place. For paragraph 2 of Article 6 began with these words: "In the event of hostilities having broken out, any State shall be deemed to be an aggressor unless a decision of the Council, which must be taken unanimously, shall otherwise declare", instead of simply "unless the Council decide otherwise". (This meant that the Council's decision would be taken unanimously in accordance with its rules of procedure.) The Sub-Committee had thought it better, however, to repeat the fact that its decision should be taken unanimously.

Moreover, the sanctions would not come into force until the Council had enjoined a certain course of action. This was true. Sanctions would not come into force before that event had taken place. This was only natural, since the League was an association founded with the object of preventing the commission of international crimes and of giving help to those of its Members which were unjustly attacked. This provision was a natural one also, because without it complete disorder would reign. One nation would begin war; another would not move. It was, therefore, necessary that the word of command setting the sanctions in motion should come from some quarter. Once the Council had met, ought it to speak that word? How ought it to speak it? ought it to take a vote upon its decision? No; there could be no question of it having to take a vote. Nor was there any necessity for discussion. The Council possessed an obligation and a duty. It could not shelve out of it. It possessed the duty of ordering States which had signed the Protocol to apply against the aggressor the sanctions contained in the necessary articles of the Protocol. In cases of manifest aggression, unanimity was absolutely necessary for a State to be declared a non-aggressor. In cases not covered by paragraphs 1 and 2, it was not a question either of unanimity or of a simple majority. The Council had no right to hesitate. It was under the obligation, if the case was not absolutely clear, to order the belligerents to conclude an armistice, but differences of opinion might arise as to the manner in which the armistice should be concluded. Hence, it was only natural that, in order to settle these details, a two-thirds majority should be provided for, for if the Council's decision was to be taken unanimously, there was a risk that it would never be taken at all. The method in which the Council was to take action was therefore as practical as it was possible to make it.

The Sub-Committee had not defined as aggression the case of a State opposing the execution of an award by means of passive resistance. Was it considered that this passive resistance justified the automatic and immediate putting into force of sanctions, and that the League of Nations should have recourse to war without having done all that it could beforehand to obtain the pacific execution of the decisions?

Let the Committee realise the great precautions which had been taken in drafting Article 4. When the award was not executed, the Council would do everything it could to see that its award was respected. If it was unsuccessful, it would make use of the provisions of Article 13 of the Covenant, which stated that it was the duty of the Council to propose the necessary measures. It was obvious that a more precise formula would have been preferable. The Sub-Committee had sought for such a formula for a long time, but in vain. In this case, however, one of the measures which, for example, the Council might adopt would be to say to the States which had been unable to obtain the execution of the award: "Go ahead; we will support you". The Council might even go so far as to authorise it to obtain justice by its own efforts. The formula covering this case, however, had been drafted with as much latitude as possible. Some hoped that its success would be obtained by friendly pressure brought to bear on the interested Power. The Council might also succeed by decreeing the application of certain economic sanctions to be applied with skill and care, but no general rule could be laid down. When the whole nature of these problems was discussed, it was readily perceived that they could not be treated with mathematical strictness. Many unknown factors would always arise. The League was aiming, not at substituting itself for the sovereignty possessed by nations, but at arriving at a compromise with them for the common purpose of avoiding war. This should not be forgotten.

It was obvious that, when the word "obligation" was used, that word possessed a moral value far greater for nations than for individuals. The Committee should be very pleased to see that, in Article 6, paragraph 2, in the case of a manifest aggression, the unanimous opinion of the Council would be necessary before it could be decided that no aggression had taken place. As regards the rest of its duties, it was not necessary for the Council to have a condition to the effect that, when setting in motion the sanctions, there was no question of determining whether the Council ought to be unanimous. Its duty was to set the sanctions in motion and to inform States of their nature. It would certainly have been pleasanter, perhaps, to say: "At such an hour, at such a date, after the facts of the case have been noted by the policeman of the League, the sanctions will be applied". This was more difficult to apply than to state. The whole question was a difficult and complex one. When the Sub-Committee had discussed cases of aggression, it had found certain cases which were not covered by the definition in the Protocol, but which were, nevertheless, marked examples of aggression; for example, the case in which a State had accepted arbitration and which, after its acceptance, had nevertheless had recourse to war. This was a case which might arise and, in those circumstances, the Council should not hesitate, but it should take the necessary measures, that was to say, it should oblige the combatants to cease fighting. These were the important points in the clause which had been submitted to the Committee.

M. Loucheur asked the Committee, therefore, while fully realising the omissions in the text before it, and while recognising that it might have been possible to go further, not to lose sight of the fact that it had met in order to achieve some practical result, in order to harmonise differing points of view, and in order to end by establishing peace. It was for this reason that the Sub-Committee begged the Committee to adopt Article 6 in the form in which it had been drafted.
Sir Cecil Hurst (British Empire) said that this was a question of capital importance. It was not a question of voting or procedure. It was a question of fact. As soon as the Council had determined who was the aggressor, the facts themselves would make matters plain to everyone, and it was certain that the Council would take action — there could be no doubt of that. If it did not do so, it would fail in its duty.

M. Guerniero (Salvador) referred to the discussion which had taken place concerning the replacement of the words "resort to war" in the first paragraph of Article 2 by the expression "resort to force".

He asked whether that proposal had been rejected because they disliked the idea of combating violence and force, or because they did not dare to attack, at the very root, certain memories of the old system of international law which justified resort to arms for the purpose of obtaining justice?

If M. Limburg's proposal had not met with the approval of the majority of the Committee, it was solely because the new order which that proposal would have established would have led them into a system so complicated and far reaching that incalculable and almost insuperable obstacles would have to be overcome.

M. Fernandes, the Brazilian delegate, had pointed out in this connection that the time was not yet ripe for the abolition of certain principles of the old international law. On the contrary, he thought that they would never have a more favourable opportunity for taking such action. If they had fear of the idea of destroying the menace of war, they would show by their attitude that two conflicting currents of opinion existed. One group would wish to retain its object by leaps and bounds, without a thought for the dangers and difficulties which it left behind it. The other group, also having as its ultimate aim the establishment of universal peace, desired to attain its goal by clearing the path of all obstacles which might frustrate the attainment of the object. All the greater States, united in their desire to abolish warfare, belonged to the first group. The second group was composed of the smaller States, which had more essential interests at stake, namely to destroy, together with war, those innumerable seeds of war which existed in every act of violence or force — seeds which often did not germinate because the States in which they were produced were not in a position to react by similar methods of force and violence.

All measures of coercion and reprisal, even those measures of force which were generally employed by States for the protection of their nationals in foreign territory, were irreconcilable with the new international regime established by the Protocol now under discussion. They constituted so dangerous a menace to peace that they must be abolished in terms which would leave no grounds for misunderstanding.

He, therefore, proposed that Article 6 should be supplemented by the following paragraph:

"The employment of force or violence against a State Member of the League, without previous authorisation by the Council in the terms of this Protocol, shall be regarded as being equivalent to a resort to war."

That paragraph was all the more necessary as an article had been eliminated from the original text of the Sub-Committee. That article had stated: "The signatories undertake to refrain from any action which may constitute a threat of aggression against another State".

The suppression of this article was all the more regrettable because it might, to some extent, have given some satisfaction to States asking to be guaranteed against acts of force and violence.

M. Rolin (Belgium) wished to add a few words to the explanations given by Sir Cecil Hurst. The Sub-Committee had not been concerned with preventing an intervention on the part of the Council, a task which appeared to be impossible, but with giving the Council such instructions as to its course of action as would prevent discussion. It had been desired to impose on each Member of the Council individually the obligation to recognise aggression in certain manifest cases, cases which Sir Cecil Hurst had so energetically defined as "the automatic tests, the facts themselves", which in certain cases would determine the aggressor.

It was true, as M. Osusky had pointed out, that a great number of facts might be disputed, but in these cases it was only a question of material facts. The Sub-Committee had wished to impose upon the Council as a standard of judgment legal facts, that was to say facts for which the Council itself might be responsible, and of which the proofs might be found in the archives of the Secretariat. On facts of this kind there could be no possible hesitation. It was true that material facts were not always conclusive from the point of view of aggression, although they might be manifest. It was possible to conceive that aggression might have been committed by the State which had accepted arbitration. It was the ascertaining of this material fact concerning which the Sub-Committee demanded that a unanimous decision should be taken. In default of this unanimous decision, the very persons who alleged that the legal presumptions were destroyed in a certain case by the material facts would be compelled to adhere strictly to the legal presumption.

The rigid procedure in regard to presumptions which the Sub-Committee proposed was intended not only to make it possible to determine the aggressor in numerous cases automatically, but also — and the attention of small countries was drawn to this point — to cause a State which refused to arbitrate to run such a risk of being declared an aggressor in the case of hostilities as to make such a risk the greatest force behind the obligation to arbitrate imposed by the Protocol.

Article 6 (continuation of the discussion).

M. Loucheur (France), Rapporteur, explained the reasons why the Sub-Committee had not been able to accept M. Guerrero’s amendment.

Should the Sub-Committee change the expression “resort to war” into “measures against force or against violence”? In so serious a matter, when the automatic application of penalties must result, it was imperative that terms should be used with precision.

The expression “resort to war” was used in Articles 13, 15 and 16 of the Covenant. That appeared to the Sub-Committee to be a sufficient reason for proposing that the expression should be retained.

Moreover, the article dealing with threats of aggression had been retained by the Third Committee, which had developed it and inserted it in its proper place, namely, among the articles relating to the dangerous period during which a threatened State might appeal to the Council, whereupon the Council might, should the threat of aggression appear to it to be well-founded, decide upon the automatic entry into force of the penalties provided.

He asked M. Guerrero to believe that the great Powers had been guided, not by the thought of avoiding the question of this resort to violence, but by the desire to remain within the limits laid down by the Covenant. The day would come when these new ideas would prevail, but it was necessary to advance step by step along this path, lest failure should result.

It was for these reasons that he called upon M. Guerrero to withdraw his amendment.

M. Guerrero (Salvador) thanked M. Loucheur for his explanations. As the article he had quoted did not deal with the acts of violence to which his amendment applied, he stated that he could not withdraw his amendment.

The Chairman announced that the Committee was called upon to discuss Article 6 and M. Guerrero’s amendment, it being understood that the part of the article to which M. Adachi’s amendment referred should be reserved for subsequent discussion.

This was agreed to.

M. Rolin (Belgium) said that he would vote for M. Guerrero’s amendment as he would have voted for M. Limburg’s proposal, but with a reservation. He considered that, if the Committee did not adopt this amendment unanimously, one of those cases would arise in which the majority would act wisely in not insisting upon its own point of view.

For, if this amendment were inserted in the Protocol, there would be a risk of arousing opposition which would jeopardise the fate of the Protocol itself, and, in consequence, also the whole fabric of peace which it was their desire to construct.

M. Guerrero, however, had no reason to fear that the rejection of his amendment would, in practice, entail serious consequences, since, in the case of acts of violence against any State, it was open to the latter to regard this act as an act of war, and appeal to the League of Nations.

M. Fernandes (Brazil) explained that it had never been his intention to say to M. Guerrero that they had not yet arrived at a time when it was possible to foresee the end of all measures of violence in international relations.

He had merely wished to state that the occasion when the Protocol was being prepared was not the time to try by indirect means to oblige the States to accept opinions which they did not share.

The speaker concurred in M. Guerrero’s opinions, but he thought that to attempt in that Protocol to force other States also to accept them would be likely to endanger the success of the Protocol.

M. Adachi (Japan) assured M. Guerrero that he had considered the question very carefully, and that, in principle, he was in agreement with him, but that, having regard to the fact that the introduction of this amendment would disorganise the whole system which they were in process of developing, he thought it desirable that he should not press the point.

Moreover, as had already been said, M. Guerrero’s views would in actual practice be met satisfactorily.

The moment had, in all probability, already come when it was possible to determine the necessary rules of law, but if they wished to ensure the success of the Protocol it was not expedient to do so in that place.

1 Article 6 became Article 10 in the Final Protocol.
M. Schaloja (Italy) wished to add to the arguments which had already been given an argument of a technical character.

In private law there existed a conception which had for centuries been the subject of study by jurists, namely, "status necessitatis", but it had been impossible to reach any entirely satisfactory result. How, therefore, was it possible to hope to find now, in the short period of their disposal, a satisfactory system which should be applicable to the case dealt with in M. Guerrero's amendment?

An endeavour to lay down rules, without having thoroughly examined all cases which might arise, would, moreover, entail the risk of inflicting flagrant injustice.

In view of these technical considerations, which added strength to the reasons already advanced by the preceding speakers, would it not be possible for M. Guerrero to withdraw his amendment while still maintaining his point of view?

M. Rolin (Belgium) did not think that there was any real divergence of opinion between M. Schaloja and himself, but the expression "status necessitatis" would always have a painful sound in Belgian ears. Article 2 had dealt with the possibility of acts of violence permitted in case of resistance to an aggression, but the delegate of Belgium could not conceive of any other "status necessitatis" justifying an exception to international undertakings. He wished expressly to state this reservation.

M. Guerrero (Salvador) noted with satisfaction the assurances which had been given him that any act of violence or force would be taken into consideration by the Council, since this was in harmony with the spirit of the Protocol; and, in order not to hamper the pacific machinery which they were endeavouring to set up, he would give his adhesion to the reasons advanced by the French, Japanese and Italian delegates, and withdraw his amendment. He would only ask that mention of his remarks should be made in the report.

M. Loucheur (France), Rapporteur, said, in reply, that this would be done.

M. Politch (Kingdom of the Serbs, Croats and Slovenes) asked the Rapporteur for some explanation in regard to Clause 1 of Article 6. This paragraph, he said, did not provide for all methods of pacific settlement of international disputes. There was, for example, the possibility of a dispute being brought before the Assembly. The Covenant laid down explicitly that this course might be taken, and the Serbian delegate asked the Rapporteur what would happen in the event of a case being brought before the Assembly, not at the instance of the Council, but upon application by a Member of the League.

Moreover, in the same paragraph of Article 6, the expression "judicial sentence or arbitral award" occurred, whereas the Covenant speaks of "the award of the arbitrators". He wished to know whether there was any reason in justification of this difference of terminology.

Finally, he wished to remark that M. Osusky had pointed out that there were certain drawbacks in speaking of a presumption of aggression, but the same held good of all legal presumptions, for instance, that which formed the foundation of the whole structure of their civil law: "pater is est quem justae nuptiae demonstrant". There could be no presumption without drawbacks.

He said he made no proposal. He merely recommended his observations to the kind attention of the Rapporteur.

M. Loucheur (France), Rapporteur, replying to M. Politch, said that the question he had raised had not escaped the Sub-Committee's attention, and that it was a very difficult point. In any case, the Sub-Committee would have to propose an additional paragraph to take account of the observations made by the delegate of the Kingdom of the Serbs, Croats and Slovenes.

He explained the way in which paragraphs 9 and 10 operated, and laid stress on the fact that, if the Covenant provided for a unanimous decision of the Council, it was a unanimous decision which had simply the value of a recommendation. The Sub-Committee had decided that, at the request of one of the parties concerned, the Council should refer the question to arbitrators. It was, therefore, only by the tacit or express agreement of the parties concerned that the Council would deal with the dispute.

What would happen if, in conformity with this article, one of the parties, within the fourteen days from the date on which the dispute had been brought before the Assembly, were to request that the matter should be referred to the Assembly? According to the text, such a procedure would lead to a unanimous recommendation by the Assembly and the Council, but that unanimous recommendation would have no more force than the unanimous recommendation of the Council, as specified in the original text.

Was it necessary to extend the new system prepared by the Sub-Committee for the procedure before the Council to the procedure before the Assembly? The difficulties were obvious. Procedure before the Assembly was always difficult. The Assembly would have to be convened and some time would elapse before representatives of the different Powers could meet at Geneva.

He realised that the Committee ought to consider this question and propose a definite text.

In reply to the second question asked by M. Politch, he said that the word "decision" was a word common to both judicial and arbitral procedure.

He was of opinion that the word was sufficiently clear in the case in point.

M. Osusky (Czechoslovakia) referred to a statement by the Rapporteur that, in the case of manifest aggression, no decision was required. He thought there might be room for discussion as to whether or no a State had refused to submit a dispute to pacific procedure.
He accordingly anticipated much greater difficulties in the future than the one they were trying to avoid. However, he would not present amendments, and would persist in the conviction which he had stated to the Committee during the present meeting.

While regretting that the Committee could not go one step further, he recognised that what had so far been done represented substantial progress. He was fully alive to the difficulties indicated by M. Politch in the application of the system of presumption. But he stated that, though the question of paternity might not be discussed, as it might present serious difficulties, it was always necessary to decide who was the husband.

M. BURCKHARDT (Switzerland) admitted that the system of presumptions suggested by the Sub-Committee would simplify the task of the authority entrusted with the duty of determining the aggressor; but it was not so satisfactory for the State which would be affected by that procedure, without perhaps actually being the aggressor. There was a risk that this system of presumptions, if applied, might lead to injustice. It was conceivable in civil law, but it was not admissible in penal law.

The State, for example, which refused to follow the procedure of arbitration was certainly wrong, but it did not follow that it had begun hostilities. There were two different questions, and he would have scruples in accepting this system of presumptions.

He then asked whether a State which had been deemed to be the aggressor on one of the presumptions specified in Article 6 would be entitled to prove its innocence before the Council. He wished to know also whether the Council, when called upon to decide by unanimous vote which of the States was the aggressor, would pronounce judgment in the absence of that one of its Members directly concerned in the dispute?

M. LOUCHEUR (France), Rapporteur, replied in the affirmative to both the questions asked by M. Burckhardt.

Article 6 was adopted, subject to the reservation made by M. Adatci with regard to M. Guerrero's amendment.

Article 7.

M. DE PALACIOS (Spain) pointed out that Article 7 did not provide for the case of States Members of the League which had not signed the Protocol, and he suggested that they should also be invited to accede to the Protocol in the event of a dispute with a signatory State.

M. LOUCHEUR (France), Rapporteur, replied that, by placing those States in the same position as signatory States, they would be forced, if one of them refused to comply with the provisions of the Protocol, to apply to it penalties not contemplated in the Covenant, while the State in question would merely be bound by the obligations in the Covenant.

In the event of a dispute between a State signatory of the Protocol and a non-signatory State, it would be advisable for the Council to bring into play Article 4, but not to apply to the non-signatory State the penalties specified in the Protocol. There was no point in introducing a special provision to that effect into the Protocol. It would be enough to mention that contingency in the report.

