B. STATES NOT BOUND BY THE PACT OF PARIS.

1. *Five Members of the League of Nations are not Parties to the Pact of Paris:*

Argentine, Bolivia, Colombia, Salvador, Uruguay.

2. *Two States Non-Members of the League of Nations are not Parties to the Pact of Paris:*

Brazil, Ecuador.

ANNEX V.

REPORT OF THE COMMITTEE APPOINTED BY THE COUNCIL ON JANUARY 15TH, 1930. LETTER FROM M. CORNEJO.

I. REPORT OF THE COMMITTEE.

The Committee appointed by the Council at its session of January 1930 in execution of the Assembly's resolution of September 24th, 1929, met at Geneva from February 25th to March 5th, 1930.

The Committee consisted of the following members :

M. ANTONIADE[1] (Roumania);
M. VON BÜLOW (Germany);
Viscount CECIL OF CHELWOOD (Great Britain);
M. COBIÁN (Spain);
M. CORNEJO (Peru);
M. COT (France);
M. ITO[1] (Japan);
M. SCIALOJA (Italy);
M. SOKAL (Poland);
M. UNDÉN (Sweden);
Dr. WOO KAISENG (China).

M. SCIALOJA was appointed Chairman.

[1] M. Antoniade and M. Ito took the places of M. Titulesco and M. Adatci, who were unable to attend the meeting of the Committee. M. Pella on various occasions sat in place of M. Antoniade.

The Committee first examined the conditions which governed its task. It appeared that, putting on one side the political aspects of the question, all the other aspects had to be considered in order to draft the amendments necessary to bring the League Covenant into harmony with the Pact for the Renunciation of War.

The Committee was not called upon to enquire whether it was expedient to amend the Covenant of the League of Nations. This question has already been answered by the Assembly, since the resolution of September 24th, 1929, declares " that it is desirable that the terms of the Covenant of the League should not accord any longer to Members of the League a right to have recourse to war in cases in which that right has been renounced by the provisions of the Pact of Paris ".

In order to conform to this decision, the Council could not propose to the States any amendments the principle of which was not included in the Pact of Paris. The Members of the League of Nations which are bound by the Pact of Paris must preserve all the rights which are theirs under the latter instrument.

Finally, the Committee had to indicate the consequences ensuing from the various amendments it proposed. In the light of the Committee's report and proposals, the Assembly will say whether it accepts these amendments or whether, on the other hand, it prefers to reject them by reason of the consequences they involve.

The Committee has not confined itself to reproducing the terms of the Pact of Paris in the Covenant of the League of Nations. This method would have had serious disadvantages. The League Covenant, under some of its articles, reserves the right to go to war, and it is essential to eliminate this right wherever it appears. Otherwise, there would be undesirable contradictions between the new provisions that were added and the old provisions that were left unmodified.

Furthermore, the members of the Committee considered that they could not confine themselves to deleting the provisions which authorise war. The Covenant of the League of Nations has an organic character which must be maintained. It takes account of all the circumstances which may arise in international life and thus forms an articulated whole the symmetry of which must be respected. Resort to war being henceforward prohibited, its place must be taken by methods of pacific settlement in order to ensure the settlement of disputes.

Prohibition of war involves certain legal consequences which the Committee has considered. At the same time, it has not felt it desirable to give a complete interpretation of the Pact of Paris. Some Members of the League of Nations have not acceded to the Pact of Paris; on the other hand, some signatories of that Pact are not Members of the League. In these circumstances, the Committee thought that, even if it were led by the necessities of the case to render more precise the meaning of certain provisions in the Pact of Paris, the interpretation thus given could clearly not affect States which were not Members of the League of Nations and, even as regards the Members of the League, could not constitute an interpretation of general application but would relate only to the matters dealt with in the amended articles.

The Committee calls attention to the political difficulty which may arise in bringing the two instruments into concordance with one another. The establishment of such concordance must not be allowed to react disadvantageously upon the relations between the League of Nations and certain signatories of the Pact of Paris. It would be equally regrettable if those Members of the League of Nations which have not signed the Pact of Paris were to raise objections of principle against the amendments which were proposed.

Similarly, the Committee decided to touch the provisions of the League Covenant as little as possible. Its task is limited. It is not required to make a general revision of the Covenant, but simply to ensure harmony between the two instruments. Accordingly, the Committee resolved as far as possible to retain the formulæ and actual words of the League Covenant.

Having carefully examined the observations submitted by various Governments,[1] the Committee agreed to propose the amendments which, together with comments thereon, are given below.

Preamble.

The Committee proposes a slight modification in the Preamble of the Covenant of the League of Nations. Instead of :

> " In order to promote international co-operation and to achieve international peace and security *by the acceptance of obligations not to resort to war* ",

the Committee proposes :

> " In order to promote international co-operation and to achieve international peace and security *by accepting the obligation not to resort to war* ."

