COMPULSORY ARBITRATION.

I CIRCULATE to my colleagues papers on the subject of compulsory arbitration of international disputes.

The Geneva Protocol of 1924 (which contained a provision for the acceptance of the compulsory jurisdiction of the Permanent Court of International Justice at The Hague over all legal disputes) and the Locarno treaties (which provided for the compulsory submission to pacific settlement of all disputes between Germany and her neighbours on the west and on the east) have stimulated interest in this question, and during the last two years I have received formal or informal proposals for the conclusion of comprehensive arbitration treaties from Sweden, Switzerland, the Netherlands, Spain, Latvia and Denmark.

Since the present Government came into office, the line I have taken in answer to private enquirers and have instructed British representatives to take at Geneva, has been that compulsory arbitration is a subject on which no move can be made by His Majesty's Government without the concurrence of the Dominions. In a paper written in 1924 (Paper (A)) the Lord Chancellor (Lord Haldane) laid stress upon the consideration that the Constitution of the Empire was not unitary and that it was perilous for the Imperial Government to proceed as if it were. Answers to recent invitations from foreign States to conclude arbitration treaties have been to the effect that no such step could be taken until the question had been fully considered in consultation with the Dominions.

The subject will come up for discussion at the Imperial Conference in October. As the subject is one on which the policy of His Majesty's Government must be defined, I instructed the members of the legal staff of the Foreign Office to prepare a considered memorandum on the question whether any acceptance of the principle of compulsory arbitration would be advisable. Paper (B) contains the views of the four Legal Advisers of the Foreign Office. They are in favour of accepting the compulsory jurisdiction of the Permanent Court at The Hague in disputes of a legal character other than those arising out of belligerent action at sea, and excluding also all disputes arising out of past events. They also urge the conclusion of agreements for the compulsory reference to some simple form of arbitration of petty claims on behalf of private individuals in which no question of principle is at stake.

Any advance in the direction of compulsory arbitration, even within the restricted limits proposed in Paper (B), requires careful consideration, and to illustrate the objections which may be urged against it, I annex an extract from a paper written in 1924 by the late Sir Eyre Crowe (Paper (C)).

No recent pronouncements have been made by Dominion Governments on the subject of compulsory arbitration. Paper (D), which has been supplied by the Dominions Office, indicates the views of the Dominion Governments so far as they are known, but the views expressed by their representatives at Geneva in 1925 make me think that Canada, South Africa and the Irish Free State will be in favour of accepting the compulsory jurisdiction of the Permanent Court in legal disputes.

I submit that the whole question ought to be carefully considered by a Cabinet or C.I.D. Committee, which should prepare the proposals and papers to be laid before the Imperial Conference.

June 24, 1926.

A. C.
Memorandum by the Lord Chancellor respecting Compulsory Acceptance by His Majesty's Government of the Jurisdiction of the Permanent Court of International Justice, under Article 36 of the Protocol signed at Geneva on December 16, 1920.

The question is whether His Majesty's Government should recognise as compulsory, ipso facto and without special agreement, in relation to any other member or State accepting the same obligation (article 36), the jurisdiction of this court. The subjects which would be submitted to the jurisdiction are—

(a.) The interpretation of a treaty.
(b.) Any question of international law.
(c.) The existence of any fact which, if established, would constitute a breach of an international obligation.
(d.) The nature or extent of the reparation to be made for the breach of an international obligation.

The article further provides that the declaration may be made either unconditionally or on condition of reciprocity on the part of other members or States, or for a certain time, and that, in the event of a dispute as to jurisdiction, the matter is to be settled by the decision of the court.

At first sight it appears natural to give the court compulsory authority in as many cases as possible, for it looks as though it were by doing so that disputes which might lead to war will be most effectually avoided. In the instances of small States with unitary Constitutions this seems true, for the jurisdiction could strengthen their position against more powerful nations.

But in the instance of the British Empire it is not so clear that this is true. In substance the Constitution of our Empire is not unitary, and it is perilous for the Imperial Government to proceed as if it were. We have to secure the assent of the Dominions and of India at every step. An analogous difficulty has confronted the United States. The Executive does not dare to give undertakings unless the President is sure—which he rarely is—that the Legislature will adopt his action. That is the real reason why the President, however disposed to an arbitrary treaty, will rarely join in one.

