THE POLICIES OF THE BRITISH DOMINIONS IN THE LEAGUE OF NATIONS.

I. The Dominions, and their Status in the League.

§ 1. *The Entities in Question.*

Professor Rappard has been thoughtful enough to apologise, as it were, in advance for me, by dwelling on the exceptional difficulty of the task I have assumed. His were no idle words. My difficulties begin even before I do: for my very task itself is ill-defined.

A series of lecture-courses have been given here, each hitherto dealing with the policy of some one member of the League, some member with a well-marked policy, the lecturer in each case having the highest of qualifications to treat of the particular country concerned. To me it falls to discourse, not about one member of the League, but about a number of members, the territories of only two of which I have visited: nor is it altogether certain how many exactly of them there are. I have therefore at the outset to ask myself, Whose policies am I to discuss? What, for the purposes of these lectures, *are* the Dominions? And have the said Dominions, strictly speaking, any distinctive policy, or policies, at all, and if yes, then how many ?

Since we are to examine policies *in*, and not merely *towards*, the League, there is at least one Dominion, namely Newfoundland, which we can disregard; for she is not in the League. So too, Great Britain, even if those are right who declare that she has lately become a Dominion, is not named among the members of the

League.[1] India, indeed, is better off in this respect, but all shades of opinion seem agreed that she is not yet a Dominion, whatever she may be destined to become to-morrow or the day after. Finally there is the Irish Free State. Must she too be excluded? Professor Smiddy, speaking in Chicago, made a point of denying that Ireland was a Dominion at all—even if she had "the status thereof".[2]

Perhaps I have not perfectly understood Professor Smiddy; but, be that as it may, in relation at least to League affairs, Ireland seems to me to be either a Dominion or nothing at all, for the Sixth Committee's report upon which in September 1923 Ireland was elected by the Assembly to membership, begins by explicitly noting that: ". . . the Irish Free State is a Dominion forming part of the British Empire upon the same conditions as the other Dominions which are already members of the League".[3] It seems then that, as Sir Cecil Hurst has put it, the Irish Free State is a Dominion, although she has arrived at this position by a route different from that along which the other Dominions have come.

I therefore propose, at any rate provisionally, to treat the Irish Free State as a Dominion. If you should conclude by-and-by that I am in error, you will no doubt arrange to forget any remarks I may have made about Ireland. Perhaps, indeed, you had better forget them in any event, for I am anything but an authority on Irish affairs.

§ 2. *Some Verbal—and other—Niceties.*

I shall devote the rest of this first lecture to a cursory examination of what is involved in that much discussed condition known as Dominion status, with particular reference to the position of the Dominions as members of the League. For the moment I do not say "as *States* members of the League", for whether or not the Dominions are to be ranked as States seems to me to depend

[1] C.44, p. 377.
[2] H.F.L. 1927, p. 109.
[3] 4A.Pl., p. 166.

simply upon which we accept of several possible definitions of statehood. We may merely notice in passing that their membership of the League does not of itself place the Dominions in the category of States. In a lecture I once heard in Geneva, a distinguished official of one of the organisations here sought, though without literal quotation of the Covenant, to argue that their admission to the League implied the recognition of the Dominions as sovereign States—for were they not thereby placed on a footing of equality with France, Italy and Belgium? The lecturer did not read Article 1 of the Covenant, which provides that "any fully self-governing State, Dominion or Colony", should be eligible for future membership. This, though not directly referring to the original members, does seem to contemplate that some members will not necessarily be States. As well might the Covenant be invoked to equate the Dominions to colonies, as for the purpose of proving them to have achieved statehood.

Although the Covenant does not in terms divide the original members into States and Dominions, it does, by abandoning alphabetical order to group the Dominions and India in a peculiar manner immediately after the British Empire, imply, rather than assert, that they are not as other members. Its vagueness on this point is relatively unobjectionable as compared with its entire silence on several other kindred questions, questions that naturally arose in the mind of a puzzled world when, in 1919, it learned that these lately developed entities were to share with their elders the dignity and responsibilities of League membership.

On every hand, and especially in the United States of America, there was raised the question of 'Britain's six votes'. Even for those discriminating students who perceived that under the unanimity rule the individual member with one vote would be as powerful as the group with six, there remained the voting on points of procedure, to which the unanimity rule was not to apply. Why should Great Britain exercise votes both under the collective title of "British Empire" and, in addition, through the several agencies of her several dominions?

Why, especially, in the most important of all cases, namely

the "disputes" procedure under Article 15, should the British Dominions be, as it were, guaranteed against an adverse report by the Council? (For, supposing a Dominion to be involved in a dispute likely to lead to a rupture, there seemed to be nothing in the letter of the Covenant to prevent the "British Empire" representative at the Council table from voting, irrespective of the merits, in condonation of that Dominion's attitude).

On the other hand, from the standpoint of the loyal British subject born, bred and resident, say, in New Zealand, there might be put the hypothetical case of England's becoming involved in war in technical breach of her obligations under Articles 12 to 15. Was it really to be expected in such a case that New Zealand, for example, should immediately act up to the letter of her ostensible commitments under Article 16 and align herself with France and Japan in the business of bringing England to her knees? Was New Zealand really to be understood as having deliberately pledged her honour in such a sense as that? And, even apart from any such extreme contingency, there were many who noted with disquiet the increased emphasis placed in the process of peace-making upon the separate individualities of the Dominions. Where was this leading them? Where else, indeed, could it eventually, if not almost immediately, lead them, but into a state of complete dissociation from the Empire to which they were supposed somehow still to belong?

