

Geneva, October 3rd, 1930.

LEAGUE OF NATIONS

AMENDMENT OF THE COVENANT OF THE LEAGUE OF
NATIONS WITH A VIEW TO BRINGING IT INTO
HARMONY WITH THE PACT OF PARIS.

REPORT OF THE FIRST COMMITTEE.

Rapporteurs: M. CASSIN (France) and M. WU (China).

The First Committee, after considering the report drawn up by the Sub-Committee which it had appointed, has approved this report and unanimously decided to submit to the Assembly the draft resolution proposed by the Sub-Committee.

REPORT OF THE SUB-COMMITTEE.

The Tenth Assembly of the League of Nations adopted, on September 24th, 1929, the following resolution:

“ The Assembly:

“ Taking note of the resolution submitted to it on September 6th on behalf of various delegations to the effect 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;

“ 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 work should take into account 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.”

A Committee of eleven jurists, appointed by the Council at its session in January 1930, in execution of this resolution, met at Geneva from February 25th to March 5th, 1930, with M. SCIALOJA in the chair.

On March 8th, 1930, it submitted a report (document A.8.1930.V) containing most carefully framed proposals for amendments.

This report and its proposals were referred to the First Committee with a view to the examination of that important item of its agenda—the question of amendments to the Covenant.

After a very thorough general discussion, the First Committee, on the proposal of M. Rolin and M. Politis, appointed a Sub-Committee to consider the political as well as the juridical aspects of the problem of bringing the League Covenant into harmony with the Paris Pact. The Sub-Committee was also instructed to consider what changes, if any, should be made in the proposals of the Committee of Jurists, and to state in its report whether it considered the question to be ripe for decision this year.

The Sub-Committee,¹ with M. J. Limburg (Netherlands) in the chair, held seven meetings.

I.

The study of the amendments to the Covenant proposed by the Committee of Jurists or, during the Assembly, by the various delegations led the Sub-Committee to draw up, as a compromise and provisionally, the following proposals:

PREAMBLE.

In conformity with the proposals of the Committee of Eleven, 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 Sub-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. ”

ARTICLE 12, PARAGRAPHS 1 AND 2.

The Sub-Committee adopted the following wording:

“ 1. 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 have recourse to war for the settlement of the dispute, and will only employ pacific means for this purpose. If the dispute cannot be otherwise settled, it shall be submitted either to arbitration or judicial settlement or to enquiry by the Council.

“ 2. The award of the arbitrators or the judicial decision shall be given and the report of the Council shall be made within a reasonable period. ”

I. The text which embodies the condemnation of resort to war in the case of a dispute likely to lead to a rupture does not differ in substance from that adopted by the Committee of Jurists. The juridical commentary submitted in this connection by the Committee of Jurists is accordingly not affected.

II. Nevertheless, the order and arrangement of the provisions of the new Article 12 are different from those adopted in the text proposed by the Committee of Eleven.

Instead of commencing with the undertaking to employ only pacific means for the settlement of a dispute likely to lead to a rupture and then enumerating the various forms of pacific procedure which could be chosen if the “ disagreement ” continued, and stating only at the end of the first paragraph the undertaking in no case to resort to war, the new Article 12 begins by excluding resort to war if a dispute likely to lead to a rupture arises between Members of the League, and lays down as a correlative that only peaceful means shall be employed for the settlement of such disputes. The enumeration of the various forms of pacific procedure between which the nations concerned may choose if the “ disagreement ” continues has, therefore, been relegated to the third sentence of the article.

This new text is clearer and more logical.

III. The Sub-Committee, like the Committee of Eleven, considered that there was no reason to omit paragraph 2 of Article 12, the utility of which continues, and is even increased with the extension of forms of pacific procedure and the importance of their success from the standpoint of world peace.

¹ The Sub-Committee consisted of the following:

M. CASSIN (France), Viscount CECIL OF CHELWOOD (Great Britain), M. CHAO-CHU WU (China), M. ERICH (Finland), M. GAUS (Germany), M. GUANI (Uruguay), M. ITO (Japan), M. LIMBURG (Netherlands), M. MIRONESCO (Roumania) (replaced by M. VISOIANO), M. PILOTTI (Italy), M. POLITIS (Greece), M. RAESTAD (Norway), M. ROLIN (Belgium), M. UNDÉN (Sweden).

