cease to deal with Italians in Soho? The Sixth Committee of the 1st Assembly apparently managed to think not. The I.B.C. were unable to go quite so far.* While agreeing that "nationals" in that connection might be considered as meaning "residents", (for that, they thought, was what must have been intended), it was right that they should point out that this was hardly a construction of the word "nationals": it was rather a departure from that word. . . . Signor Schanzer is pleasant on this point.†

> "Last year it was held in the Assembly that the word 'nationals' should be interpreted as a synonym for 'inhabitants' in the sense that . . . . the prohibition of intercourse . . . should apply from country to country, *i.e.* between States, and not within States . . . . The I.B.C. held that the word 'nationals' should be understood in the sense of 'resident' but that this interpretation of the word 'nationals' was not an obvious one. . . . . so that it was necessary to amend Article 16 in this respect. Your Committee shares this view. It does not appear that the problem raised by the word 'nationals' can be solved merely by an interpretative explanation and without inserting an explicit amendment to the provision in question."

So an amendment was proposed, and voted, and continues insufficiently ratified still.

It remains now to mention some of the points in regard to which no special resourcefulness of interpretation seems to have been exercised, or needed.

Ten days ago, after Germany had reoccupied the Rhineland, the following from *Le Temps*‡ is typical of much that appeared in France:

> ". . . . se posera la question des sanctions en vertu de l'esprit et de la lettre du covenant et en vertu de la resolution adoptée à l'unanimité par le Conseil de la Société des Nations le 16 avril, 1935. . . . . C'est la régle inflexible du pacte [que le gouvernement de Londres] a invoquée, on le sait, pour faire prévaloir à Genève la politique des sanctions . . . . . Personne n'a le droit de supposer d'après avoir réclamé avec tant de fermeté l'application de la regle du pacte à propos du conflit italo-éthiopien elle veuille éluder ses responsabilités en refusant de faire jouer la même régle à propos d'une violation de traité infiniment plus grave que celle commise par l'Italie à l'egard de l'Ethiopie."

Yet, in 1921, it had been noted that—subject to the special provisions of Article 17 the measures prescribed in Article 16 applied only to the specific case mentioned therein: "and last year the Legal Sub-Committee of the Committee of Thirteen, speaking of measures to be recommended in the presence of a threat—without the actuality—of war, said "in the absence of any special undertaking to that effect the State would not be under a legal obligation to comply with the recommendations."†

The specific case envisaged in Article 16 is that of "resort to war in disregard of" Articles 12, 13 or *(sic)* 15 of the Covenant. It is natural that on this point a certain confusion should still exist in people's minds. "Can we say," asked M. de Brouckére, "that a country cannot 'resort to war' unless another country takes some part in the matter? . . . . Can we admit that it takes two to make war, as it does to make peace? If we refuse to accept this inference we are bound to admit that a country can resort to war without being in a state of war . . . a distinctly strange situation . . . The fact is that" [apart from a formal declaration

*Loc. cit.
†2nd Assembly, Committees, Vol. I, p. 390.
‡March 10th, 1936.

*2nd Assembly, plenary meetings, p. 427.
†Report of the Legal Sub-Committee, p. 3

of war] "a state of war does not really exist until the country attacked takes up the challenge."* It is, you see, like tennis. All on my own I can make a tennis stroke (an "act of tennis"): but, unless someone on the other side of the net takes part I cannot *play* tennis ("resort to tennis.") Without two participants there can be no *game* of tennis ("state of tennis.") Hence, when Italian forces bombarded and occupied Corfu there was, with a vengeance, an "act of war," but, Greece not resisting, there was no "state of war," hence technically no "resort to war"! Again, when Japanese forces overran Manchuria there were many acts of war, but, while Chinese troops fought, the Chinese Government did not break off diplomatic relations with Japan. There was thus, perhaps, no formal state of war; hence, perhaps, no formal resort to war! No wonder if people are puzzled.

In October, 1935, when her fellow-Members denounced Italy, Baron Aloisi affected deep indignation. "Let us examine", he said, "the precedents. . . . This is not the first time that the League has recognised a breach of the Covenant. It is so notorious that it would be in bad taste to stress the fact that such a breach was recognised two years ago in the case of the Sino-Japanese conflict, and another breach in the case of the conflict between Bolivia and Paraguay. Why in neither of these cases was there any talk of sanctions?"†

Of the South American war it may suffice to observe that neither side had kept within the Covenant. Both had at first been in the wrong, in omitting to bring the dispute to Geneva: but

*League of Nations Publications V. Legal. 1927. V. 14. p. 68.
†16th Assembly, plenary meetings, p. 105

Paraguay has never been designated as having originally started the war. Though later she certainly failed to stop fighting when asked to, that was not quite the same as "resorting to war" in the first place, within the meaning of Article 16.