Finally, even if no student may have pitched upon this further conundrum at the outset, there was soon to be mooted, in a mildly sensational form, the question whether, as between League members belonging to the British Commonwealth, the plain language of Article 18 could be represented as meaning anything materially different from what it said.

When, in 1924, the Minister for External Affairs of the Irish Free State undertook to show that according to the Covenant not merely was Ireland entitled to register the so-called Anglo-Irish Treaty with the Secretariat, but neither Ireland nor the British Empire was strictly free to do otherwise, he seemed to have an easy task, and the Foreign Office, or was it the Colonial,

or the Dominions Office, stating the opposite position, a correspondingly difficult one.

And, inasmuch as the Secretariat is considered to have no discretion to refuse registration of the instruments presented to it by the League members, there may to-day be seen in the place where the Secretariat keeps its registered treaties the agreement known as the Anglo-Irish Treaty, along with official statements of the grounds on which the Irish and British Governments respectively contended that the document in question was, and was not, proper to be registered under Article 18 [1].

So too for light on the other aspects of Dominion status within the League we shall do well to look beyond the inconclusive wording of the Covenant to the history of what has subsequently happened in the practice of the Governments concerned.

That the plurality of British Commonwealth votes were not always, if ever, to be placed at the unfettered disposal of England, became manifest from the start. Had it been otherwise there would have been little occasion, or material, for such a lecture-course as this; whereas, frankly, my chief problem to-day is how to reduce an abundance of suggestive material to a manageable compass.

And, outside the League, on the general plane of world affairs, there was corroborative evidence that some if not all of the Dominions thought it right to continue thinking and speaking for themselves.

When, in 1924, the Canadian Government was invited by the British Government to concur in the ratification of the Treaty of Lausanne negotiated with Turkey by a delegation appointed from London, Mr. McKenzie King replied firmly that, Canada not having participated in the negotiations, her Parliament could not be asked to approve the instrument so drawn up, and that in default of Parliamentary approval her Government could not concur in its ratification.[2] Evidently, no matter what the consequence, Canada at least was not prepared to forgo the luxury of a separate national will.

[1] T.S.XXVI, p. 9 and XXVII, p. 449.
[2] J.P.E.V.2, p. 326.

§ 3. *A Glance at History.*

Certainly it is not difficult so to present the facts about the British Empire as to give them a puzzling appearance. It should however be worth while trying so to present them as to render the present position a little less unintelligible than at first it may seem.

Apparent anomalies there are; but, as everyone knows, the Empire is a product of history and history is no slavish respecter of logic. Dominion status in the League is not to be fully understood either from the wording of the Covenant, or by way of logical inference therefrom.

In order to understand the position to-day, we shall do more wisely to go back and study the position in 1919; and this in turn will be most usefully examined after a glance at the historical process of which it was the consummation.

Those of you who have, for example, read Professor Duncan Hall's well-known book,[1] will remember how he traces the evolution of Dominion nationhood from the period of Lord Durham's famous report composed in the late eighteen-thirties, past the succession of landmarks recording the institution of responsible government in Canada and later in other colonies, the attainment of tariff autonomy in 1859, the first participation of a Canadian representative in the negotiation of a treaty concerning Canada, the convening first under the one name, later under the other, of a series of Colonial, or as we now call them, Imperial Conferences, down to the testing time of 1914. They will recall that already in 1900, Great Britain was enjoying the wartime help of contingents spontaneously raised and despatched by the governments overseas, the governments of what it was becoming ungracious to designate colonies. They will know that in 1911, though the then British Government said it did not see its way to sharing with the Dominions the determination of the Empire's foreign policy, the Imperial Conference was favoured with a full confidential exposé thereof from the mouth of the British Foreign Secretary. They will have noticed how,

[1] D.H., Chapters I-VI.

when Sir Robert Borden was hoping to provide in the name of Canada certain battle-ships for the British navy, the principle of Britain's exclusive control of policy, laid down in 1911, seemed likely to be relaxed: and how it seems to have been only the fact of Sir Robert's subsequent inability to deliver the battle-ships which delayed that expected development. They will remember how, in 1914 and the years that followed, the Dominions proved able and indeed eager to deliver something even more precious than battle-ships, in the form of military contingents that earned the respect of allies and enemies alike. Thus it was that during the war policy passed into the hands of an Imperial War Cabinet comprising representatives not only of Britain, but of the Dominions as well. Thus it was that on the Allied Supreme War Council the Imperial War Cabinet was from time to time partly represented by some of the overseas men. And thus it was that the British Commonwealth which had helped to win the victory claimed and secured the right to appear at the peace table with a delegation for which history could show no precedent. The several Dominions, certain of which had made sacrifices inferior only to those of some of the Great Powers, appeared in their own right as small nations interested in the peace: and at the same time the British Empire as such was represented in part by spokesmen who came, as they had to the Imperial War Cabinet, from the outlying portions of the Empire.

There is nothing in history to parallel the participation of the Dominions in the prosecution of the war. There is equally nothing to parallel their participation in the framing of the peace.