One of the members of the Committee proposed that the actual text of Articles 1 and 2 of the Pact of Paris should be inserted in the Preamble to the Covenant. This proposal was connected with an amendment to Article 12 which will be discussed under Article 16. The Committee, however, did not concur in this view. It thought that the proposed insertion was unnecessary and that it would be better to define the scope of the obligations laid down by the Pact of Paris by modifying certain articles of the Covenant of the League of Nations.

[1] See Annex II.

In the Committee's opinion, it was unnecessary to give in the Preamble of the Covenant of the League any further definition of the extent and meaning of the obligation assumed by the States. The Preamble should retain the quite general character given to it by its authors. The prohibition of resort to war will be formulated in more precise terms in Article 12.

Article 12, Paragraph 1.

The Committee adopted the following text :

" The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will not employ other than pacific means for its settlement.

" If the disagreement continues, the dispute shall be submitted either to arbitration or judicial settlement, or to enquiry by the Council. The Members of the League agree that they will in no case resort to war for the solution of their dispute. "

1. The first question examined in connection with this article was that of condemnation of war. The Committee considered whether it ought to employ a general formula absolutely condemning all war. It decided, for two reasons, not to accept certain suggestions made to it in this sense.

The Committee thought that it must remain faithful to its method and restrict itself to bringing Article 12 into harmony with the Pact of Paris. What is the article's sphere of application ? It provides for the settlement of disputes likely to lead to a rupture. Consequently, in conformity with Article 2 of the Pact of Paris, it is sufficient to declare that " the Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will only employ pacific means for its settlement ".

Any contradiction between the Pact and the Covenant, in regard either to form or to substance, is thereby removed.

On the other hand, the statement of the fact that the Pact of Paris simply condemns war " as an instrument of national policy ", without prohibiting resistance to aggression or the execution of international police measures, cannot be regarded as an endeavour to interpret that Pact. In these circumstances, any formula which was too general must have been accompanied by comments and reservations which would have modified the structure of Article 12.

One member of the Committee made a reservation regarding the insertion in Article 12 of this prohibition of resort to war, on account of the consequences which such an amendment might have in connection with the application of sanctions. This question will be dealt with in connection with Article 16.

Certain members of the Committee drew its attention to the question whether, in the case of resistance to aggression or the execution of international police measures, the laws of war (*jus belli*) would continue applicable. In such circumstances, it might, indeed, be doubtful whether the case was one of war properly so called. In the Committee's opinion, whatever name may be given to such operations, the rules of the laws of war would remain applicable.

2. The various forms of pacific procedure which might be employed to settle the dispute were next discussed.

The Committee did not desire to limit the free action of the parties. They may obviously, as in the past, resort to all pacific means which seem to them likely to secure the settlement of the dispute. Clearly, if the dispute can be settled by means of diplomatic negotiations, mediation, or conciliation, for instance, there is every reason for congratulation. But provision must be made for the possibility of such proceedings failing or not being resorted to at all. In such cases, all parties, whatever the dispositions of the other party may be, should have reserved to them the right to resort either to arbitration or judicial settlement or to enquiry by the Council.

Article 12, Paragraph 2.

Should paragraph 2 of Article 12 be omitted ?

Certain members of the Committee thought that the modifications made in the first paragraph materially altered the structure of Article 12. They therefore asked whether the existence of paragraph 2 was not bound up with the provision in paragraph 1 of a time-limit of three months during which war was prohibited. All resort to war having been eliminated and the time-limit having accordingly disappeared, they saw no reason why the provisions of paragraph 2 should be retained.

In this connection it was stated that the term " reasonable time " was not definite enough and could therefore not be as effective as might be desirable.

The Committee nevertheless decided to retain paragraph 2 of Article 12 as it stands. This paragraph is in no way incompatible with the Pact of Paris. It would be preferable, therefore, not to delete it. Moreover, it expresses a general idea which it is necessary to retain. It lays stress upon the duty to take rapid action which is incumbent on the authorities who have to render the decision as well as on the Council when making a report in accordance with Article 15.

The Committee did not think that the grounds put forward for the deletion of the term " reasonable time " were sufficient. It is impossible in a general provision to lay down a definite time-limit, for the disputes which may arise between two States are from their very nature too different and too complex for the same time-limit to be applicable to all of them. All that can be asked, therefore, is that the award should be given as rapidly as possible. This is the meaning of the present text and there seems no reason for modifying it.

ARTICLE 13, PARAGRAPH 4.

" The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered and that they will not take any action against any Member of the League which complies therewith.

" In the event of any failure to carry out such award or decision, the Council shall propose what measures of all kinds should be taken to give effect thereto ; the votes of the representatives of the parties shall not be counted."

The Committee drafted the above text after examining a number of suggestions.

