

between arbitration or judicial settlement, on the one hand, and recourse to the Council on the other. Arbitration or judicial settlement implies findings which are binding upon the parties and to which effect must be given. Recourse to the Council, even when the Council is unanimous, produces only a limited effect. In the Covenant as it stands, war is prohibited against a State which complies with the unanimous recommendations of the Council, but the Covenant does not provide for any obligation to carry out these recommendations and the Council has no means of guaranteeing such execution.

To place the problem of the pacific settlement of disputes on a plane with the principle of prohibiting recourse to war, two methods seemed feasible. The first and simpler was to extend arbitration or judicial settlement by means of contractual undertakings. In this direction considerable progress has been made through the acceptance of the Optional Clause of the Statute of the Permanent Court and the General Act of 1928. The Committee, nevertheless, considered that it would be premature to seek at present to embody in the Covenant the rigid obligation to resort to arbitration or judicial settlement for all disputes.

The second solution contemplated was at least to provide in the Covenant that Members of the League must carry out in good faith the unanimous recommendations of the Council, and to entrust to the latter the duty of proposing suitable measures to ensure that such recommendations were carried into effect. The discussions indicated that an amendment of this character would not command the necessary ratifications. A number of States in favour of compulsory arbitration were not prepared to grant to the Council arbitral or judicial powers or to give its decisions executory and compulsory force, even with the guarantee that the Council could, by a majority vote, apply for an advisory opinion to the Permanent Court of International Justice.

As regards the hypothesis of the Council being divided, the Finnish delegation proposed that, in such a case, the Council should by a majority vote suggest the best procedure to be followed in the circumstances and should recommend it to the parties. The Committee decided that this proposal might usefully be accepted as a basis for subsequent discussion. If a prohibition of recourse to war is embodied in the Covenant, the number of cases liable to sanctions (Article 16) will be increased. The question arose—and in this regard it seemed impossible to reconcile the points of view—whether the obligations under Article 16 could not be restricted to cases where the Council had been unanimous, to the exclusion of those cases in which it was divided either on the question as to who was the aggressor or as to the provisional measures which should be recommended to the parties.

Those in favour of a distinction of this kind argued that the function of the League was not to be a repressive judge. Its function was to bring about peace. The opinion prevailed, however, that any distinction ought to be rejected. The Covenant enjoined upon the Council to concern itself with any war or threat of war; if, in certain cases, Members of the League were at liberty to stand aloof, the Council would find itself without any means of action. To say that Members, after taking note of the violation of the undertaking, could wash their hands of the whole matter would be to undermine the force of the prohibition of recourse to war. It would diminish the guarantees the Covenant affords. The obligations under Article 16 were not subject to the condition that the Council must have taken a decision as to who was the aggressor. Similarly, it seemed absurd to claim that Members of the League which considered that common action was possible should abstain from carrying out the obligations under Article 16 for the sole reason that unanimity had not been obtained in the Council. Such a condition was too rigid. There might be on the Council, besides the aggressor State, another State secretly allied with it or not sufficiently alive