§ 4. *The Position established at Versailles.*

The British Empire delegation at Versailles can only be appropriately described as a "freak" delegation. The Dominions were there both in virtue of their newly matured separate nationhood and in virtue of their partnership in a still subsisting British Commonwealth.

The constitution of the League of Nations reflects, in several

of its features, the constitution of the 1919 peace conference; and, as the British Commonwealth appeared both as several nations and as a united Empire in the one, so it survives in this twofold aspect in the other.

Argue from one of these aspects in disregard of the other and you can prove almost anything; but, obvious though your conclusions may seem, it is unlikely that they will square with the facts as they are.

When Mr. Fitzgerald gave his reasons for presenting for registration the Anglo-Irish treaty, he argued from one aspect in disregard of the other. When, two years later, he explained in the Dublin Parliament the less logical resolutions of the 1926 Imperial Conference, which he had helped to frame, he spoke, though in his own idiom, of the facts as they were—and are. The Conference resolution had said:

> " The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the territories on behalf of which it has been signed in the name of the King. "

Mr. Fitzgerald, in explaining it at home, said that

> it would be foolish to imagine that a system of group association could cease to operate within any period calculated by this generation. No political régime in that country could remain isolated without substantial injury to the country[1]. . . " The new system gives exact expression to existing realities. There is a special bond between the States of the Commonwealth, consisting not in a supreme governmental authority but in a common King. The exact nature of the relationship outside the common bond of the king is undefined; but it is naturally felt that League treaties and conventions can not be taken as applying completely—as to all their articles—between them as if there was no special relationship whatever. "

The wording of the British note to the Secretariat in 1924 had been:

> " Since the Covenant of the League of Nations came into force, His Majesty's Government has consistently taken the view that neither it nor any conventions concluded under the auspices of the League are intended to govern relations *inter se* of various parts of the British Commonwealth. "

[1] J.P.E.VIII.1, p. 179.

Sir Cecil Hurst, in his Harris Foundation Lectures, asserts that the Commonwealth holds together because it suits the several members so to do; and he likens their association to that, not of a contractual partnership, but rather of a human family[1]. Mr. Fitzgerald has less, if anything, to say about family feeling: but he agrees with Sir Cecil that, at least for the present, it is convenient that the Empire should hold together. It is convenient, in fact, that the Dominions should conserve and not throw away the peculiar privileges of the anomalous position, won by them in the war, and conceded to them in the peace.

The Covenant does not expressly absolve members of the Commonwealth from the duty of applying in given circumstances sanctions against one another. Nor does it expressly disable them from voting on disputes to which other members of the Commonwealth are parties. It does not expressly distinguish, under Art. 18, the categories of ' international ' and specifically ' inter-Imperial ' engagements.

Yet the Covenant does, both in the terms of Article 1 and in the form of its Annex, recognise that not all the League's members are for all purposes on exactly the same footing. Notwithstanding the view which Canada had the superficial appearance of adopting at the time of Lausanne, the six nations took part in 1919 in terminating a war declared against Germany not by Canada, New Zealand and the others severally, but by the Empire as a unit.

Mr. McKenzie King, while denying that the Treaty of Lausanne could lay any " active " obligations on Canada, made no question that Canada was none the less " bound " by it![2] What he certainly meant was that, whether at Lausanne or Versailles, the making of peace, like the making of war, was strictly the affair, not of Canada, or of England, but of His Britannic Majesty, in respect of the Empire as a single whole. Though the several spokesmen

[1] H.F.L. 1927, pp. 62, 102.
[2] J.P.E.V.3, p. 505.

negotiated at Versailles in the interests of several nations, they signed the resulting treaty all as representing one and the same High Contracting Party, that same High Contracting Party who was later to conclude, through fewer signatures, the equally effective Treaty of Lausanne. Though it may negotiate as *many*, the Empire has, at least hitherto, made war and peace as *one*. Moreover, while for purposes of the most-favoured-nation clause our foreign, and chiefly, I think, our American friends have sometimes seemed to wish we would admit more fully the implications of our obvious manyness, they have not, I fancy, in discussions of disarmament, contended that our "requirements", when the yardstick is being applied, should be calculated otherwise than in reference to the defence of the Empire as a whole. Ours is regarded as one large navy, not as six or seven small ones.

The unity of the Empire in the ratifying of the Peace Treaty, including the League Covenant, was as evident as its multiplicity in the drafting thereof and in the resulting membership. Nobody in interpreting the Covenant can fairly leave out of account this fact. Viscount Grey surely took a sound position when, in January 1920, he disclaimed any right of one member to cast an operative vote, as not being a "party", on a dispute involving another member of the Commonwealth [1].

In the case at least of some Dominions, their membership of the League arose almost by inadvertence from their participation at Versailles, and as the latter can I think be usefully discussed only as being what I have termed a sort of "freak" participation, so it seems to me best to acknowledge from the outset that the Dominions's League membership can be satisfactorily discussed only as being in some respects a sort of "freak" membership.

Every here and there we may expect to find the smooth uniformity of the normal association of League members interrupted, or if you like relieved, by evidences of that special relationship which history alone can explain, but which rendered unthinkable any separate declarations of war, or neutrality, by the Dominions in 1914.

[1] D.H., p. 347.

