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INTERNATIONAL ORGANIZATION AND WORLD
PEACE A CRITIQUE OF THE LEAGUE
OF NATIONS COVENANT

By HUGH MCKINNON WOOD*

ARTICLE 8 of the Declaration which was signed at sea on August 14, 1941, by President Roosevelt and Mr. Churchill and is known as the Atlantic Charter, contemplates disarmament of aggressor nations "*pending the establishment of a wider and permanent system of security.*" Although the phrase is deliberately vague, it is plain that the two statesmen did not look forward to any fundamental change such as would result from federation on a world scale, but had in mind some form of organization to provide security to the individual state in a world composed, as at present, of independent states. There can be little doubt that this is a correct diagnosis of the problem which will confront the United Nations if they are in a position to enforce their views at the end of the war. It will be a question of doing again, and doing better, what was attempted in the Covenant of the League of Nations.

The machinery set up by the Covenant is in essentials simple. The League is an example of the type of organization which states naturally adopt when they form themselves into a permanent combination for common purposes. The two necessary organs of such a combination are a standing conference of representatives of the members and a permanent staff. The political character of the League led to the conference assuming two forms. There is the Assembly, which is the general meeting of all the members, and there is the Council which consists of a permanent element, namely all the Great Powers belonging to the League, and a transitory element in the shape of other Powers elected by the Assembly. Except as otherwise provided, the Assembly and the Council have legally equal and concurrent authority to act for the League, but the interests of the states without seats on the Council are safeguarded by the provision that they shall be invited to join the Council when matters specially affecting their interests are under consideration, and an interesting constitutional development has

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differentiated the functions of the two bodies so that, roughly speaking, the Assembly has assumed the right and final decision of all matters of concern to the whole League while the Council, in addition to preparing business for the Assembly and carrying out the policies decided by it, has come to be important chiefly as the body which deals with international disputes and crises as they arise and discharges the permanent political tasks which are entrusted to the League. The Secretariat is a corps of long-service international officials, chosen so as to be as far as possible representative of all the members and pledged to obedience to the League. The structure is completed by a multifarious system of standing and temporary commissions or committees, and by the appointment of commissioners for special tasks. Finally the operation of the whole imposing organization is subject to the traditional rule of diplomatic conferences, that decisions shall be taken by unanimity, a rule which is normally adopted in unions of states for common purposes. The rule applies only to the Assembly and the Council, not to the bodies which they may set up, but the relevant article of the Covenant permits no derogation unless there is an "express provision" to that effect or the question is one of procedure. Moreover, with two exceptions which will be mentioned later (articles 15 and 16), the matters in which the Covenant authorizes some form of majority decision are all matters relating to the internal affairs of the League itself. The result is not an international authority or form of government, not a tribunal for the settlement of disputes, but an association of states pledged to abstain from war with one another unless and until certain prescribed methods of dealing with their disputes have been tried and failed, pledged to apply in accordance with those methods all the influence they can exert to settle or neutralize disputes, and pledged in the last resort to come to the rescue of any of their number which become victims of unlawful war. To this primary function the Covenant adds other functions, political and non-political, and it gives the League a competence sufficiently wide to embrace any form of political or non-political cooperation between nations for which the members may agree to use it. Given such agreement the League can concentrate for the approved ends whatever resources the governments place at its disposal.

There seems to be no reason why the United Nations should depart from this simple and familiar pattern of organization, which is consistent with stiffening up or relaxing the obligations of mem-

bership and with increasing, as may be thought wise, the powers of the organs of the association. The Council, in particular, has thoroughly justified its existence. A smaller body than a general meeting of all the states of the world is essential for dealing with crises and it is essential that in it should be concentrated the authority of the major Powers. It is also very important that the institution which deals with disputes and war should be at the same time the central institution for international cooperation, not only because the experience and equipment which it acquires in this capacity will be directly serviceable for the performance of its political task but above all in order that it may provide the organization through which can be gradually developed the more rational and equitable regulation of international economic relations which is increasingly recognized to be a necessary basis of permanent security. Accordingly in this article it will be assumed that the new system of security will take the form either of a revised and reformed League of Nations or of a new institution of the same general type. The object will be to examine what changes in the present Covenant (articles 10 to 17 and 19) would be most likely to make what I shall venture to call the "new League" an effective organization for the defense of its members against aggression.

