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League of Nations

Committee of the Council on Article 11 of the Covenant

REPORT OF THE BRITISH
REPRESENTATIVE TO THE SECRETARY
OF STATE FOR FOREIGN AFFAIRS

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LEAGUE OF NATIONS.

Committee of the Council on Article 11 of the Covenant.

Viscount Cecil to Sir Austen Chamberlain.

Sir,

Geneva, March 16, 1927.

You will remember that, at the first session of the Preparatory Committee on the Disarmament Conference in May 1926, the French representative submitted certain proposals for the rapid working of the organs of the League in cases of emergency, particularly with reference to articles 11 and 16 of the Covenant. In September last the Council referred these proposals to the Committee of the Council for examination, and in December it approved the proposal of the Committee of the Council to make a special study of article 11. The Committee of the Council therefore charged a small sub-committee, consisting of the Belgian, British and Roumanian representatives, to meet in London in February and draft a report for consideration at its session fixed for the 14th March.

2. I transmit to you herewith a copy of this report as finally approved yesterday by the Committee of the Council. It will be seen that the committee has made certain changes in the draft originally submitted to it by the Sub-Committee of Three.

3. I do not think that any of the changes can be said to be of capital importance. A number of them are purely verbal emendations. In regard to the remainder, I would offer only the following observations :—

4. The new passage in Chapter III (b) was inserted, after a laborious search for the correct formula, on the suggestion of the Secretary-General. Evidently at a time of crisis the presidency of the Council might be held by an interested party, and against that eventuality it was necessary to make some provision of this kind.

5. It will be seen that Chapter III (d) has been practically redrafted. This was necessary in order to meet the views of certain representatives who feared that the original text was too much in the nature of a "règlement" which might tie the hands of the Council by prescribing a procedure from which they would be unable to depart. I considered these fears groundless myself; the point had not escaped the three members of the sub-committee in London, and they had inserted at various points passages which made it quite clear that they were anxious to avoid this difficulty. However, it was necessary to allay the fears and apprehensions of certain members, and the new text may be an improvement on the old. The passage inserted at the end of Chapter III (d) was drafted on the proposal of the Secretary-General.

6. The next difficulty of any serious kind that arose was in connection with the mention of air demonstrations in Chapter III (f).

It is unnecessary to summarise the discussion, which ranged over almost every possible aspect of the question. I think the passage as it now stands is unobjectionable. I thought it important not to omit all mention of the possibility of air demonstrations. It is true that this expedient has never yet been tried, but it seems to me that the rapidity of such action and the fact that it could be applied to States possessing no seaboard may one day render it a useful instrument for bringing pressure to bear on a recalcitrant State.

7. On the whole, I think the committee have achieved a useful work. The discussions were interesting throughout, and at times animated. In any case, I think the committee has been careful not to go beyond the Covenant nor to interpret it in any way so as to increase the liabilities and obligations devolving from that document on the Members of the League.

I have, &c.
CECIL.

Enclosure.

Report of the Committee of the Council, dated March 15, 1927.

I.—Preliminary.

(a.) THE committee has not been asked to give an authentic interpretation of article 11, or even to draw up a complete code of procedure for the application of this provision of the Covenant. It has simply to make recommendations regarding the action that may be deemed wise and effectual for the purpose of carrying into effect the provisions of that article. The recommendations which follow are based on—

1. Past practice.
2. Previous resolutions of the Assembly and Council.
3. The proceedings of these bodies and of various committees formed by the League of Nations.

It should be clearly understood that the measures referred to below are only cited as examples, and that the committee does not wish to underrate or dispute the value of any which it may not have expressly mentioned. It is impossible to draw up in advance any rigid classification of the infinite variety of events which occur in international political life. Nor is it possible, by resolutions, recommendations or suggestions, to prescribe limits to the extensive rights which the League holds in virtue of its essential duty, that of effectually safeguarding the peace of nations. Among the measures recommended will be found those which, having been favourably received and having already been successfully applied, appear particularly effectual. The list of these measures will doubtless be added to as further experience is gained.

(b.) If the action to be taken under article 11 is of particular concern to States which are not members of the Council, such States

must, under the terms of paragraph 5 of article 4, be given a seat at the Council. The procedure instituted under article 11 in no way implies the exclusion of procedure taken under other provisions of the Covenant. The Aland Islands question, for example, was referred to the Council by the British Empire in virtue of article 11; this did not, however, prevent the Council from declaring itself competent under article 4, paragraph 4, and at the same time applying as far as possible articles 12, 15 and 17.

Thus, if any action contemplated by the Council as being calculated to preserve peace is taken under the provisions of article 15, the votes of the representatives of the parties will not count for purposes of unanimity as far as such action is concerned. The report referred to in article 15, paragraph 6, may, of course, contain any recommendations which the Council may think likely to bring about a settlement of the dispute and prevent a rupture.

(c.) If the threat of war did not arise out of a dispute coming under article 15, the members of the Council not directly concerned in the dispute would still be free to make recommendations, which could not fail to have a considerable moral value.