Not that we shall be safe in supposing that the position to-day is precisely the same as it was in 1914, or that were the test repeated to-morrow the system would work again just in the same way as then. The first thing to know about Britannic institut ons is that they have about them little of the static. They everlastingly evolve. In 1926 the report of the Imperial Conference said many things which would have sounded premature, if not fantastic, in 1914. (I do not know whether every foreigner finds comprehensible that report of 1926. English people many of them talk of it as if it contained an immoderate proportion of logically incoherent eyewash.)

§ 5. *A Summing up.*

There are of course occasions when a lecturer has some purpose in view other than the coldly objective elucidation of truth. For political reasons, a speaker does not always judge it proper fully to illuminate the minds of his audience. The politician is concerned rather to guide than to enlighten. The public, like a beast of burden, can sometimes be more easily guided if it can be prevailed upon to proceed in blinkers.

Now a great part that is said in one place or another about inter-Imperial relations is said with a propagandist political motive and belongs to the category of tendencious theory rather than of rigorous scientific analysis. Here what I would like to produce would be a serious piece of analysis. For understanding the place of the Dominions in the Empire and in the League, two distinctions should, I think, be borne in mind.

First there is the distinction between the two sorts of theory which are intermingled in the doctrine of the Commonwealth: I mean on the one hand the legal theory which underlies the law of the British Constitution and according to which the Empire, so long as it remains in being, continues essentially a single unit; and, on the other hand, the theory of current constitutional usage in the British Commonwealth, according to which the Empire is a number of politically independent units cooperating merely because it suits them so to do.

The other distinction I wish to stress is one which I borrow from Professor Rappard, namely his pregnant differentiation between the League to prevent war and the League to promote international co-operation [1]. The former is the League which handles disputes and applies, if necessary, sanctions. The latter is the system of teamwork between governments in positive constructive undertakings, a teamwork in which certain States not even nominally members of the League first mentioned take an active share.

Whatever may technically be the legal effects of a declaration of war, the Empire for normal purposes comprises a plurality of governments voicing a plurality of national wills. Constitutional usage accords with this fact.

Whatever may be the technical position in reference to disputes and sanctions, the League, for purposes of international cooperation, thinks not of Great Powers, or small powers, or potential belligerents or neutrals, but simply of governments coordinating their activities to a common end. For these purposes the Dominion members, I suggest, will be perceived to move on a footing of entire equality with the other members of the League. For these purposes correspondingly the ' British Empire ' delegates in Geneva speak, in effect, mainly for the particular government of Great Britain, the Dominion delegates speaking severally for theirs. Identity of policy is aimed at, but not regarded as vitally necessary.

On the more critical matters with which Articles 11 to 17 of the Covenant have to do, we fortunately have less experience, but one may perhaps conjecture that, if and when the occasion should arise, we are likely to find stress being laid on the special relationship that we noticed just now—at least for so long as that special relationship continues to be felt by the several constituent parts of the Empire to be not merely to their collective advantage but to the advantage of each of them severally as well.

1 W.E.R., *passim*.

II. Dominion Contributions to the Covenant.

§ 1. *The Pamphlet of General Smuts.*

I do not know how far, for the purpose of such a course of lectures as this, one would be justified in treating the individual pronouncements of a country's public men as necessarily representative of that country's policy. And certainly it would be incorrect to describe policies pursued in the course of setting up the League of Nations as being policies *in* the League. But I think their intrinsic interest will excuse my including at this stage a glance at the parts played at the Peace Conference, and before it, by Dominion statesmen in relation to the founding of the League.

I certainly do not for a moment claim that South Africa as a whole had arrived in 1918 at the standpoint embodied in General Smuts's famous pamphlet "The League of Nations; a Practical Suggestion" [1]. Issued between the date of the armistice and the gathering of the statesmen in Paris this eloquent document contained a boldly imaginative development of the substance of the Phillimore Report. [2] The very fact that so busy and practical a man as Smuts had felt and thought so deeply on the subject must of itself have served to bring the League project into a prominence that the colder draftsmanship of the Committee's report could hardly have secured for it.

It is interesting to consider just how important a contribution to the existing covenant was made by Smuts's essay. In its concrete details, strikingly little. However radical in spirit the Covenant may at first have seemed to some it bears in every line the traces of a foreign office hand. Beside it, the proposals of Smuts sound amateurish: but perhaps it was in this very amateurishness that their principal attractiveness lay; there is

1 H.M.II, p. 23.
2 *Ib.*, p. 3.

room for the vision of the amateur when an attempt is being made to break free from the shackles of the past.

But the enthusiastic note which might catch the sympathy of the ordinary reader made of Smuts's writing an object of suspicion to shrewder men of affairs. General Tasker Bliss and Mr. David Hunter Miller do not seem to have liked it much. General Bliss saw in it an ingenious snare laid for the United States. "The sole object", he wrote, "of the proposition of General Smuts is to bring the United States into line with Great Britain in exercising supervisory control over certain areas of the earth. The people of the United States will understand that a great burden is contemplated to be thrust upon them by this plan".[1]

I doubt if General Bliss can have read the pamphlet more than once or twice : and to get the heart of it you have read it over and over again.

If you do so, you will realise that there are great differences between the League that is and the League as Smuts conceived of it. Even the mandates system, an idea which President Wilson seems to have adopted almost without change from the Smuts plan, was to be applied, at least nominally, to just those very former German colonies to which he had not meant it to be applicable.