The problem falls naturally into two parts, the prevention of war and collective action to deal with war if it occurs. For the first purpose the Covenant employs what may be described as the "conference method," coupled with strict obligations limiting the right to go to war. Taking for granted the impossibility of setting up an organization which will decide international disputes and enforce its decisions, it relies on the many influences favorable to peace which come into operation if a dispute, crisis or situation dangerous to peace can be removed from the sphere of mere controversy between the parties and transferred to the relatively calm and public atmosphere of an international conference. The Council or Assembly serves as the forum for this purpose. The method has its analogy in the domestic field in the submission of labor disputes—which, like disputes between nations, are not capable of settlement by authority—to conferences between employers, labor and government officials representing the community at large. Its application to international relations was not, of course, new. An attempt to make it a permanent part of the peace settlement after the Napoleonic wars was made by article VI of the

Quadruple Alliance between Great Britain, France, Russia and Prussia, but it broke down with the failure of the Conference of Verona in 1822. In the hundred years from 1815 to 1914 the method was successfully used on numerous occasions by the Great Powers of Europe, the European Concert, which not merely employed it to settle the respective claims of the Powers, big and small, but also sometimes intervened forcibly in favor of the settlements thus reached. Of their activities the English historian, C. R. M. F. Crutwell has written ¹

“An examination of the century 1815-1914 certainly justifies the claim that the Concert of Europe although unable to prevent major wars did very valuable work, often unappreciated or forgotten, in initiating or imposing solutions for difficulties which if left to themselves, would have led to wars capable of producing a general conflagration. Doubtless the arrangements made were often based rather on expediency than on justice, and involved the exercise of coercion more or less veiled. Yet it is obviously preferable that pressure, if it must come, should be collective rather than individual in its origin. The Great Powers, while by no means a disinterested or impartial body, aimed at preserving the peace of Europe by methods which were far from being exclusively cynical. It is indeed largely due to their efforts that the sphere of peaceful change was so largely extended during the nineteenth century”

It was the conviction of Sir Edward Grey, the British Minister for Foreign Affairs of 1914, that the world war of 1914-1918 would have been prevented if an institution had existed which could have obligated Germany to come to the conference which he unsuccessfully attempted to convene, for she would have seen at once that Great Britain, France, Italy and Russia would be against her (Burton J. Hendrick, “The Life and Letters of Walter H. Page,” Vol. II, p. 163)

Articles 12 to 16 of the Covenant, whose application to non-member states is attempted in article 17, are inspired by this experience. Their operation is familiar the obligation to refer disputes to the League, if they are likely to lead to a rupture, unless submission to arbitration or an international court is preferred, the moratorium on war until the results of the course which has been taken are known and there has been an interval for reflection, the thorough investigation of the case and the painstaking endeavor to obtain a settlement by agreement, the ultimate adoption, if this endeavor fails, of recommendations for a settlement which if voted by a mere majority have only a moral value but if they attain a

¹In his “History of Peaceful Change in the Modern World,” p. 17

prescribed degree of unanimity² make war unlawful against the party which complies with them and entitle it, if it is attacked, to receive immediate assistance in the form of action against the aggressor by the other League members.³ With these articles should be grouped article 11, paragraph 2, which greatly extends the field of operation of the method by giving each League member the right to bring to the League's attention any circumstances affecting peace, whether the member be concerned or not and without it being necessary to allege the existence of a dispute. It is true that, owing to the omission to provide for not counting the votes of parties, this paragraph does not authorize the adoption of recommendations against the votes of the parties, but the possibility of starting proceedings under article 15 is always present. In practice the making of formal recommendations has usually marked the failure of the conference method to reconcile the parties and its importance has lain in the claim to protection which it gives the state which complies with the recommendations and in the inducement to come to an agreement which its existence offers to a party which is afraid of the recommendations which are likely to be made.

The Assembly and the Council of the League of Nations are of course very different from the pre-League conferences of the Powers, which were attended only by the representatives of the Great Powers and such other Powers as they chose to have present, and which in the main served as a means of enabling the Great Powers to agree upon the arrangements which ought to be made and induce the others to accept them. Whether it was the Council or the Assembly which acted, governments which have referred a dispute to the League have had to deal with a body whose attitude was conditioned by the fact that it was a permanent body, one of the supreme organs of a world association of states, and that its behavior in the particular case would be a precedent of importance for the League and every member of it. A sense of collective responsibility was thus engendered in the delegates and the obligation to seek a settlement which would be fair to the

²In the Council there must be a vote which is unanimous except for the votes of the parties, in the Assembly one which comprises all the votes cast by the Council members and a majority of those of other League members, disregarding the parties in both cases. The authors of the Covenant correctly assumed that the general interest in the maintenance of peace would be likely to make this degree of unanimity attainable.