M. HOFFINGER (Austria) and M. RUNDSTEIN (Poland) were present at the meetings in order to explain the proposals submitted to the Sub-Committee by their respective delegations.

Nevertheless, a unification has been accomplished: all tribunals, including the Council, are bound to reach a decision or make a report within a reasonable time.

ARTICLE 13, PARAGRAPH 4.

The Sub-Committee adopted the following text:

“ The Members of the League agree that they will carry out in full good faith the award or decision rendered in a dispute to which they have been parties. They further undertake in no way to support a State in refusal to carry out an award or decision. In the event of any failure to carry out such an 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. ”

I. In the new draft proposed by it for the beginning of Article 13, paragraph 4, the Committee of Eleven had retained the undertaking by the Members of the League to carry out in full good faith the award or decision rendered, but had substituted in the same sentence, in the place of the original undertaking—now useless—“ not (to) resort to war against a Member of the League which complies therewith ”, the undertaking “ not to take any action against any Member of the League which complies therewith ”.

The Sub-Committee considered it desirable not to merge in a single provision, but to enunciate in two consecutive sentences of the same paragraph, the positive obligations which rest upon the parties to the dispute and the general obligation (negative in character) of full good faith which, on pronouncement of the award or decision, become incumbent upon all the other Members of the League. The provision which, in the first draft, had in view the relations of these Members with a State which complies with the award or decision has been reversed; it now deals with the attitude of these Members in regard to a refractory State, the refusal of which to carry out the award or decision they agree not to encourage.

II. The Sub-Committee unanimously recognised—what the report of the Committee of Eleven had already emphasised—the cardinal importance of ensuring that the award or decision rendered should, whatever the circumstances, be carried out. Any failure of the League in this field would have incalculable consequences and must be guarded against.

The Committee did not feel that it should go beyond the proposals of the Committee of Eleven in regard to the exclusion of the votes of the parties and to the question as to the manner in which the Council should take its decision—unanimously or by a simple majority, in accordance with Article 5 of the Covenant of the League of Nations.

III. The text of Article 13, paragraph 4, proposed by the Committee of Jurists in order to define the part to be played by the Council was adopted in its entirety by the Sub-Committee.

The Sub-Committee unanimously recognised that a “ constitutional duty ” devolved upon the Council to ensure execution, when requested to do so by the State which, having had an award or decision pronounced in its favour, was faced by a persistent refusal on the part of the other party to carry out that award or decision. It was agreed that the French phrase “ *Le Conseil propose* ” and the English “ It shall propose ”, are imperative and constitute a recognition of the Council’s responsibilities in such a case.

IV. It is within the power of the Council to resort, if necessary, to third States, in order to apply to a refractory State measures likely to secure compliance with the award or decision, and it is for the Council to indicate such measures, as also the time at which they are to be applied.

Proposals made by the Council to States which have not yet become parties to the dispute are different in character from injunctions to a State which refuses to comply with the award or decision, the latter being imperatively and absolutely bound by such an award. Members of the League which have not yet become parties to the dispute are entitled, for their part, in virtue of the general principles of Article 5, to send a representative to the Council should the question of their possible participation in the measures contemplated by it arise. At the same time, if presented with a recommendation by the Council, it is their moral duty to comply with it.

V. As noted in the Jurists’ report, the proposed text obviously guarantees the right of States to proceed by themselves to execution of an award or decision rendered in their favour.

The only question remaining open is that of the limits within which the State in whose favour the award or decision has been rendered must restrict itself. It appears in accordance with the general desire to accept the view that the principle of prohibition of resort to war laid down in the Preamble applies to the case. The lack of sufficient certainty on this altogether new point of international law should be an additional inducement for the successful State to resort to the Council, and for the Council to propose measures for the execution of the award or decision.

ARTICLE 15, 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 Council shall invite the parties to comply with the recommendations of the report. The Members of the League undertake in no way to support any party in refusal to comply with such recommendations.”

I. The amendment to Article 15, paragraph 6, of the Covenant proposed by the Committee of Eleven aimed principally at giving the Council's unanimous resolutions a binding character, comparable to, if not identical with, that of arbitral awards or judicial decisions. The Sub-Committee endeavoured to discover whether, under present circumstances, it could propose to the Assembly this important modification of the system established by the Covenant.

