

"I propose that the resolution shall, in accordance with this provision, be communicated to the following States:

"United States of America, Brazil, Costa Rica, Germany, Guatemala, Honduras, Japan, Nicaragua."

The conclusions of the report were adopted.

4097. **Application of the Principles of the Covenant of the League of Nations : Collaboration between the League of Nations and Non-member States : Designation by the Council of the Non-member States to which the Assembly Resolution of September 30th, 1938, shall be communicated in accordance with the Last Paragraph of that Resolution.**

Mr. BUTLER presented the following report:¹

"On September 30th, 1938, the Assembly adopted a resolution relating to the collaboration between the League of Nations and non-member States.² Under the terms of this resolution, the Secretary-General is requested to communicate it to non-member States.

"As the collaboration contemplated by the resolution is of a technical character, I think the said resolution should be communicated as widely as possible. I propose, therefore, that it should be communicated to the following States:

"United States of America, Sa'udi Arabia, Brazil, Costa Rica, Iceland, Germany, Guatemala, Honduras, Japan, Liechtenstein and Nicaragua."

The conclusions of the report were adopted.

4098. **Appeal by the Chinese Government** (continuation).

The PRESIDENT.—On September 19th, 1938,³ the Council, in view of the appeal made by the Chinese Government to the League of Nations under Article 17 of the Covenant, decided to send to the Japanese Government the invitation provided for in the first paragraph of that article. The Japanese Government replied on September 22nd that it could not accept the Council's invitation Annex 1726, Communication No. II, page 988).

In these circumstances, the Members of the Council have had an exchange of views and have prepared **a report**, which I have the honour to lay before the Council:⁴

"1. The report of the Far-East Advisory Committee, adopted by the Assembly on October 6th, 1937,⁵ states 'that the military operations carried on by Japan against China by land, sea and air . . . can be justified neither on the basis of existing legal instruments nor on that of the right of self-defence, and that (they are) in contravention of Japan's obligations under the Nine-Power Treaty of February 6th, 1922, and under the Pact of Paris of August 27th, 1928'.

"2. The Japanese Government, having been invited, under **Article 17**, paragraph 1, of the Covenant, to comply with the obligations devolving upon the Members of the League for the settlement of their disputes, has declined this invitation.

"3. Although, in conformity with established practice, it is, in principle, for the Members of the League to appreciate in each particular case whether the conditions required for the application of Article 16 and Article 17, paragraph 3, are fulfilled, in the special case now before the Council, the military operations in which Japan is engaged in China have already been found by the Assembly to be **illicit**, as mentioned above, and the Assembly's finding retains its full force.

"4. In view of Japan's refusal of the invitation extended to her, the provisions of Article 16 are, under Article 17, paragraph 3, applicable in present conditions, and **the Members of the League are entitled, not only to act as before on the basis of the said finding, but also to adopt individually the measures provided for in Article 16.**

"5. As regards co-ordinated action in carrying out such measures, it is evident, from the experience of the past, that all elements of co-operation which are necessary are not yet assured.

"6. The Assembly, by its resolution of October 6th, 1937,⁶ assured China of its moral support, and recommended that Members of the League 'should refrain from taking any action which

¹ Document C.353.1938.VII.

² Document A.76.1938.VII.

³ See page 865.

⁴ Document C.350(1).1938.VII.

⁵ See *Official Journal*, Special Supplement No. 177, page 42.

⁶ See *Official Journal*, Special Supplement No. 169, page 121.

might have the effect of weakening China's power of resistance and thus of increasing her difficulties in the present conflict, and should also consider how far they can individually extend aid to China'.

"Referring more particularly to this resolution, the Council, on May 14th, 1938,¹ earnestly urged Members of the League 'to do their utmost to give effect to the recommendations contained in previous resolutions of the Assembly and Council . . . and to take into serious and sympathetic consideration requests they may receive from the Chinese Government in conformity with the said resolutions'.