1. The Committee has omitted the mention of recourse to war in the first sentence of Article 13, paragraph 4. The Members of the League undertake to refrain from any action against a State which complies with any award or decision that has been rendered.

The proposed text obviously secures to States the right themselves to proceed with the execution of awards or decisions given in their favour, without, however, leaving them the right to resort to war. Certain members of the Committee, however, made a reservation on the latter point.

2. The right of going to war being abolished, some members of the Committee asked that the Council should be given the necessary powers to ensure execution of the award or decision. They proposed that the Council should be able to determine *by a simple majority* what measures should be taken to give effect to awards or decisions that had been rendered. To support their case, they argued that the Council would not be required to take a fresh decision on the substance of the dispute, but only to ensure the execution of an award or decision which had already become legally final and binding. Accordingly, they thought that the Council should be given the powers necessary to ensure execution in all circumstances and that the rule of unanimity should be excluded. They added that this rule might involve serious disadvantages, since the opposition of a single State represented on the Council would be sufficient to prevent the execution of a judicial decision or arbitral award.

The Committee recognised the gravity of the question; it agreed that decisions or awards rendered by a judicial or arbitral authority ought to be executed; at the same time it was unable to accept the proposal put forward.

On the one hand, it thought that an award rendered had so much authority that, in practice, a State would be very unlikely to refuse to comply with it. The Council's intervention in such matters will therefore be exceptional. States have agreed to carry out in full good faith any award or decision that may be rendered. Consequently, it is to be presumed that awards or judicial decisions will be executed in due course. An interested party will only appeal to the Council if it has been unable to obtain execution of the award. In such a case, the Council's obvious duty is to take all the necessary measures to cause effect to be given to the award or judicial decision.

On the other hand, it is in virtue of Article 5 that the Council will decide to vote by a majority or unanimously according as the methods which it adopts to ensure execution of the award or decision are, or are not, matters of procedure. Article 5 enunciates one of the fundamental principles of the Covenant and must remain applicable.

Nevertheless, the Committee thought it essential to specify that the votes of the parties will not be counted when it is a case of prescribing measures of execution to be taken against a recalcitrant State.

Finally, the majority of the Committee desired that the attention of the Assembly and the Council should be called to the necessity of ensuring that effect is given to awards or judicial decisions in all circumstances whatsoever. The whole authority of the League of Nations might be affected if an indisputable right derived from an award or judicial decision which had become legally final and binding could continue to be violated with impunity.

If, therefore, the Council or Assembly think that, from the political point of view, the provisions of Article 13 are too weak, they must take all the necessary steps to strengthen them. This question might be referred by the Council for closer study to the Committee on Arbitration and Security.

3. The Committee's attention was drawn to the expression " shall *propose* what steps should be taken to give effect to the award ". Some members asked that the word " determine " should be substituted for the word " propose ".

In support of this contention they put forward two arguments. In the first place, they thought that the Council would be called upon not merely to *propose* measures to the Members of the League, but also to *take* steps itself (censure of a recalcitrant State, appointment of a Committee of Enquiry, etc.). In the second place, they thought that the term " propose " was not sufficiently imperative.

The Committee did not endorse this view. It considered that, except for serious reasons, it was preferable not to alter the actual words of the Covenant, the use of the expression " the Council shall *propose* " not being any obstacle to the steps which the Council might be called upon to *take*.

So far as regards the extent to which the measures prescribed would be obligatory, the term employed appeared to be sufficiently explicit. Furthermore, the Council would here be addressing itself to the States which were not parties to the dispute. It could not issue orders to these States. It must confine itself to indicating the measures of coercion which would be most effective for the purpose of inducing the recalcitrant State to comply with the award or decision. The latter State does, indeed, become the object of an actual order; but

this order derives its authority, not from the Council's decision, but from the award or judicial decision.

4. Lastly, the Committee decided that the Council should be left the greatest possible freedom in its choice of methods for ensuring the execution of awards or judicial decisions. No limits can be laid down. Everything depends on the circumstances. The Council must be relied on to act with the necessary prudence and firmness.

Article 15, General Observations.

This article gave rise to amendments and observations upon its sixth and seventh paragraphs. A new paragraph, 7*bis*, has been added. The new paragraph provides a procedure which is applicable both in the case covered by paragraph 6 and in that covered by paragraph 7.

The general principle by which the Committee has been guided has been that the elimination of resort to war should have as its consequence the extension of the procedure of pacific settlement. Otherwise, war would only be forbidden by the law and in practice there would be a danger that, in default of any other solution, States would be led to adopt a warlike attitude.

Article 15, Paragraph 6.

The Committee adopted the following text :

> " If the report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will comply with the recommendations of the report. If the Council's recommendation is not carried out, the Council shall propose suitable measures to give it effect."