In the cases of Great Britain and the United States alike it is thus, for reasons which although not the same are analogous, undesirable to give unqualified undertakings which it afterwards may prove impracticable to fulfil. The condition of things in the event of failure is apt to show itself more provocative of unsolvable dispute than if no unqualified undertaking had been given.

There is therefore more to be considered in connection with the present proposal than its prima facie desirability on grounds only of international policy or public morality. Even on these grounds it may be perilous to give an undertaking which, under a Constitution which is in substance non-unitary, we cannot be sure of being able to fulfil. At a later stage in the evolution of the unwritten Constitution of the Empire it may be easier to get over this difficulty. Lord Balfour seems to have hinted so much in the speech he made to the Assembly of the League in December 1920.

But there are also other reasons for hesitation which require consideration. The words of article 36 are wide enough to extend to disputes arising out of past events in the course of the late war. Now the nation rejected the Declaration of London, although approved by their Government, and consequently it is not clear that the principles applied by an international court would harmonise with all of those actually adopted during our actual conduct of that war. In addition there may well be other points on which the decisions of our prize courts might be set aside. I think that we should thus be compelled to exclude a number of questions to which the article as it stands may well extend.

Sir C. Hurst, whose opinions on a matter of this kind always carry much weight, is inclined to think that, so far as legal points are concerned, the risk of accepting compulsion would not be great. It may be that this is true. But it is not possible to predict it with certainty, and I am myself inclined to believe that if we proceeded to the other view we should be free from the real danger of raising a question of principle within the Empire which we should not be able to control. Speaking for
myself. I think it safer in the present state of the Constitution of our Empire to avoid trying to go further than Article 13 of the Covenant of the League of Nations. This article binds us to refer to arbitration any matter which is suitable and which diplomacy cannot satisfactorily settle, including the interpretation of treaties, questions of international law, the existence of facts constituting a breach of international obligations and the extent of the reparation to be made. The language used in this article is less stringent than that in Article 36 of the protocol of 1920, and gives rise to less embarrassment. I agree with Lord Balfour, in his suggestion of 1920, that resort to the Permanent Court is likely by degrees to become more and more general. In the end I think it will probably become compulsory. But this requires time to enable a firm conception to mature fully and to become familiar to our own people. For the present I am adverse to the explicit acceptance of a principle which will probably give rise, if so accepted, to keen controversy.

July 21, 1924.

H. O. C.

Paper (B).

Memorandum by the Legal Advisers of the Foreign Office respecting Compulsory Arbitration.

This memorandum deals solely with the advantages and disadvantages from the legal point of view of an acceptance by His Majesty's Government of the principle of compulsory arbitration of international disputes. Considerations of a political nature, such as the difficulty of encouraging other States to accept obligations which His Majesty's Government are themselves not prepared to accept, lie outside its scope.

2. Proposals have been received by the Secretary of State for Foreign Affairs from various foreign Powers for the conclusion of a comprehensive arbitration treaty. Arbitration as a substitute for war is a matter on which it is important that the Empire should have a common policy, but it is clear that at present the Dominion Governments are not unanimous on the subject, and the Foreign Office have therefore asked that the question should be included in the agenda of the Imperial Conference. This will necessitate the consideration of the question by His Majesty's Government and the adoption of a definite policy.

3. Under the Covenant, His Majesty's Government, as a member of the League, are committed to the view that, in principle, legal disputes should go to arbitration, and where such a dispute is likely to lead to a rupture they are bound, if it is not submitted to arbitration, to submit to enquiry by the Council.

Under arbitration conventions concluded with most of the important Powers, His Majesty's Government are bound to refer to arbitration disputes of a legal nature and those relating to the interpretation of treaties, except disputes which affect the honour, vital interests or independence of one of the parties, or affect the interests of third Powers.

In addition, His Majesty's Government have, in various instruments, accepted an obligation to submit to arbitration (usually to the Permanent Court of International Justice) disputes relating to the interpretation or application of the particular instrument.