³Compliance with an arbitral or judicial decision has the same effect but disputes which are *bona fide* submitted to such a process of settlement are not disputes which lead to war.

parties and creditable to the League was taken seriously. Indeed one of the most remarkable and encouraging features of the League's work was the conscientious and patient labor which not only ambassadors and officials but also the foreign ministers and other leading statesmen of the League countries would devote through long meetings and over long periods to this often ungrateful and sometimes hopeless task. They were assisted by the fact that they were accustomed to work together, since the laudable practice of the governments was to send the same representatives for periods of years at a time. They were also greatly helped by having at their disposal an experienced permanent staff and other facilities which no specially convened conference could command. Further safeguards for the parties lay in the precise definition of the League's duties and powers which is given in the Covenant and the elaborate rules of procedure adopted by the Assembly and Council. Finally the parties could rely on the presence in both Assembly and Council of a certain number of Powers not affected by the issues at stake but strongly interested in avoiding any step which might create a dangerous precedent. The smaller states, in particular, were constantly on their guard against the Great Powers and watchful to prevent any weakening of the principles of international law on which they considered their own safety and independence to be founded. In short a League inquiry was conducted with a high degree of impartiality, not merely as regards its methods, i.e., such a matter as appointing neutral delegates to take charge of the case as reporters (*rapporteurs*), but also in its spirit and aim, and although it is doubtless true that nothing could be done against the will of the more powerful members, the institution did not lend itself to utilization by those members for purely selfish objects.

Indeed the question is rather whether the fears of the beneficiaries of the peace treaties lest the *status quo* as established by those instruments should be endangered, and the natural legalism of the smaller states, did not force too legalistic an attitude upon the League and whether the safeguards against the exercise of pressure upon League members through the League do not go too far. Certainly the tendency of the Covenant as a whole is too conservative. It opens with a preamble which couples "maintenance of justice" with "scrupulous respect for all treaty obligations" as a means of "achieving international peace and security." In article 10 we have an obligation to "respect and preserve against external

aggression the territorial integrity and existing political independence of all the members of the League." Can the Assembly and the Council in these circumstances properly recommend any change in territorial or treaty settlements, or must they forever regard them as sacrosanct? If the latter is the right answer, does not article 16 bind every League member to defend by sanctions the *status quo* of 1920? Even the appearance of stabilizing the situation existing at a particular date is dangerous for a "permanent system of security." The status quo as by law established can no more be unalterable among states than it can be unalterable within the state itself among groups or classes—employers and labor, for example, or voters and non-voters—whose interests conflict and whose importance and strength change in relation to one another. Too firm resistance to inevitable change means war in the one sphere, revolution or civil war in the other.

This conservative tendency is not sufficiently corrected by article 19 which authorizes the Assembly to recommend League members to consider the advisability of peacefully altering conditions dangerous to peace, but leaves the states affected with a veto on any resolution in this sense which may be proposed.

A further defect of the whole system, as the Assembly early realized, is that it treats war as simply the result of failure to settle a *bona fide* dispute, whereas too often there is a dispute only in the sense in which there was one between the lamb and the wolf in the fable. Some provision for intervening to protect the victim of aggression before war actually breaks out would be desirable. If the votes of the parties could be disregarded, it could be found in article 11, particularly the first paragraph which makes even a threat of war an occasion which calls for the League taking "any action that may be deemed wise and effectual to safeguard the peace of nations" or in article 10 which directs the Council to, "advise upon the means" by which the League members are to implement the guarantees of the article. There has always been a tendency among delegates and the Secretariat to argue that in such provisions the obvious intention should on general legal principles be interpreted as making it right not to count the parties' votes, but the contrary view prevailed in practice and the eloquent language of the articles cannot be regarded as depriving the parties of their veto.

During the first fifteen or sixteen years of its existence the value of the League method was demonstrated by a series of successes,

both in dealing with critical situations and in contributing to the reconstruction of Europe (Austria, Hungary, Greece, Bulgaria, Estonia, Danzig), and where it failed, it at least enabled the grievances of the parties to be ventilated. The fact that many of the results achieved related to situations which have been swept away by the onslaught of the Axis Powers does not diminish the service thus rendered to the maintenance of peace. So effective⁴ were the results of League treatment of the frontier disputes and other crises which sprang directly from the peace settlement that in 1925 the present writer was told by the Secretary General, Sir Eric Drummond, that he considered the League to have for the time being practically finished its political work except for permanent functions such as minorities protection and mandates. In 1928 the writer took an opportunity of asking Lord Cushendun, a prominent English conservative politician who was then Under-Secretary for Foreign Affairs, what the latter really thought of the League's political activities. Lord Cushendun replied that the business of the Foreign Office had never been so easy to conduct and that he attributed this to the League.