M. DE PALACIOS (Spain) expressed the opinion that the question should be dealt with in an additional provision, and he asked the Rapporteur to put the point to the Sub-Committee.

M. LOUCHEUR (France), Rapporteur, accepted the latter suggestion.

M. POLITCH (Kingdom of the Serbs, Croats and Slovenes) asked whether the Protocol would be open for the adhesion of States not Members of the League, and what would be the legal position of such States if they signed the Protocol.

M. LOUCHEUR (France), Rapporteur, replied that the Sub-Committee had given the point careful consideration, and had come to the unanimous conclusion that the Protocol should be open for the signature of States not Members of the League.

Article 7 was put to the vote and adopted.

M. OSUSKY (Czechoslovakia) stated that, on page 6 of the draft circulated on September 22nd, there was an article relating to Article 19 of the Covenant. As he found no mention of it in the latest edition of the draft, he would be glad to know whether it had been omitted accidentally or deliberately.

M. LOUCHEUR (France), Rapporteur, replied that the matter had been submitted to the Sub-Committee only as an amendment by one of the members, and that it had been decided to do no more than make a full reference to it in the report.

M. BABINSKI (Poland) said that a reply was necessary to a question bearing upon the composition of the Permanent Court of International Justice in regard to advisory opinions. He wished to know whether the Committee thought the subject should be raised immediately, or during the general discussion.

After obtaining the views of the members of the Committee, the CHAIRMAN intimated that the question might be dealt with at once, but in the form of a general discussion on a technical point, and not as a discussion which could lead to an amendment of any kind.

1 Article 16 in the Final Protocol.
M. Babinski (Poland) stated that the Rules of the Permanent Court of International Justice did not provide for bringing in national judges in questions involving an advisory opinion. And yet the spirit of the Statute of the Court was based on the idea of the right of the interested party to have a national judge in each case. On the other hand, Article 31 of the Statute of the Court provided for this judge, but it was true in the case of a contest brought before the Court by both parties. The result was that, when certain disputes were under consideration, one of the parties might have a judge at the Court while the other would not. According to the practice followed up to now, a national judge had sat in the Wimbledon case, but not in the Jaworzina case, in which an advisory opinion had been asked for. That was an unfair state of things, which must be remedied. Article 24 of the Statute of the Court, which provided that certain judges might not sit in exceptional cases, did not appear sufficient.

It was indeed impossible in the Protocol to make amendments to the Statute of the Permanent Court of International Justice. The Court itself was not competent to amend the Statute. There were, accordingly, only two possible solutions of the problem: either the report might contain some reference to this matter, which the Court would interpret as a suggestion for a modification of its Rules of Procedure, or a draft resolution to that effect might be submitted to the Assembly.

If the Rapporteur preferred to adopt the latter suggestion, the following might serve as the text for the draft resolution:

"The Assembly, having regard to the terms of Articles 4 and 5 of the Protocol, adopted by to-day’s resolution, and to the principle of the equality of the parties appearing as litigants before the Court, which is embodied in Article 31 of the Statute of the Court, requests the Permanent Court of International Justice to consider the possibility of increasing the number of its members by adding ‘national’ judges for all questions submitted for an advisory opinion to the Court."

M. Loucheur (France), Rapporteur, considered that the matter was not within the province of the Committee. It was not the Sub-Committee which had created the advisory opinion of the Court; that was mentioned in the Covenant as one of the prerogatives of the Council.

The Statute of the Court had been discussed and adopted by the Assembly after the Covenant had been framed. Those who drafted the Statute had certainly anticipated that there would be decisions on disputes which would raise the question of national judges.

Article 24 of the Statute endowed the President of the Court with certain rights, and it was for him to exercise those rights.

M. Babinski’s suggestion should be made general so as to apply to all advisory opinions asked for by the Council.

The Sub-Committee was anxious strictly to observe Article 14 of the Covenant, and could not deal with any question outside its province unless the question was referred to it by the Assembly.

M. Babinski (Poland) pointed out that, when submitting the proposal, he had had no thought of modifying the Statute of the Court. But the fact remained that the jurisdiction of the Court would in future be extended. It would, therefore, be expedient to call the attention of the Court, as courteously as possible, to the facts he had stated, which appeared to him to call for full consideration.

M. Loucheur (France), Rapporteur, observed that he had to keep strictly to the law and the texts. If the Committee should so decide, however, he would have no objection to the insertion in the report of a suggestion, in courteous terms, of the nature indicated by M. Babinski.

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NINTH MEETING

Held on Friday, September 26th, 1924, at 3 p.m.

Sir Littleton E. Groom in the Chair.


Article 5 (continuation of the discussion).

The CHAIRMAN pointed out that, at the last meeting, the consideration of Articles 5 and 6 had been held over, in order to allow the amendments submitted by the Japanese delegation to be examined.

Sir Cecil Hurst (British Empire) said that he wished, before proceeding further, to propose to the Committee and to the Japanese delegation a text which, he thought, might constitute a compromise.
He believed that it would not be difficult to meet the wishes of the Japanese delegation, as expressed in their amendment. The question was obviously of the greatest importance. In drawing up the Covenant in 1919, great care had been taken to avoid all interference with the sovereignty of States and also to avoid giving to the League of Nations the character of a super-State. It was just as necessary that they should be governed by the same principle now. The powers of the Council had been carefully defined, and they should take no action which might justify a suspicion that the present Protocol was intended to increase those powers. As he was quite sure that this was also M. Adatci's intention, he felt that it was only a question of method which separated the Japanese and British delegations.

In order to attempt to solve the difference between the two delegations, he proposed that they should omit Article 18 of the Protocol, which lays down that "the present Protocol shall not in any way detract from the obligations arising under the Covenant", and should replace it by the following text:

"The undersigned agree that except as herein provided the present Protocol shall not affect in any way the rights and obligations of Members of the League, as determined by the Covenant, including in particular the duty of the Council to endeavour to achieve by conciliation the settlement of disputes so as to assure the maintenance of peace and the good understanding between nations."

As Article 18 concerned all the articles of the Protocol, and not only Article 5, the modification proposed by the Japanese delegation would have a wider effect.

The Chairman re-read the text of the Japanese amendment to Article 5:

"Without prejudice to the Council's duty of endeavouring to conciliate the parties so as to assure the maintenance of peace and of the good understanding between nations."

M. Adatci (Japan) thanked Sir Cecil Hurst for the efforts he had made to meet his wishes. He must, however, adhere absolutely to the text of his amendment, the object of which was to fix and define the duty of the Council in a question regarded as forming part of the jurisdiction of States.

If, however, the Committee did not feel itself able to accept this text, he proposed that — for reasons which did not require explanation — it should omit in Article 6 the sentence to which allusion had been made at a former meeting.

M. Loucheur (France), Rapporteur, on rising to speak, stated that he proposed to address the Committee not as Rapporteur but as French representative.

The Committee had before it three proposals: the first was contained in the Japanese amendment to Article 5. The second, which had also been submitted by M. Adatci, was that, if the first amendment were rejected, they should omit in the third paragraph of Article 6 the following sentence: "or had disregarded a unanimous report of the Council, a judicial sentence, or an arbitral award recognising that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State." Finally, a third proposal, submitted by Sir Cecil Hurst, which was almost identical with the Japanese amendment, but which, being inserted in Article 18, would not have at all the same force.

The French delegation would vote for M. Adatci's amendment. Had there been in this amendment one sentence or one word directed against any other State, it would have voted against the amendment. But when examining the text they should consider above all the lofty idea which it embodied.

It had been decided that a State which disregarded the Council's recommendation and resorted to arms should be declared the aggressor. In such circumstances, it was well to bear in mind the fact that it was still the Council's duty to make one supreme effort towards conciliation. The parties might accept conciliation or they might not, but, before they declared the party which rebelled against a unanimous decision of the Council to be the aggressor, all friends of peace were bound to make one last effort to prevent war.

If it had been argued that, as this amendment had been submitted by the Japanese delegation, it was more significant than might appear on the surface. In that case they should seek to ascertain what was its underlying idea, and they would find that this idea was: the Council should make a fresh effort. Was not that the object pursued by the League of Nations, the task which the League had undertaken?

At any time, even after the complete breakdown of the whole procedure, it was the duty of the Council and the Assembly to watch over the peace of the world. France, ever faithful to the policy which she had defended since the opening of the fifth Assembly, would therefore give her support to the Japanese delegation.

Sir Cecil Hurst's hesitation was quite comprehensible. Having carefully considered the question, he had tried to find some common ground for agreement with M. Adatci, but the compromise which he proposed to the Committee was neither satisfactory nor effective. To say in Article 18 that the Council should work to maintain peace was to place at the end of the Protocol a sentence which might well have been included in the preamble. In point of fact, the new Article 18 proposed by the British delegate had no connection with the question raised by the Japanese delegation.

Seeing that it would be impossible for any State to regard M. Adatci's proposal as a hostile act, or even as a desire to interfere in the internal affairs of other countries, the Committee...
would be well advised to state that it should at all times be the duty of the Council to seek to obtain peace and conciliation.

The Chairman pointed out that they had endeavoured to make compulsory arbitration the basis of the whole procedure in every eventuality, and, if the Council thought it necessary, questions would be referred to the Permanent Court of International Justice, which would be bound to decide whether the dispute submitted to it did or did not affect the domestic jurisdiction of a State. All disputes were in their essence capable of endangering the peace of the world, and it was for that reason that they had endeavoured to prevent the peace of the world being disturbed by the procedure and methods which they advocated.

By signing the Protocol the parties would undertake to submit to the decision of the arbitrators, the Council, or the Permanent Court of International Justice, and they would all feel bound to honour their signatures. M. Adatci's proposal, however, appeared to him to involve the making of a selection or choice among the various questions thus to be decided. M. Adatci said, in connection with those special cases to which he had referred: "When the Council has decided to submit those questions to a court of arbitration or to the Permanent Court, and the court of arbitration or the Permanent Court has notified its decision, instead of a State conforming to these decisions — which would mean the automatic settlement of the question referred to those Courts — the Council should still endeavour to act as a conciliator and maintain the peace of the world."

Why should they make such a selection, which would give them the appearance of differentiating between various categories of disputes?

Obviously one of the main functions of the Council was that of safeguarding the peace of the world, but peace should be maintained in conformity with the provisions of the Covenant, that was to say, by applying the same rules of procedure to all disputes. He feared that M. Adatci's proposal might have a contrary effect.

The Protocol in its entirety should be regarded as one harmonious whole. If M. Adatci's proposal were added to Article 5, that article would only apply to the questions specifically referred to in the article. If, however, they inserted the addition in Article 18, as Sir Cecil Hurst had suggested, it would apply to the whole Protocol.

He therefore appealed to M. Adatci's spirit of conciliation and asked whether he could not accept Sir Cecil Hurst's proposal. Personally, he could not agree to the insertion of M. Adatci's proposal in Article 5.

M. Limburg (Netherlands) appealed to the Japanese representative to accept Sir Cecil Hurst's proposal — a proposal which met his wishes in every way.

In point of fact, however, he thought that both the Japanese delegation's amendment and Sir Cecil Hurst's proposal were unnecessary, because in any circumstances it was always the duty of the Council to watch over the peace of the world, both before and after an arbitral award had been given or a unanimous recommendation adopted. But if they had to choose between the two proposals, he preferred Sir Cecil Hurst's, because, if they accepted the amendment of the Japanese delegation, there would appear to be an antithesis or distinction between the judicial decision provided for in Article 5 and other judicial and arbitral decisions.

They should not forget that, when Article 7 took effect — when, in the opinion of the Court, which was to be binding on the arbitrators, a question was found to be one which, under international law, was solely within the domestic jurisdiction of one of the parties, then there could be no uncertainty as to the award which the arbitrators must render. He took it that the Japanese delegate did not wish to draw a distinction between different awards given, and, if that were so, he ought to accept Sir Cecil Hurst's proposal.

M. Rolin (Belgium) said that he could not see why the Japanese representative was unable to accept Sir Cecil Hurst's proposal.

There were various kinds of dispute. There were disputes which might affect questions of domestic jurisdiction, and it was these which the Japanese representative had in mind. He asked that, even after the Court of Justice had given its opinion, conciliation might still be possible. That was a legitimate demand, and he (M. Rolin) thought that a country, though it might be little disposed to accept conciliation so long as its rights were being contested, would very often, when once its rights were recognised, show a greater disposition to accept such procedure. He therefore thought that conciliation might still be of use even when a dispute had been definitely settled.

The idea of conciliation was that the two parties to the dispute should endeavour to discover in a friendly spirit some common ground for agreement. It was, therefore, right that provision should be made for conciliation in Article 5, but if they made provision for the possibility of conciliation in certain cases referred to in Article 5, they would run the risk of weakening the effect of the judgment by excluding from Article 5 cases to which the procedure of conciliation might equally well be applied.

Let them suppose that the question was one of a request involving the infringement of a country's established and incontestable rights, such as territorial rights or the rights of political independence. Certainly his own country, Belgium, if such a request were addressed to her, would absolutely refuse to consider it or to accept any conciliation until she had obtained satisfaction from a juridical point of view. That was why he had stated that, even if an appeal were made to arbitration, the arbitrators would be bound to seek the opinion of the Permanent Court of International Justice.

Law was an essential guarantee for small countries. He should add that a country, after obtaining satisfaction at law, might find that it was wholly in its interests, with a view to improving the international atmosphere, to accept, after it had obtained legal guarantees, the
procedure of conciliation which the Council might propose to it. Conciliation might also prove useful in the cases covered by Article 4.

If M. Adatci thought that the place in which Sir Cecil Hurst proposed to insert his amendment was too far away from these articles and would deprive the amendment of all practical value, and if, on the other hand, Sir Cecil Hurst thought that Article 5 was of too restrictive a nature to allow of the possibility of conciliation in all cases, they might perhaps satisfy both M. Adatci and Sir Cecil Hurst by incorporating Article 5 with Article 4 and making Sir Cecil Hurst’s proposal into a new Article 5.

One advantage of this solution would be to eliminate the temporary disagreement between M. Adatci and Sir Cecil Hurst.

M. LOUCHEUR (France), Rapporteur, proposed that, as M. Rolin had suggested, Article 5 should be combined with Article 4 and inserted after paragraph 5. Sir Cecil Hurst’s proposal would then form Article 5, and would apply to all cases provided for in Article 4. They would thus attain their object, and both parties would be satisfied.

M. ADATCI (Japan) regretted to note for the first time that a proposal of his had not met with unanimous approval, for all the proposals which he had submitted hitherto at all the meetings had been adopted unanimously.

He thanked all the members of the Committee for the sincere spirit of conciliation which they had displayed, but, as his amendment could not obtain unanimous approval, he felt himself obliged to withdraw it, and, on behalf of the delegation, to make every possible express reservation as to the whole system which the Committee proposed to establish.

M. LOUCHEUR (France), Rapporteur, said that he adhered to his point of view, although, like all his colleagues, he was profoundly impressed by M. Adatci’s statement and realised that the position was particularly serious for Japan.

He asked M. Adatci to consider before the following day whether it might not be possible for him to agree to his proposal. If the Committee agreed with the suggestion, the Drafting Committee might modify the text as required.

M. ADATCI (Japan) thanked M. Loucheur for his attempts to bring about an agreement and for according him this delay.

M. SCIALOJA (Italy) stated that, if M. Adatci’s amendment had been put to the vote, he would have voted for it. He would be glad, therefore, if they could draw up a text which would satisfy M. Adatci, and pointed out how necessary it was that they should be able to submit to the Assembly a text which had been unanimously adopted by the Committee.

M. OSUSKY (Czechoslovakia) pointed out that, at their meeting on the previous day, he had proposed the establishment of a body whose duty it would be to reach a decision concerning any disputes which might arise. They were now proposing a system of conciliation. In order to make sure that this system would give good results, it would be advisable to ask the Chairman, the Rapporteur, M. Adatci and Sir Cecil Hurst to endeavour to come to an agreement.

M. FERNANDES (Brazil) said that most States in the world were already making a considerable sacrifice in allowing the possibility of continuing negotiations after an arbitral award. This sacrifice would be rendered far heavier if, for the purposes of obtaining conciliation, countries were made to suffer any infringement of their right of internal sovereignty. Some solution should be found which would be free from such a serious disadvantage.

The CHAIRMAN accordingly stated that the point in dispute, raised by M. Adatci’s amendment, would be reserved until further notice. As soon as a solution had been found the Committee would be convened to discuss it.

M. LOUCHEUR (France), Rapporteur, wished to know whether the Committee agreed with his suggestion. Naturally, as M. Osusky had proposed, Sir Cecil Hurst would assist in the drafting.

M. Loucheur’s proposal was adopted.

Article 7¹.

M. LOUCHEUR (France), Rapporteur, pointed out that two questions had been referred to the Sub-Committee.

First, the Sub-Committee had been asked to re-draft Article 7, and it proposed for this article the following text:

“The signatory States agree that, in case of dispute between one or several of them and one or several States not signatory to the present Protocol and not Members of the League of Nations, these non-Member States shall be invited, in the circumstances contemplated by Article 17 of the Covenant, to submit to the provisions accepted by the signatories of the present Protocol for the purpose of pacific settlement.

¹ Article 17 in the Final Protocol.
“If the State thus invited refuses to accept these conditions and resorts to war against a signatory State, the provisions of Article 16 of the Covenant as defined in the present Protocol shall be applicable to it.”

He pointed out that the Spanish delegate had asked for the addition to this article of a sentence defining the respective positions of Members signatory and Members non-signatory to the present Protocol in case any dispute arose between them. The Sub-Committee, in its anxiety to avoid any modification of the obligations contracted under the Covenant between non-signatory States, did not see its way to accept the Spanish delegation’s amendment. However, in order to meet this delegation’s wishes to a certain extent, it had obtained the consent of M. Politis to the inclusion in the report of a phrase which would make it clear that, when a dispute arose between States signatory and States non-signatory, the latter would be invited to conform to the procedure laid down in the Protocol, although no sanctions could be taken against them.

M. de Palacios (Spain) thought the inclusion of a special provision concerning non-signatory States would have been preferable, but in a spirit of conciliation he accepted M. Loucheur’s suggestion.

The new text proposed by the Sub-Committee for Article 7 was adopted.

Interpretation of Sub-paragraphs 8 and 9 of Article 15 of the Covenant.