4. Though the above commitments cover a large part of the field, they leave considerable gaps. The obligation to arbitrate under the Covenant leaves each State entitled to decide for itself whether it recognises the particular case as being suitable for arbitration. Similarly, under the arbitration conventions, a State is left to decide for itself whether a dispute affects its vital interests, &c., and a dispute of which the arbitration would be inconvenient can always be found to fulfil that qualification. In practice, and excluding cases such as those covered by the last sentence of paragraph 3, international arbitrations only take place in cases where both parties willingly consent to the submission.

5. The result of a refusal on the part of either party to a serious dispute to submit to arbitration is, if they are members of the League, that the case will come before the Council.

Disputes are of two kinds, those where the point at issue is a question which can be solved by the application of a rule of law, i.e., justiciable cases—those which are described in the Treaty of Locarno as "cases where the parties are in conflict as to their respective rights"—and cases which arise out of a clash of political
interests or domestic interests, i.e., cases which are non-justiciable and which it is useless to submit to a tribunal if it is desired that the result of the submission shall be a solution of the question at issue.

Enquiry by the Council of the League is a satisfactory method of handling disputes of the non-justiciable order, but it is not satisfactory as a mode of handling those which are justiciable. The Council is a political body, and it is as ill-qualified to decide a case which should be brought before a bench of judges as a tribunal of judges is ill-qualified to deal with a political question. For the Council to find itself obliged to deal with cases which ought to go before a bench of judges naturally induces the feeling that the Council must receive legal guidance as to the conclusion at which it should arrive and should seek the opinion of the Permanent Court of International Justice by asking for an advisory opinion. The knowledge that such an advisory opinion is likely to be invited by the Council leads a State involved in a dispute which the other party declines to arbitrate to allege that it is one which is likely to lead to a rupture, and, as such, one which it is entitled to bring before the Council. This is not a satisfactory application of the provisions of the Covenant, and though His Majesty's Government themselves found it useful to adopt this course in the Tunis nationality dispute with France, it will tend, if it increases, to embarrass the Council and to complicate the working of the Covenant.

6. The resort by the Council to the court for an advisory opinion might with advantage be limited to cases where some legal point emerges in the course of a dispute of which the nature is such as to render the Council a suitable body for handling it. Many disputes in practice involve mixed considerations of politics and law, and in these cases reference to the Council is the appropriate procedure, but these mixed cases cannot reasonably be said to be justiciable.

7. As regards non-justiciable disputes, there is at present no ground for maintaining that, for serious cases, anything further is wanted in the case of this country than the existing machinery of the Covenant, nor is there at present any reason to believe that for disputes which are not sufficiently serious to be brought before the Council any special machinery need be set up by treaty. Much attention has been devoted during the last few years to schemes for promoting conciliation commissions, and some such commissions have already been instituted, e.g., those under the Bryan treaties concluded by the United States Government with many other Powers, including Great Britain. Despite the amount of machinery in the form of conciliation commissions set up for investigating non-justiciable disputes, no instance is yet on record of such machinery being made use of.

8. It is in respect of justiciable disputes that the case for an advance is sufficiently strong to merit exploration. The great argument which is always relied on by those who oppose any acceptance of the principles of compulsory arbitration is the danger that would result to this country from an obligation to submit to the decision of an international tribunal the validity of measures taken by the British naval forces in time of war. Some ground exists for thinking that this danger would not now be so great as in the past, but there can be no doubt that the acceptance of any obligation to arbitrate such disputes would provide great alarm in the country and would lead to an agitation which it is desirable to avoid. It is also the point upon which it would be most difficult to harmonise the views of the various Governments within the Empire, as, apart from the attitude adopted by His Majesty's Government in the past on this subject, both Australia and New Zealand have indicated the greatest objection to the acceptance of the principle of arbitration in such disputes.