Let us turn to the second part of the problem, that is to say collective action against states unlawfully resorting to war. What is the value of the League's equipment for this purpose?

So soon as there is any outbreak of war contrary to the provisions of articles 12, 13 or 15, article 16 requires each and all of the League members to proceed immediately to isolate the offender from all intercourse with themselves and all other countries, whether belonging to the League or not, and the Council must make recommendations as to the contingents which each is to contribute to the armed forces which are to be used against the offender. It is left to the conscience of each member to decide whether there has really been a breach of the Covenant. The offender remains a member of the League, unless it is expelled by a unanimous vote of the Council, for which purpose its own vote does not count. There is no provision contemplating that the League as an institution will examine whether there has been a breach of the Covenant, or that it will organize the measures to be taken, but it was from the outset recognized that this would be necessary

It is not surprising that the spontaneous levee en masse to which the League members are thus committed should have been a failure. What is surprising is that so unprecedented a defensive

⁴It is not suggested that they were ideal.

alliance could be created without more discussion of its difficulties. Its first official sponsors, the British Foreign Office committee known as the Phillimore Committee which in the early part of 1918 drew up the first draft of the Covenant, were a cautious body; but there is no sign in their report that they saw any difficulty in article 16. They describe the article as the "sanction" of their system and confidently observe.

"We have desired to make it as weighty as possible. We have, therefore, made it autonomous and automatic, and one to which each state must contribute its force without waiting for the others, but we have recognized that some states may not be able to make, at any rate in certain cases, an effective contribution of military or naval force. We have, accordingly, provided that such states shall at least take the financial, economic and other measures indicated in the article."

At the Peace Conference the article was redrafted, and an unsuccessful proposal for an international army was made by France, but no one seems to have asked whether the obligations of the article would really be carried out. And yet the article was based upon a most daring assumption.

This assumption was that all the forty-seven states which were to be the original members of the League—and eventually all the states in the world—could be trusted to hold themselves constantly in readiness to come to the rescue of any of their number. To appreciate how daring this assumption was, one must realize, that what is involved is readiness of all the governments to expose their populations to the incalculable strains, risks and losses of involvement in war. The test which article 16 has to pass is successful application to a strong, aggressive and well-prepared state or combination of states, and, once committed to war, such an adversary is unlikely to yield to anything except defeat by arms, and will not refrain from attacking loyal League members for the mere reason that they are confining themselves to economic pressure. At the same time the article makes no allowance for the obvious fact that the ways in which particular states will regard any particular outbreak of hostilities, the direct effects which the war will have upon them, and the losses and risks which they will incur by intervening, are bound to be very different according to the distance which separates them from the aggressor, their capacity for defense and attack, the nature of their foreign trading and financial relations, and other circumstances. Furthermore the article gives no right to examine whether intervention is likely to succeed.

Its operation, as the Phillimore Committee pointed out, is automatic so soon as the breach of the Covenant occurs. It calls for universal disregard of all the considerations which naturally influence states when they are confronted with a war in which they are not engaged.

It is not practical politics to expect fidelity to a treaty obligation to produce such results. One is tempted to suggest that the acceptance of the article in its present shape was due to a false analogy, a kind of anthropomorphism applied to the state. It treats states as though they formed a primitive community which had advanced far enough to develop in its members a sense of interdependence which would make them combine for mutual defense against invaders from without and criminals within. One thinks of a savage or of pioneers settling in unexplored territory. The members of such a group do feel that "peace is indivisible" and see their individual interest in defending every member of the community. But such a picture is quite unlike the relations which have always prevailed between states, which have been relations of competition and contest, with war in the background as the ultimate instrument of national policy.