1. Paragraph 6 of Article 15 implicitly stated that in certain circumstances war was lawful against a State which did not make its conduct conform to the solutions indicated in the Council's report. The Members of the League merely agreed that they would not go to war with any party to the dispute which complied with the recommendations of the report.

The Committee has, of course, struck out this possibility of settling the conflict by war.

On the other hand, paragraph 6 gave some degree of force to a report of the Council which was unanimously adopted, but the parties to the dispute were not obliged to comply with the redort. If the report was not satisfactory to any of the parties, a solution of the conflict by force remained possible, at least after the expiration of the three months' period provided for in Article 12.

Here again the Committee desired to eliminate all possibility of war.

2. The draft proposed by the Committee gives an obligatory character to the recommendations of a report which is unanimously adopted. The Members of the League *agree* to comply with the recommendations of such a report.

No doubt the Council's report does not have the character of a judicial decision or arbitral award which is legally final and binding. The Committee, however, felt that a report which was unanimously adopted was of so great authority that it ought to prevail over the individual will of the States.

Moreover, before taking a final decision, the Council can always make to the parties any suggestions which it considers desirable. Before taking a decision, it can and should give advice. It would only take a final decision in cases where it was compelled to overcome the resistance of the States concerned. Such a decision cannot be final unless it is obligatory. The Council, therefore, remains perfectly free to decide whether it will finally settle the dispute or whether it prefers to make a mere attempt at conciliation in the unanimous recommendation which it adopts.

3. The obligatory character of the Council's recommendation having thus been made clear, the question of its execution arose.

The Committee felt that an obligatory decision should not be left in danger of not being executed. The arguments which were used in connection with the new text of Article 13 are here fully applicable. Whatever be the nature of the conflict considered, the whole authority of the League of Nations would be impaired if a recommendation unanimously voted by the Council should remain a dead letter. Various forms of dilatory manœuvring would, moreover, be encouraged. If the Council's unanimous recommendation could again be disputed, States would have an interest in delaying and in waiting in the hope that a change in the composition of the Council might produce a solution with which they would be better satisfied. In order to confirm the principle of the permanent character of the organs of the League of Nations, it is indispensable that a decision which has been declared to be final should not be capable of being further questioned, and this implies that the decision must be executed.

It is, of course, very unlikely that a State would refuse to comply with the recommendations of a report which had been unanimously voted. The Committee had, however, to take such a case into account. Accordingly, it has been made the duty of the Council, in the event of any failure to carry out the recommendations of its report, to propose whatever measures may be appropriate to ensure that effect is given to those recommendations.

Some members of the Committee raised an objection at this point. They argued that a recommendation was not in the true sense a decision and could not be entirely assimilated

to an arbitral award or judicial decision. They maintained that the Council's duty was to endeavour to avoid war rather than to secure the execution of the recommendations of its report.

The majority of the Committee did not adopt this point of view. They thought, however, that the wording to be proposed should mark the distinction between the unanimous decision of the Council and an arbitral award or judicial decision. At the same time they intended to make it clear that the Council's decision and the arbitral award or judicial decision are both alike to be executed.

It is unnecessary to say that States may always use their own means for obtaining the execution of the recommendations made by the Council, subject always to their not being entitled to resort to war. It is only if they fail in their attempts to secure such execution that they will ask the Council to intervene and take any measures that may be necessary.

Article 15, Paragraph 7.

The Committee adopted the following text :

> " If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall examine the procedure best suited to meet the case and recommend it to the parties."

Paragraph 7 of Article 15 contained a serious lacuna which has often been pointed out. If the Council failed to reach a report which was unanimously voted, the Members of the League retained full liberty of action. They could, in particular, resort to war for the protection of their rights and interests after the lapse of three months.

1. The first duty of the Committee was to eliminate such resort to war. The Committee thought it unnecessary to repeat the general prohibition contained in the new draft of Article 12. Article 12 serves as an introduction to Articles 13 and 15. States have, in all circumstances, lost the right to make war in order to secure the settlement of their disputes.

2. Some members of the Committee would have desired that a binding decision should always be capable of being reached in the case covered by paragraph 7. They saw no other means of attaining this result than that of making arbitration compulsory in the last resort. The procedure which they contemplated was summed up in the three following propositions : a new examination of the case by the Council ; an obligatory consultation of the Permanent Court of International Justice upon the legal points material to the dispute ; an arbitration organised by the Council. Under this system, after a fresh attempt at conciliation and after a thorough study of the legal issues, the Council would have referred the dispute to an arbitral tribunal whose decision would have been binding upon the parties.

The Committee as a whole felt that the true solution for the case covered by paragraph 7 was to be found in the accession of the Members of the League of Nations to the General Act of Arbitration. It would have been glad if it had been possible to settle the question by a reference to that instrument. Such a course was, however, rendered the more impossible by the fact that only a very small number of States have hitherto acceded to the General Act. Other accessions are, no doubt, contemplated or announced. Such accessions may, however, be accompanied by reservations. In present circumstances it does not seem that the Members of the League are prepared to submit all their disputes, without any exception, to compulsory arbitration.