9. The difficulty as regards disputes arising out of naval belligerent action could be avoided by resorting to the power given by what is known as the "optional clause" in the Statute of the Permanent Court of International Justice, to accept as compulsory the jurisdiction of the court only within certain stated limits. Justiciable disputes, to the arbitration of which all members of the League are in principle committed, are defined by the Covenant as being those which relate to the interpretation of a treaty or to any question of international law or to the existence of any fact which, if established, would constitute a breach of any international obligation or to the extent and nature of the reparation to be made for any such breach. This same classification is repeated in article 30 of the Statute of the Court, and the scheme of that article is to allow members of the League to accept the jurisdiction as obligatory in all or any of these classes of disputes. At the time of the discussions on the Geneva Protocol, all those who were participating in the discussion agreed that it was open to the members of the League to accept the compulsory jurisdiction
of the court in respect of certain of the classes mentioned and not to accept it in respect of the rest, or to accept it in respect of a portion of one of those classes. The report which accompanied the protocol contains passages to the same effect, and it was agreed at the time that it was open to His Majesty's Government, if they accepted the jurisdiction of the Permanent Court as compulsory, to exclude from their undertaking all disputes arising out of naval measures at sea in time of war. The way is now open, therefore, for an acceptance of the principle of compulsory arbitration in general, with the exclusion of the class of cases which His Majesty's Government cannot agree to submit to an international tribunal.

10. The other arguments which have in the past been put forward against any acceptance of the principle of compulsory arbitration are of less weight. Two only need be mentioned; one is that no sufficient confidence can be felt in an international tribunal unless His Majesty's Government have been parties to the selection of at least a majority of the members; the second is that in a really important case it might be impossible for His Majesty's Government to give effect to an adverse award. These objections do not appear to be sufficient to outweigh the advantages which would accrue from being able to obtain as of right arbitration of disputes with other Powers where it is His Majesty's Government who desire to secure arbitration and where the objection to arbitration comes from the other side.

11. If some advance is decided on in the direction of compulsory arbitration, the necessity of excluding any obligation to arbitrate disputes relating to belligerent measures at sea affords a strong argument in favour of making such advance by way of a limited acceptance of article 36 of the Statute of the Court and not by way of negotiating a new treaty. A limited acceptance of article 36 is a step which can be taken by His Majesty's Government as of right without obtaining the consent of other Powers. The negotiation of a treaty containing similar exceptions would entail negotiations with foreign Powers and might entail bargaining in order to obtain their consent.

12. The limitations which it would be necessary to introduce in any acceptance of the compulsory jurisdiction of the court would not be restricted to disputes arising out of naval belligerent operations. The undertaking to accept the jurisdiction of the court should be based on reciprocity, should be limited to disputes arising out of events taking place after the date of the declaration, and should also endure only for a definite period of time so that at intervals the obligation could be reconsidered by His Majesty's Government.

13. A question which is likely to be raised during the discussion of a proposal to accept the compulsory jurisdiction of the Court is whether this would involve a possibility of our being compelled to arbitrate the legality of the system of Imperial preference which now obtains as between the different Governments of the Empire. There have been signs recently that other countries who are entitled to most-favoured-nation treatment under their treaties with us are inclined to dispute the legality of the system in view of the new status of the self-governing dominions, and action which is likely to increase the possibility of our having to arbitrate the point may well cause alarm in certain quarters, though it can hardly be denied that a country which has got an arbitration clause in its commercial treaty with us would be entitled to have the point submitted to arbitration as things stand. The question whether any limitation to safeguard our position in this respect is possible and desirable would have to be discussed with the dominions. The risk would to some extent be diminished if the British acceptance of the compulsory jurisdiction of the Court, subject to the limitations suggested, were effected by one instrument on behalf of the whole Empire, so that the seven Governments of the Empire can in this matter contract as one. It is recommended that this method of procedure should in any event be adopted.

14. Any acceptance of the jurisdiction of the Permanent Court as obligatory for disputes will render it desirable to conclude some separate arrangement relating to petty claims put forward on behalf of the nationals of one State against the other. The Permanent Court of International Justice is a court of eleven judges the business of which is conducted in accordance with a procedure which has been framed with a view to securing adequate handling of important disputes between States. Relations between States are at present incommoded from time to time by petty claims for compensation on behalf of private persons who have been the victims of some improper action on the part of the authorities of another State. These claims require simpler and more expeditious treatment than is afforded by the cumbersome machinery of reference to the Permanent Court.