M. Loucheur (France), Rapporteur, said that, according to sub-paragraphs 8 and 9 of Article 15 of the Covenant, in all the cases provided for in this article the Council could refer the dispute to the Assembly, before which the questions might be brought at the request of one of the parties. The request should be so referred within fourteen days after the submission of the dispute to the Council. When the dispute was referred to the Assembly, the latter might, if it was so decided by a unanimous vote of the Council and a majority vote of the Assembly, pass a recommendation which would have the same value as a unanimous recommendation of the Council.

As regarded this point, a fresh procedure was proposed. The Council could not proceed to an examination of the dispute until it had exhausted other means, in particular until it had offered the parties amicable arbitration or, at the request of one of the parties, had set up compulsory arbitration. The problem to be solved was how to adapt this fresh procedure to the old one.

What was the position in regard to the unanimous recommendation of the Assembly? The new system made the unanimous decision of the Council binding, but only after a whole series of precautions. If only one of the parties so requested, arbitration became compulsory and the unanimous decision of the Council only took effect if the parties had, so to speak, at least tacitly agreed that the Council should act as arbitrator.

Should the same system be applied to the Assembly? Certain delegates had proposed that they should do away with the intervention of the Assembly. The Sub-Committee thought that would give rise to difficulties in view of the fact that the appeal to the Assembly might have a great influence from the point of view of public opinion.

Sir Cecil Hurst had proposed a solution which appeared to be simpler, but was not very practical. He suggested that in Article 4 of the Protocol the word “Council” should be replaced by the word “Assembly”. In that way the Assembly would be substituted for the Council either by the wish of the Council itself, in virtue of sub-paragraph 9, or at the request of one of the parties, because the parties always had the right to have the dispute referred to the Assembly. Under this scheme, the Assembly would be empowered to follow the procedure hitherto entrusted to the Council. It was the Assembly which would have to choose the arbitrators and, if necessary, transmit requests for an opinion, etc., to the Hague Court. And lastly, if any one party rejected compulsory or friendly arbitration, it was the Assembly which, voting in accordance with the provisions of Article 10, would have to pass a unanimous recommendation.

After discussion, the Sub-Committee had decided on a mixed system. It proposed that the Assembly should be substituted for the Council in the series of acts provided for in Article 4. If one of the parties appealed to the Assembly or the Council referred the question to the latter, it was the Assembly which should deal with the various acts provided for in Article 4.

But in the case of executive acts, such as the choice of arbitrators or the transmission of requests for opinion to the Hague Court, it was the Council which should act, for the Council was the only body so qualified. If such a task were entrusted to the Assembly it would often be impossible for negotiations to be continued.

The Sub-Committee was not yet ready to submit a draft. It requested the Committee to adopt the principle upon which it would base a text, taking into account the proposals of Sir Cecil Hurst and of M. Fernandes.

M. Politch (Kingdom of the Serbs, Croats and Slovenes) thanked the Rapporteur for his reply, which entirely satisfied him.

M. Fernandes (Brazil) reminded the Committee of the views which he had already expressed.

The procedure before the Assembly should still be the same as it had been before the Council. In particular, the Assembly should endeavour to get the parties to agree to a friendly settlement. If there were no request for arbitration, they should give a decision regarding the facts of the case, and such decision should have executive force.
But they could not leave it to the Assembly to carry through the arbitral procedure. For the Assembly consisted of a very large number of representatives who sat only thirty days in the year and could not preside over arbitration proceedings which would in practice require almost constant work. It would be necessary, therefore, for the Assembly to appoint a Committee. What Committee could offer as full guarantees as could the Council, to which all the States had free access and with which they could communicate through diplomatic channels?

The principle submitted by the Sub-Committee was adopted, subject to the definitive text to be drafted by a special Committee.

Mr. DANDURAND (Canada) asked when the Committee would be called upon to discuss the resolution.

M. LOUCHEUR (France), Rapporteur, announced that the Sub-Committee of the First Committee would hold a joint meeting with the Sub-Committee of the Third Committee in order to draft a common text of the preamble and the resolution accompanying it.

Mr. DANDURAND (Canada) pointed out that most of the delegations had not received any special instructions from their Governments in regard to the Protocol, and that this fact should be taken into account by the Committee.

M. LOUCHEUR (France), Rapporteur, replied that they only had to have a recommendation to the States passed by the Assembly. The only actual resolution would be the decision transmitted to the Council for the summoning of a Conference for the Reduction of Armaments.

The CHAIRMAN announced that the general discussion on the articles of the Protocol was at an end.

TENTH MEETING

Held on Saturday, September 27th, 1924, at 3 p.m.

Sir Littleton E. GROOM in the Chair.


The CHAIRMAN proposed that the Committee should consider the preamble, Resolutions 1 and 2, and the new Article 4 bis of the draft Protocol (Annex 12).

Preamble.

M. GALVANAUSKAS (Lithuania) approved the drafting of the preamble, with the reservation, however, that mention of territorial security should not in any way prejudice territorial disputes existing between the States signatories of the Protocol, and that this declaration should be inserted in the Minutes.

M. CHAGAS (Portugal) observed that the new drafting spoke of ensuring the security of "territories", while the earlier drafting gave the word in the singular. He thought the expression "territories" somewhat vague and liable to interpretations inspired by bad faith. He therefore proposed the following wording:

"Animated by the firm desire to ensure the maintenance of general peace and the security of nations whose existence, independence or territories placed under their sovereignty may be threatened."

This wording would allay the legitimate misgivings of countries possessing a number of colonies.

M. LOUCHEUR (France), Rapporteur, asked M. Chagas not to press his proposal. The Joint Committee of the First and Third Committees had already considered the Portuguese proposal and, with a view to meeting the views of the Portuguese delegate, had agreed to replace the word "territory" by "territories". The expression was sufficiently clear.

M. OSUSKY (Czechoslovakia) pointed out that in the report of the Third Committee there occurred the following: "Territories should be taken to mean the whole territory of a State, no distinction being made between the mother country and the colonies". The Rapporteur of the First Committee might use the same sentence in his report.

M. CHAGAS (Portugal) apologised for insisting on his amendment. Portugal was a small country with a large number of colonies and therefore was anxious to avoid dangerous interpretations. What objection was there to accepting an expression that satisfied him and made the text clearer without in any way modifying its substance?

M. BUERO (Uruguay) supported the Portuguese delegate's proposal.
M. ADATCI (Japan) reminded the Committee that, in the international conventions formerly concluded under the auspices of the League, the following expression was used: "Territories placed under the sovereignty or authority of the States". They should not consider the colonies only, but countries under a mandate and protectorates, in respect of which there was the same responsibility. The insertion, which he proposed, of this expression in the first paragraph of the preamble would fully satisfy Portugal.

M. LOUCHEUR (France), Rapporteur, thought that the expression "territories", accompanied by the commentaries in M. Benes' report, was sufficiently clear. If the Committee adopted M. Chagas' amendment the text would have to be referred to the Third Committee and they would have to endeavour to convince the latter. Would it not be simpler to leave the wording as it was and to introduce a sentence into the report similar to the one in M. Benes' report?

M. BUERO (Uruguay) asked the Committee to introduce into the sub-paragraph the expression to which M. Adatci had referred. In this way the Protocol at present under discussion would be brought into line with the international conventions formerly concluded under the auspices of the League.

M. CHAGAS (Portugal) supported the formula proposed by M. Adatci, which was wider and more precise than his own.

M. POLITIS (Greece) informed the Committee that the Portuguese delegate had raised the same question in the Third Committee. After an exchange of views between M. Freire d'Andrade and M. Benes, the Portuguese delegate had declared himself satisfied with the reference inserted in M. Benes' report. In these circumstances, what reason could M. Chagas have for not being satisfied with a formula that had satisfied M. Freire d'Andrade?

M. CHAGAS (Portugal) said he could not see from the minutes of the Third Committee that M. Freire d'Andrade had given his formal approval to M. Benes' proposal. In any case, they were not concerned here with the Third Committee, but with the First, and, whatever M. Freire d'Andrade's attitude had been, he urged that M. Adatci's amendment should be submitted to the First Committee for approval. Besides, this discussion brought out the disadvantages of the same questions being dealt with by two different Committees.

M. POLITIS (Greece) admitted that he did not fully understand the bearing of the amendment. The expression proposed by M. Chagas might have been used in other conventions but those conventions were not of a political character. Did the expression "territories placed under the authority of a State" also include countries placed under a mandate?

M. CHAGAS (Portugal) observed that it was for M. Adatci to reply to the question put by M. Politis because the formula at present under discussion had not been proposed by him.

M. ADATCI (Japan) said that they were concerned with a Protocol the political bearing of which was of capital importance and the consequences of which were incalculable. The wording he proposed to insert in the first paragraph of the preamble had so far only been used in administrative conventions. The Third Committee had accepted those words, and had stated that they also referred to colonies. Therefore, all the delegations' reasonable fears would be allayed.

With this observation, he withdrew his amendment.

M. LIMBURG (Netherlands) appealed to the strong legal sense of M. Chagas and asked him to recognise that the amendment he proposed was incompatible with the principle underlying the first paragraph of the preamble.

In this paragraph they went no further than a general principle and were not concerned with any considerations of legal detail, constitutional law, or international law. They merely intended to say that they were firmly resolved to ensure the maintenance of general peace and the security of the nations whose existence, independence or territories (that is, territorial integrity) might be threatened.

There was no need to enter into such fine legal points and to inquire if colonies, dominions and countries placed under a mandate were part of a nation's territories.

There was a great difference between "colonies", dominions and countries placed under a mandate.

Since it was stated in the report that "territories should be taken to mean the whole territory of a State, no distinction being made between the mother-country and the colonies", he considered that M. Chagas should be satisfied, and he asked him to withdraw his amendment.

M. DANDURAND (Canada) said they were concerned with the drafting of a preamble and not with an article of the draft. The words used in the preamble had a general character and no legal value. He thought therefore that there was no need to waste time on a purely verbal discussion in connection with the preamble.

M. BUERO (Uruguay) thought, on the contrary, that it should be precisely stated in the preamble to whom the Convention was addressed, what objects it was intended to secure, and on whom it would be binding; even though the preamble did not bind the signatories to the Protocol, it was none the less very important, and the first question to ask was: Were the colonies protected by the Protocol or were they not?
The Rapporteur had observed in his report that the draft covered colonial territories. If everyone was agreed on this point, it would be easy to introduce a formula into the preamble to that effect.

Moreover, it was not unanimously admitted that the formula proposed by M. Adatci did not cover territories placed under a mandate. Besides, it did not cover the dominions, which formed independent States and were considered as sovereign States.

That was why he supported the formula proposed by M. Chagas. He observed that M. Chagas' amendment in no way affected the political position and therefore there was no reason for not harmonising the preamble with the report.

M. Chagas (Portugal) said that the Canadian delegate seemed to regard the Portuguese amendment as meaningless. A country that had discovered new worlds and that still had possessions was entitled to take measures to safeguard its patrimony. They had been too often the victims of the spirit of rapine not to be somewhat uneasy as to the future, and that was their reason for considering that the time had arrived for introducing into a draft such as they were discussing a clause protecting them from this spirit of plunder.

Since M. Adatci had withdrawn his amendment, the speaker felt obliged to maintain his, as it was a moral question of the greatest interest for Portugal. He therefore asked the Chairman to put his proposal to the vote.

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international crime" at the end of paragraph 4 were misplaced. A war of aggression was an international crime, but all international crimes were not wars of aggression: there were other international crimes of which mention should be made.

M. Loefgren (Sweden) supported the opinion expressed by the preceding speaker, all the more willingly in view of the fact that, in accordance with the discussions which had taken place at the meetings of the Sub-Committee, every unlawful act of violence should be included in the definition of an act of war.

After carefully reading the preamble and the whole Protocol, he had interpreted the text in the sense that all acts prohibited by the Covenant would also be prohibited under the preamble and the Protocol. The Sub-Committee was unanimously agreed in condemning any unilateral act accompanied by the unlawful use of force, even should there be no resistance by the other party.

The Chairman declared the discussion on the preamble to be at an end and put the text to the vote.

The preamble was unanimously adopted.

Text of Resolution No. 1.

Sir James Allen (New Zealand) stated that he was not in a position to accept paragraph 1 of Resolution No. 1, and, in view of the distance, he was unable to refer to his Government. The latter, moreover, had instructed him to enter into no engagements.

Being unable, therefore, to agree to paragraph 1 as drafted, he proposed to replace the wording by the following text: "(1) To recommend the acceptance of the draft Protocol for the earnest consideration of all Members of the League.

M. POLITIS (Greece), Rapporteur, quite understood Sir James Allen's idea, and, in view of the very small difference between the two texts, he saw no difficulty in accepting that proposed by Sir James Allen.

The Chairman therefore put paragraph 1 to the vote in the form proposed by Sir James Allen, to which the Rapporteur had agreed. The text read as follows: "(1) To recommend the acceptance of the draft Protocol for the earnest consideration of all the Members of the League".

The text was adopted by 18 votes to 1.

M. de Palacios (Spain) called the attention of the Committee, and especially that of the Rapporteur, to the wording of paragraph 2, namely:

"(2) To open the said Protocol, in the terms proposed, for immediate signature by those representatives of Members of the League who are already in a position to sign it and to hold it open for adhesion by all other States."

The Spanish delegate emphasised the difference between "signature" and "adhesion". If it was stated that the Protocol was open for immediate signature, some mention must, for the sake of clearness, be made of a time-limit, in view of the fact that the signature must be followed by ratification, whereas in the event of adhesion ratification was not necessary, adhesion being given only after a time-limit had been granted and had expired.

M. POLITIS (Greece) said that the Protocol should be open for the signature of those States which were in a position to sign immediately in view of the impression likely to be produced on public opinion. However, subsequent adhesion must be possible, in order that the Protocol should become universal law.

In these conditions and in order to take into consideration the observations made by M. de Palacios, the text should be remodelled and should read:

"(2) To open immediately the said Protocol, in the terms proposed, for signature by those representatives of Members of the League who are already in a position to sign it and to hold it open for that of all other States."

M. de Palacios (Spain) agreed to the wording.

Paragraph 2 as amended was adopted.

M. Limburg (Netherlands) pointed out that, as regards the last sub-paragraph of paragraph 4, as a very brief preliminary time-limit had been provided for the ratifications, the end of the last paragraph of the draft resolution had been drawn up with a view to rendering possible the adjournment sine die of the Conference in the event of the number of ratifications being found to be insufficient on May 1st, 1925. There would therefore be a period, possibly a very long one, of uncertainty. In order to avoid this inconvenience, he proposed that, after the words "or merely adjourn the Conference", the following should be added: "until a subsequent date fixed by the Council.

In that way the Council would only be able to cancel the invitations by fixing a definite term for the adjournment of the Conference.

M. ADATCI (Japan) said that, with regard to the time-limit allowed for the communication of the documents for use in preparing conferences, the remoteness of countries like his own should be taken into consideration. He therefore proposed that the time-limit provided for at the end of the last paragraph but one should be increased from two months to three months.
The CHAIRMAN seconded the amendment, in view of the fact that Australia was in that respect in the same position as Japan.

M. POLITIS (Greece), Rapporteur, readily admitted that, whereas it was necessary to allow the Council time to draw up the general programme for the reduction of armaments, it was still more necessary to take into consideration the situation of countries at a distance from Europe, and these should be given time to examine the documents communicated to them. He therefore accepted M. Adatci's amendment.

With regard to the object of M. Limburg's amendment, the Sub-Committee had thought that the Council would be aware of the approximate date at which it might be possible for the Conference to meet in the event of an insufficient number of ratifications having been deposited by May 1st, 1925, and that it would take steps in consequence. It was, however, preferable to introduce into the text the definite statement suggested by the Dutch delegate, and the end of the last paragraph might be modified in the following manner: "...or merely adjourn the Conference to a subsequent date, which shall be fixed by the Council with a view to allowing the necessary number of ratifications to be obtained".

M. LIMBURG (Netherlands) accepted the wording proposed by M. Politis and withdrew his amendment.

Sir Cecil HURST (British Empire) pointed out that the provisions of the draft resolution related to questions settled by the articles of the Protocol adopted by the Third Committee and that any discrepancy between the two texts must be avoided. He therefore asked that the amendments proposed and the new wording put forward by the Sub-Committee should be adopted, provided that the Third Committee agreed to introduce similar modifications in the draft Protocol.

M. POLITIS (Greece), Rapporteur, recognised the soundness of these remarks. If M. Adatci's amendment in particular were adopted, the time-limit provided for in Article 16 of the Protocol must be modified in the same way.

The Third Committee should therefore be notified of the modifications made by the First Committee in the first draft resolution.

With the reservation that similar amendments should be made in the text of the Protocol by the Third Committee, M. Adatci's amendment to the last paragraph but one and the new text proposed by M. Politis for the end of the draft resolution were adopted.

The CHAIRMAN communicated a paragraph which had been omitted in the copies distributed to the members of the Committee, and which should form the fifth paragraph of the draft resolution:

"(3) To request the Council forthwith to appoint a Committee to draft the amendments to the Covenant contemplated by the terms of the said Protocol."

Resolution No. 1 was adopted, as amended.

Resolution No. 2.

M. DE PALACIOS (Spain) requested the Rapporteur to confirm the following interpretation of the resolution, if he considered it correct.

The text contained a recommendation to the States to give their adhesion as soon as possible to the special Protocol opened by virtue of Article 36 of the Statute of the Hague Court. Should not this recommendation be interpreted as being independent of the obligation on signatories of the Protocol then under discussion to adhere within a time-limit of one month following upon its entry into force?

M. POLITIS (Greece), Rapporteur, confirmed the interpretation suggested by M. de Palacios. In view of the fact that the entry into force of the present Protocol would not take place for at least some months, and that it was desirable that this period should not be wasted from the point of view of the credit of the Court, the States were recommended to exercise the right which they possessed at present of adhering immediately to this Statute. But what was now recommended and was still optional would become an obligation upon the day on which the present Protocol came into force.

The interpretation would be inserted in the text of the report.

Resolution No. 2 was adopted.

Article 4 bis.

Article 4 bis was adopted.

The Committee adopted Article 1 of the Protocol.


The Chairman reminded the Committee that they still had to settle a few questions arising out of Articles 5 and 6 of the Protocol. He proposed reserving these questions until M. Politis had read his report.

M. Politis (Greece), Rapporteur, submitted the report he had drawn up in conjunction with M. Benes. The first part of this report contained a number of general considerations, then two distinct portions referring respectively to the work of the First and Third Committees. M. Politis pointed out that it would be advisable to make an addition to the report, and he proposed that his colleagues should reserve their observations on the various paragraphs of the Protocol until he had read the full report.