The Committee thought that it was a serious matter to attempt to settle a question as complicated as that of compulsory arbitration in a few lines. Accordingly, it directed its efforts towards a more modest solution.

3. The Committee first examined a different proposal, which consisted in referring the case successively to the Permanent Court of International Justice and to the Assembly. As will be mentioned below, the first of these suggestions was adopted by the Committee (see paragraph 7*bis*) ; but it seemed undesirable to turn the Assembly into a kind of court of appeal, since it is very difficult to convene it immediately. The Council must, therefore, be left free to refer a dispute to the Assembly as already provided by Article 15, paragraph 9, without this procedure being made the general rule. Moreover, under paragraph 9, any party to a dispute has the right to bring the dispute before the Assembly.

4. The Committee has, however, not renounced the idea of giving the Council the duty of watching over the final settlement of the dispute. It has merely felt that it was not desirable to make any particular procedure obligatory. It leaves the Council with the task of examining what course would be the most appropriate to the case and of making recommendations to the parties accordingly. The Council can recommend arbitration, resort to the Permanent Court of International Justice or any other proceedings for pacific settlement of the dispute. If the parties submit their dispute to arbitration in accordance with the Council's recommendation, a decision will, of course, be given which will have become legally and finally binding and which will be executed under the conditions contained in Article 13.

This solution of the problem is doubtless inadequate. The Committee does not intend to disguise this fact. In order to remedy its defects as far as possible, the Committee has taken the necessary steps to ensure that the legal issues can, in all circumstances, be settled. This is the object of paragraph 7*bis*.

Article 15, Paragraph 7*bis*.

The Committee adopted the following text :

" At any stage of the examination the Council may, either at the request of one of the parties or on its own initiative, ask the Permanent Court of International Justice for an advisory opinion on points of law relating to the dispute. Such application shall not require a unanimous vote by the Council."

1. Two considerations underlie this draft.

On the one hand, it is necessary to ensure respect for international law, even in a political conflict. On the other hand, the solution of any kind of dispute will be greatly facilitated if the issues of law raised by the parties are settled by the competent authority.

How and by whom should the opinion on the points of law be asked ?

The Council is alone competent to ask the Court's advice. It was, however, desired to give certain guarantees to the parties to the dispute. It is accordingly stated that the opinion is to be asked by the Council " either on its own initiative or at the request of one of the parties ". Some members of the Committee desired to go further in this direction. They wished that it should be obligatory for the opinion of the Court to be requested if one of the parties so desired.

It was felt that this proposal was not obviously necessary. If it would be of real importance for the solution of the dispute that the advisory opinion should be requested, the majority of the Council will be very ready to consult the Court, if so requested by one of the parties. Moreover, it was thought necessary to preserve the special character of the procedure of advisory opinions and avoid the danger of allowing a confusion to arise between that procedure and the ordinary jurisdiction of the Court. The procedure of advisory opinions is one which can be resorted to only by the Council or the Assembly. This consideration caused the Committee not to go beyond the measures indicated above.

2. Nevertheless, the majority of the members of the Committee thought that, in order to render the asking of an advisory opinion easier, the Council should be given the possibility of making a request for an advisory opinion by a decision adopted by a simple majority. The Committee has left entirely on one side the question whether, as a general rule, a request for an advisory opinion requires unanimity or may be made by a simple majority. It has merely intended to make it clear that, in the course of the proceedings of enquiry which take place under Article 15, such opinions would be asked for by a majority decision.

In the intention of the Committee, the provision in question, being peculiar to Article 15, could not be used as an argument in either sense in the discussion which has arisen upon this question. Some members of the Committee, however, formulated an express reservation on this question.

3. Some members of the Committee expressed the fear that the extension of the use of requests for advisory opinions might present certain political disadvantages on account of the new provisions relating to this procedure. They accordingly proposed that the advisory opinion might be asked " from the Permanent Court of International Justice or, failing the Court, from a committee of jurists ".

The Committee thought that this was a purely political question which it was not competent to examine. It confined itself to drawing the attention of the Council and of the Assembly to the consequences which may be involved in the manner in which paragraph 7*bis* is drafted.

Article 15, Paragraph 8.

One of the members of the Committee proposed to strike out paragraph 8 of Article 15 for the purpose of establishing closer concordance between the Covenant and the Pact of Paris. He argued that the Pact of Paris provides that " the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, shall never be sought except by pacific means ". It was logical not to leave any exception to this general rule. In so far as a dispute which arises " out of a matter which by international law is solely within the domestic jurisdiction of a party " may put the peace of the world in peril, it was necessary to ensure the settlement of the dispute.