Doubts were expressed on this point in several quarters. It was pointed out that the Council was a political organ and, as such, should retain an elasticity and a freedom of decision which might be impeded and hampered if its recommendations were recognised as binding. The very nature of its task would thus, it was said, be changed, for it would act no longer as mediator but as an arbitrator, and sometimes this might even make it more difficult to secure unanimous agreement.

In these circumstances, the Sub-Committee returned to the original principles established by the Covenant.

II. The existing text of Article 15, paragraph 6, of the Covenant has only been modified in so far as was rendered inevitable by the need to substitute for the restrictions it contained with regard to the possibility of legal war, a text in accordance with the principles of the Paris Pact.

The amendments made consist, first of all, in the provision that "the Council shall invite the parties to comply with the recommendations of the report". The word "invite", which does not appear in the present text of paragraph 6, is only a slight strengthening of the force of the conclusions of a unanimous report; it *emphasises* what already existed in virtue of paragraph 4.

Secondly, the Members of the League undertake "in no way to support any party in refusal to comply with such recommendations". This obligation upon third States has been substituted for the present obligation not to go to war with the State which complies with the recommendations, for the reasons explained in connection with Article 13.

III. Both from the point of view of the Council and from that of the States which are parties to a dispute, the proposals to which the Sub-Committee has felt it should restrict itself differ from the conclusions of the Committee of Eleven, in that it is no longer possible to assimilate the effects of the recommendations of a unanimous report by the Council to those of an arbitral award or judicial decision.

The analogy which remains is the undertaking in both cases on the part of third States Members of the League in no way to support any party in refusal to comply with the Council's recommendations: this undertaking would naturally be confined to cases in which the other State had failed to comply with its obligations under Article 12.

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, it shall examine the procedure best suited to meet the case and recommend it to the parties."

The Sub-Committee maintained without any modification the text of the amendment to Article 15, paragraph 7, proposed by the Committee of Eleven.

ARTICLE 15, PARAGRAPH 7*bis*.

The text proposed by the Committee of Eleven was as follows:

"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."

As the obligatory character of the Council's unanimous recommendations has not been retained, it was thought that the principal reason which existed for the insertion of this supplementary provision in the Covenant, and which would have justified its maintenance, no longer remained.

ARTICLE 16, PARAGRAPH 1, FIRST SENTENCE.

The Sub-Committee confined itself to putting forward the following draft:

"Should any Member of the League resort to war in disregard of its covenants under Article 12, it shall, *ipso facto*, be deemed to have committed an act of war against all other Members of the League . . ."

The change made is merely suppression of the reference to Articles 13 and 15 which in the Covenant followed the reference to Article 12. This reference was justified by the fact that those two articles contained partial prohibitions of resort to war, whereas, with the new draft, Article 12 contains a general prohibition of resort to war.

The proposal to alter Article 16 still further, with the object of limiting the application of sanctions, was not adopted.

II.

After completing the first part of its task, which was to examine what changes it might be desirable to make in the proposals of the Committee of Eleven, having regard to the political and the legal aspects of the problem of bringing the Covenant of the League of Nations into concordance with the Pact of Paris, the Sub-Committee had still, under its terms of reference, to pronounce upon whether the question seemed to it to be ripe for final decision this year.

On this point, the Sub-Committee obtained, in the first place, the opinion of the representatives of those Members of the League of Nations which have not acceded to the Pact of Paris and accordingly do not stand in the same relation to the problem as the other Members of the League.

The task of perfecting the Covenant of the League which has been undertaken receives the full sympathy of these Members of the League as being in harmony with their political traditions, but does not present itself to them as an urgent matter. They feel that its achievement should be conditional upon a very thorough examination of the new methods of pacific settlement which are its corollary.

In this connection, mention was made of the possibility that, in the work done by the League in the matter, all reference to the Pact of Paris should be omitted. This, however, would raise another problem.

Certain of the States which have signed or acceded to the Pact of Paris accompanied their signatures or accessions by interpretations of the terms employed in that instrument.

The question might, in particular, be asked whether these interpretations would have the same effect if the case ceased to be one of bringing the Covenant into harmony with the Pact of Paris and became merely one of introducing the principle of prohibition of resort to war into the Covenant of the League of Nations.