A state moreover cannot safely be credited with either the capacity for disinterested action or the capacity for consistent action which belong to a human being. Existing to promote the welfare of the population, its government would be false to its trust if it risked the safety of the state from altruistic motives. On the other hand, consistency of behavior in matters which are not controlled by long established tradition or force of circumstances, such as geographical situation, cannot be counted upon in an entity whose internal life is one of constant struggle between the rival forces which seek to control it. At any moment a change in the balance of these forces and resulting change in the government, or even in the form of government, may profoundly modify the state's foreign policy. During the twenty years of its active existence the League of Nations saw itself repudiated by the United States, the chief author of its being, British policy vacillate between scepticism and extravagant belief in its principles, France pass from a policy of paramountcy in Europe to what was almost one of peace at any price, Italy and Germany transformed from liberal democracies to totalitarian dictatorships. In both these respects article 16 asks too much from the League members.

The history of article 16 confirms the theoretical objections to

which it is open. The first reaction of the League Assembly to the withdrawal of the United States was the adoption in 1920-1921 of recommendations which emphasized the right of each member to judge for itself whether there had been an unlawful resort to war, and which called for the exercise of cautious pressure of progressively increasing severity rather than the sudden crushing blow which the article contemplates. This stage was followed by the search for security, as the necessary preliminary to reduction of armaments, and during this period the article became the starting point for a number of abortive schemes of mutual assistance, the most important being the 1924 Protocol for the Pacific Settlement of International Disputes and the later proposal to make every war which would be unlawful under the Kellogg Pact also unlawful under the Covenant. An unhappy flavor of unreality, not to say insincerity, attached to all these discussions owing to the fact that they inevitably turned upon article 16. No government dared to repudiate the article and governments which felt the need of protection could not resist the temptation to seek at least a diplomatic success by insisting on the sanctity of the obligations of the article, and trying to extend its scope. Yet at the same time, it was notorious that few delegates or governments failed to make mental reservations as to the possibility of their countries being able to carry out the full obligations of the article or felt much confidence in other countries doing so. The test of practice came with the Japanese attack on China from September, 1931, onwards. In the absence of a lead from Great Britain or France, no action under the article was ever contemplated. Then on October 3, 1935, Italy flagrantly violated the Covenant by invading Ethiopia and a timid experiment in the application of article 16 was at last made.

The situation was unfavorable for such action. Germany under Hitler was already dangerous, and no one wanted to force Italy into her arms. But there was a general feeling that it would be impossible to take article 16 seriously again, if nothing was done. Experts thought the conquest of Ethiopia would be a lengthy and difficult business, and the idea arose that a modest amount of economic pressure should suffice to divert Italy from her enterprise, without alienating her from the League or her former allies. In these circumstances the British government, under strong pressure from British public opinion but seemingly against its better judgment and despite the reluctance of the French government and a

powerful section of French opinion, took the lead and sanctions were applied. Italy throughout remained a member of the League and took part in all its other proceedings.

Such measures as were adopted were decided upon with remarkable rapidity. Within sixteen days from the beginning of the invasion a "co-ordination committee" of representatives of the members of the League had submitted to the governments four proposals for sanctions: 1) an embargo on the supply of arms to Italy, 2) certain financial sanctions, 3) refusal to allow certain imports from Italy, 4) refusal to allow certain exports to Italy. On October 31 it was possible to announce that, although Austria, Hungary, Albania and Paraguay had from the outset refused to take action, fifty League members were applying or had promised to apply proposal No. 1) and forty-nine proposal No. 2), and that forty-nine replies had been received showing proposals 3) and 4) to have "met with very extensive agreement." The execution of the proposals was however not so prompt and before all the governments which accepted them had taken action the war ended on May 2, 1936, with the flight of the Emperor from Ethiopia. On July 4, 1936, it was decided to abandon the sanctions. Some twenty-five per cent of the League members, including Italy's neighbor Switzerland and most of the Latin American countries, did not apply the more important sanctions at all.⁵ This fiasco was a death blow to the hope that reliance could be placed on article 16 and at the Assembly of 1938 the article was for practical purposes abandoned in favor of the view that what could be done in case of aggression must depend upon the circumstances of the case.

Nevertheless the above history is not wholly discouraging. The original acceptance of article 16, the energy devoted to the search for security, even the final episode, show that modern nations do not as a whole acquiesce in the view that war must simply be accepted as an unavoidable sociological phenomenon, and that they are anxious to find an effective way of combining to prevent it. The Ethiopian affair, although not an application of article 16, was an example of disinterested action on behalf of peace, and, whether the material cost was great or small, the political sacrifice which was risked and incurred was nothing less than the formation of the Axis and consequent upsetting of the balance of power.