(d.) Under article 11, any war or threat of war is declared to be a matter of concern to the whole League, and the League is directed to take any action that may be deemed wise and effectual to safeguard the peace of nations. If there is no threat of war, but some circumstance threatens to disturb the good understanding between nations upon which peace depends, that circumstance may be brought to the attention of the Assembly or the Council by any member of the League, so that presumably the Assembly or Council may consider what, if anything, should be done to restore international good understanding.

II.—Where there is no Threat of War or it is not Acute.

(a.) The Council will consider the question at a meeting, to be called specially if necessary, to which the contending parties will be summoned.

(b.) The Council can request an organisation, or even a private individual, appointed by it to exercise conciliatory action on the parties.

(c.) The Council may also suggest that the dispute be referred to arbitration or judicial settlement, in accordance with the provisions of article 13 of the Covenant.

(d.) If there is a doubt as to the facts of the dispute a League Commission may be sent to the *locus in quo* to ascertain what has actually happened or is likely to happen. It is understood that such a commission cannot go to the territory of either party without the consent of the State to which that territory belongs.

(e.) If, for the accomplishment of its task, the Council deems it necessary, it can, in certain appropriate cases, ask for an advisory opinion from the Permanent Court, or else, in certain special circumstances, from a committee of jurists appointed by it.

III.—Where there is an imminent Threat of War.

(a.) Everything should be done to ensure that the Council shall meet with the greatest promptitude. In this connection the committee refers to the recommendations which it made in its previous report on these questions (document C. 677, dated the 4th December, 1926).

(b.) Even before the Council meets, it is desirable that the acting president should send telegraphic appeals to the parties to the dispute to refrain forthwith from any hostile acts. The nature of this appeal will necessarily vary with the circumstances of each case.

If, owing to exceptional circumstances, the Secretary-General considered that the acting president was not in a position to act, he might request the ex-president most recently in office who is available to take this step in the name of the Council.

(c.) As soon as the Council meets, it will no doubt verbally urge on the representatives of the nations in dispute the great importance of avoiding a breach of the peace.

(d.) Further, the Council may take steps to see that the *status quo* is not disturbed in such manner as to aggravate or extend the dispute and thus compromise the pacific settlement of the dispute. For this purpose it may indicate to the parties any movements of troops, mobilisation operations and other similar measures from which it recommends them to abstain.

Similar measures of an industrial, economic or financial nature may also be recommended. The Council may request the parties to notify their agreement on these points within the shortest possible space of time, the length of which will, if necessary, be fixed by the Council.

The details of these measures, and even their nature, obviously depend upon the whole of the circumstances of the dispute. It should be mentioned that in certain cases with which it has had to deal, the Council fixed a neutral zone on either side from which the parties to the dispute were called upon to withdraw their troops.

(e.) In order to satisfy itself of the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute. The Secretary-General, duly authorised by the Council, would keep lists of experts—political, economic, military, &c.—on the basis of lists supplied by the States members of the League and of applications for employment submitted direct to him. These lists, classified according to categories, would be held by the Secretary-General at the disposal of the Council, which in case of crisis would thus have the names of suitable experts before it. The Council may also have recourse in this connection to diplomatic personages stationed in the neighbourhood, who belong to States not parties to the dispute.

(f.) Should any of the parties to the dispute disregard the advice or recommendations of the Council, the Council will consider the measures to be taken. It may manifest its formal disapproval. It

may also recommend to its members to withdraw all their diplomatic representatives accredited to the State in question, or certain categories of them. It may also recommend other measures of a more serious character.

(g.) If the recalcitrant State still persists in its hostile preparations or action, further warning measures may be taken, such as a naval demonstration. Naval demonstrations have been employed for such a purpose in the past. It is possible that air demonstrations might within reasonable limits be employed. Other measures may be found suitable according to the circumstances of each case.

IV.—*General.*

(a.) It should be pointed out that the very general terms of article 11—"any action that may be deemed wise and effectual to safeguard the peace of nations"—allow of any action which does not imply recourse to war against the recalcitrant State. The above-mentioned measures have only been given as examples. Circumstances might lead to an alteration in the order of their application.

(b.) In taking any of these measures, the Council will of course not lose sight of the distinction made in article 11 between paragraph 1, which deals with "threats of war," and paragraph 2, which deals with "circumstances which threaten to disturb the good understanding between nations."

(c.) In any case contemplated above, the members of the League not represented at the Council should be kept fully informed. Where necessary or desirable, their collaboration with the Council might be sought, either by sending a communication to each of them or by summoning a special meeting of the Assembly.

(d.) In the case of disputes between member States and non-member States, or between non-member States, the Council will apply article 11 in the light of the above observations, bearing in mind the circumstances of each case.

(e.) If, in spite of all steps here recommended, a "resort to war" takes place, it is probable that events will have made it possible to say which State is the aggressor, and in consequence it will be possible to enforce more rapidly and effectively the provisions of article 16.