M. Politis read his report (Annex 13).

The Chairman associated himself with the enthusiastic approval with which the reading of the report had been received, and congratulated and thanked the Rapporteur for his very clear and precise statement.

On behalf of the whole Committee, he also thanked M. Adatci, who had acted as Chairman of the Sub-Committee.

He then suggested passing on to a seriatim consideration of the report, as the Rapporteur had proposed. He asked if anyone had any observations to make on the introductory part of the report.

I. Introduction.

M. Loucheur (France) wanted the drafting of Section 1 modified by leaving out the word "suddenly".

M. Politis (Greece), Rapporteur, did not oppose this modification. He also proposed leaving out the words "and even an unexpected" at the end of this paragraph. The last words of this paragraph would then read as follows: "The problem of the reduction of armaments has this year assumed a different and wider form".

This new reading was adopted.

The first part of the report was adopted.

Count Apponyi (Hungary) said that he cordially associated himself with the applause with which M. Politis' report had been received and very sincerely joined in the thanks that the President had tendered to the Rapporteur on behalf of the whole Committee. Nevertheless, he said there were some passages in the text that had now been submitted which called for some remarks from him.

In the introduction, the report spoke of the way in which arbitration, as provided for in the Protocol, was distinguished from what might be called "classical" arbitration as established by the Hague Convention.

The report read as follows:

"(b) It is more an instrument of peace than an instrument of justice. Arbitration has always had these two functions. But whereas, in the historical development of arbitration, the second tends to be more important than the first, here it is the first which is predominant. According to the system of the Protocol, the arbitrators are conciliators rather than judges. They are called upon to give proof of statesmanship rather than to show knowledge of legal science."

That, he said, was not the spirit that had presided over their work. As a rule, he thought it was difficult to give either of these attributes, peace or justice, predominance over the other. The Rapporteur had said, on the first page of his report, that justice could not exist without

1 This article became Article 10 in the Final Protocol.
peace. That was true, but it was also true that peace could only be secured by justice. Justice was in great danger when it had to defend itself by force, because in a conflict of force the right cause might be defeated and injustice might triumph.

Moreover, he thought it impossible to build the best and most solid psychological foundation for the establishment of peace in the human mind if peace did not rest on justice. It might be dangerous and involve fresh difficulties that might stand in the way of the Governments' acceptance of this Protocol if so much stress were laid on the predominance of the idea of peace over justice, when those two ideas were so closely connected as to be inseparable.

There was also a practical danger in, in a way, imposing upon the arbitrators that they should be more concerned with peace than with justice. The following situation, for instance, might arise: a powerful State might come into conflict with a weak State and might not furnish full guarantees of its entire submission to the measures that might be taken against it. The arbitrator, being instructed to consider peace rather more than justice, might conclude from that fact that he should bring pressure to bear upon the weak State, since peace was not to be allowed to be threatened even if the weak State had to suffer an injustice.

Further on, in that part of the report dealing with the first case of compulsory arbitration, the Rapporteur said that the role of the arbitrators could not be merely that of judges giving sentence in accordance with principles of law, but should take into account considerations of equity and even of expediency. He thought that that might also be dangerous. He was of opinion that what the arbitrator should bear in mind was embodied in the word "equity". Equity allowed a certain latitude in the application of the law and such latitude took account also of expediency, but could not go so far as to allow itself to clash with the law.

He therefore thought that it was going rather far simply to say: justice, equity and expediency.

These passages in the report caused him a certain amount of uneasiness. If the Rapporteur agreed with these observations, he might, perhaps, make such modifications himself as would eliminate from the report the marked predominance of the idea of peace over justice and place these two ideas side by side on an equal footing.

The Sub-Committee's draft, which had been adopted article by article, was the result of a compromise. Two points of view, legal and political, had each been put forward and defended by eminent men. The Sub-Committee had had to take into account both points of view. It had had to strive to find a formula that would ensure international justice by judicial and arbitral methods; on the other hand, it had to consider the great political points of view that could not be disregarded without losing touch with reality.

A compromise between these two ideas had been made which perhaps did not satisfy everyone. He would certainly have preferred other solutions than those proposed by the Sub-Committee. He had, however, supported them. Why? In the first place, because a compromise, by its very nature, meant that no one set of ideas, of those put forward, had obtained complete satisfaction. The precise point of a compromise was the one in which every idea, every kind of mentality, every sort of argument involved in the question, though not obtaining full satisfaction, nevertheless obtained what was essential to it.

In conclusion, the speaker said that the work of the Sub-Committee, concurred in by the whole Committee, had successfully reached a compromise between the two sets of ideas. He thought, however, that the way in which the report had emphasised the predominance of the idea of peace — which, in other words, was the predominance of the political idea — over the legal idea was to a certain extent a divergence from the line of absolute compromise which he had got desired and in order that the Protocol might be ratified by the greatest number of countries possible, it would be advisable to soften the expressions in the report that appeared to incline a little too much to the political side as expressed by the word "peace".

There was a second reason why he had supported these compromises, part of which did not at all voice his own views, and that reason was that the formule of compromise that had been submitted had the assent of the great Powers. But he warned his hearers against mistaking the meaning of his words. He did not want the sword of Brennus, material force, to be thrown into the scales which were intended to ensure the reign of justice.

Moreover, there were moral grounds which commanded respect and which had to be taken into account. For weak nations it was a very appreciable gain that the reign of law should succeed the reign of force; they had everything to gain and nothing to lose. The great Powers, in setting their seal of approval on institutions organising the reign of law, sometimes in opposition to what they might obtain if they relied on their power, were sacrificing a position that might perhaps give them world dominance.

They were certainly working in their country's interest, because the peoples of the great Powers were just as much in need of peace as those of small countries. But the great Powers in the abstract had not so much to gain from the establishment of the reign of law as small countries.

The respect with which this generous action on the part of the great Powers inspired him was the second motive — perhaps the strongest — that had induced the Hungarian delegate, in spite of the scruples he entertained, to give his approval to the solution submitted.

In conclusion, he once more strongly urged the Rapporteur to introduce, if possible, a slightly different tone into the part of the report to which he had referred, and to eliminate anything that might give the impression that the concern for justice played a secondary part in the great edifice they were endeavouring to erect, and he also urged the Committee not to interfere too much with the essential attributes of an arbitrator, which should be based on law and justice.
It had never been his intention, he said, to seek to subordinate the idea of peace to the higher idea of justice; but justice in his report had quite a different meaning from that placed upon it by Count Apponyi. He did not mean that ideal justice which seeks to avoid evil and endeavours to do good, but a form of justice answering to the more material facts of life.

He merely wished to point out that, failing definite principles in the body of international law, they should always reach a solution because that was their duty. If the arbitrators were simply invited to apply the rules of law, their duty would be, in case of disagreement, to discharge all the parties on equal terms. Under the system which they were proposing, it would be impossible to do this without admitting that the system of arbitration was bankrupt.

He was fully prepared to simplify the formalities suggested in his report and to show that arbitrators must never lose sight of the ideal of justice by which mankind should be inspired. He agreed to omit all mention of expediency and to render the introduction of the report less emphatic, but he felt that he would have given an inaccurate idea of the Sub-Committee's work and the spirit of the Protocol if he had failed to point out the differences between arbitration as defined in the Protocol and the arbitration procedure to which he had referred as "classical".

It was particularly necessary to consider that distinction, because public opinion in every country included a large body which was hostile to these ideas and was only too ready to dismiss their authors as Utopians. If they had sought at a single step to forestall the process of evolution and establish universal arbitration applicable to all disputes, they would indeed have deserved this reproach; but they intended to confine themselves to what was practicable. It was because they were endeavouring to accomplish useful and practical work that they had now conceived a system of arbitration which was in some respects unlike the system to which they had hitherto been accustomed.

The form of arbitration which they proposed was different from ordinary arbitration in that it was one part of a pacific mechanism. Moreover, if the arbitrators had no rule of law to assist them in finding a solution for the disputes submitted to them, they were bound, nevertheless, to reach a decision. They had not merely to ensure the observance of the law, but at all costs a solution had to be found which would safeguard peace. Whatever political passions poisoned the air, they must, before all things, avoid that great scourge of humanity, war.
M. Burckhardt (Switzerland) dwelt upon the great importance of the passage which
was being discussed. Should the arbitrators apply the letter of the law or take considerations
of expediency into account? When arbitrators were called upon to settle a dispute it was
reasonable enough that they should not be bound down to rigid legal doctrines. They would
be too dogmatic, and besides, the letter of the law might not be equitable. But it was not
allowable to tell the arbitrators that war was threatening and that they must do everything
to avoid it.
There could never be a threat of war, since the decision of the arbitrators was binding
and the States signatories of the Protocol had undertaken never to resort to war. The hypo-
thesis, therefore, might materialise, but they could not use it as an argument at present. If
one of the parties wished to resort to war in spite of arbitration, it would have to take the re-
ponsibility, and the sanctions provided in the Protocol would come into operation. This
passage in the report was not entirely satisfactory.
On the other hand, it was certain that rigid legal doctrines might be an obstacle to con-
ciliation, and that the arbitrators must be left free to apply the rules of equity.
In these circumstances, it would be preferable to draft the last paragraph but two of the
introduction in the following manner:

"But whereas, in the historical development of arbitration, the second should
be more important than the first, this is not here the case. According to the system
of the Protocol, the arbitrators are as much conciliators as judges. They must combine
equity with legal science."

In the same paragraph this sentence also would be found:

"That is not a matter for regret. It is an illusion to imagine that justice can kill
war. It is the contrary which is true: the reign of justice presupposes peace."

That sentence might lend itself to misinterpretation. Certainly it was not in its meaning
counter to the idea of justice, but he thought that the following text would perhaps be prefer-
able:

"This is not a matter for regret, for, in order to guarantee to the nations the reign
of law, you must first guarantee to them peace."

In conclusion, he stated that the forms of words which he had proposed were merely sug-
gestions which he submitted to the Rapporteur.

M. Politis (Greece), Rapporteur, thanked M. Burckhardt for his suggestions. It would
be easy to attenuate, in accordance with Count Apponyi's wishes, the force of the passages
referred to in the introduction and to omit the word "expediency" in that part of the report
dealing with the first case of compulsory arbitration. They should not forget that the parties
retained their entire liberty of action in the first stage of the arbitration proceedings. They
might reach an agreement on one of the rules which were to ensure the success of arbitration,
such as the number, selection and powers of the arbitrators. Consequently, if the parties
could agree to be judged on the basis of law, irrespective of the rules of equity, they would
be free to do so. It was only when the parties could not reach an agreement, and when peace
appeared to be seriously threatened, that there was at any rate a need for the rules of equity.

M. Rolin (Belgium) shared the opinions of the previous speakers. No reproach could
possibly attach to M. Politis; he had accomplished the superhuman task of being both Chairman
of the Third Committee and Rapporteur to the First.

In actual fact, if the arbitrators anticipated resistance on the part of a powerful State
as the outcome of their award, there was some danger that they might be tempted to forsake
law and even equity.

The arbitrators should go as far as equity, and there they should stop. That was the
intention of the Committee in laying down that the arbitrators should be bound to consult
the Permanent Court of International Justice at the request of a single one of the parties.

When, on the preceding day, the Committee had rejected by a very small majority
M. Fernandes' proposal that the opinion of the Court should be made binding and integrally
and textually executory in the award of the arbitrators, it had been quite understood that it
was with the reservation expressed by several speakers, including M. Loucheur, that, as far
as the opinion of the Court of Justice could be made practically applicable, the arbitrators
should be formally bound to conform to it.

After the discussion which had just taken place, he thought that this opinion should be
clearly brought out in the text. If legal procedure were to fail, the arbitrators must not be
able to refuse to give a decision; they must, at any rate, reach a decision on the substance
of the question in accordance with the rules of equity.

That idea should be clearly brought out, and with that object he would submit to M.
Politis a new text for paragraph (b) and the penultimate paragraph of the introduction.

M. Politis (Greece), Rapporteur, after examining the two amendments submitted by
M. Rolin, stated that he accepted them in principle; but he thought that it would be preferable
to reserve the drafting of the final text until all the speakers had expressed their views on the
subject.

M. Scialoja (Italy) said that he would like to see omitted from paragraph (a) of the in-
troduction the word "works", which might give rise to a misunderstanding. He would suggest
the words "is constituted" or "is organised".

M. Politis (Greece), Rapporteur, said that he would modify the text as suggested.
TWELFTH MEETING

Held on Sunday, September 28th, 1924, at 4 p.m.

Sir Littleton E. Groom in the Chair.

27. — Draft General Report submitted by M. Politis on the Work done by the First Committee (continuation of the discussion).


M. Politis (Greece), Rapporteur, read a new draft of the second part of the introduction to the report of the First Committee incorporating the observations of Count Apponyi and M. Burckhardt.

"The arbitration which is now contemplated differs from classic arbitration mainly from the following points of view:

"(a) It is only part of a great machinery of pacific settlement. It is set up under the auspices and direction of the Council of the League of Nations.

"(b) It is not only an instrument for the administration of justice. It is, in addition and above all, an instrument of peace. The arbitrators must, no doubt, seek in the first place to apply the rules and principles of international law. This is the reason why, as will be seen below, they are bound to consult the Permanent Court of International Justice if one of the parties so requests. But if international law furnishes no rule or principle applicable to the particular case, they cannot, like ordinary arbitrators, refuse to give a decision. They are bound to proceed on grounds of equity, for in our system arbitration is always of necessity to lead to a definitive solution of the dispute. This is not to be regretted, for to ensure the respect of law by nations it is necessary first that they should be assured of peace.

"(c) It does not rest solely upon the loyalty and good faith of the parties. To the moral and legal force of an ordinary arbitration is added the actual force derived from the international organisation of which the kind of arbitration in question forms one of the principal elements; the absence of a sanction which has impeded the development of compulsory arbitration is done away with under our system."

This new text was put to the vote and adopted.

M. Fernandes (Brazil) said that he had intended that morning to support Count Apponyi's observations as to the re-drafting of the second part of the introduction to the report. As Count Apponyi's wishes had been met, he himself had nothing to add. He joined with the Chairman in thanking M. Politis for his excellent report, in which he had once more displayed his high authority and profound knowledge.

M. Urrutia (Colombia) joined in the tribute to M. Politis' universal prestige and authority in the field of international law.

He was not entirely satisfied with M. Rolin's formula. The classic and universally accepted terms of international justice, which were to be found in the Hague Conventions, had been omitted from the preamble.

As their report would be consulted in future when the new system came to be applied, it would have been better to declare once more that their primary object was the pursuit of justice.

He did not think it was really necessary to state that the arbitration would work under the auspices and control of the Council of the League of Nations.

The Protocols must not be forgotten, nor must all the provisions relating to the Court of International Justice, whose authority had no connection with the Council of the League.

In any case, they ought not to speak of the Council alone, but of the Assembly as well. All that need be said was "under the auspices and control of the League of Nations".

He thought the phrase had no value, moreover, because the Council was a political and not a judicial body.

He proposed that the second paragraph of the introduction to the report should be modified as follows:

"The realisation of this great ideal, to which humanity aspires with a will which has never been more strongly affirmed, presupposes as indispensable conditions the elimination of war, the extension of the rule of law and the reaffirmation of sentiments of justice."

These were the actual terms in the Hague Protocol for the pacific settlement of international conflicts.
According to the Covenant, the States had joined the League of Nations in order to establish the rule of justice. As M. Politis himself had said in his work on international justice, “the practice of justice is the path of peace”

It was not possible to imagine an international regime in which there would be peace without justice. It would be difficult to imagine the reign of peace without first establishing the reign of justice.

M. POLITIS (Greece), Rapporteur, replied that the absence of any reference to the Assembly in paragraph (a) of the introduction was deliberate.

The arbitration organisation had been brought into line with that for which provision was made in the Covenant. The Assembly retained its rights under Article 15 of the Covenant; but, as the actual arbitration was essentially an executive procedure, it came within the sole province of the Council. He did not see that M. Urrutia’s amendment could be accepted unless the Committee’s decision were reversed. On the other hand, M. Urrutia’s addition to the end of the second paragraph of the introduction might be welcomed. There was no objection to a statement that the permanent establishment of peace presupposed not only the elimination of war but also the extension of the rule of law and the strengthening of the sentiment of justice.

M. Urrutia (Argentina) said that M. Urrutia would not press his first amendment. He added that, in order to incorporate M. Urrutia’s second amendment, M. Politis proposed that the end of the second paragraph of the introduction should read as follows: “... the elimination of war, the extension of the rule of law and the strengthening of the sentiment of justice”.

The first chapter, “Introduction to the Draft Report of the First Committee (Compulsory Arbitration)”, with the above additions, was adopted.


M. LOUcheur (France) agreed with Sir Cecil Hurst that the last paragraph but two, as at present drafted, had too wide a scope, and might hamper the work of the Committee of Jurists which would be instructed to draft the amendments to the Covenant.

He, therefore, proposed that this paragraph should read as follows:

“When the Covenant has been amended in this way certain parts of the Protocol will lose their value as between the said States: some of its provisions will have enriched the Covenant, while others, being temporary in character, will have lost their object.”

He also asked that the beginning of the last paragraph but one should read as follows:

“The whole Protocol will remain applicable to relations between signatory States...”

M. POLITIS (Greece), Rapporteur, thought there would be very little left of the Protocol when it had been transformed into amendments to the Covenant. He was anxious however, that no paragraph in his report should hamper the Committee of Jurists, and he, therefore, accepted the amendments proposed by M. Loucheur and Sir Cecil Hurst.

The second chapter, with these amendments, was adopted.

III. Condemnation of Aggressive War.

M. LIMBURG (Netherlands) wished to offer two purely formal observations and one remark on a legal point.

In the second paragraph in the sentence: “There are a fair number of cases in which the exercise of this right is tolerated”, he proposed to delete the words “a fair number of”. He reminded the Committee that a number of speakers at the Assembly had said that the enforcement of the Covenant would suffice in itself to obviate all possibility of war.

In the fourth paragraph he thought that the words: “It may and should at once defend itself with its own force” seemed to impose on the States the obligation of defending themselves, and might be regarded as an encroachment on the sphere of the future disarmament Conference. He, therefore, thought that the following wording might be adopted: “It will at once defend itself with its own force”.

M. POLITIS (Greece), Rapporteur, accepted the first amendment, and proposed that the words “and should” should be deleted from the fourth paragraph.