Suggestions may now be offered for making the Covenant effective as the charter of an organization for security. The hy-

⁵Martelli, "Italy Against the World," pp. 159-161 (Harcourt, Brace and Company).

pothesis adopted, namely that the organization must be a new League, i.e., a grouping of independent states and not a form of world government, rules out proposals which are impracticable without the existence of a strong executive to enforce the decisions of the organs of the community, and makes it unnecessary to discuss such popular ideas as a League army, decision of all disputes by the League, absolute prevention of war by the League. In planning to maintain the peace among the essentially self-regarding and unstable entities which we have seen modern states to be, the basis upon which we have to build is the sentiment against war which created the present League and is still increasing in strength and the fact that in increasing measure, as war grows more universally destructive, the great majority of states are finding that they have an interest in exerting themselves to prevent it, however much particular states at particular times may see their advantage in attacking their neighbors. The aim must be to create a structure of obligations and institutions which will develop and bring into operation the potential balance of power in favor of peace which these circumstances will create, without seeking to bind the members of the organization to more than they are able sincerely to pledge themselves to perform. It must be recognized that an essential condition for success is the existence of a nucleus of powerful members determined to maintain the peace, such as we may hope will emerge from the present war, and that success on every occasion cannot be guaranteed.

The ground would be cleared by abolishing the guarantees of territory and political independence contained in article 10. Instead of guaranteeing the *status quo*, the new League would have the duty of examining all cases in which members exercise the "friendly right" of calling attention to circumstances, whether affecting them or not, which they regarded as dangerous to peace. Such circumstances would include the obsolescent treaties and the dangerous conditions with which the present article 19 purports to deal and this article too would disappear. The new article would be the basis for League treatment of emergencies not brought before it as disputes, and for League action in favor of making by peaceful means such adjustments in the international situation as proved justifiable in the interest of peaceful relations between the various states. When satisfied of the need for its intervention the new League would have the right to order inquiries, which the country concerned would be bound to facilitate, and to make such

recommendations as it might consider proper. Although such recommendations would in themselves have no legal effect, the power of making them would be a valuable means of pressure, for they would both express publicly the sense of the international community and show what would be the result of bringing the issues before the League as a dispute. At the same time the recommendations might facilitate concessions since it is easier to yield to the wishes of the community than to the demands of an opponent.

These provisions and those which follow are to be understood as subject to a new rule of voting according to which a) the votes of parties would always be disregarded, b) the other states would decide by a majority which states were parties and c) any inquiry could be ordered by a majority

There would follow articles obliging the League members to submit to it disputes which were likely to lead to a rupture, if they did not refer them to arbitration or judicial settlement. Only a few changes would be made in the existing system. The moratorium on war would be extended to cover preparations for war, and the League would be empowered to request the parties to abstain from measures prejudicial to the claims or security of the other party and withdraw measures of this kind taken after the submission of the dispute to the League.

We are thus led to the most difficult problem, that of collective action in case of unlawful war. Article 16 must be replaced by something more realistic and supple. I think the most that should be attempted is to impose on the League the duty of examining each case and taking the measure which it deems wise and effectual, leaving each member to decide what part it will play but requiring each not to obstruct the measures taken, and recognizing frankly that there may be cases in which it would be better for the threatened state to make sacrifices than to rely on League assistance.

On the other hand the provisions for collective intervention should apply to cases where an unlawful war is threatened. In the Ethiopian affair the proper time for intervention was while Italy was shipping her forces to Africa.

In view of these considerations I would propose to substitute for article 16 a series of provisions to the following effect

a) Not only any war begun in violation of the Covenant but also any circumstance indicating that there is danger of such a war, including preparation for war after a dispute had been re-

ferred to arbitration or the League, would be declared to be the concern of the League, whose duty it would be to take whatever action it might deem wise and effectual for safeguarding or for restoring and maintaining peace.

b) The League would at once tender its good offices and at the same time consider whether and in what form it would recommend intervention.

c) Intervention might be by any form of pressure, rising to the full blast of economic measures, and measures of war, which is contemplated by the present article 16.

d) The minimum obligation of the individual League member would be to accept the measures taken as legitimate, whatever their effect upon it, and not to claim neutral rights against members applying measures of war to the covenant-breaker.

e) The intervention would be organized and the date at which it should cease would be decided by the League.

f) Agreements between League members fixing the amount of help to be given to any one of them on whose behalf intervention took place would be allowed.

g) It is undesirable to expel the covenant-breaker from the League, because it will be difficult for it to return. At the same time it is absurd and inconvenient that the covenant-breaker should continue to take part in the League's work. It would be better that the recommendation of intervention against a state should automatically suspend its rights of membership. During the period of suspension it should be debarred from resigning from the League.