The Committee did not feel that there was any formal contradiction between the text of paragraph 8 and that of the Pact of Paris. In these circumstances, the author of the proposal merely asked that his observations should be mentioned in the report.

Article 15, Paragraph 10.

One member of the Committee proposed to amend the provisions of paragraph 10. According to the text as it now stands, " a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof, other than the representatives of one or more of the parties to the dispute ". The author of the proposal asked that the representatives of those Members of the League represented on the Council should no longer be added to the majority of the League Members. He thought that, if the Council were unable to obtain the unanimous adoption of its report, it

ought to be able to bring the dispute before the Assembly and to rely purely and simply upon the majority of the Members of the League of Nations. He thought in this way to extend the scope of this procedure, which in practice has been little used.

The Committee did not share this view. If we examine paragraph 10 of Article 15, we find no contradiction between that text and the Pact of Paris. Strictly speaking, therefore, it was not part of the Committee's duty to examine an amendment, however desirable in itself, which was not imposed by the desire to harmonise the two Pacts.

The amendment submitted to the Council would have introduced an entirely new procedure into the system of the League Covenant. The author of the amendment naturally pointed out that, now that war was banished from the Covenant of the League of Nations, it was desirable to multiply the forms of pacific procedure. The Committee, however, thought that the proposal was too remotely connected with its mission to be considered.

Article 16.

1. One member of the Committee reverted to a reservation which he had made, during the discussion of Article 12, concerning the effects of the amendment adopted by the Committee upon the operation of the sanctions provided for in Article 16.

In particular, he called the attention of the Committee to the case of war occurring after a breakdown of the various forms of procedure provided by Article 15, paragraph 7. He would have wished that in such case sanctions should only apply in regard to the period of three months provided for in Article 12. When this period had elapsed, the possibility of sanctions in case of resort to war would disappear.

The proposal was, in reality, not so much one for amending Article 16 as for framing Article 12 in a different way, which would make it possible to avoid an extension of sanctions. The member completed his proposal by asking for the insertion of Articles 1 and 2 of the Pact of Paris in the Preamble to the Covenant.

In support of the proposal, the author insisted upon the circumstances in which the Council would adopt its report if unanimity could not be secured for the recommendations of the report. In such a case there was the risk of seeing the members of the Council divided into two groups of almost equal strength and importance but differing in opinion upon the respective claims of the parties. The authority of a report voted in such conditions was weakened and it might be difficult to bring the sanctions of Article 16 into operation against the State which did not comply with the report.

2. The Committee did not feel it should give effect to this proposal. Resort to war is forbidden in every case. This constitutes for the Members of the League a definite obligation the execution of which must be ensured. The Covenant of the League of Nations being an organic legal whole, it is impossible to conceive of there being two kinds of obligations of which one kind only would be accompanied by sanctions. The new undertakings contracted by the Members of the League under Articles 12, 13 and 15 would be meaningless if they could remain a dead letter. This being so, it is essential to place them on the same footing as the obligations previously established by those articles and covered by the authority of Article 16.

In practice, moreover, the amendments to Articles 12, 13 and 15 will not add to the burden of the obligations contracted by States under Article 16. These amendments aim at ensuring the pacific settlement of disputes more effectively and with greater certainty. To that extent they reduce the chances of war and therefore the possibility of sanctions. As was pointed out, the stronger the system of sanctions, the less the risk of having to apply them.

Article 17.

One member of the Committee reverted to a proposal made by a Government to insert a new paragraph between paragraphs 3 and 4 of Article 17. This new paragraph would have provided that, "if a State which is not a Member of the League resorts to war against a Member of the League before it has been invited to accept the said obligations, Article 16 shall be applicable to such State so long as it does not comply with the measures taken by the Council for the re-establishment of peace ".

It was urged in support of this proposal that the Council ought to be given powers against a State which commits an act of aggression so sudden that it would be impossible for the Council to extend to it the invitation contained in Article 17, paragraph 1. (" In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.")

The Committee considered that this modification was not called for by the Pact of Paris. It is not for the League of Nations to ensure in all circumstances respect for the Pact renouncing war. It might be thought in some quarters that the League of Nations was exceeding its powers if, by modifying its Covenant, it reserved the right to put into effect the sanctions provided for under Article 16 in the case of any war whatever, even if it had not invited the belligerents to appear before it.

Furthermore, it is unlikely that the Council of the League of Nations would not have the time to invite States not Members of the League to lay their disputes before it. For it to be otherwise, an abrupt and definite aggression would have to have been committed and the Council would then be authorised to act in virtue of Article 10 or of Article 11.

One member of the Committee proposed that the attention of the Assembly be called to the very serious obligations that Article 17 might involve, owing to the fact that certain large States are not Members of the League of Nations.

Article 18.