The proposed amendments have given rise to other questions as to the problem of the compatibility of the amended Covenant of the League of Nations with other treaties and situations which were the object of express reservations when the Pact of Paris was concluded. The Sub-Committee felt that it would be impossible to settle these questions unless the Governments concerned were given the opportunity to examine them further.

This consideration was one of those which played the greatest part in causing a considerable majority of the Sub-Committee to feel that it would be actually in the interests of the success of the proposed amendments that they should be referred to the Governments for further examination. It was, however, not the only consideration. The question of the conditions of the application of the sanctions of Article 16 of the Covenant to the new obligations is a question on which all the Members of the League do not as yet hold the same views. The discussions in the full Committee and in the Sub-Committee are a proof of this.

Moreover, the Sub-Committee had considered substantial changes in the amendments proposed by the Committee of Eleven. In a matter of such importance, it is entirely appropriate that the Governments of the Members of the League should be able to examine the new texts.

Accordingly, the Sub-Committee proposes that the following draft resolution be submitted to the Assembly:

Draft Resolution.

“ The Assembly:

“ Believing it to be necessary to incorporate in the Covenant of the League of Nations the general prohibition of resort to war and the principle that the settlement of international disputes should never be sought except by pacific means;

“ Appreciating the great value of the report made by the Committee of Eleven;

“ Taking account of the facts that, on some points, the First Committee has been led to consider changes in the proposed texts and that in the course of the discussion certain political aspects of the question have come into view which render it desirable for it to be further studied:

“ Requests the Secretary-General to submit to the Governments of the Members of the League the report of the Committee of Eleven and that of the First Committee, asking them to formulate their observations before June 1st, 1931, and to state, if they so desire, what amendments to the Covenant would, in their opinion, be best suited to attain the object in view.”

ANNEX

AMENDMENTS TO THE COVENANT.

PRESENT TEXT.	AMENDMENTS PROPOSED BY THE COMMITTEE OF ELEVEN.	TEXTS DRAWN UP BY THE SUB-COMMITTEE.
<p><i>Preamble.</i></p> <p>In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war.</p>	<p><i>Preamble.</i></p> <p>In order to promote international co-operation and to achieve international peace and security by accepting the obligation not to resort to war.</p>	<p><i>Preamble.</i></p> <p>In order to promote international co-operation and to achieve international peace and security by accepting the obligation not to resort to war.</p>
<p><i>Article 12, Paragraph 1.</i></p> <p>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.</p>	<p><i>Article 12, Paragraph 1.</i></p> <p>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.</p> <p>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.</p>	<p><i>Article 12, Paragraphs 1 and 2.</i></p> <p>1. 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 have recourse to war for the settlement of the dispute and will only employ pacific means for this purpose. If the dispute cannot be otherwise settled, it shall be submitted either to arbitration or judicial settlement or to enquiry by the Council.</p> <p>2. The award of the arbitrators or the judicial decision shall be given and the report of the Council shall be made within a reasonable period.</p>
<p><i>Article 13, Paragraph 4.</i></p> <p>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.</p>	<p><i>Article 13, Paragraph 4.</i></p> <p>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.</p> <p>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.</p>	<p><i>Article 13, Paragraph 4.</i></p> <p>The Members of the League agree that they will carry out in full good faith the award or decision rendered in a dispute to which they have been parties. They further undertake in no way to support a State in refusal to carry out an award or decision. In the event of any failure to carry out such an 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.</p>
<p><i>Article 15, Paragraph 6.</i></p> <p>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.</p>	<p><i>Article 15, Paragraph 6.</i></p> <p>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.</p>	<p><i>Article 15, Paragraph 6.</i></p> <p>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 Council shall invite the parties to comply with the recommendations of the report. The Members of the League undertake in no way to support any party in refusal to comply with such recommendations.</p>

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.

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, it shall examine the procedure best suited to meet the case and recommend it to the parties.

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, it shall examine the procedure best suited to meet the case and recommend it to the parties.

Article 15, Paragraph 7bis.

(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.

Article 15, Paragraph 7bis.

(Suppressed.)

Article 16.

1. 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 . . .

Article 16.

(No change proposed.)

Article 16, Paragraph 1,

First Sentence.

1. Should any Member of the League resort to war in disregard of its covenants under Article 12, it shall, *ipso facto*, be deemed to have committed an act of war against all other Members of the League . . .