In Smuts's eyes the chief task of the Peace Conference would be the setting up of a comprehensive system of world government to work out the details of the peace and to deal in normal times with the remoter causes of war, and so to accumulate the authority and to command the confidence it would want for averting war in time of crisis.

With Europe as it seemed in dissolution, and with the common people in idealistic mood, that was the moment when the time was ripe for the States to exercise self-denial in a common constructive effort. In the new situation national solutions would not do: world government, whether by a League or otherwise, was essential. Amid the vast social and industrial changes and upheavals that

[1] *Ib.*, p. 96.

were coming, the League's steadying, controlling and regulating influence was to give stability to progress and to remove wasteful friction in the name of the moral and spiritual unity of the human race.

Smuts wrote as a soldier who had known war. He wrote also as a philosopher with a life-long interest in political constitutions. Though he had at one time been in arms against the British Empire, he had never fought against the principles to which it seemed to him to owe its present greatness. The old empires resting on coercion had in a sense kept the peace, but had inevitably broken down. Annexations must, therefore be forsworn. Politically immature nations newly emancipated from subjection to the defeated Powers must be trained up to govern themselves, guided by stabler nations picked out as acceptable to the communities requiring tutelage.

Smuts was inspired partly by memories of the Concert of Europe in the 19th century, partly by the spectacle of the British Empire with its multiple executives coordinating their policies by the method of conference, and with its respect for the ideas of nationality, autonomy, decentralisation and the guaranteeing of the weak against the strong. The new problem however was unprecedented. The situation must be carefully analysed and special machinery developed to take the place of that common allegiance in which peace within the Empire had its basis. A small executive representing the principal countries only, taking decisions by a 2/3 majority, and resolving its deadlocks by negotiation, frank discussion and good will, should watch over the world, looking—where necessary—even into the internal conditions of States.

For the education of public opinion and the fostering of such a broad spirit as would neutralise local narrowness discussions of relatively non-contentious issues would be promoted in an assembly representing all the independent countries.

A modest beginning on sound lines, not too remote from current political practice, was more important than any full-blown scheme. Thus the mandates system was propounded merely as a workable temporary compromise, a necessary concession to the Great Powers,

but allowing of a real control by the League. Joint international administration he did not in any case believe to be possible, or not at any rate until the League should have had time to train an internationally-minded personnel.

To the non-annexation principle exceptions were to be allowed, for what General Smuts held to be sufficient special reasons, in regard to Alsace-Lorraine and the German colonies.

Notice also the tone in which he endorses the 'Phillimore' ideas on the pacific settlement of international disputes.[1] Fundamentally the avoidance of war would depend on the possibility of organically altering any conditions not compatible with continuing peace. Arbitration and conciliation could not suffice for this. A great point is made of the division of disputes into the justiciable and the non-justiciable. To afford time, in critical cases, for full inquiry, for tactful statemanlike mediation, for the enlightening of public opinion by means of reports and recommandations, there must be a moratorium, effectively sanctioned by the automatic state of war and the automatic boycott, and in the last resort even by force. Yet not even when the recommending body was unanimous were the disputants to be technically bound to comply or even to refrain from final recourse to war.

The League we have to-day is in many respects a substantially different structure, the work chiefly of men who had read and pondered Smuts's suggestions, but had by no means slavishly accepted his views.

But he would be the last to complain of this. A League in being was what he mainly wanted, a League which might be left to learn by experience its own lessons. This is the instinct of the practical man of affairs, as opposed to that academic type of reformer who worries over a want of symmetry here or there. Smuts frankly left open the theoretical door to war in one place and to deadlock in another, content in his belief that in neither instance was the

[1] *Ib.* I, p. 4.

door in practice likely to be used. For mere paper completeness and freedom from 'gaps' he does not seem to have cared. Anyhow, it was the big idea for which he stood. The detail of its realisation was less important to him.

§ 2. *The "C" Mandates Compromise.*

How different the posture of Mr. W. M. Hughes, the Australian Premier. When on 25th January the resolution for the divising of a League Constitution was adopted by the plenary Conference he spoke as follows: "Will it be possible to discuss the scheme when it is complete?" And again on 14th February when, once more in a plenary Conference, President Wilson resumed his seat after a stirring appreciation of the now completed Draft Covenant Mr. Hughes made a further intervention: "Will the delegates," he asked, "have an opportunity of discussing this text, and, if so, when?"

Some folks are never edified—or perhaps it would be fairer to say, some countries never feel secure.

But it was on January 30th at the meeting of the Council of Ten, at which the general lines of the mandates system were settled once for all, that Mr. Hughes made his international reputation[1].

To the Dominions in general the old German colonies had had the character of jumping-off points for possible foreign invasion of their territory. With varying degrees of difficulty their troops had occupied some of these territories, always in the belief that they were thereby ending for ever the danger to which they had felt exposed. The Dominions had been encouraged to regard their own remarkable participation in the war as putting the mother-country rather deeply in debt to them. In England too it would have been generally desired that Dominion susceptibilities should be a particular concern of the British Government. At a late stage of the war President Wilson had, however, declared for the principle

[1] *Ib.* II, p. 208.

of No Annexations. But how except by annexation could these territories be permanently reserved from foreign control? For the form of annexation the Dominion Governments may not have greatly cared. The substance of it however was perhaps the one result they had been confidently looking to England to secure at the Peace Conference.