M. LIMBURG (Netherlands) agreed to this. He then pointed out that, in the course of the Committee’s discussions, he had demonstrated that war would no longer have the legal character which it had hitherto possessed. Whereas formerly, no matter under what circumstances the war broke out, the countries concerned were contending on a footing of equality, in future there would be a State attacked and a criminal State, against which latter the international police force was fighting. Thus a new penal law would arise, and new usages of warfare must be set up.

He, therefore, suggested the following addition at the end of Chapter III:

“It is only true to say that henceforth, under the rule of the Protocol, the judicial character of war is going to be somewhat modified, and therefore, it will perhaps be necessary in future to revise the present rules of the laws and usages of war.”
M. Politis (Greece), Rapporteur, agreed to omit the words "a fair number of". He would not insist on the words "and should" being retained if the Committee was of opinion that a country was under no obligation to defend itself.

As to the scientific scruples which M. Limburg felt, it had to be recognised that henceforward a war would be waged, in a sense, under the auspices of the League of Nations, whereas formerly it was merely a free exercise of two sovereignties. For countries which were Members of the League of Nations, and for countries which were signatories of the Protocol, war would, therefore, have a different character in the future.

Would this have any effect on the laws and usages of war? That was a difficult question to answer.

If slight alterations were, in point of fact, to be introduced in the present rules concerning the laws of war, the Committee would have made itself safe from all criticism by the addition of this small paragraph; if not, no harm would be done in making such an addition.

M. Scialoja (Italy) thought that the additional phrase which had been proposed was not so harmless as it appeared at first sight; it seemed to him to involve a certain amount of danger.

During the last war, it was seen that humanitarian precepts were not necessarily observed. Would it not be dangerous if they now expressed doubts which might still more impair the efficacy of such precepts?

In pursuing the ideal of peace, there was no point in running the risk of increasing the horrors of war; whatever the future had in store, the conquests of humanity in respect of the laws of war must be preserved intact.

The essential change in the legal interpretation of war was that henceforth a war between two States would have the effect of placing other States in a special and novel situation.

In any case, M. Limburg's proposal aroused misgivings. What was the use of adopting a text which was so worded that there would be a risk of weakening the value of the laws of war in the conscience of humanity?

M. Pusta (Esthonia) spoke as the representative of a small country with limited military resources. He said he would vote against the amendment proposed by M. Limburg, as he preferred the text proposed by the Rapporteur. The Protocol under consideration gave a further guarantee to the small countries, but that did not exempt each and every one from doing its duty.

M. Rollin (Belgium) argued with great emphasis for the retention of the words: "It should at once defend itself with its own force". As has very aptly been said by the Rapporteur: "Its interests are identified with the general interests". This showed clearly that it was not possible to set aside the formal obligation for a State first of all to take its own measures of self-defence.

Of course, as pointed out in a previous meeting by the French delegate, there was no idea of imposing a minimum quantity of armaments upon a State; each State would have to make its own estimate of the dangers to which it was exposed, but at least it ought, if attacked, and if it appealed to the League, to put into operation all means of resistance at its disposal. It was impossible to tolerate the extremely dangerous situation which would arise if there was any idea of abandoning the obligation for a State to defend itself first and foremost with its own resources, and if a State were simply allowed to bide its time, while awaiting the help of the other States, not only without offering to the enemy the rampart of its own children, but without even destroying the means of communication, viaducts, etc.

The Belgian delegate concluded by suggesting as a suitable maxim: "The League of Nations helps those who help themselves"; and if it was necessary to sum up in a word why he asked the Committee to maintain in the report the obligation for a country to begin by defending itself, he would ask to be allowed to answer: "Because he was Belgian!"

M. Enich (Finland) said that he was entirely in sympathy with the point of view expressed by the previous speaker. Stress should be laid upon the juridical quality of States, whether small or large, as regards their rights and their duties, including the duty of self-defence to the utmost of a State's resources. However desirable it might be to aim at guaranteeing the absolute security of small States so that they should be free from all danger of war, one ought not to begin by exempting them from the primordial duty of self-defence to the utmost of their ability.

M. Andersen (Denmark) wished to say a word in reply to the delegate of the Netherlands with regard to disarmament in Denmark. The disarmament bill to which he had alluded had not yet been submitted to the Chamber, and its fate was quite uncertain.

He had no authority to give the Committee an official opinion on this question, but, from a strictly personal standpoint, he would like it to be known that his views were absolutely in accordance with those expressed by the Belgian delegate and supported by the delegates of Esthonia and Finland.

M. Limburg (Netherlands) said that he gathered that the first of his amendments had obtained general acceptance.

As to the second amendment which he had submitted, he had never for a moment thought that the minor proposal it contained would have provoked a discussion of such importance. He had been second to none in admiring Belgium's vigorous self-defence, and he was sure that, in similar circumstances, his own country would defend itself to the last man. But there was nothing about that in the paragraph which had given rise to the amendment submitted by the Netherlands delegate. There was no reference in it to the duty of self-defence, but there was a reference to the right of self-defence. The speaker recapitulated the terms of the paragraph:
"The prohibition affects only aggressive war. It does not, of course, extend to
defensive war. The right of legitimate self-defence continues, as it must, to be respected.
The State attacked retains complete liberty to resist by all means in its power any acts
of aggression of which it may be the victim. Without waiting for the assistance which
it was entitled to receive from the international community, it may and should at
once defend itself with its own force."

By his amendment, the speaker proposed to replace the words "it may and should at once"
by the words "it will at once". It was indeed quite natural that a country when attacked would
take up arms in self-defence. He had only wished to raise the question of the extent to which
a country might reduce its armaments beyond the proportion fixed by the Conference which
was to meet in the coming year.

Besides, the Rapporteur had concurred in the amendment proposed. However, if the Com-
mittee could not see its way to giving effect to his suggestion, he was quite ready to withdraw it.

With regard to his last amendment, the Netherlands delegate said he was in agreement
with M. Scialoja. It was, nevertheless, imperative that, in a report of so wide a scope and of
such legal significance, it should be made quite clear that, from the juridical point of view,
war in the future would be something very different from wars in the past. In virtue of the
intervention by the international police against the State guilty of aggression, the odds would
be all on one side.

Though, from the humanitarian point of view, the speaker was in full agreement with
M. Scialoja, he considered it absolutely necessary that, from the juridical point of view, the
difference should be clearly defined in the report. He was glad to find the Rapporteur in
agreement with him on that point.

The Committee proceeded to vote on the amendments.
The first amendment, consisting in the deletion of the words "a fair number of", was adopted.
The second amendment was withdrawn.
The third amendment, which consisted in adding the following paragraph to the end of the
third part, was rejected:

"It is true to say that henceforth, under the rule of the Protocol, the juridical
character of war is going to be somewhat modified, and, therefore, it will perhaps
be necessary in future to revise the present rules of the laws and usages of war."
The third part of the report was adopted.

IV. Compulsory Jurisdiction of the Permanent Court of International Justice.

M. BURCKHARDT (Switzerland) proposed an amendment to the fourth paragraph. For
the words: "So far such compulsory jurisdiction has only been accepted by a small number
of countries", he wished to substitute the words: "So far such compulsory jurisdiction
has only been accepted by a minority".

M. POLITIS (Greece), Rapporteur, opposed the amendment and pointed out that, of the
fifty-four countries which had joined the League of Nations, fifteen had accepted the
engagement.
The amendment was rejected.

M. POLITIS (Greece), Rapporteur, stated that he would defer to the request which he
had received for the deletion of the words "more particularly the great Powers" in the phrase:
"Most States, more particularly the great Powers, have abstained".

M. LOUCHEUR (France) urged, on the other hand, that those words should be maintained
because, in his view, they represented a well-deserved reproach.
The words "more particularly the great Powers" were maintained.

M. BURCKHARDT (Switzerland) drew attention to the fact that there was a passage
stating that the possibility of bringing about an agreement was reserved. He suggested
that there might be a contradiction between those terms and the Protocol and also Article 36
of the Statute of the Court.

He had always interpreted the phrase "ipso facto" to mean that States which signed
the Protocol were thereby bound to comply with its provisions.

M. POLITIS (Greece), Rapporteur, admitted that the question raised by M. Burckhardt
was a nice point and that the theory of the Swiss delegate was quite defensible.
M. Politis had favoured another solution because it offered greater facilities for States
which might hesitate to come before the Court. He said that an obligation was imposed on
States to adhere to the Protocol, but this obligation should not appear so onerous that it would
induce them to refuse to sign the Protocol.

M. BURCKHARDT (Switzerland) withdrew his proposal.
Part IV was adopted.

V. Strengthening of Pacific Methods of Procedure.

The RAPPORTEUR indicated the modifications he proposed to make in the fifth section,
"Strengthening of Pacific Methods of Procedure", in order to take account of several amend-
ments which had been proposed.
In the first place, he proposed to add the following sentence at the end of paragraph 3 of the section concerning the first case of compulsory arbitration: “It is understood that the word ‘powers’ [the powers of the arbitrators] must be taken in the widest sense, and must include the questions to be put to the arbitrators.”

M. Fernandes (Brazil) pointed out that, should the parties fail to agree, it would be for the Council to determine the powers of the arbitrators, but he doubted whether, in the special case of the parties not having made known their conclusions, the Council would be able to interpret the word “powers” as the Rapporteur wished.

The Rapporteur replied that, if the parties agreed to settle a dispute by arbitration, it would naturally be for them to decide on what questions the arbitrators would have to pronounce. M. Fernandes’ misgivings applied to cases in which, the parties not having come to an agreement on the powers to be given to the arbitrators and on the points at issue to be put to them, the Council was substituted for the parties.

The question deserved to be examined exhaustively, as M. Fernandes’ hypothesis did not cover every possible case. A party might refuse to appear before the arbitrators or refuse to put its conclusions before them. After careful consideration, he had thought of embodying in the text a clause to the effect that in that case the arbitrators might even render judgment in default.

He thought, however, that it would be preferable to lay down a few general rules to cover every eventuality. It was possible that a party might go to extreme lengths of obstinacy and refuse to appear before the arbitrators. Arbitration was, however, compulsory, and if the parties failed to agree, the Council alone was entitled to settle all the details of arbitration. In that case the arbitrators must have a definite programme of work. It was not, of course, admissible that the only party submitting to arbitration should be entitled to determine all the points to be put before the arbitrators; that would mean a deadlock. It was indispensable that the authority imposing this particularly delicate type of arbitration should have power to determine the questions to be submitted to the arbitrators.

Such were the reasons which had led him to propose the addition.

M. de Palacios (Spain) considered that the addition should come a little later, after the paragraph beginning: “It also appeared inexpedient to define precisely…”

M. Politis (Greece), Rapporteur, replied that the two paragraphs referred to two distinct questions.

In the paragraph to which the amendment under discussion referred, there might be some question as to the exact meaning of the term “powers of the arbitrators”.

It was therefore proposed to state that this term referred to the determination of the questions to be laid before the arbitrators.

The paragraph referred to by M. de Palacios concerned the determination of the competence of the arbitrators. The point at issue was whether they could pass judgment according to the strict letter of the law or act rather as friendly mediators liable to take into account considerations of equity.

He therefore concluded that the proper place for the amendment was in the third paragraph and not in the fifth, as M. de Palacios proposed.

M. Fernandes (Brazil) was not satisfied with the Rapporteur’s explanations. If it was merely a question of the powers to be given to the arbitrators and of ascertaining the rules applicable in the case if it called for a purely legal judgment or required a settlement ex seque et bono, he would be quite in agreement with the sense in which it was proposed to take the term “powers”.

But he could not agree that, in default of an agreement between the parties, the Council should be given the power of settling the question. In that case a party dragged before the arbitrators might find the whole question which it had raised cut down in a manner incompatible with its view of the protection of its rights.

In his opinion, the terms of the question must be settled by the parties themselves; in the absence of one of them, either the conclusions of the party appearing before the arbitrators would be accepted or an advocate would be appointed officially.

But, in any case, the judges must gain their information on the questions put to them from the conclusions of the parties. A State appearing before arbitrators by compulsion could not be deprived of the right of defining the question as it thought fit.

M. Loucheur (France) pointed out that the amendment under discussion had been proposed by the French delegation.

He quite agreed with M. Fernandes as regarded the determination of the powers of the arbitrators by the Council, but that was not the question. The sentence which it was proposed to add was very definitely related to that laying down that the parties should themselves constitute the Committee of Arbitrators, i.e., the following sentence: “They [the parties] may agree between themselves in regard to the number, names and powers of the arbitrators, and the procedure”.

The French delegate pointed out that cases might arise in which the parties would not agree on the questions to be laid before the arbitrators. It was therefore necessary to tell them that they must reach an agreement on this point.
The CHAIRMAN reminded the Committee that the proposal was to add the following sentence at the end of the paragraph beginning "Full liberty..." : "It is understood that the word 'powers' is to be taken in the widest sense, including inter alia the questions to be put to the arbitrators".  

The amendment was put to the vote and adopted.

The RAPPORTEUR said that, in the second place, it was proposed, in the paragraph beginning "It also appeared inexpedient to define", to delete from the words "although in a general way" onwards and to substitute the following:

"This is a matter which depends on the attendant circumstances in each case. If necessary, the rôle of the arbitrators can, as stated above, be not merely that of judges giving sentence in accordance with the principles of law but that of friendly mediators, able to take into account considerations of equity."

This amendment was proposed by M. Fernandes to bring this part of the report into line with the modifications already made in the introduction.

The RAPPORTEUR expressed his approval of this amendment.  

The amendment was adopted.

The RAPPORTEUR said that, to meet the wishes of M. Fernandes, it was necessary, after the words "to take the necessary action", to add the words "except that the Council shall not be able to decide the form in which the question shall be submitted".

M. CASSIN (France) thought that M. Fernandes' amendment ought to be accompanied by the reasons he had given.  

The form in which the question would be submitted would in that case be determined by the conclusions of the party appearing before the Court of Arbitration if the other party did not appear.

The impression should not be created that no procedure existed in the event of one of the parties failing to appear before the Court. The amendment should therefore read: "except that the Council shall not be able to decide the form in which the question shall be submitted, this being determined by the conclusions of the party or parties present."

M. BURCKHARDT (Switzerland) enumerated the different cases which might arise.

If the two parties were in agreement as to the form in which the question should be submitted, the question would be submitted to the arbitrators in that form.

If one party formulated conclusions and the other party did not do so, the arbitrators would decide.

If the two parties formulated opposing conclusions and the other party did not do so, the arbitrators would decide.

M. POLITIS (Greece), Rapporteur, made a fresh statement of the conditions under which the question would be submitted to the arbitrators.

If the parties agreed as to the form in which their questions should be put, there would be no difficulty. If they disagreed, the Council could be given the right of deciding the form of the questions. Here there was a danger to which M. Fernandes had called attention and, to obviate it, it was necessary to have recourse to the common law of judicial procedure.

According to common law, the form in which the question at issue should be submitted depended on the conclusions of the parties. If the two parties put forward conclusions, the judge decided on the question at issue after considering the conclusions. If only one of the parties formulated the questions, the arbitrator would pronounce judgment on the basis of that party's conclusions, provided, naturally, that these conclusions were in conformity with law and equity.

The Rapporteur accordingly proposed that, at the end of the third paragraph beginning: "If the parties...", the following clause should be added:

"...except that the Council shall not be able to decide the form in which the question shall be submitted, this being determined by the arbitrators from the conclusions of the parties, or of only one party if the other party or parties are absent."

This addition was adopted.

M. POLITIS (Greece), Rapporteur, said that he accepted M. Loucheur's proposal to insert the following sentence at the end of the penultimate paragraph of the section headed: "Effect of and Sanction enforcing Decisions": "The party in favour of which judgment has been pronounced may only use force against the recalcitrant party if it is authorised to do so by the Council or Assembly of the League of Nations".

The reason for this addition was that it was necessary at this stage in the report to refer once more to the hypothesis put forward in section 3 of the report dealing with the condemnation of aggressive war, in the following words: "A State may employ force with the authorisation of the Council or Assembly in order to enforce a decision given in its favour."

The amendment was adopted.

M. FERNANDES (Brazil) feared that it might be going too far to say that the three categories of disputes enumerated in the paragraph regarding the "sphere of application of methods of pacific procedure" were "disputes to which the system will not apply"; and he asked who would decide whether the cases were really exceptional. He considered that these cases would in reality be cases which could not be admitted and not disputes to which the system would not apply.
If this were not so, a State would be entitled to make war when it was party to a dispute on which the Council had previously made a unanimous recommendation before the Protocol came into force.

M. Politis (Greece), Rapporteur, wished to say a few words in reply to M. Fernandes. The latter had expressed the opinion that the words: "disputes to which the system will not apply" were perhaps rather too strong. He wished to know who would decide whether a case was exceptional, maintaining that this was a question of cases which could not be admitted and not a question in which the system did not apply.

M. Politis said that, in his opinion, it came to the same thing. When the Council had failed to reconcile the parties, the procedure described in the Protocol and analysed in the report would come into play. The passage in question said that there were three kinds of disputes which would not be subject to this procedure.

He did not think that the expression "to which the system will not apply" could give rise to any misunderstanding.

M. Galvanauskas (Lithuania) proposed an amendment to the second sentence of the paragraph regarding the third class of dispute. For the words "the existing territorial integrity of signatory States" he proposed to substitute the words "the territorial integrity as it exists according to the law in force".

M. Politis (Greece), Rapporteur, regretted that he could not accept the Lithuanian delegate's amendment. The term which the latter wished to amend was that used in the Covenant. He did not think that any other term could be adopted.

Furthermore, the term "territorial integrity" did not refer to every kind of territorial possession. If a State was in possession of territory to which it had no title, this possession was not covered by the idea of "territorial integrity".

The Covenant itself took "territorial integrity" in the same sense as M. Galvanauskas did. It was not necessary in the report to comment on this term, which had a definite meaning in law and a still more definite meaning in regard to the League of Nations.

M. Galvanauskas (Lithuania) thought that his amendment would be unnecessary in view of the Rapporteur's explanations regarding the expression "territorial integrity". He would merely ask that this exchange of views should be inserted in the Minutes.

He further asked whether, in the first of the three categories of disputes mentioned in the section relating to the sphere of application of methods of pacific procedure, it would not be desirable to insert the words "at least" after the words "the subject of a unanimous recommendation by the Council accepted by..."

M. Politis (Greece), Rapporteur, replied that the amendment was superfluous as the meaning would remain the same.

M. Galvanauskas (Lithuania) did not insist upon his point.

The Rapporteur added that the Minutes would record that there had been agreement on this point.