The question whether under the suggested system decisions should be taken unanimously, save for the parties, or by some prescribed majority, is a difficult one. I doubt if majority decision would be acceptable to the governments for all purposes, although the unanimity rule lends itself to obstruction by satellites of the parties. I am inclined to propose unanimity for the adoption of reports and recommendations on disputes, since here it is less difficult not to support a friend, and it is important that the moral authority of the proposals should be as great as possible. For other purposes a three-quarters majority would be sufficient, provided that not more than one of the permanent members of the Council, i.e. the major Powers, had voted against the resolution. Questions of procedure, as hitherto, would be settled by a bare majority.

For wars which are not unlawful it is, I think, only possible

to require the League to stand ready to use its good offices in arranging a settlement when opportunity occurs.

Wars between members and non-members and between two non-members would be dealt with in a new article 17, which would give the League a certain discretion as to taking up the case.

With such equipment I believe the new League would be able to do anything that was politically practicable to prevent war and defend its loyal members, and would be in a better position to develop collective security than was the present League with its armament of automatic obligations. The system may be criticized as reactionary because admittedly it gives less protection to the smaller Powers and greater freedom of action to the major Powers than the existing Covenant. I regard this as essential. One cannot, of course, expect the major Powers to be guided by pure altruism, or to be incapable of sacrificing the interests of other states where their own interests are involved. They are no more altruistic than other states, although they may perhaps claim that the wider range of their power and interests gives them a greater sense of responsibility. But they possess the capacity for the effective action which is necessary to make the system work, and they must be induced and enabled to assume the burden of doing so. As a matter of fact, the necessity of working through the Council or the Assembly will be a serious check upon ill behavior by the major Powers. If the experience of the past twenty years is any guide, there is as much risk of lack of energy as of unfair or violent action on their part.

To show how the system would work in detail a new version of articles 11, 12, 13, 15, 16 and 17 of the Covenant is appended. It contains some omissions and changes not discussed in the article.

DRAFT ARTICLES

ARTICLE A

1. Each member of the League has the right to bring to the attention of the Assembly or the Council without incurring any imputation of unfriendly conduct, any circumstance, whether directly concerning the member or not, which affects international relations and threatens to disturb peace or the good understanding between nations upon which peace depends. Among such circumstances are included treaties which appear to require reconsideration and situations whose continuation might endanger peace. If

the Council is seized of the case, all the League members shall be immediately notified. The Council may at any time refer the case to the Assembly, and it shall be bound to do so at the request of any League member, if the request is made within (thirty) days from the submission of the case to the Council.

2. The Assembly or the Council shall take the case under consideration and may make any recommendations which are considered wise and appropriate.

3. The parties, that is to say the states directly concerned with the case which is before the League, shall furnish any information and evidence requested by the Assembly or the Council, and each party shall give all necessary facilities for any inquiry ordered by either of these bodies in any place within the jurisdiction of such party

ARTICLE B

1. The members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit such dispute to arbitration or the Permanent Court of International Justice or other form of judicial settlement, as may be agreed between them or provided by treaty, or else will submit it to inquiry by the Council which shall report thereon in accordance with article D.

2. They further agree

i) Not to resort to war until their respective claims have been dealt with in accordance with paragraph I above, and

ii) Not to resort to war, or make any preparations for war, until (six) months have elapsed from the date of communication to them of the arbitral or judicial decision or the Council's report; and

iii) Not to resort to war at all against a party to the dispute which complies with the arbitral or judicial decision or with the recommendations of a report of the Council which is unanimous within the meaning of article D.

ARTICLE C

1. The members of the League recognize the obligation to carry out in full good faith all arbitral and judicial decisions.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obliga-

tion, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for arbitration or judicial settlement.

ARTICLE D

1. Submission of a dispute to the Council under article B may be effected by either party by a notification to the Secretary General.

2. The parties shall communicate to the Secretary General, as promptly as possible, statements of their cases with all relevant facts and documents. They shall furnish any additional information and evidence requested by the Council, and shall give all necessary facilities for any inquiry ordered by the Council in any place within their jurisdiction.

3. The Council shall inquire into the dispute and endeavor to effect a settlement. If it succeeds, a statement shall be published giving such facts and explanations regarding the dispute and the terms of settlement as the Council deems appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper for its solution. The report shall be made within (eighteen) months of the submission of the dispute to the Council, unless the Council unanimously considers more time to be necessary.