One member of the Committee proposed that the registration of treaties should be made subject to certain fundamental conditions. He asked that the Secretariat of the League of Nations should not be authorised to register any treaty of peace imposed by force as a consequence of a war commenced in violation of the Pact of Paris. He added that the League of Nations should lend its assistance in order to re-establish the *status quo* destroyed by such a war.

The effect of such a provision would be to render invalid treaties concluded under the influence of force.

The Committee fully recognised the importance of this suggestion, but for the following reasons it did not think that the proposed amendment should be entertained.

In the first place, there is nothing in Article 18 that is incompatible with the Pact of Paris. It is, therefore, not *a priori* necessary to modify it.

Secondly, the object of Article 18 is not to confer an enhanced value upon certain treaties, but simply to ensure publicity for treaties. The effect of the amendment submitted to the Committee would, therefore, be a complete modification of the meaning of Article 18.

Moreover, the contingency of a treaty imposed by force is difficult to conceive. The stipulations of Articles 12, 13 and 15 are such, henceforth, that all disputes must be settled in accordance with the law. To hold otherwise would be to admit the possibility of the Pact of Paris and the Covenant of the League of Nations being violated with impunity in their essential provisions. It would be tantamount to forgetting that Article 16 establishes solidarity between all the Members of the League of Nations and imposes upon them the obligation to oppose any such violation.

Finally, the application of the proposed amendment would have met with immense difficulties. It would be hard to imagine the Secretariat refusing to register a treaty on the ground that it was dictated by force. Such a discrimination between treaties would involve political action in the first instance, and that of the most delicate description. The Council would have to be applied to. But it would be imposing upon the Council a singularly heavy task to ask it to exercise a general control over all treaties that might be concluded.

In these circumstances, the Committee does not propose any amendment to Article 18. It recognises, however, that the idea underlying the proposed amendment is an interesting one which might be considered by the League of Nations at a later date.

II. Letter from M. Mariano H. Cornejo to the Secretary-General of the League of Nations.

[*Translation.*] Paris, March 7th, 1930.

I have the honour to forward to you my observations on the report prepared by the Sub-Committee on the work of the Committee.

The purpose of these observations is to explain the extent and meaning of the proposals I had the honour to submit — proposals which are very inadequately rendered in that report.

I request that these observations be printed together with the report.

(Signed) M. H. Cornejo.

[*Translation.*]

Observations submitted by M. M. H. Cornejo, Member of the Committee.

I would observe that the Committee instructed to revise the report did not clearly explain the modification I proposed to paragraph 10 of Article 15.

From the wording of this part of the report it would appear that I proposed the suppression in all cases of the clause laying down that the votes of all the States represented on the Council must always be included in the majority of the Assembly.

This is not at all what I proposed.

I think that this general rule, the reasons for which are well known, should always be maintained. The advantages in many cases of making a majority decision of the Assembly dependent upon the concurrence of all the States represented on the Council are obvious, since the Council is composed of Powers representing far-reaching interests and possessing a permanent seat and of others on whom the confidence of the Assembly was conferred by election. Moreover, this article is in harmony with Article 26, which requires the same guarantee for any modification of the Covenant.

What I proposed was that the Council should be entitled — at its discretion and by a unanimous vote — to release itself from the obligation of representing in the Assembly the divergent opinions held by some of its members.

It may happen that, in case of a conflict submitted to the Council, the latter has not unanimously approved the report, but has agreed unanimously to refer the dispute to the Assembly in accordance with the provisions of paragraph 9.

It is difficult to understand why, in such a case, the Council should not also be able, by a unanimous vote, voluntarily to release itself from the obligation of representing in the Assembly the same divergent views which prevented it from adopting a unanimous report.

I do not propose an appeal from the Council to the Assembly, but only to render practical and effective the right the Council already possesses to refer the dispute to the Assembly. This right would in practice remain null and void if, in every case, the Council retained the right of veto over the majority of the Assembly possessed by each of its members.

It would be enough for a single member of the Council to maintain the divergent opinion he had expressed in the Council for any appeal to the Assembly to remain null and void.

It may happen in case of a dispute that, though the members of the Council have not been able to agree on the terms of settlement of the dispute, they are nevertheless unanimous regarding the desirability of referring the dispute to the Assembly and the expediency of leaving the latter free to decide it by a majority vote. Why, in such a case, prevent all the members of the Council from voluntarily relinquishing the right of veto conferred upon them under paragraph 10 ?

Just as the Council may decide not to deal with a question and to refer it to the Permanent Court of International Justice without interfering with the latter's decision, the Council should also be entitled, by a unanimous decision, to refer a dispute to the Assembly ; in such a case, its individual members would waive their right to intervene in their capacity as members of the Council and would act solely in their capacity as members of the Assembly.