15. At present the difficulty of securing arbitration for these pecuniary claims is considerable. No Government likes to admit that its officials can have blundered,
and, therefore, any such claim is unwelcome and considerable ingenuity is displayed in advancing reasons why the claim is bad and also why it is unsuitable for arbitration. Before arbitration can be secured, wearisome and irritating negotiations are usually necessary.

17. There is no statute of limitations as between States, and consequently in practice many pecuniary claims are now only submitted to arbitration when they have become hopelessly stale and when such arbitration is agreed to by the respondent Government only because it has other claims of its own for which it desires this form of settlement, or because for political reasons it finds it expedient to consent.

As an instance of the intolerable delay which under present practice usually accompanies the arbitration of such pecuniary claims, it is well to quote the following from a paper written a year ago on the work of the Pecuniary Claims Commission which is dealing with the outstanding claims between this country and the United States:

"This commission has up till now decided thirty-four claims. Of these only three were less than ten years old by the time the tribunal gave its decision, the age of the claim being reckoned for this purpose from the occurrence out of which it arose. Of these three, one was seven years old, another was eight, and the third was just under ten. Of the remaining thirty-one claims, the age of twelve claims was between eleven years and twenty; of eleven claims, between twenty years and thirty; of three, between thirty and forty; of four, between forty and fifty and one was over a hundred, having arisen in 1812 and been decided in 1914.

"It is much the same with the claims which are still awaiting decision. One claim arose in 1812; another in 1845. A group of thirteen claims, for a refund of customs duties, arose in 1876; another group in 1895; another group in 1898. With the exception of a group of claims against the Newfoundland Government on behalf of American fishing vessels for refund of customs and light dues and for seizure of vessels for violation of Newfoundland fishing statutes, it is difficult to find a single claim still awaiting adjudication which is not earlier in origin than the present century."

18. Apart from the injustice of keeping individuals waiting so long for the settlement of claims where such claims are good, the interests of the respondent State are not served by a system under which it is open to it to refuse arbitration for so long as it pleases, but where nevertheless circumstances may sooner or later oblige it to agree. The only result is that when the claim does come up for arbitration the collection of the necessary evidence to rebut it is rendered far more difficult and the tribunal is frequently prejudiced by the continued efforts to avoid arbitration.

For all these petty claims some system of compulsory arbitration would be an advantage, but such claims should be submitted to a tribunal composed of a small number of judges and working under a procedure which is simple and inexpensive.

19. The need of a wider acceptance of the principle of arbitrating such claims has been felt for a long time, and nearly resulted in 1907 in the conclusion of an agreement on the subject at the Second Peace Conference at The Hague. What was there proposed would have involved the compulsory arbitration of claims arising out of allegations of fact, which, if established, are admitted to involve international liability. A limitation of this sort is necessary if the submission to arbitration is to be obligatory, because otherwise a pecuniary claim might involve some principle of international law of great importance to the respondent State. As an instance it is only necessary to cite the American blockade claims with which His Majesty's Government may possibly be faced.

20. An agreement to arbitrate pecuniary claims involving no large question of principle would be desirable before the compulsory jurisdiction of the Permanent Court is accepted. The details of such an agreement would not be difficult to formulate, and would enable the rule to be introduced as between States that a claim should be barred if not presented for arbitration within a fixed period of time. Claims which, when presented, were found by the respondent Government to involve a question of principle on which there was no agreement as to whether international liability was involved might go before the Permanent Court unless they fell within the categories of cases excluded from the acceptance of the compulsory jurisdiction. If they did, they would not be arbitrated, nor would they be barred by the mere lapse of time. They would remain in existence, as claims do now, until such time as a solution could be found.
Memorandum (Extract) by Sir Eyre Crowe respecting Compulsory Arbitration.

The objections to entering into a solemn engagement to submit to arbitration any disputes arising under the four heads set out in article 36 of the Statute creating the Permanent Court of International Justice at The Hague are twofold. One is concerned with the degree of confidence which can be placed in the impartiality and competence of the tribunal. The other arises from the doubt whether it is right to accept the risk of an adverse award, possibly in cases where the carrying out of such award would present insurmountable obstacles, so that the undertaking to be bound by the award, whatever it be, could not in fact be honoured.