5. The Council may at any time refer the dispute to the Assembly, and it shall be bound to do so at the request of a party, if the request is made within (thirty) days from the submission of the dispute. The Assembly shall thereupon exercise all the powers and be given all the facilities which the Council can exercise or demand under this article, and its report shall have the same force and effect for the purposes of article B, paragraph 2, as a unanimous report of the Council, if it is adopted by a majority in which are included all the votes cast by members of the Council and a majority of those cast by other members of the League.

ARTICLE E

1. Any war which is begun in violation of article B, and any circumstance indicating that there is a danger of the outbreak of such a war, including preparation for war contrary to article B,

paragraph 2, shall be a matter of concern to the League, and the League shall take whatever action may be deemed wise and effectual to safeguard or restore and maintain peace.

2. With this object

i) The Council shall at once place its good offices at the disposal of the states involved in the war or danger of war, which are hereafter called the parties,

ii) The Council may at any time and from time to time recommend the members of the League to take appropriate measures, including intervention by interruption of economic, financial and other relations between League members and non-member states and the party or parties indicated by the Council, and intervention by force of arms,

iii) The Council shall decide when the measures recommended by it shall cease.

3. The members of the League undertake that they will to the best of their ability participate and support one another in taking the measures recommended by the Council. They accept in advance as legitimate all steps taken by other members in execution of the recommendations and, in particular, if unable themselves to take part in an intervention by force of arms, they renounce all right to be treated as neutrals by the members which are intervening in this manner.

4. So soon as measures have been recommended under paragraph 2, subsection ii), the Council may set up a committee of representatives of the League members, other than the member or members against which the measures are to be directed, and may delegate to this committee the function of determining the exact scope of the measures and co-ordinating their application.

5. The Council may at any time refer the case to the Assembly. The Assembly shall thereupon exercise all the powers which can be exercised by the Council under this article, and its recommendations shall have the same force and effect as recommendations of the Council.

6. A (three-quarters) majority shall suffice for the adoption of decisions under the present article, provided that not more than one permanent member of the Council has voted against them.

7 It shall be permissible for members of the League to enter into engagements with one another fixing the support to be given by each to any of their number on whose behalf intervention is recommended.

ARTICLE F

1. The adoption under article E of a recommendation for action against a League member on the ground that it has resorted to war, or is preparing to resort to war, contrary to its obligations under article B, shall suspend that member's rights of membership until it is reinstated therein by a unanimous vote of the Council or a three-quarters majority vote of the Assembly

2. During the period of suspension the member cannot validly give notice of withdrawal from the League.

ARTICLE G

1. If there should arise between a League member and a non-member state a dispute likely to lead to a rupture, or any other circumstance indicating a danger of war being made upon the member by the non-member, the latter state shall, if the member so request, be invited by the Council to accept the rights and obligations of membership of the League for the purposes of the particular case. If the non-member accepts the invitation, the provisions of articles B, C, D, E and H shall be applied as though both states were members of the League.

2. If the non-member refuses the invitation and resorts to war against the member, the provisions of article E shall be applied against the non-member state.

3. The Council, if it thinks fit to do so, may invite any non-member states between which a rupture of relations or outbreak of war appears likely to occur, to accept the rights and obligations of League membership for the purpose of the particular case. If all the states accept the invitation, the provisions of articles B, C, D, E and H shall be applied as though they were members of the League.

ARTICLE H⁶

1. Where war has broken out between League members before action has been taken under article D, the Council may treat that article as applicable notwithstanding the outbreak of war, if it considers it desirable to do so. It shall have the same discretion as regards article G in a case where war occurs between a League

⁶The desirability of some such provision as this article is suggested by the Chaco war, between Bolivia and Paraguay, in which the League was asked to apply article 15 after the parties had been at war, contrary to the Covenant, for a considerable period.

member and a non-member or between two non-members before the article has been applied.

2. In all cases of war which have not involved a breach of the Covenant, whether the parties are members of the League or not, the League shall at all times be ready to use its good offices for the reestablishment of peace.

ARTICLE I

In all proceedings under articles A, D, E, G and H

i) The votes of parties shall not be taken into account,

ii) Any question as to which states are parties shall be decided by a majority, the votes of the states in regard to which the question is raised being disregarded,

iii) All questions relating to the obtaining of information and the holding of inquiries shall be treated as questions of procedure (i.e. be decided by a majority).