As to the point raised by M. Fernandes in agreement with the Rapporteur, he proposed a slight addition to the paragraph in the same section of the report beginning: "A few exceptions to the rule have also had to be made in order to preserve the elasticity of the system". After the word "rule" the following should be added: "which constitute pleas in bar, the question having in limine to be refused by the Council".

This amendment was adopted.

M. Burckhardt (Switzerland) proposed a slight modification in the section dealing with the first case of compulsory arbitration.

The seventh paragraph contained these words: "The opinion of the Court is obtained for the assistance of the arbitrators; it is not compulsorily binding upon them, although its scientific value must, in all cases, exercise a strong influence upon their judgment." While it had been decided that the opinion of the Court would not be legally binding, it had, none the less, been decided that morning that the arbitrators must first of all keep strictly to law and equity.

These opinions of the Court would relate to questions of law. It was therefore not to be supposed, although the arbitrators were not legally bound to consider them, that they would in actual fact disregard opinions of this kind. The delegate of Switzerland therefore proposed that the passage should read as follows: "The opinion of the Court is obtained for the assistance of the arbitrators. It is not legally binding upon them..."

This amendment, as accepted by the Rapporteur, was adopted. Section 5 of the report, "Strengthening of Pacific Methods of Procedure", was adopted.

VI. Rôle of the Assembly under the System set up by the Protocol.

This section of the report was adopted.
VII. Domestic Jurisdiction of States.

This section of the report was adopted.

VIII. Determination of the Aggressor.

M. Politis (Greece), Rapporteur, reminded the members that he had informed them at the morning's meeting of a somewhat considerable alteration at the end of this section. The new text had been circulated.

In regard to this text, the Rapporteur had received from the British and French delegations notice of a slight drafting amendment. This consisted in substituting in the last paragraph for the word "remind" the expression "call upon them to carry out their duty".

The object of this amendment was to conform to the actual wording of the Protocol.

Further, in order to give precision to the thought expressed, there should be added at the close of the re-drafted text the following words: "there is no occasion for a vote".

M. Fernandes (Brazil) thought that the last paragraph but two of the new text was not in entire conformity with the text stating that there was deemed to be presumption unless there were a unanimous decision by the Council. He suggested a different wording, which might be as follows: "When there is a presumption, the facts themselves determine the aggressor, and, unless the Council unanimously decides otherwise...".

M. Politis (Greece), Rapporteur, accepted M. Fernandes' proposal and suggested that the text should read as follows:

"When there is a presumption, the facts themselves determine which is the aggressor, and, unless the Council unanimously decides otherwise, it is under the obligation to act accordingly."

M. Loucheur (France) was of opinion that this wording was far from clear. M. Fernandes concurred in M. Loucheur's opinion. It might be thought in reading the commentary that the unanimous decision of the Council referred to the action of the Council, whereas it referred to the presumption of aggression.

The Rapporteur, in order to meet the suggestion of M. Fernandes, proposed that the text of the report should not be altered, but that a provision should be added, in the following terms:

"When there is a presumption not contradicted by a unanimous decision of the Council, the facts themselves determine which is the aggressor. There is no need for any further decision of the Council and consequently the question of a majority vote or unanimous vote does not arise. The facts once established, the Council is under the obligation to act accordingly."

This provision was adopted.

M. Erich (Finland) pointed out the difficulty which would arise in regard to the competence of the Council in the case of war between a State signatory to the Protocol and a State which was a non-signatory and also not a Member of the League of Nations. In order to obviate any misunderstanding on the subject, he proposed that the following words should be added:

"In all cases when a State signatory is involved in the conflict, even though the aggressor be a State non-signatory and a non-Member of the League of Nations..."

M. Limburg (Netherlands) thought that, in order to meet M. Erich's suggestion, it would be sufficient to specify that this provision was also applicable to the case in which a State non-signatory and non-Member of the League was in question.

The Rapporteur admitted that the provisions of the report and of the Protocol were only applicable to the relations of the signatory Powers as between each other. With a view to settling the question of the competence of the Council in the case referred to by M. Erich, he proposed that the following sentence should be added to the text of the report: "The same applies when one of the parties to the dispute is a State non-signatory of the Protocol and a non-Member of the League of Nations."

This addition was accepted.

M. Osusky (Czechoslovakia) was of opinion that the point under discussion was the most important point of the report and of the Protocol, and the success or failure of the system would depend upon the character of its solution.

He was moved to make these remarks by the interpretation given in the two final paragraphs of the supplementary text of the report on Article 6, paragraph 5, an interpretation which, in regard to the rules for prescribing an armistice, did not correspond to the meaning, such as he had understood it, when Article 6 had been discussed, and which had been expressed in the first draft of the report, according to which a two-thirds majority had been laid down for the decision prescribing an armistice.

The system established by Article 6 was a system of manifest facts. It was thought possible automatically to determine the aggressor, prescribe an armistice and to enjoin the guaranteeing States to do their duty.

First of all, it was stated in the penultimate paragraph of the supplementary text: "Where there is no presumption, the Council has to declare the fact of aggression. A decision is necessary
and must be taken unanimously". The question, in his opinion, was therefore settled. But the text continued: "If unanimity is not obtained, the Council is bound to enjoin an armistice."

And for this purpose no decision, properly speaking, has to be taken; there exists an obligation which the Council must fulfil. It had been said that, in this case, there was no decision to take, but that it was an obligation which the Council would have to fulfil. Call it what anyone liked—decision, or by some other term—the fact remained that the Council ought to perform a definite action, i.e., to prescribe an armistice.

The Third Committee had taken the precaution, in drafting a certain number of articles, to exclude from voting the parties concerned who were Members of the Council, in a case when it devolved upon the latter to take certain measures. In the present case, a Member of the Council, a party concerned, might take part in the decision. If unanimity were made a necessary condition, it would be sufficient for the party concerned, the party against whom they wished to set in motion all the machinery, to refuse to vote the decision—which might, for instance, be one enjoining an armistice—and the whole machine would come to a standstill.

M. Osusky concluded by regretting that so serious a gap should have been left in a system prepared with so much care.

M. Politis (Greece), Rapporteur, wished to allay the misgivings of M. Osusky. The latter was afraid that the Council might not be able to do its duty and that the entire system would then come to a standstill because one Member of the Council prevented it from working. He was afraid that the Council might include a party so excessively interested that it would wish to stop the system from working. He was thinking of one of the parties concerned in the dispute which might be a Member of the Council.

This apprehension was unfounded, because there was a universal rule that the parties concerned in the dispute could not vote. It was stated three times over in Article 15 that decisions were to be taken independently of the Members concerned in the point at issue.

It remained to be decided whether all the other Members of the Council, except the parties interested, had to be unanimous in their decisions.

Article 6 was perfectly clear. It began by establishing a series of presumptions. When these presumptions existed and were not invalidated by a unanimous decision of the Council, they at once and automatically became operative.

The Council’s whole duty was to establish the facts. It had no power to judge them. That was the meaning of Article 6 of the draft Protocol 1.

If, nevertheless, the Council wished to judge the facts, and was not unanimous, the whole system might fall to the ground; that was M. Osusky’s objection.

It was not to be supposed that the Members of the Council, not including the interested parties, would refuse to perform the most serious and important duty allotted to them by their international organisation.

In the first hypothesis the presumption existed. It was not invalidated by a unanimous contrary decision of the Council. Under Article 6, it immediately became the Council’s duty to determine the aggressor. There was no question of taking a decision, as was stated in the report. A decision would imply the existence of two possible solutions.

If there was no unanimous decision the presumption came into operation. He (M. Politis) could not imagine that the Council would ignore the presumption.

Again, M. Osusky had laid stress upon the eventuality of there being no presumption. In that case, the aggressor would have to be determined by a unanimous decision of the Council with the exception of the interested parties.

If the decision was unanimous there was no more difficulty; if not, it was the Council’s duty to prescribe an armistice. It was scarcely to be supposed that anyone would say: “I would not co-operate in establishing an armistice”.

If he did, his colleagues would reply: “You have no right to object to an armistice, because we are bound by Article 6. You are obliged to concur in the issue of an order to the belligerents”.

Since the armistice conditions could be established by a two-thirds majority, it followed that a two-thirds majority would also be sufficient to decide any difficult points in case of doubt.

Lastly, an armistice prescribed the conditions. Suppose one of the belligerents would not accept the conditions, or broke the armistice: it was then the duty of the Council to declare that that State was an aggressor.

It was improbable that any Member of the Council not interested in the question should say: “There is no doubt about it; there has been an aggression and the aggressor is known; nevertheless, I am not prepared to join in reminding the Members signatory to the Protocol of their duties”.

That would be an intolerable situation, and it was incredible that any Member of the Council would so gravely fail in its duty as to commit such an act of folly.

Taken as a whole, he thought that Article 6 was dazzlingly clear, and he did not think that he had added anything in his report which detracted from its meaning.

M. Osusky (Czechoslovakia) said that M. Politis’ arguments had not entirely dispelled his misgivings. The Protocol would be interpreted in accordance with its own provisions. If it were not explicitly stipulated in Article 6 that the parties concerned in the dispute should not sit as Members of the Council, there would be nothing to prevent them from participating.

1 This article became Article 10 of the Final Protocol.
in the decision, in view of the fact that they had been expressly excluded in the article concerning preventive measures in case of a threat of aggression.

If it were postulated that all countries would fulfill their obligations, what was the use of discussing at such length a Protocol the aim of which was precisely to organize the measures to be taken in case a State should not fulfill its undertakings?

He did not oppose the adoption of Article 6, but he formally repeated his warnings as to the three great loopholes which would be left for the reappearance of war, and which would cause the system to break down as soon as any serious dispute arose.

M. Politis (Greece), Rapporteur, did not see why M. Osusky accepted Article 6 if he thought that it would wreck the Protocol. For the sake of the great work in which so many nations had collaborated, he begged him to tell the Committee how he thought that the three loopholes he saw could be stopped up.

M. Fernandes (Brazil) said he would like to try to show M. Osusky where he was wrong on the main point of his remarks. It would be better to say that the Council "shall have the duty" than to say that it might reach a decision by such-and-such a majority. If they said that the Council "shall have the duty", that meant that it would be the Council's duty to take that step without discussion. The whole machinery of the Covenant was based on that idea. For example, when the Covenant required the Council to bring the parties to an agreement, it was not open to the Council to decide not to do so.

The same applied to the obligation of the Council to meet at least once a year or to its duty to take part in the election of judges of the Hague Court. If it could be imagined that the Council would not carry out its obligations, then there would be an end of the Convention, and no League of Nations would be possible.

M. Osusky (Czechoslovakia) described the three gaps which he saw in the Protocol.

1. In the case of presumption, the identity of the aggressor was determined by the actual facts. What happened if the Members of the Council did not agree as to the existence of these facts?

2. There was another loophole in the method of determining whether there had been recourse to war in violation of the undertakings provided for in the Covenant and the Protocol as well as in the manner of prescribing the armistice.

In case of divergency of opinion in the appreciation of the fact whether an undertaking resulting from the Covenant or the Protocol had been violated, the Council, not being in a position to determine the aggressor, must prescribe the armistice. The Committee mentioned "the obligation" of the Council. It was accordingly necessary to enable the Council to fulfill this obligation by permitting it to take a decision by at least a two-thirds majority.

3. The third loophole was in the passage in which it was said that the Council should merely "enjoin". In case of divergency of opinion, however, on the question whether a belligerent had refused an armistice or violated its conditions, how could the Council, acting as a body, enjoin upon signatory States the application of sanctions?

His motive for announcing his anxieties and his convictions was his earnest desire that some solid edifice should be built. If it was to be assumed that everybody always did his duty, why were they building such machinery with a view to bringing to terms the party which would not fulfill its engagements?

M. Scialoja (Italy) did not think that M. Osusky's objections were justified. The main point was that M. Osusky put the case that the organs of the League of Nations might not do their duty. But every society was bound to assume that its organs would do their duty. If they did not do so, the society would disappear. This eventuality, therefore, could not be contemplated in the organisation of any society.

It was quite clear that in the case in question the Council would have to hold its discussions in the absence of the parties interested. It was true that in other articles explicit provision was made for their exclusion; but the Covenant might be referred to, and the Covenant provided for their exclusion.

He was, however, slightly in doubt on one point connected with this procedure. Article 4 of the Protocol laid down that the Council should invite a representative of the other State to sit as a Member of the Council. Neither of the representatives of the States concerned could take part in the decision, but they had to be present.

But this was a matter of urgency and the procedure might be too long.

It would be expedient, therefore, to insert in the report a passage stating that urgency necessitated in this case that this procedure should not be rigorously applied.

It would, no doubt, have been preferable to include a provision to this effect in the Protocol. The speaker would have liked the Protocol to have been discussed more calmly. The Assembly might authorise a revision of this instrument from the purely technical point of view. They might perhaps make an addition to this effect in the resolutions to be submitted to the Assembly.

M. Loucheur (France) thanked M. Osusky for having raised this discussion, for it had allowed them, after hearing his apprehensions, to listen to M. Fernandes' observations, which still further strengthened the original draft.

He entirely agreed with what M. Fernandes had said, and hoped that M. Osusky would distinguish between the two types of powers conferred on the Council. He begged him not to forget that, in certain cases provided for in the Covenant—as in the case provided for in Article 6, which they were discussing—the Council was an executive agent pure and simple.
He, too, had thought of a majority vote, but after mature reflection had come to the conclusion that in this case the duties of the Council should be purely and simply executive. As an executive agent, the Council received instructions, and there was then no question of a vote; it simply had to act.

He recognised that in Article 6 two weak points had been indicated which, in certain cases, might give rise to discussion. For example, it was not laid down that the States which were parties to the dispute should not vote, if a vote were taken. He had himself, on more than one occasion, recommended that the Drafting Committee should insert in this connection a sentence which was to be found in the text of the Covenant. He was told that this point would be covered by a general provision, but no such provision had ever been added; the speaker, therefore, asked that, at all events, some very definite statement should be made in the report in regard to the matter.

A second difficulty arose in connection with the armistice conditions. The speaker described what, in his opinion, would be the course of events. The Council would meet; there would be no need to take a decision on the question as to whether there should or should not be an armistice. The armistice would be decided ipso facto, and all that was required was to settle the terms. The Members of the Council might differ in regard to questions of detail, as, for example, the day and the hour for the cessation of hostilities. If such were the case, the character of the Council's meeting would change: then it would have to take a decision, and it was laid down that there should be a two-thirds majority.

The speaker regretted that this majority had been fixed, because in certain cases there was a risk that the proceedings of the Council might be brought to a standstill; he would have preferred a bare majority. He did not, however, wish to raise this question again; he accepted the majority decision by which Article 6 had been adopted.

Part VIII was adopted.

IX. Disputes between States signatory and non-signatory to the Protocol.

Adopted.

The report as a whole was adopted, subject to the reservation of any modifications which might become necessary as the result of amendments to the Protocol.

28. — Arbitration (Draft Protocol): Articles 5 and 6 held over.

The CHAIRMAN said that the Protocol had been adopted by the Committee, subject to the possible amendment of Articles 5 and 6.

Article 5.

This article became Article 10 of the Final Protocol.

M. Babinski (Poland) expressed his disagreement with M. Scialoja's second suggestion regarding Article 4, paragraph 5.

In the opinion of the Polish Government, paragraph 5 of Article 4 laid down a fundamental right, and neither the motives invoked in the Protocol nor the report could be allowed to touch the principle embodied in this article.

The speaker stated that, if the Rapporteur allowed M. Scialoja's views to prevail, he would ask that his reservations might be included in the Minutes.

The CHAIRMAN declared the debate on the point raised by M. Osusky closed.

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28. — Arbitration (Draft Protocol): Articles 5 and 6 held over.

The CHAIRMAN said that the Protocol had been adopted by the Committee, subject to the possible amendment of Articles 5 and 6.

Article 5.

Article 5 was adopted.

Article 6 1.

M. Adatci (Japan) stated that, in response to the request of the Chairman and M. Loucheur, he had made every effort to see if he could agree to a compromise on Article 6. He regretted that he had been unable to find any solution, and was obliged to make the following statement:

It is the profound conviction of the Japanese delegation that the League should, in fulfilment of its moral and political duties, allow the application of the procedure laid down in Articles 12, 13 and 15 of the Covenant in the case of all disputes which may arise between Members of the League. In paragraph 8 of Article 15 alone is it provided that such procedure shall not apply to a certain class of questions which may arise between the various States. The League of Nations should fulfil its regular duty by making all such questions subject to the procedure laid down in the Covenant,
whenever the peace of the world is seriously endangered, in order to facilitate a pacific settlement and a just and equitable solution of the dispute. There would be otherwise this absurd consequence, that the League of Nations will remain quite indifferent to the fact that the most flagrant acts of injustice are being committed under the purely technical and juridical cover of the alleged domestic jurisdiction of a State which is a Member of the League.

And yet, the Committee has desired to maintain a disconcerting and absolute inactivity on the part of the League in disputes which may arise between the Members in connection with any of the problems which are vaguely covered by paragraph 8 of this article.

Very regretfully we yield to your wishes, for the time has perhaps not yet come to insist upon this point. But what is so illogical and unjust is that any party should incur the risk of being declared the aggressor because it takes action when flagrant injustice has given rise to disputes between the Members of the League and the latter has categorically refused, in virtue of purely technical and juridical considerations, to deal with the matter. The most elementary logic and equity should preclude such a method of procedure, for the League should not threaten to declare guilty any party which takes action, precisely when the League offers no solution, when a dispute has arisen between that party and another State which threatens to disturb international peace or the good understanding between nations.

It is in order to do away with this anomaly that the Japanese delegation formally proposes the deletion, in number 1 of Article 6 of the Protocol, of the words: “...or has disregarded a unanimous report of the Council, a judicial sentence or an arbitral award recognising that the dispute between it and the other belligerent State arises out of a matter which, by international law, is solely within the domestic jurisdiction of the latter State”.

The speaker appealed not only to the juridical sense of the Committee but to their sense of statesmanship. He appealed to their devotion to the ideals of the League and the peace of the world, and trusted that his amendment would meet, if not with unanimity, at all events with an overwhelming majority. Such was his hope in submitting the amendment.

M. Fernandes (Brazil) said he had already appealed to M. Adatci’s goodwill and that he ventured to do so again. He begged him to consider very carefully the serious difficulty in which he was involving his colleagues, who were at the same time his friends.

M. Adatci knew, he said, how sincerely he shared his patriotic anxiety and how much he wished to help him in solving the difficulties by which he had been so greatly perturbed. But of all the solutions which had been suggested, that proposed by the Japanese delegate was the one which he could never accept.