The first objection is not seriously discussed by either Sir C. Hurst or Mr. Malkin. This is the more remarkable in that it has largely influenced the situation in which the question as now raised presents itself. When the constitution of the International Court was considered in 1920, the draft scheme then prepared contained articles (Nos. 33 and 34) providing for compulsory arbitration in the very cases now under discussion. Attention was then called to the danger involved in the acceptance of those provisions, and in due course the question was referred to the highest legal authorities in this country. A considered and unanimous opinion was pronounced on the 14th October, 1920, and signed by the then Lord Chancellor, Attorney-General and Solicitor-General (Lord Birkenhead, Sir Gordon, now Lord, Hewart, and Sir Ernest Pollock). It declared decidedly against the acceptance of the two articles in the draft scheme on several grounds, one of which was the grave doubt "whether it would be politic for Great Britain to bind herself in any circumstances to refer any disputes which might arise in the future within the very wide jurisdiction to a tribunal of whose impartiality it has no assurance."

This doubt has always been felt. It does not necessarily throw discredit on the personal honour of the fifteen individual judges forming the Court, although the circumstances in which its present members were selected by the League of Nations certainly justify some scepticism as to the standing and competence of some of them. The apprehension which may legitimately be entertained is that, as happened in important cases of arbitration in the past, political considerations of expediency and hesitation to wound the so-called susceptibilities of particular Powers will always influence the votes of some if not most of the judges, so that a really impartial judgment given strictly on the merits of the case cannot be counted upon with any degree of certainty. It is clear that, failing such confidence, statesmen having the honour and vital interests of their country at heart, must hesitate to subscribe blindly and in advance to an undertaking to submit to such a Court any and every dispute over a question of international law in which the country may become involved.

In any case, the opinion of our high legal authorities prevailed. It was as a result of our opposition that the provisions of articles 33 and 34 of the draft Statute were ultimately so modified by the League as to assume the form in which they now stand as article 36 of the Statute. That is to say, it is now optional for a State to undertake the obligation of compulsory arbitration under the four heads. It is therefore well to realise that the present proposal that His Majesty's Government should, by exercising this option, agree to compulsory arbitration on the four points is nothing less than a demand for a deliberate reversal of the decision taken by the Cabinet in 1920 on the advice of the Lord Chancellor and the Law Officers.

I pass to the second objection, which arises in connection with the carrying out of adverse awards. The difficulties which here present themselves may be general or specific. As Mr. Malkin points out, the essence of the new obligation which is now sought to impose upon us is that we should waive the reservation as to the vital interests, independence or honour of the State in generally agreeing to arbitration in regard to all questions otherwise suitable. No doubt the object in advising withdrawal of this reservation is to prevent other countries, acting in bad faith, from putting forward such a plea merely as a dishonest subterfuge in order to avoid arbitration. But it would be wrong to go on the assumption that there may not be cases where the reservation can and will be pleaded in perfect good faith and quite legitimately. Sir C. Hurst in his Opinion rather implies than states that, so far as the British Government is concerned, it would, except as regards cases arising out of acts of war, never wish to refuse arbitration.

I would recall a very important case, not so long ago as to have lost its force as a notable precedent, in which His Majesty's Government did refuse to submit to arbitration a dispute over a grave political issue with France. It arose out of the
Newfoundland fisheries settlement which formed part of the Agreements constituting the Entente of 1904. It was in 1908 when France insistently demanded what was practically a reopening of the principal point supposed to have been settled in 1904. She revived her claim for the exception of French fishermen from the colonial jurisdiction in Newfoundland waters, basing herself on an alleged possible interpretation of the clauses of the agreement. Now, the Government of Newfoundland had made it an absolute condition of any agreement negotiated with France that the colony would recover complete and unrestricted sovereign rights within her waters, and His Majesty's Government had given a solemn and written pledge to the colony that this point was definitely conceded by France under the terms which had been finally negotiated. The French argued that the wording did not amount to this, and, failing our accepting their thesis, demanded arbitration.