President Wilson on the other hand, from the moment he first read General Smuts's far-reaching mandate proposals, had set his heart on applying the system, certainly the substance of it, to the colonies taken from Germany [1]. (No one at that time believed that Germany ought to have them back). And, while caring greatly for the substance of the system, he was sufficiently a politician to see a certain value even in the mere form of it for its own sake.

The British Government was not concerned to resist the application of the mandatory principle to the African colonies. It was not considered to involve any supersession of traditional British methods of African administration. But Mr. Lloyd George could not very well have imposed the mandates system upon the Dominions. He accordingly devoted a strenuous effort of diplomacy to getting the provisional assent of the Dominion Prime Ministers to a compromise which, under the forms of the mandate, was expected to give the Dominions most of the substance of annexation.

This compromise scheme being then brought to the notice of the Council of Ten seemed so vague and ambiguous that it pleased neither Mr. Hughes nor President Wilson [2]. The former however announced that, subject to anything that might be decided in the Australian Cabinet that day, he would support the scheme. President Wilson hesitated at first. He would have wished to see the practical implications of the proposal. Mr. Hughes naturally replied that he too would have wished first to see the system working. Mr. Lloyd George reminded President Wilson that public opinion in the Dominions must be considered. " These

[1] *Ib.* I, p. 101.
[2] *Ib.* II, pp. 195 to 198.

gentlemen were not enamouved of the mandatory system: they represented real democracies and the people were solid behind them on this question [1]."

At the afternoon meeting Mr. Massey spoke. [2] He was premier of New Zealand and no less picturesque a figure than Mr. Hughes. He too showed disappointment at President Wilson's scruples. He frankly declared that he thought direct annexation would have been better for everybody.

Then happened the incident from which Mr. Winston Churchill extracts so much amusement in his book. President Wilson asked if he was to understand that the Peace Conference was confronted with an ultimatum from the Dominions. The reply of Mr. Hughes, who through deafness had imperfectly caught the question, seemed at first to be in the affirmative!

Mr. Massey, though disclaiming any thought of using threats, agreed generally with Mr. Hughes, though he was able to go further in signifying definitively there and then the consent of his government to the scheme.

There was also a memorable intervention on the part of General Botha, a man who among his own people was proud to have made many sacrifices for the sake of a big ideal. Let them not stop, he said, at small things. Strongly convinced though he was that the special situation in South West Africa made it a peculiarly unsuitable territory to be put under mandate, he was prepared to trust the League of Nations, mostly consisting as he assumed it would of " the same people who were present there that day " and who understood the position, not to make it impossible for South Africa to govern the country.

And so, in a wording which might mean either much or little, the mandates project was that day adopted in the Council of Ten; and, when later in the League of Nations Commission the delegate of Belgium, a country not represented at the discussions in January, observed that he did not see why certain of the German colonies

[1] *Ib.*, p. 198.
[2] *Ib.*, p. 214.

should be placed under special rules, General Smuts, in effect, asked him to regard the subject as closed.

§ 3. *An attempt to make the League Safe for Democracy.*

On the League of Nations Commission the only Dominions man was General Smuts, who played an always useful part. On one occasion, with a display of that boldness, or, shall we say, that amateurishness, to which I have already referred, he advanced and for some time defended single-handed a proposal which to men in the street might well have seemed reasonable enough, the proposal, namely, that the meetings of governmental delegates should from time to time be supplemented by assemblies at which whole peoples, including schools of opinion temporarily in opposition to their governments, should be represented, for the educational purpose of ventilating and exchanging all opinions anywhere seriously held [1]. "Governments have responsibilities", objected M. Hymans, "while parliaments have not" — an argument which prevailed.[2] Yet we may sympathise with the impulse which moved General Smuts so to plead for a "league of peoples rather than of governments", an ideal not universally abandoned even to-day.

§ 4. *The Comments of Mr. Hughes and Sir Robert Borden.*

And so in due course the Draft Covenant was completed and exposed for criticism, and we have a further contribution from Australia. Over the signature of Mr. Hughes we find some Notes on the Draft Covenant, including several penetrating criticisms to which we owe definite improvements [3].

But for Mr. Hughes the supremely important Article 11 might perhaps not have been worded in quite the pregnant way that it is. The League, as such, is now given a *duty*, which may some

[1] *Ib.*, I, p. 231.
[2] *Ib.*, II, p. 299.
[3] *Ib.*, I, p. 363.

day save mankind, where at first the several members were merely to have reserved a *right*.

It is particularly interesting to notice, in view of many discussions since, that Mr. Hughes—unlike General Smuts— considered the "automatic" sanctions of Article 16 a mistake. The weight of the League he believed would be as effective as a pledge. Let them leave the League to take counsel when the case arose, as in any event, by-the-by, it would have to do in the situations not technically covered by Article 16.