"7. Although the co-ordination of the measures that have been, or may be, taken by Governments cannot yet be considered, the fact none the less remains that China, in her heroic struggle against the invader, has a right to the sympathy and aid of the other Members of the League. The grave international tension that has developed in another part of the world cannot make them forget either the sufferings of the Chinese people, or their duty of doing nothing that might weaken China's power of resistance, or their undertaking to consider how far they can individually extend aid to China."

M. Wellington Koo. — It is no secret to my colleagues on the Council that the proposed report, in the drafting of which I had the honour to take part, is not entirely satisfactory to my Government. Viewed in the light of paragraph 4 of the report, it may be considered to mark a step forward.

I regret, nevertheless, that the Council finds it difficult in the existing circumstances, in the absence of all the necessary elements of co-operation, to take steps at the present moment to bring about a co-ordinated action on the part of the Member States in carrying out the provisions of Article 16 of the Covenant. But this temporary situation, in the view of the Chinese Government, cannot and does not in any way affect the validity of the said provisions.

The Chinese Government earnestly hopes that the necessary elements of co-operation may soon be assured for the work of co-ordination to be undertaken and that, meanwhile, the Member States will do their utmost to carry out individually the provisions of Article 16. In taking such action, the Member States will indeed be doing what they are entitled to do under the Covenant towards the aggressor no less than fulfilling a duty towards another Member State, victim of the aggression.

With this hope, and reserving the right of my Government to ask for the adoption at a later date of measures of co-ordination, I accept the report in the name of my Government. I wish to add that my acceptance of the report is also subject to the understanding that the Council remains seized of the appeal of the Chinese Government.

At the same time, I wish to make it clear that, in accepting the report, I have no intention of renouncing the repeated request of my Government to the Council to implement the earlier resolutions of the Assembly and the Council, by adopting concrete measures of aid to China and those tending to restrain the aggression. Nor can I refrain from calling the Council's attention again to the request to adopt, for humanitarian considerations, effective measures to deter the continued resort by the Japanese armed forces to the use of toxic gases and to the indiscriminate bombing of the Chinese civilian population and non-military objectives.

On the first of the two questions, the Council has before it a draft resolution. I shall presently make a statement on that subject.²

As regards the question of the illegal bombing from the air by Japanese aircraft in China, I propose to make a declaration when the following item on the agenda—"Protection of Civilian Populations against Bombing from the Air in Case of War"—is taken up for consideration.³

Mr. BUTLER. — I have listened with care to the observations of the representative of China, who has expressed the point of view of his Government. The view of His Majesty's Government in the United Kingdom is that it accepts the position as set out in the report.

As Lord Halifax said at the May meeting of the Council,⁴ His Majesty's Government has done its best, within the limits imposed upon it by the situation, to fulfil its obligations under the resolutions adopted by the Assembly and the Council in regard to the situation in the Far East.

His Majesty's Government will continue, as it has done in the past, to give serious and sympathetic consideration to any requests it may receive from the Chinese Government in conformity with these resolutions.

M. WESTMAN. — The report which the President has just read confirms the established practice under which it is, in principle, for the various Members of the League to appreciate in each particular case whether the conditions required for the application of Article 17, paragraph 3, are fulfilled. The report further recalls that, in October 1937, the League Assembly had already placed on record the illegal character of the military operations conducted by Japan in China, and that this finding of the Assembly retains its full force.

In drawing attention to these particular conditions, I can support the finding contained in the report—namely, that, in view of Japan's refusal of the invitation extended to her, the

¹ See *Official Journal*, May-June 1938, page 1378.

² See page 881.

³ See page 882.

⁴ See *Official Journal*, May-June 1938, page 380.

provisions of Article 16 are applicable in present conditions, and the Members of the League of Nations are entitled, not only to act as before on the basis of the said finding, but also to adopt individually the measures provided for in Article 16.