This right conferred upon the Council subject to the condition of unanimity cannot prejudice any member of the Council, for the latter remains free to exercise this right or not according to whether it considers it desirable in the interest of peace and justice to maintain or forego its right of veto.

I think that this explanation differs fundamentally from that given in the report.

2. The report does not mention anywhere the amendment I proposed to paragraph 1 of Article 15. This amendment reads as follows :

> " If none of the parties informs the Secretary-General of its dispute, and if the President of the Council considers that it endangers peace, the President shall inform the parties that he will bring the dispute before the Council and that they are obliged to comply with the provisions of the following paragraph . . .

There can be no doubt as to the expediency of this additional clause. Article 11 declares that any threat of war is a matter of concern to the whole League of Nations and gives to all its Members the right to summon the Council through the Secretary-General. It is strange that the President of the Council should have no special powers. Experience has shown that it is not always necessary to convene the Council. This step, by which a specific procedure is set in operation, may even have two disadvantages. There have been cases in which the action of the President of the Council was enough to bring about the desired result and a threat of war was averted without the dispute being submitted to the Council. The intervention of M. Briand, when President of the Council, in the disputes between Greece and Bulgaria and between Bolivia and Paraguay is an example of the value of such intervention, which neither the Secretary-General nor other Members of the League could have undertaken.

The amendment proposed would give the President legal authority to take action immediately, without the risk of having this right contested by the parties to the dispute.

3. The arguments adduced in the report against the additional clause to Article 18 were refuted in the course of the discussions. This addition was as follows :

> " The Secretariat of the League of Nations may not register any treaty of peace imposed by force as a consequence of a war undertaken in violation of the Pact of Paris. The League of Nations shall consider as null and void any stipulations which it may contain, and shall render every assistance in restoring the *status quo* destroyed by force."

Since, in Article 16, the Covenant provides sanctions against a war undertaken in violation of Articles 12, 13 and 15, it is difficult to understand how it could be said that the Secretary-General is invested with arbitrary powers. The happily improbable contingency of a war breaking out in spite of the League of Nations and the Pact of Paris must nevertheless be taken into account — and the contingency of its leading to its natural conclusion, *i.e.*, a Treaty of Peace imposed upon the victim of aggression in order to obtain territorial or other advantages. Article 10 establishes the principle ; the other Articles — *i.e.*, 12, 13, 15 and 16 — establish the procedure to prevent wars the consequences of which would constitute a violation of Article 10. For the same reasons, Article 18 should provide for a procedure applicable to a Treaty of Peace, which aims at legalising the advantages obtained by an illegal war and constituting a violation of the principle laid down in Article 10.

It is difficult to understand what danger there could be in this perfectly logical addition.

The reasons which I gave to explain the utility of this additional clause will be found in the Minutes of the meetings of the Sub-Committee of the Legal Committee which are to be attached to the report.

Paris, March 7th, 1930.

ANNEX VI.

PROPOSALS OF THE COMMITTEE.

The Committee proposes amendments to the Preamble of the Covenant and to Articles 12 (paragraph 1), 13 (paragraph 4), 15 (paragraphs 6 and 7). The Committee also proposes the addition of a paragraph 7*bis*.

Articles 10 and 11, paragraph 2 of Article 12, paragraphs 8 and 10 of Article 15 and Articles 16, 17 and 18 were considered by the Committee, which decided not to propose any modifications in the provisions contained therein.

Present Text.	Proposed Amendments.
Preamble.	*Preamble.*
In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war.	In order to promote international co-operation and to achieve international peace and security by accepting the obligation not to resort to war.
Article 12, Paragraph 1.	*Article 12, Paragraph 1.*
The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.	The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will only employ pacific means for its settlement. If the disagreement continues, the dispute shall be submitted either to arbitration or judicial settlement, or to enquiry by the Council. The Members of the League agree that they will in no case resort to war for the solution of their dispute.
Article 13, Paragraph 4.	*Article 13, Paragraph 4.*
The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.	The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered and that they will not take any action against any Member of the League which complies therewith. In the event of any failure to carry out such award or decision, the Council shall propose what measures of all kinds should be taken to give effect thereto ; the votes of the representatives of the parties shall not be counted.
Article 15, Paragraph 6.	*Article 15, Paragraph 6.*
If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.	If the report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will comply with the recommendations of the report. If the Council's recommendation is not carried out, the Council shall propose suitable measures to give it effect.
Article 15, Paragraph 7.	*Article 15, Paragraph 7.*
If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.	If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, it shall examine the procedure best suited to meet the case and recommend it to the parties.
	Article 15, Paragraph 7 bis.
	(New Paragraph.)
	At any stage of the examination, the Council may, either at the request of one of the parties or on its own initiative, ask the Permanent Court of International Justice for an advisory opinion on points of law relating to the dispute. Such application shall not require a unanimous vote by the Council.

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