But most important of all was the general objection he made to the ambiguity of expression running as it seemed to him throughout the Covenant. Two rival principles were involved. In its main outlines the constitution rested on the idea of a standing international conference: but phrases every here and there suggested the conflicting idea of an international government. The nomenclature used seemed to him to be inspired by the false analogy of the threefold division of powers within the state. If, which he doubted, it was proposed to give the League legislative competence it ought to be quite definitely indicated. "The draft as it now stands", he concluded, "halting between the two inconsistent principles of international cooperation and supra-national government, now leaning in one direction and now in the other, is open to widely different interpretations and stands the serious danger of combining the disadvantages of both with the advantages of neither". And indeed though General Smuts had, it was true, foreseen in his pamphlet an experiment in "world government",[1] M. Larnaude, of France, and others, had disclaimed any intention of going quite so far.

Sir Robert Borden of Canada also commented on the Draft Covenant [2]. He too wanted in general a simpler and clearer style of expression. He too found fault with the then wording of Article 11. He too fixed upon a weakness in Article 16. What was the proof of aggression? Was the Council to make a public declaration?

[1] *Ib.*, II, p. 38.
[2] *Ib.*, I, p. 354.

That would take time. There should be a provision permitting immediate action in the meantime, for, on the wording as it then stood, the aggression was automatically to create a state of war. Then again, in regard to Article 18: as an additional safeguard against war, in the sense of an added deterrent to aggression, he suggested that by way of giving the Council control over the terms of peace, no peace treaty should be registered without the Council's permission. As having come from Sir Robert Borden this, I must confess, seems to me quite a sensible notion—which shows what a prejudiced person I am; for when an identical proposal was lately advanced by a Latin-American delegate it struck me as a particularly foolish idea.

But, historically, by far the most notable criticism then offered by the Canadian Prime Minister was that relating to Article 10. According to Mr. David Hunter Miller this criticism was founded in part on a very general misconception of the legal effect of Article 10 as written [1]. The principle of Article 10, he says, is merely that forcible annexation shall not result from external aggression.

To Sir Robert Borden the undertaking seemed to involve initially a careful study consideration and determination of all territorial questions between the various states who became parties to the Covenant. It was impossible to forecast the future. There might be nationalistic aspirations which could not be permanently repressed.

The provision moreover seemed inconsistent with subsequent articles which contemplated a possibility of wars in which other States would not be called upon to participate actively. It should, he maintained, be struck out or materially amended.

And, though President Wilson's insistence on Article 10 did not keep Canada out of the League, she by no means conquered her aversion or abandoned her objection to Article 10; for as Mr. Doherty subsequently informed the Assembly at its first session Canada accepted the Covenant "in the hope and expectation" that there would be opportunity for amending it [2].

[1] *Ib.*, I, p. 354.
[2] 1A.Pl., p. 281.

§ 5. *Canada and Article 10.*

A somewhat slender reason was found by the first Assembly for simply referring Canada's proposal to an amendments committee, which submitted the following year the draft of an interpretative resolution [1]. At the Assembly however—a sub-committee having proposed amendments to this—the First Committee judged it expedient to postpone the investigation and to make no statement on the interpretation or suggested deletion of the article.

Mr. Doherty reminded the Assembly that rightly or wrongly his government perceived in Article 10 a dangerous principle, which seemed, they thought, to lay down that possession could take precedence over justice. The vital interests of the League, in their belief, were at stake. In 1922, a Liberal government having succeeded the Conservatives in Ottawa, Canada withdrew her original motion and in its stead, submitted two amendments, which the Assembly referred to its next ordinary session. Many governments in due course sent in their comments—only a very few of them, in point of fact, being in full agreement with Canada [2].

At last in 1923, at its fourth session, the Assembly brought the matter to a head. In proposing at a plenary meeting an interpretative resolution, M. Rolin, the Rapporteur, described Article 10 as the oldest article, a "purely Wilsonian provision", which, he said, no one wanted to modify, but merely to elucidate [3]. He quoted M. Scialoja to the effect that such a resolution was of no very definite value from a legal point of view, though from a moral point of view it was otherwise, and from a practical point of view it ought to satisfy Canada. It did not necessarily presuppose immediate military intervention. There was in the guarantee, an elasticity both of time and circumstance. Besides, the Council's recommendation could not possibly be regarded as an order to

[1] *Ib.*, p. 281.
[2] C.26, p. 1425.
[3] 4A.Pl., p. 75.

any country's troops. The constitutional authorities must consider in good faith in what measure the undertaking to give assistance, to which they agreed in giving their adherence to the Covenant (there was emphasis upon these words) would necessitate the dispatch of military forces. The resolution was not inopportune. Canada had shown a praiseworthy spirit of conciliation. Could the Assembly possibly refuse so insistent a request to define clearly the scope of an essential undertaking ? The movement, he pointedly concluded, to *suppress* Article 10 was past.

Sir Lomer Gouin of Canada spoke next. Three successive Canadian governments, he pointed out, were agreed in asking for modification of Article 10 [1]. There had, he recalled, been no fewer than five versions of it in Paris; and had not the words about the Council's 'advice' been added in the final stages, Canada's amendment would never have been proposed. As it was, interpretation of the article was absolutely essential. The amendments committee had considered that many of the interpretations theretofore in vogue were too wide. Interpretation was less dangerous than ambiguity, and the resolution now proposed involved no fundamental change. Canada was entitled to know where she stood.

The only explicit opposition to the resolution came, somewhat pathetically, from far-away Persia. Prince Arfa-ed-Dowleh pointed to the strong contrast between the political and geographical positions of Persia and Canada [2]. An attack on Canada would be an attack on the British Empire. Persia on the other hand was surrounded by States not members of the League. In her view the Council's recommendations under Article 10 would be binding on the States affected. Several delegates he knew to concur wholeheartedly in that view. Let them ask the Permanent Court of International Justice for an opinion upon it.