In this connection, I wish to recall, in order to avoid any ambiguity as to Sweden's attitude, the declarations made during the present session of the Assembly by M. Sandler,¹ the first delegate of Sweden, regarding the non-obligatory character of the sanctions provided for in Article 16 of the Covenant, and regarding the guiding-lines which the Swedish Government has laid down for the conduct of its foreign policy.

Subject to those observations, I shall vote for the report laid before us.

M. BOURQUIN. — In voting for the report submitted to us, I wish to express my deep sympathy for the Chinese nation in the trials which it is undergoing, and which it is bearing so bravely.

There is no further need to affirm the illicit character of the military operations from which China is at present suffering, since the Assembly recognised this last year.

In these circumstances, the refusal of the Tokio Government to accept the invitation recently extended to it places us in the hypothesis envisaged in Article 17, paragraph 3, of the Covenant. The Council can take note of this situation without conflicting with the established practice under which it is for the Members of the League to appreciate in each particular case whether the conditions for the application of the measures laid down in Article 16 and Article 17, paragraph 3, of the Covenant are fulfilled.

The report explicitly states that the above practice is in no way questioned. My Government is therefore able to accept the text before us. As regards the measures which the Members of the League are entitled to take individually under Article 16 and Article 17, paragraph 3, of the Covenant, I shall merely recall the statements made on several occasions by the representatives of Belgium, both in the Assembly and in the Committee of Twenty-eight, as to the scope of those articles.

M. FELDMANS. — The Latvian delegation accepts the report and, in particular, paragraph 4 thereof, in the light of the declaration made by its first delegate at the Assembly meeting on September 19th, 1938,² regarding Article 16 of the Covenant.

M. PAUL-BONCOUR. — I have no observations or reservations to make in regard to the report submitted to us, and which reproduces faithfully and equitably the various opinions expressed during our exchange of views. That exchange of views was all the more important since, although unanimous on the particular matter referred to us, some of our colleagues were concerned, and rightly so, as is always the case in such circumstances, about the precedents which might thus be created and the new significance which might be attached to specially important articles of the Covenant of the League of Nations.

Before voting, I would like the representative of China to realise that he is not the only one who feels that the report is not entirely what we might have wished it to be. We appreciate—I, at least, do—the comprehension which he has shown, and the way in which he has reconciled his duty as representative of a country which, as we know, is struggling against aggression, with the limitations placed on our possibilities of action at present.

M. LITVINOFF. — I wish to assure the representative of China of the sympathy and understanding which we have for his statement that he is not quite satisfied with the report. I agree with him that it is not what China had a right to expect from the League of Nations. Such a report certainly can neither deter aggressors nor stop aggression. It is the more unfortunate that we have to limit ourselves to such modest recommendations at a time when, outside the League, much is being done to encourage aggression and to assure its success.

The Government of the Union of Soviet Socialist Republics, for its part, would be quite prepared to go further than this report and to take part in the fulfilment by the League of its whole duty. The individual measures prescribed under Article 16 cannot do much in the way of stopping aggression. Such measures can only be effective when they are co-ordinated and taken collectively. My Government would be quite ready to take part in such co-ordination, but since other Governments do not feel the same way, we are compelled to vote the report.

Mr. CAMPBELL. — Since the acquiescence of Members of the Council in this compromise report is being formally expressed and in part qualified, may I say, on behalf of the New Zealand Government, that our acceptance of it is qualified only by sincere regret that the terms of the Covenant are not being collectively applied without qualification, in conditions about which there is unfortunately no room for doubt.

M. HENRÍQUEZ-UREÑA. — I shall confine myself to expressing my country's sincere sympathy with China, and to stating that I accept unreservedly the report that has just been submitted.

The report was adopted.

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¹ See *Official Journal*, Special Supplements Nos. 183, page 39 and 189, page 37.

² See *Official Journal*, Special Supplement No. 183, page 65.