He declared that they desired peace based on security, security based on justice, and justice administered by the best-qualified organs. The Japanese delegation’s proposal was that they should admit, and leave unpunished, the most unrighteous wars, and even wars directed against a State which was admitted, by the highest authorities, to have acted strictly within the rights conferred by its domestic jurisdiction.

If they agreed to M. Adatci’s suggestion, it might be impossible to inflict penalties in half the cases calling for judicial action, and the most abominable and unjustifiable wars would have legal sanction.

Moreover, they must bear in mind that the weapon they requested might prove to be double-edged, because, although a State, in applying its internal laws, might do injustice to another State and force might be used to settle the dispute, other cases might frequently arise in which a State would be acting not only in accordance with its rights, but in accordance with strict justice. In such instances, any violent action directed against it would be doubly odious.

No; that was not the solution of the problem, and the Committee would be committing a very grave mistake if it considered the possibility of adopting such a suggestion.

With nations as with individuals, law was not in itself sufficient for the maintenance of peace; it was only, as it were, the codification of the needs of society, recognised by a competent body, and controlled by public authority. Whenever the positive right and the conditions of the existence of a society proved incompatible, such society either collapsed or reacted by means of revolution.

The same applied to international relations. The remedy lay in co-operation, in the codification of international law, whereby it would be possible to recognise and define the limits beyond which an abuse of domestic jurisdiction would call for suppression and punishments as a crime against humanity.

The authors of the Covenant, although they did not contemplate so universal, so rigorous a system of compulsory jurisdiction, emphasising as they did the importance of mediation and the political power of the Council, nevertheless foresaw the all-important problem now under discussion. That problem would come up for settlement after the problem of compulsory international justice had been solved. They had, in fact, touched upon an intricate question which would involve them in many complications.

Article 23 of the Covenant stated that Members of the League “will make provision to secure and maintain freedom of communication and of transit, and equitable treatment for the commerce of all Members of the League”.

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Article 23 of the Covenant stated that Members of the League “will make provision to secure and maintain freedom of communication and of transit, and equitable treatment for the commerce of all Members of the League”.
“Commerce” was a word which should be interpreted in this case in the widest possible sense. All exchanges, all economic relations were governed by this text. That was how the legitimate aspirations of peoples who suffered under the abuses of internal law might be safeguarded.

Just as they were preparing a Convention which would institute a system of penalties for the international crime of war, so they might later conclude universal conventions, according to which States which refused to give adhesion to their provisions could not profit by the advantage reciprocally granted by contracting parties in the economic field.

The system before them was too rigid, that the Covenant precluded the possibility of making distinctions which deserved, at times, to be made. The anxiety of the Japanese delegate was quite justified, but it was not by allowing force alone to decide the serious question whether a State had overstepped the just limits of its national sovereignty, whether it had signalily abused its rights, that an equitable solution was to be found.

M. Fernandes, however, could not deny that it was an exceedingly severe procedure to declare that a party which was precluded from discussing the matters in question should be dealt with on presumption. Such presumption would only be irrefutable because there would be no unanimity of opinion to invalidate it. If they omitted the paragraph in question, the results which he feared would not ensue.

It was because there was no likelihood of such results that he agreed to M. Adatci’s amendment.

Was it true, as M. Fernandes had suggested, that they were going to admit the legality of a war, so that a country might take refuge in its domestic jurisdiction?

Such a State, if it resorted to war, would be failing in its engagements, for it had undertaken, under Article 10 of the Covenant, to respect the territorial integrity and political independence of all Members of the League. The other possibility was that the State would have refused any sort of pacific procedure.

M. Fernandes stated that, on the contrary, the supposition was that it had agreed to it.

It would be the aggressor, but not ipso facto. It would at least be allowed to discuss the matter. They could not refuse it this right to discuss the question before the Council. They could not regard it as a criminal. Having closed the door to discussion, he thought it quite fair — since it was a consequence of the rigid nature of the present Covenant — not to carry the matter any further, and to apply this presumption of aggression to a State which acted in the manner described.

For the above reasons, the speaker felt that he could accept M. Adatci’s amendment.

M. ROLIN (Belgium) stated that the considerations adduced by M. Adatci, which were of greater weight than his conclusions, had at first caused him some anxiety, but he had finally been convinced by the arguments of M. Politis. The amendment did not tend to create a category of legal wars, but solely to disallow a certain presumption, and they might adopt it, maintaining Articles 4 and 5 in their entirety.

The right to regulate, within its territory, all matters connected with religion, institutions and property was within the exclusive competence of a State. This vital right, which was dealt with in paragraph 8 of Article 15 of the Covenant, could not be disputed.

When they came to consider the matters dealt with in Article 23 of the Covenant, which referred exclusively to the interests of States, it was possible to imagine an abusive use of this right, which would one day be embodied in international law.

If the Permanent Court of International Justice considered that it could not solve a dispute because that dispute was a matter for the internal jurisdiction of a State, peace was imposed with sanctions. Could they then insist that the State whose interests had been affected should accept that decision as final? Could they forbid it to reopen the question? Could they bring up against it that formidable presumption contained in Article 6, if the conflict arose in some distant country?

M. Politis’ observations had clearly proved that M. Adatci’s amendment did not undermine any of the rules laid down in the Protocol. Equity and commonsense commanded the adoption of the amendment.
M. LOUCHEUR (France) said that he wished to raise a point of order; the amendment should be referred for examination to the Sub-Committee, which should include the Chairman of the Committee.

M. ADACHI (Japan) accepted the proposal, with the hope and conviction that his amendment would be accepted by the Sub-Committee when all the facts had been considered.

The proposal that the question should be referred to the Sub-Committee was adopted.

M. LOUCHEUR (France) asked that the Sub-Committee should meet as soon as possible. He also requested that the Chairman should be entrusted with the duty of convening the Committee itself. It would be dangerous for them to determine then and there the hour and date for the convening of the Committee. In a question of such importance a few hours one way or the other were of little account. The only thing which really mattered to all the members of the Committee was the friendship of their Japanese colleagues.

After discussion, it was decided that it should be left to the Chairman to convene the Committee.

The amendment which Sir Cecil Hurst was to submit in connection with Article 6 was also referred to the Sub-Committee.

ANNEX.

M. BURGOS (delegate of Panama) said: "Gentlemen — I do not know whether the opinion of the delegation of Panama can, in this most important discussion on the means of establishing a lasting peace among all nations, be of any value for the other States, great and small, to which this serious problem is a cause of continual anxiety. One thing is quite certain, however, and that is that my country, a free and sovereign State, which enjoys, or suffers from, an exceptional geographical situation, is the one country in the world which has never devoted any of its energies to military activities. Perhaps the profoundly peaceful condition of the Republic of Panama enables it to see with greater distinctness a situation of fact which, by reason of the violent contrast it presents, may possibly obscure to a certain extent the outlook of other countries.

"Even as I speak, there comes to my mind a vision in white — the beautiful statue of Peace by Ambrosio Lorenzetti, which adorns the municipal palace at Siena.

"I am sure that you, too, the procession of the people of Siena making obeisance before the Lord of Justice, surrounded by Power, Wisdom, Mercy and Temperance, all allegories, symbols of peace. I cannot banish this white vision from my thoughts, for we are assembled here to discuss matters in calm and tranquillity, and, therefore, this vision should be symbolic of our ideal.

"Peace has been the dream of all mankind for centuries — indeed, ever since the earth has suffered from war and bloodshed.

"How many other noble figures in history have preceded you — you who now represent all that is best in the diplomacy of the world? There is Sully, who in the reign of Henry IV conceived the idea of a federation of European States; the Abbé de St. Pierre, who, at the Congress of Utrecht, submitted a scheme for a conference of nineteen Powers, with a general Diet as its legislative and judiciary organ; the poet of sentimental socialism, Jean Jacques Rousseau, who wrote so profusely on universal peace; Bentham and Lorrimer, with their schemes for a federation of the United States of Europe; and so many other modern minds which have believed that universal peace can be achieved through compulsory and permanent arbitration. Distant and recent, all had faith in a Peace which never came. Women, too, have offered their noble contribution to this lofty ideal: Berta Suttner, a real apostle of peace, has graphically delineated all the horrors of war in realistic descriptions contained in a book which has been spoken of as a victorious battle for the noblest ideal of all.

"Sentiment and reason have said their last word, but sentiment and reason have failed. War has broken out afresh on the old Continent with greater savagery than ever, and the storm clouds have not yet been dispelled.

"And what is the reason? It is that this serious problem cannot be solved by Utopian conceptions, or by the noblest dreams of the sentimentalist. War is innate in man. He owes his life to the incessant warfare which he has waged, first against the elements, and then against his fellows. Rome throughout all her history waged war, and when noble and plebeian alike were no longer willing to fight for her, she fell into the hands of peoples which did not shrink from conflict and which took up their abode in the magnificent gardens of Europe, conquered by destruction and the sword.

"The history of Europe, too, is a history of wars. It was only the peaceful period that followed the Franco-Prussian war which brought the minds of many men to conceive the hope that war had been banished from the face of the world. Then it was that the 'Society of the Friends of Peace' was formed; then it was that for the first time publicists, statesmen, poets, sociologists, and philanthropists sought in a common endeavour to resolve the problem of peace by establishing institutions, associations, and congresses. Some proposed to transform mankind into one vast Republic, of which each great State should form an integral part; others dreamed of establishing the authority of some great organisation, endowed with legislative, judicial and executive powers, to lay down for all the federated States rules of common action for the solution of their disputes and the execution of their decisions. Certain parliamentarians,
basing their hopes on still more shadowy dreams, even went so far as to assert in Parliament that it was already possible to proceed to the general disarmament of the European States because the nations were now tired of war, and because war could not be made without the support of the workers...

"After the fine example set by England and the United States in the famous Alabama case, arbitration came to the fore. A number of eminent persons, including Nobel and Carnegie, offered their private fortunes for the purpose of peace propaganda. An Emperor was inspired by the hope of gaining immortal fame as the 'Emperor of Peace'. In 1910, the World Congress of International Associations for Peace met at Brussels for the purpose of increasing the action of pacificist propaganda. The Socialist Party included in its programme the question of disarmament and universal peace.

"What more is there to say? A Russian philosopher, a simple-minded mystic, extolled before all the world the virtue of the Gospel as he interpreted it, preaching against patriotism, which he called the eternal source of wars. He urged young people to desert the army and not bear arms against their fellow-men, because 'God commands men not to kill one another but to love one another'.

"The truth is, however, that Europe, as she listened to all these voices raised in favour of peace, was on the very brink of the Great War. What bitter disillusionment for those who dreamt of the golden age! War broke out anew, and war more terrible than ever before—whole countries destroyed, millions of dead, thousands of families bereaved!

"The meaning of all these facts is that fine words in support of social brotherhood are of no avail so long as relations between men are founded on egotism and brute force. The counsels of Tolstoy weakened the nations which listened to them, and afforded an opportunity for the violent and overweening to accomplish their tyranny with greater ease. At the very time when Tolstoy was teaching the Gospel as he understood it, others were proclaiming that the Superman, the true hero, must always be a conqueror.

"No, gentlemen—material disarmament can never be attained until we have brought about moral disarmament. We must cast out the hatreds which still linger in the hearts of men, goading nation against nation, and the rivalries of many conflicting interests; we must banish all feelings of mutual distrust; we must draw into this League of Nations all the peoples which, as long as they are not with us, will be a cause of anxiety and fear to other nations.

"Violence and egotism have caused too much sorrow, too much disillusionment, for us to be ignorant of the need for changing our outlook on life. We must reconcile the interests of great and small. We should remember the weighty dictum of Lamartine: 'Unless we can enlighten public opinion in our own country, we are dragged with it towards the abyss'.

"Wilson said: 'Peace between equals is the only durable peace. Treaties and agreements must be designed to establish a peace which can be appreciated by humanity, and which does not merely serve immediate interests. Nations both great and small must have equal rights and every nation must be the arbiter of its own destinies. Commerce must be provided with outlets to the sea; naval and military armaments must be limited'.

"I do not speak to you as one who has recently been converted to the idea that compulsory arbitration is necessary, for I upheld this conception with all the force of conviction at that memorable plenary meeting of the Peace Conference (April 28th, 1919) at which the vote in favour of this League of Nations received the unanimous and hearty approval of the many nations gathered at the Quai d'Orsay. May I quote my words on that occasion? 'We must work for the establishment of a League founded on the immutable basis of right and justice, as President Wilson has so eloquently pointed out. This institution will constitute the boundary-line between two epochs in the history of mankind: the epoch of wars of ambition and conquest and the epoch of triumphant international law. The Covenant of the League of Nations affirms, above all, that the provisions of international law must constitute the basis of all Government action. In reality, it is announcing a new principle, since before the war international law only indicated to States a theoretical line of conduct and, therefore, its precepts were ineffective. Two essential conditions were lacking: the establishment of obligations agreed to by the States, and the institution of penalties and punishments for any State violating that agreement. The scheme which we are discussing embodies these two conditions, and for the first time in history there will evolve a positive international law of sufficient authority to enforce the recognition and execution of its provisions'.

"I was fortunate enough to hear the magnificent speeches of the most illustrious European and American statesmen, all of whom spoke admirably and with great sincerity. Whatever the results of this discussion may be, history will surely accord its blessing to our efforts. I am convinced that all which is humanly possible has been done here. Perhaps our discussions will for the moment have only a moral effect, but even that result is considerable. Little by little, peoples and Governments will obtain a better comprehension of the force of our endeavours. The time will come—it cannot long be delayed—when the words of Gustavus Adolphus will have been for ever expunged from the human mind: 'Above myself and my country I recognise only God and the sword of the victor'.

"People must learn to love their country while respecting the countries of others. We must all unite to form one single party, the party of humanity."
THIRTEENTH MEETING

Held on Tuesday, September 30th, 1924, at 4.45 p.m.

Sir Littleton E. Groom in the Chair.

29. — Arbitration (Draft Protocol): Consideration of the New Drafts of Articles 5 and 6 proposed by the Fifth Sub-Committee.

The Chairman reminded the Committee that at the last meeting Articles 5 and 6 of the Protocol had been referred back to a Sub-Committee; he requested M. Politis to be so good as to inform the Committee of the results of its work.

M. Politis (Greece), Rapporteur, said that he was very glad to announce that the main difficulty which had arisen three days before, and which for a moment had given rise to serious misgivings as to the final result of their labours, had now been settled to the satisfaction of all the members of the Sub-Committee.

The Sub-Committee hoped that this satisfaction would be shared by all the members of the Committee.

The Sub-Committee proposed that the following sentence should be added to Article 5:

"If the question is held by the Court or by the Council to be a matter solely within the domestic jurisdiction of the State, the decision shall not prevent consideration of the situation by the Council or by the Assembly under Article 11 of the Covenant."

Article 11 was as follows:

"Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council."

This alteration of Article 5 had necessitated a similar modification of Article 6. It was, therefore, proposed that the following sentence should be added at the end of the first paragraph of that article:

"Nevertheless, in the last case (that is to say, when a unanimous report of the Council or a judicial or arbitral decision has established that the dispute refers to a matter which under international law is solely within the domestic jurisdiction of the State) the State shall only be presumed to be an aggressor if it has not previously submitted the question to the Council or the Assembly in accordance with Article 11 of the Covenant."

While giving satisfaction to the perfectly legitimate demand of the Japanese delegation, the additions which had been suggested in no way whatever weakened the Protocol or the guarantees which the various States had hoped, and were still hoping, to find in it.

It should be borne in mind that Article 15, paragraph 8, notwithstanding its rigid character, ought not to be considered apart from the other articles of the Covenant.

In order to understand its full scope and importance, it should be regarded as a part of the general framework of the Covenant. That article thus stood in intimate connection with Article 11, in accordance with which the duty was imposed upon the Council, at the request of any party affected, of taking cognisance of the dispute, when a threat of war existed, with a view to endeavouring to find the most effectual means of avoiding war.

By bringing the two texts together it had been possible for the Sub-Committee, and those who had been entrusted with the task of finding a solution, to settle the serious problem which had presented itself.

The rigidity of the initial provision in Article 5 of the Protocol had been removed by referring in the additional paragraph to the provisions laid down in Article 11 of the Covenant.

It was stated that, when a unanimous decision of the Council or an arbitral or judicial decision recognised that the dispute came within the domestic jurisdiction of one of the States party to the dispute, the Council, at the request of the party interested, might, nevertheless, by virtue of Article 11, investigate the matter again with a view to ascertaining, should a threat of war exist, with a view to endeavouring to find the most effectual means of avoiding war.

By bringing the two texts together it had been possible for the Sub-Committee, and those who had been entrusted with the task of finding a solution, to settle the serious problem which had presented itself.

The solution adopted for Article 5 furnished the key to the problem concerning Article 6.

In what did the difficulty consist? It had been represented to them with obvious force and justice that it was inadmissible to presume that a State was the aggressor which had been put out of Court by the Council, the latter having unanimously held that the dispute was a matter solely within the domestic jurisdiction of the other party. That State would not be given an opportunity of explaining its position, and when, in the last resort, it acted in the matter on its own initiative, with a view to settling a matter that no one seemed to desire to deal with, it would be exposed to the terrible presumption of aggression, as a result of which all the Members signatories of the Protocol would be ranged against it.

This article became Article 10 in the Final Protocol.
Between the decision in accordance with which the exclusive jurisdiction of the other party would be recognised and presumption of aggression, they had been asked to interpolate a procedure of some kind giving to a State thus put out of court a last opportunity of settling the dispute by peaceful means.

Article 11 of the Covenant had enabled them to find the solution. Henceforward, in order that a State should be deemed to be the aggressor, it would no longer be sufficient that it had taken no account of the decision by virtue of which the dispute had been recognised, as being solely within the domestic jurisdiction of a State, and that, in the second place, that State had recourse to hostilities. There must be a third condition: the State must either not have requested the application of the special and exceptional procedure provided for in Article 11 of the Covenant or it must have refused to submit to it. Only in the event of all three conditions being fulfilled would there be "presumption" in this special case.

In that manner satisfaction was given to those points in the claim made by the Japanese delegation which were well founded and perfectly just.

But none of the guarantees offered to the signatories of the Protocol were withdrawn as a result of the system they were engaged in. Henceforward, the following amendments were made: the delimitation of the jurisdiction of the Council or the Permanent Court of International Justice on the ground that the dispute was one coming within the exclusive jurisdiction of the adversary.