On the Corfu and Manchurian cases I have the decisive quotations here. At the Council table the day after the Corfu incident the Greek delegate said:

> "It may be asked whether this was not the case contemplated by Article 16 . . . . However alarmed the Greek Government may be at events, and the turn which they have taken, it does not in any way desire to injure the dignity or wound the feelings of a great nation. The Greek Government is accordingly inclined to profit by the doubt which may exist as to the character of the acts committed by the Italian Government in order not to take the initiative in asking for the application of Article 16."*

In the discussions on Manchuria you will find little concerning sanctions. In 1934, however, in a different connexion the Chinese delegate, Mr. Liang, in the 1st Committee of the Assembly, said: "In the case of the Sino-Japanese conflict . . . . . the aggressor was declared by the Assembly of the League, but, unfortunately Article 16 was not followed. Great pressure was brought to bear on China not to bring up the question of the application of Article 16. It was not the fault of the Chinese Government that that Article was not applied."† While it is proper to mention, *pace* Mr. Liang, that the Assembly had not specifically found Japan to have "resorted to war" in dis-

*Official Journal, 4th year, No. 11, pp. 1277, 8.
†Official Journal, Special Supplement No. 124, p. 35

regard of Articles 12, 13 or 15, this does not wholly deprive his remarks of their interest.

Such were the major precedents down to October 1935.

In relation to the Rhineland crisis of to-day it is relevant, in passing, to notice that M. de Brouckére, after insisting that, for a state of war to arise, the State attacked must take up the challenge, had continued: "The second country must have justification in taking up this attitude . . . . Every act of violence does not necessarily justify its victim in resorting to war . . . ."[1] After instancing an imaginary case of more or less accidental violation of a frontier he had added:

> "The accident which has occurred has in no way released that country from the specific obligations laid down in Articles 12 and following. It would not be released unless it were the victim of a flagrant aggression of such a serious character that it would obviously be dangerous not to retaliate at once. In short, to borrow the felicitous phrase used in the Treaty of Locarno, 'the country in question must be exercising the right of legitimate defence.' Legitimate defence implies the adoption of measures proportionate to the seriousness of the attack and justified by the imminence of the danger . . . . . If a country flagrantly exceeded these limits . . . it would become in actual fact the real aggressor."

There is in the present crisis another aspect on which the study of Article 16 can shed a useful light. A principal point in the German case is that in the Franco-Soviet Pact the parties assume to themselves the right to determine the aggressor independently, if need be, of the Council. And it happens of course under Locarno that in case of an

[1] League of Nations Publications V. Legal. 1927. V. 14, p. 69.

alleged violation it *is* for the Council to "issue its findings".

If the stipulation complained of to-day is improper this must be either in terms of Locarno or else in relation to the Covenant. (Not that in the latter event Germany, a non-Member, would strictly have occasion to complain). However, since the provisions of Locarno bind only the signatories thereto, they cannot affect the free judgment of Russia, even where the case is an alleged attack by Germany on France. On the other hand those provisions relate only to breaches of 'Locarno.' They therefore cannot limit the free judgment of France, or anybody else, where the case is an attack by Germany upon Russia.

And, as to the Covenant,—until lately the idea was still rather prevalent that among Members of the League authority to help a friend attacked in the case covered by Article 16, if not also in the contingency indicated by Article 15, paragraph 7, would depend upon some antecedent finding by the Council. This simply is not so.

In 1920-21, no doubt whatever was entertained. Under the Covenant each Member was seen to be responsible for finding for himself the existence or otherwise of a breach of the Covenant.[1] Even under the resolutions and amendments of 1921 this responsibility was to remain with each several Member; though in practice it was foreseen that the Council should speedily meet and form if possible an opinion on the facts. Even the amended text was not to debar the Member State from independently coming to the aid of whomsoever it

[1] See e.g. 2nd Assembly, plenary meetings, p. 427.

might judge to be the victim of aggression. "It is a question," M. Schanzer had said, "of reconciling the liberty and independence of the States in their determination of a breach of the Covenant. . . . . with the obvious necessity of arriving at an agreement between Members of the League as to the existence of a breach and of co-ordinating their action on the basis of a joint plan."† Still less is the position affected in the continued absence of any operative amendment. "It has been suggested," wrote M. de Brouckére in 1926, "that States should not be allowed to intervene until the League itself has given its opinion. This would be questioning a right which Members clearly derive from the Covenant."‡ Last October neither the Council as such nor the Assembly as such denounced Italy, albeit it was *at* the Council table and *in* the Assembly that the Member States put on record their several opinions on Italy's action. The recognising of aggression in a Russo-German war is something with which Locarno has no concern. And the duty of assistance to Russia by France in such a war is, I think, officially spoken of limited to cases in which France has never, either as in the Covenant, or in Locarno, or in the Kellogg Pact, promised not to resort to war against Germany.