Next spoke France, through the mouth of M. Barthelemy. France he said would have preferred neither amendment nor interpretation, but would abandon her passive resistance [3]. His

[1] *Ib.*, p. 79.
[2] *Ib.*, p. 81.
[3] *Ib.*, p. 81.

words are still of some interest. "It is public opinion", he said, "which gives life to the dead letter of words . . . . The obligation exists. The law exists and must be obeyed, but there are moral spheres over which the law ceases to possess material authority." I have never felt that the innuendo here was wholly complimentary to Canada. Finally . . . "Article 10 does not set out to dam, but to canalise, the stream of history".

In the end, the Assembly having by 19 votes to 18 refused to allow time for the Persian delegate to telegraph for new instructions,[1] there was a vote taken on the interpretative resolution, which was declared not adopted, 29 delegations having supported it, 22 having abstained and Persia alone having recorded her dissent [2].

§ 6. *The Canadian Standpoint—A Speculative Interpretation.*

This result was formally communicated to the Council, which would thus become aware of the views of the League's various members even though the Assembly as such had not technically succeeded in making up its official mind. And the fact that Canada after having originally proposed the deletion of Article 10 is officially said to have been fully satisfied with this relatively meagre result is presumably evidence that it had some positive significance. What was that significance ? Not that it in any way lightened the obligations imposed on Canada in the Covenant, for it appears to have been commonly recognised that even the unanimous and therefore effective adoption of such a resolution could have had no such consequence. The point seems to have been that certain governments, as for instance the Persian, had toyed with the contention that the Council's so-called advice under Article 10 would be not merely advisory but binding. It was well for Canadians to know where their country stood in this regard. So again it was well for Canadians to find it commonly acknowledged that both

[1] *Ib.*, p. 86.
[2] *Ib.*, p. 87.

the substance of its obligations and the happening of the *casus foederis* were matters to be judged of by each State for itself. If this was obvious enough to most people it had not been obvious to everybody; and in a British Dominion especially there was likely to be some confusion on the point. The man in the street—and who can blame him ?—does not always differentiate sharply between matters of international law, of Dominion constitutional practice, and of inter-imperial quasi-diplomatic usage. The respective roles of the executive and the legislative in Canada are matters of Canadian constitutional law and practice; the international obligations of Canada are matters of international law; the obligations of Canada as towards, say, Great Britain are matters not of international law, but either of Commonwealth constitutional law, or of inter-imperial quasi-diplomatic usage. A Canadian could be pardoned for getting a little mixed as between the doctrines of two sorts of law and two or three sorts of usage: and the period of the Article 10 discussions was a period of developing inter-Imperial practice. 1914 had reminded Canadians that London diplomacy might involve Ottawa automatically in war. The Chanak crisis of 1922 was to reassure Canadians of two further propositions: first, that even when automatically at war Canada was by inter-Imperial usage constitutionally competent and morally free to refrain from any active participation and, secondly, that by Canadian constitutional usage it was becoming accepted that Canada's active participation was to be a question for Parliament, not for the executive alone. From her days of Colonial status Canada had thus gradually evolved to a position of virtual independence in relation to London and of virtual control by Parliament of the executive's diplomacy.

Now alongside of these questions Canada was coming to understand a parallel but distinct set of questions in the more strictly international domain. Within the Empire it might be thought that in strict law the British still retained a vestige of theoretical power to control Canada's course of action: but as a matter of practical politics Canada's independence in this regard was perceived to be complete. Now however Canada was to receive " advice " from an international Council. In times when Dominion

Governments were finding it expedient to exact solemn declarations limiting the practical scope of Imperial sovereignty, it was natural that they should also take an interest in similar assertions of the limits of the Council's competence to dictate.

There is a further reflection suggested by the mention of the discretion of Parliaments. The position of the Canadian Parliament differs in relation to the Imperial Government, to the League Council and to International Law respectively.

When Sir Robert Borden wrote, in Paris, " It is assumed that the adhesion of each Signatory State to the Covenant will be subject to the approval of its Parliament !", he may have seemed to be insisting on the self-evident. The real point to my mind is that he was laying down a constitutional doctrine in an international law context. Internationally his assumption could be neither supported nor refuted: for the effective inclusion of Canada in the League was technically brought about by the British Empire's ratification and whether or not this ratification would be allowed to await the approval of Ottawa was a matter between Canada and England.

It is said, and we cannot but believe it, that Canada was not anxious to evade her obligations. I doubt, however, if many Canadians are positively fond of Article 10. Just at a time when the Dominion was coming to appreciate that as between itself and Britain there would never be any moral or legal obligation for it to take part in a war, Canadians were awakening to the fact of Canada's obligation at International Law, to intervene in some of the wars of her neighbours.

It was only natural that in some quarters this situation should have been found a little disconcerting.

If, said Mr. C. G. Power, they had no business in coming to the assistance of the senior partner of the British Commonwealth, he did not see what business they had to come to the assistance of people who were foreign to them[1].

Such were the Dominion contributions to the making of the Covenant.

[1] J.P.E. IV.4, p. 823.