Should the three conditions required for the establishment of presumption not be fulfilled, the possibility remained of applying the second part of Article 6, which authorised the Council, by means of a procedure with which they were acquainted, to ascertain the aggressor and denounced him for punishment by all the other members of the international community.

Without making any changes in the Covenant, greater elasticity was given to the application of paragraph 8 of Article 15, and none of the essential guarantees which their draft Protocol ensured with a view to the peace of the world were withdrawn.

These explanations showed the Committee that its unanimous approval was necessary for the unanimous confirmation of the agreement to which they had happily been arrived at between the delegations which had succeeded in finding the solution.

Having had occasion to remodel the text of the Protocol for the purpose of including this solution, they had availed themselves of the opportunity to satisfy the wishes of one of their colleagues who, during the course of the last meeting, had manifested certain misgivings with regard to an imperfection he had noted in Article 6.

M. Osusky had pointed out that there was danger in forgetting the conditions under which the deliberations of the Council had to be conducted; moreover, the fact that the votes of the parties concerned did not count in establishing unanimity or in reckoning the majority required, and that it would be advisable to re-state in Article 6 — although it was undoubtedly understood — the fundamental provision of Article 15 of the Covenant.

This suggestion had been taken into consideration in a special article which would be included in the Protocol. The text was the following:

"Whenever mention is made in Article 6 or in any other provision of the present Protocol of a decision of the Council, this shall be understood in the sense of Article 15 of the Covenant, namely, that the votes of the representatives of the parties to the dispute shall be counted when reckoning unanimity or the necessary majority."

On the other hand, at the end of Article 6, where the statement was made that when aggression had been noted or established "the Council shall call upon the signatory States to apply forthwith against the aggressor State the penalties provided for by Article... of the present Protocol", they proposed that a sentence should be added for the purpose of dispelling the misgivings which had arisen in certain minds with regard to the jurisdiction of countries which, having been requested by the Council to fulfill their duty, employed force against the refractory State.

They thought that it should be explicitly stated — although it was obvious — that the States called upon to act by the Council were in the position of belligerents in relation to the aggressor. They would, therefore, enjoy all the rights and privileges which international law conferred upon belligerents.

This was the sentence which it was proposed to add at the end of the last paragraph of Article 6: "Any signatory State thus called upon shall thereupon be entitled to exercise the rights of a belligerent."

The wording had been criticised. It had been asked if grounds did not exist for apprehension lest the State required to intervene, in response to the request by the Council to exercise force against the refractory State, might abuse its position and exceed the measures necessary for bringing the Protocol-breaking State to submission.

The reply had been made — and the author of the criticism admitted that it was satisfactory — that the words "thus called upon" signified that the State would not have entire liberty of action; it would only act under the conditions which had been recommended to it, as well as to the other members of the community, by the Council of the League of Nations.

This wording did not, therefore, present any danger. Its advantage would be to dispel the misgivings which had arisen in certain minds on the juridical situation of the State which, on behalf of the community, had recourse to acts of hostility against the refractory State.

These explanations had been necessary in order to show the scope of the texts submitted for their approval by the Committee.

The Chairman suggested that the discussion should be divided into two parts; the Committee would first consider the amendments adopted by the Sub-Committee; it would then consider the amendment of which M. Politis had been speaking, and which had been suggested by M. Osusky's observations. — Agreed.
M. Adachi (Japan) expressed to the delegates his profound gratitude for the supreme effort which they had made in order as far as possible to give satisfaction to his proposal. The Sub-Committee unanimously submitted to them the two texts which they had before the meeting.

The Japanese delegate stated that, after due reflection, he was prepared to accept the texts if his colleagues of the Committee were agreed upon them. A unanimous agreement had been reached in the Sub-Committee. It was to be hoped that similar unanimity would be shown in the First Committee.

M. Loucheur (France) stated that the texts which had been brought to their notice were the results of a friendly co-operation between the British, Italian and French delegations. These texts had been accepted integrally by the Japanese Government. It knew the spirit in which the work had been undertaken, the loyal desire to give its full weight to what was just in the argument put forward by it, but they had been obliged — and it was the least they could do — to take into consideration the legitimate apprehensions entertained by other delegations.

It had been too frequently repeated during the last two days that the Japanese amendment had been in some sort directed against a certain Power. Could it be supposed for a single moment that the texts submitted by these three delegations could in any single point encroach upon the interests of any Power and, if it was so, would they ever have ventured to submit these texts to the Committee? If these texts had been submitted that day, it was because they considered them strictly and absolutely just.

Therefore, whatever might be the criticisms of details which might be made, the Sub-Committee urgently asked that unanimous approval might be given to these two texts. They certainly had had a difficult time, but the bonds of friendship uniting them, for that very reason, would be further strengthened and the value of the great work which they had undertaken would thereby be enhanced.

M. Adachi (Japan) said that the French delegate had just alluded to the Japanese Government. The Japanese delegation had not yet been able to inform its Government of this agreement. The Japanese delegation, moreover, was not the only one in that position, and it had been under those conditions that the agreement had been arrived at in the Sub-Committee.

M. Loucheur (France) stated that he perfectly understood.

Sir Cecil Hurst (British Empire) said that many might have thought that the Sub-Committee had worked slowly, and ought to have come to a conclusion long ago, but they had been forced to work slowly because they had been up against one of those cases where the interests of the League of Nations touched upon the exclusive rights of States.

It has been the fundamental principle, upon which the League of Nations was based, that it was a League of independent States, and it is only on a full recognition of the basis that every sovereign State must remain the master of its own dispositions that the League of Nations can work.

When, as happens here, we are face to face with a question which seems outwardly to touch upon that particular difficulty, you will, I am sure, realise that no body of men can submit to you a proposal, unless it has been the subject of the profoundest study and investigation, to make sure that the rights of their own countries are being fully respected and protected.

This first amendment, which is submitted to you as an additional paragraph to Article 5 — that article in the draft Protocol which touches upon this very point I have mentioned — brings into the forefront this article which already exists in the Covenant, Article 11, the article which gives the League of Nations the right whenever certain circumstances arise to take certain action.

It is the understanding of the British delegation, in accepting this amendment, that the text now adopted, which it is proposed to add to Article 5, safeguards the right of the Council to take such action as it may deem wise and effectual to safeguard the peace of nations in accordance with the existing provisions of Article 11 of the Covenant. We accept it because we believe that it does not confer new powers or functions on either the Council or the Assembly. Those powers are already defined in the Covenant as it exists to-day, and we do not add to them by this text.

Now I pass to another point and a point of great importance. I am here touching on rather complicated and intricate questions of interpretation. We are here really dealing with points of great importance. We must remember, too, that we are gathered here together in the absence of the Assembly, and we must not mind devoting to the very difficult questions the few minutes that are necessary in order to avoid all misunderstanding. Now, a cursory inspection of the text of the Covenant may leave in some minds a doubt as to the relationship between paragraph 8 of Article 15 of the Covenant and the powers possessed by the Council and the Assembly under Article 11. It is desirable that we should all be clear upon this point.

Where a dispute is submitted to the Council under Article 15, and it is claimed by one party that the dispute arises out of a matter exclusively within its domestic jurisdiction, paragraph 8 prevents the Council from making any recommendations upon the subject if it holds that the contention raised by the party is correct, and that the dispute does, in fact, arise out of a matter exclusively within that State's jurisdiction. The effect of this paragraph is that the Council cannot make any recommendation in the technical sense in which that term is used in Article 15, that is to say, it cannot make, even by unanimous report, recommendations which become binding on the parties in virtue of paragraph 6 of Article 15. Unanimity for the purpose of Article 15 implies a report concurred in by all the Members of the Council other than the parties to the dispute. Given the measure of support indicated, a report is one which the parties to the dispute are bound to observe in the sense that if they resort to war with any
party which complies with the recommendations it will constitute a breach of Article 16 of the Covenant and will set in play the sanctions which are there referred to.

On the other hand, Article 11 is of a different scope. Firstly, it operates only in time of war or threat of war; secondly, it confers no right on the Council or on the Assembly to impose any solution of a dispute without the consent of the parties. Action taken by the Council or the Assembly under this Article cannot become binding on the parties to the dispute, in the sense in which recommendations under Article 15 become binding, unless they have themselves concurred in it. But an explanation, if I may so venture to term what I have said, of our understanding of the mutual relation between Article 11 and Article 15, paragraph 8, of the Covenant, is so important that I venture to beg that, if it meets with general acceptance, it may be at least inscribed in the minutes of our meeting, or perhaps, if you are all willing, and M. Politis, our Rapporteur, is willing, that it should be inserted also in the report which is made, which accompanies our Protocol.

Article 6 is another important amendment. That has been explained in such detail by M. Politis that I do not want to add to what he has stated, but M. Loucheur made a remark, which I think is abundantly true, that we have done our best to find solutions for the problem, and, of course, the wording of the amendments which are before you is wording that must be construed fairly. It has been mentioned to me, for instance, in one quarter, that perhaps a criticism might be directed to the text of the amendment to Article 6 because we use the word "submit" — that it is sufficient to prevent the operation of the presumption there laid down merely if the question has been submitted. Of course, when we use a word like that, it is a word which must be interpreted fairly. It means only that this presumption is avoided in cases where a party to a dispute has asked the Council, and given the Council fair opportunity, to do what it can under Article 11.

Now, let me add one word more of appeal to this Committee in the sense also of what M. Adatci said just now. I have perhaps not very seriously asked your forgiveness for those of us who have been working at this question, because we have kept you away from what ought to be a pleasant holiday. But let us ask your forgiveness for this reason: We have only been able to arrive at this solution very late, and we ought to be most grateful to the delegations who are willing to accept this proposal, so far as they are concerned, in taking upon themselves, as in many cases they have the responsibility of accepting on behalf of their delegations, with that opportunity of consulting their Governments and without opportunity of submitting to their Governments, the text of these amendments.

So far as we, the British delegation, ourselves are concerned, we cannot do more than say that, as a delegation, we will submit this proposal to our Government. That is all we ourselves are in a position to do. We cannot pledge our Government to the acceptance of this text. It is a text which was finally decided only at noon to-day. Therefore, I desire to associate myself most cordially and most exactly with what His Excellency M. Adatci has said. It is a text which was finally decided only at noon to-day. Therefore, I desire to associate myself most cordially and most exactly with what His Excellency M. Adatci has said.

The Japanese delegation had asked for an amendment: they were offering it two. The Japanese delegation had adopted both of them, and he hoped that the Committee would do the same.

These amendments contained something more than the immediate solution of a difficulty. The Committee might remember that, when the Sub-Committee first began its work in connection with the Protocol, the speaker had said that the Protocol was merely juridical in character; it left the most important questions unsolved and could not protect them from serious dangers in the future, because such dangers were the outcome of physical and social laws which could not be settled by law.

In the amendments now before the Committee there was the seed of what, with care, might become a fruitful and flourishing tree.

In the means thus offered them would be found the solution of the ultra-juridical problems — if he might use such an expression — of which he had spoken. They would agree that that was a great step; it was the first step in the realisation of a programme which might appear to offer insurmountable difficulties, but they had already begun to overcome those difficulties.

Such being the case, the Assembly might conclude its labours in a moral atmosphere of perfect serenity — from the physical point of view also in an atmosphere of unclouded sunshine, which the rain and mist of the last few days had temporarily overcast.

Mr. Hofmeyr (South Africa) stated that the South African delegation had found great difficulty in coming to a conclusion during the last stage of these negotiations. He did not propose to discuss the amendment but simply to explain their attitude, which might be misunderstood if a silent vote were given; he wished, therefore, to make a few remarks. He would have preferred a different solution of the problem, but agreed to the compromise proposed, as he looked at the Protocol as a whole.

The speaker stated that, as Sir Cecil Hurst had explained, they could not speak for their Governments or Parliaments who were free to decide on the Protocol, but he was prepared to recommend his Government to sign the Protocol, which he regarded as the greatest advance yet made by the League towards the fulfilment of its function of ensuring the peace of the world.

It was true that the Protocol, like the Covenant, imposed limitations upon the individual liberties of States. But unless the latter were prepared to make certain sacrifices, the League,

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It was true that the Protocol, like the Covenant, imposed limitations upon the individual liberties of States. But unless the latter were prepared to make certain sacrifices, the League,
whose duty it was to protect the smaller States, would never be able to succeed in its purpose. The Protocol would be the barbed wire fence surrounding the Naboth's vineyard, which were the smaller States, who looked to the League of Nations to guarantee their peace and security.

It was to be hoped that this was the spirit in which the Protocol would be ratified. Thus the great idea of the founder of the League would be realised — the principle that the maintenance of peace called for the reduction of national armaments to the lowest point consistent with the safety of each State.

The Disarmament Conference must be held and must succeed. All those who had experienced the same difficulties would recognise the problem facing their friends in the Far East. They might congratulate themselves that, thanks to the good-will of all parties, they had overcome the difficulty which stood in their way, and they owed a deep debt of gratitude to all those who had been engaged in this work, to all the members of the Sub-Committee by whose efforts they had now arrived at a solution.

The Protocol would endure as the Magna Charta of the smaller States, and in time would become the real charter of the League itself.

M. de PALACIOS (Spain) stated that, on behalf of the Spanish delegation, he accepted the solution now submitted to them; it was in accordance with the fundamental principles of the Covenant and was inspired by the spirit of conciliation to which all were devoted.

M. FERNANDES (Brazil) reminded the Committee that it was he who had raised the discussion which led to the Japanese amendment being referred to the Sub-Committee; he was glad, therefore, to be present on this happy occasion. He agreed to the excellent solution proposed, and gave his unreserved support to Sir Cecil Hurst's remarks as to the necessity of stating in the Minutes, or preferably in the Report, that the powers conferred on the Council by the Committee's fresh text were the same as those conferred by the Covenant, and remained subject to the provisions of paragraph 8 of Article 15, which was an indispensable safeguard for the domestic sovereignty of the States. The speaker requested the Committee to record this point, preferably in the report, which would be the authentic source for the interpretation of the Convention drafted.

He agreed with M. Scialoja that the work they had done was only a beginning. The judges whom they were setting up would have a law to apply. They would only state if this law conciliated the particular interests of States with the higher interests of the international community.

M. BURCKHARDT (Switzerland) stated that the Swiss delegation were delighted that an agreement had been reached. True statesmanship taught that it was sometimes necessary to take into account not only the requirements of the law but also its imperfections.

The fresh drafting of Article 6 was the fruit of this teaching.

As he had already explained at an earlier meeting, he would perhaps have preferred an agreement on a somewhat different basis, in order to obviate the difficulties arising out of the principle of presumption which underlay Article 6. The important thing, however, was that they had found a basis for agreement which appeared to be acceptable to all parties.

He was delighted that they had been successful, and congratulated all those who had devoted their efforts to the attainment of this result. It had given all the States an opportunity of displaying that best thing in the world: good-will.

The CHAIRMAN paid a tribute to the spirit in which the Committee had discussed the problem and to the manner in which the members had contributed towards the solution of the difficulties with which they were faced.

In response to his appeal, they had endeavoured in all sincerity to find the best means of limiting armaments and of making war impossible. In an atmosphere of cordiality they had brought all their powers to bear in the attempt to find a satisfactory solution of the difficult questions which might arise.

They had remained faithful to the spirit of the Covenant, which was still the guardian of the internal sovereignty of the States. That was a point which should be taken into consideration by the Assembly and the Council.

He did not quite agree with M. Scialoja, who had said that the outcome of their work was only a beginning. The germ of a new order of things. He was of opinion, on the contrary, that they had found a solution both practical and admitting of immediate application.

The proposals of the Committee could now be submitted to the Assembly and the Governments. The latter would have an opportunity of judging of the value of the solutions they had arrived at.

The last difficulty raised in the Committee had been somewhat unexpected, and the delegations of distant countries like his own had not had time to consult their Governments or Parliaments. He could only speak, therefore, in the name of his delegation, which had done its best, in a friendly spirit of co-operation, to assist in solving the problems that had arisen.

This had been the spirit which had led them along the path that would end in security and peace for all nations.

M. LOUCHEUR (France) said that it had been his intention not to speak until the end of the discussion, but that, as the Chairman had just thanked the Committee, he felt it his duty at this point, on behalf of all the members, and more especially on behalf of the French delegation and the British delegation, who had so requested him, to tender the sincerest thanks to the Chairman for the masterly way in which he had conducted the proceedings.

Before they parted, he would like to remind them that the great work which they were about to conclude had been the outcome of a Franco-British resolution.

This was the starting-point. On the first day on which he addressed them he had said that he had been struck by certain defects in the Covenant.
In the name of the two Governments, the British and French delegations had requested the Committee to see if these defects could be remedied.

No doubt some members of the Committee were at first dismayed by the magnitude of the task which they were called upon to undertake, but it was not long before all were resolutely setting to work. At last they had surmounted the stupendous difficulties with which they had been faced.

He asked them to consider the work which they had just completed, to put themselves back in the year 1907, when the Governments hesitated before the very definition of arbitration.

He asked them to look back on a less distant time when, having set up the Permanent Court at The Hague, after this Court had already been in existence for four years, not one of the big Powers had given its adhesion to its compulsory jurisdiction.

To-day it was the big Powers that were setting the example. He was proud at such a moment to be the representative of France, which once again had given proof of her fidelity to the great tradition of the Revolution.

Those present had just lived through an historical moment, and if they would allow him to throw of the jurist robes which he had been privileged to wear, he would urge them to forget for a moment that they were jurists and only remember that they were also statesmen. As statesmen they would know that this moment was the dawn of a new era for humanity.

The last war had been too full of horrors. He called to mind one tragic night when he was going about in that part of Northern France where he was born and saw hundreds of widows and orphans amidst smoking ruins. On that night he had taken a solemn resolution to exert every effort to prevent war ever recurring.

On both sides, whichever way they looked, among their former enemies or among their friends, there were too many widows and orphans. That must never occur again. And they were met together here to find some means of preventing such disasters.

It was essential to give mankind a certain measure of happiness. If their purpose was to be achieved, the nations must go forward side by side, the small nations without fear of being crushed by the greater and the greater without temptation to overwhelm the smaller.

Before the Committee dispersed, he felt he must pay a special tribute to those who had been the artisans of the great work—their Chairman, Sir Littleton Groom; their Vice-Chairman, M. Limburg, who had constantly come to their help with his invaluable legal knowledge; the Rapporteur, M. Politis, whom they could never adequately praise for his splendid clearness of vision, his truly Attic eloquence and, above all, for his wonderful perseverance and power of work, without which he would not have been able to place before them the masterly product of his brain.

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