A propos of the arrangement whereby, as suggested in 1921, the Council would circulate an opinion, together with the minutes of the meetings at which that opinion was formed, it is slightly pathetic to recall how naive was the faith expressed in those days in the potency of world criticism. "The Council's opinion," said the I.B.C.,

† 2nd Assembly, plenary meetings, p. 428.

‡ League of Nations Publications V. Legal. 1927. V. 14, p. 69.

"should be accompanied by a statement of reasons. It will be advisable to give it the widest possible publicity, so that not only may the governments acquire that conviction which is essential for common action but that the peoples themselves may also be clearly convinced that there are really sufficient grounds to justify the application of Article 16."* So far so good, but—"This publicity would also be beneficial in another way, namely, that public opinion in the country which has been declared a Covenant-breaker will also be aroused and that in consequence a new political orientation may be adopted, thus making a return to a normal situation possible. The result will be that the conflict will be brought to an end without it becoming necessary to put the sanctions in force." Perhaps it is the censorship that has falsified these beliefs. At all events, after our experience of the movement of Italian and Japanese opinion in certain relevant situations, no one would nowadays be quite so sanguine as regards the effect, at least in non-democratic countries, of unfavourable comment towards a change of heart, such comment seems liable rather to unify, if not to exasperate, national sentiment in support of the delinquent government.

A word now in regard to the best known difficulty of all—and one which lies perhaps at the root of most of the others. I refer to the potentially unsympathetic attitude of non-Member countries—in particular, the United States.

"Every possible effort," said the I.B.C., "should be made to arrive at arrangements which will at least ensure their passive co-operation with the

* League of Nations Publications V. Legal. 1927. V. 14, p. 18.

here an instance of one or the other of these? "Politically" is the word Sir John seems to prefer.

Let us, however, read a little further.

> "On the other hand. . . . it is unnecessary to assume that, when the occasion arises, third States will necessarily take the same view of their rights under international law as they might be expected to take in the case of a war or a resort to measures of economic pressure without declaration of war by a State or group of States pursuing their individual interests. . . . . While it is not safe to rely in theory and in advance of the event upon the possibility there must be held to be a possibility that third States, even if their active co-operation is not secured, may recognise such adaptation of the traditional rules of international law as experience may show to be necessary to render the application of Article 16 effective."

This possibility perhaps was partly realised when in October last President Roosevelt, in proclaiming a state of war as between Italy and Ethiopia, also desired it to be known, in those specific circumstances, that "any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk." If therefore the express terms of Article 16 have not in the Abyssinian case been over-scrupulously fulfilled, fear of the United States will quite possibly have been not the sole, or even the most influential real reason.

And this brings us again to the "practice" of 1935. When, on October 3rd, Italy took against Ethiopia "the necessary measures of defence"* their fellow-Members of the League behaved with perhaps reassuring restraint. The technical freedom of each State independently to perceive, and

* *The Times*, October 3rd, 1935

independently to act upon, what was unmistakably a "resort to war" in disregard of Articles 12, 13 or 15, was—shall we say?—not abused. The first official declaration, except Mr. Roosevelt's,† on the breach of the Covenant was made by a special Committee of Six created for the occasion by the Council.‡ Thereupon almost the entire League membership signified, expressly or tacitly, its agreement with that finding. On the "recommendation" of the Assembly, the Members (except the belligerents) then quickly came together in conference, to frame "proposals" as to the measures the governments might take in execution of their duty under Article 16. The conference, or "Co-ordination Committee," with its principal offshoot, the Committee of Eighteen, and its various other auxiliary bodies, went to work with encouraging energy.§ With a speed that owed much to the already-mentioned labours of the Committee of Thirteen, proposals were elaborated for the withholding of arms, of money and of certain key-materials and means of transport, as well as for the non-importation of Italian goods. General indications were also formulated in the matter of that "mutual support" which is mentioned in Article 16, paragraph 3. The several governments having, in their sovereign discretion, expressed approval of this programme, a date, November 18th, was appointed for that "immediate" and therefore simultaneous action which the letter of the Covenant still requires.

Border-line issues on which fascinating discussion arose would need at least a lecture to themselves.§

* *The Times*, October 7th, 1935.
† Official Journal, 16th year, No. 11, p. 1223.
‡ See Official Journal, Special Supplement No. 145.
§ Fuller details are in my article, *Sanctions—1935*, in *Polycon*, March, 1936.

I shall doubtless be excused—not to say thanked—for attempting here no large-scale philosophical estimate of the historical import of this grandiose experiment tried for the first time in 1935. The game has not proceeded without the benefit of criticism from the grand-stand. Various things, rightly or wrongly, have been left undone. If Sir Thomas Holland's "mineral" sanction was not solely relied on, an ample answer seems to be that the parties of the Kellogg Pact were not all of them associated in the effort. If petroleum was left out of the original list of key-products, it was partly because the list was avowedly drawn up so as to include nothing the supply of which the sanctionist countries between them could not expect effectively to control. If access to the Suez Canal was not interrupted this may have been partly because the stoppage of intercourse between a country and its colonies does not happen to be specifically called for by the terms of Article 16—and difficult enough it was to win support even for steps which it expressly enjoined. Financial assistance was not accorded to the victim of aggression; but this again may have been partly because the Covenant fails to demand it. Nor were any diplomats withdrawn from Rome. It is possible to argue as to the bearing of Article 16 on this question: it is possible also to contend that, where more positive steps are being taken forthwith, a mere moral gesture is rendered superfluous. One cannot however help ascribing something to an idea that the spirit of the Covenant requires the aggressor to be restrained in the gentlest and most conciliatory possible way.

Against those who judged that the League was proceeding too fast could be cited many voices

regretting that "if war moves slowly, so does the work of stopping it."*

"The impossibility of Great Britain applying sanctions alone is obvious," wrote General Spears, "but it is also obvious that if nothing but mild sanctions are possible owing to the attitude of M. Laval . . . . . then the League is dead."† "Economic sanctions applied in time" said Mr. Lloyd George, "are effective. Applied too late they are worse than useless—they are a sham and a mockery. It is a sorry, miserable tale, a tale of weakness, hesitation, indecision, delay, procrastination, action months too late."‡ Even Sir Charles Mallet, while pleading for inaction on the ground that "strong sanctions . . . . must necessarily involve a grave risk of war," conceded that "mild sanctions, loosely applied and unlikely to deter the offender, would be worse than useless. Force which is not force becomes absurd."**

No doubt it is something to have set, though only in this small way, a precedent for dealing collectively with a law-breaking belligerent. After all, the world as a whole will not have digested the discussions of 1919, 1921, 1926: but it has now been afforded an object-lesson in a method open, in some more favourable future, to development in any desired degree. And perhaps it is only by object-lessons, by experience, that the world as a whole can ever be made receptive to a new idea.

The fact nevertheless remains that, among the authors of the Covenant, the expectation very ex-

*Cf. *The Manchester Guardian*, 7 October, 1935.
†*The Times*, October 11th, 1935.
‡*The Times*, October 21st, 1935.
**The Times, September 26th, 1935.

dently was that armed force would, if needed, be forthcoming to rescue his victim from the aggressor. In October, 1935, Ethiopia asked in Geneva that the Council should recommend, under paragraph 2 of Article 16, the furnishing of forces to uphold the Covenant.* 'It goes without saying,' said *Le Temps*, 'that there can be no acceding to such a request.'† And Britain has constantly reaffirmed that she will in no respect move ahead of France.

Lord Cecil,‡ in answer to Lord Hardinge, has admirably recalled how that Great Britain, along with Italy, solemnly renewed, at the time of Locarno, her undertaking "to co-operate loyally and effectively in support of the Covenant and in resistance to any act of aggression in the degree which" her geographical position and particular situation as regards armaments might allow.** That declaration had been made at a time when already the United States had refused to join the League. If, in 1935, the contrary doctrine was sound, it had been sound months previously, when Abyssinia first appealed ot the League. "If we were not prepared to carry out our League obligations to her we ought to have so informed her then."

Though Great Britain very probably has done about as much as was reasonably possible in the circumstances, it seems a pity to have to leave it at that.

*Official Journal, 16th year, No. 11, p. 1213.
†October 7th 1935
‡*The Times*, August 28th, 1935.
**See Annex F to the Final Protocol of the Locarno Conference, 1925.

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