It was decided after much discussion and consideration that, apart from other reasons, we could not agree to arbitration, because in the event—always possible with an arbitral tribunal—of an award adverse to the British case being given, not only would it be impossible for His Majesty's Government to enforce such an award on Newfoundland, but it would in all probability lead to a secession of the colony and the break-up of the Empire. This, we held, constituted in the true sense of the word a "vital interest," and thereby became excluded from our obligation to accept arbitration. France did not pursue the controversy, and dropped her demand.

It would be rash to assume that similar cases will never arise again, and it is highly significant that the United States Government have always attached the highest importance to maintaining the exemption from arbitration of any cases touching the vital interests, independence or honour of the State.

There is a more specific reason which militates against an unconditional acceptance of any possible arbitral award, and that is the impossibility of any constitutional government in modern times guaranteeing that the national parliament will agree to pass the legislation required to give effect to an arbitral award where the vital interests, independence or honour of the country are adversely affected. For no Government could foresee what kind of claim against it might some day form the subject of a judgment by the International Court. At the moment when judgment is pronounced, the Government against which it is given may realise that in no case would the national parliament pass the necessary legislation to give effect to it. But it would then be too late. This difficulty might well arise in Great Britain as well as in other countries. In the United States it may be counted upon to arise almost with certainty. So much is this understood at Washington, that the State Department notoriously puts every obstacle in the way of arbitrations for the very reason that the United States could not be considered bound except with the express consent of the Senate, which that body would never give in hypothetical cases in advance.

It remains to consider what advantages we or anyone else would reap from our now reversing our policy on the subject of compulsory arbitration. Those who advocate it do so largely, if not exclusively, on purely theoretical and abstract grounds. They offer as a remedy a remedy that is a panacea for all ills. The claim is surely exaggerated. It might, perhaps, be urged that the various parties who in all countries have written the battle-cry of compulsory arbitration in international affairs on their banners, offer as a rule determined resistance to compulsory arbitration in their own home affairs, such for instance as trade union disputes, which may be taken to imply an acknowledgment that there are certain classes of difficulties in regard to which arbitration may not necessarily be the proper remedy. However this may be, no evidence has so far been adduced by anybody that the introduction of unrestricted compulsory arbitration in international disputes would meet any really felt need. We have all the existing advantages and facilities of the League of Nations to deal with grave international conflicts. Of course it yet remains to see the League machinery tested in a real and important crisis. But if that machinery should prove inadequate to meet such a crisis, the introduction of fresh guarantees for settling by arbitration deep-seated conflicts that might otherwise lead to war, will hardly advance matters, but may rather increase the feeling of scepticism with which all such paper guarantees are still regarded in many quarters. There is a strong conviction, widely held, that there is nothing to gain from unnecessarily hurrying the pace of further development, and that pacifist energies would be better spent on fostering and spreading what in modern jargon is called the will to peace, rather than on concentration on the erection of more machinery for dealing with hypothetical problems.

E. A. C.

Foreign Office, July 13, 1924.
Note on Recent Views expressed by Dominion Governments in regard to Compulsory Arbitration.

In September 1924 the notice of the Dominion Governments was called to the provision contained in article 36 of the statute establishing the Permanent Court of International Justice under which, either at the time of signature or ratification of the protocol to which the statute is adjoined, or at a later moment, a declaration may be made that the parties recognise as compulsory ipso facto, and without special agreement, in relation to any other member of the League of Nations or State, accepting the same obligation, the jurisdiction of the Court in certain specified classes of legal disputes.

It was stated that no such declaration had been made on behalf of His Majesty's Government either on the 16th December, 1920, when the protocol was signed by Lord Balfour, or subsequently, and that no declaration had been made on behalf of any of the dominion members of the League, or of India. It was further stated that representations had recently been made to His Majesty's Government from parliamentary and other quarters that the time had arrived when the matter should be reconsidered; the issues raised were, however, of great importance and complexity, particularly in relation to the position of the British Empire in time of war, when acceptance of the compulsory jurisdiction of the Court would enable any foreign country, if it were similarly bound, to contest before the Court the legality of naval measures.

The only specific replies to this despatch were those received from New Zealand and the Union of South Africa.

New Zealand.

The New Zealand Government in November 1924 stated that they strongly objected to any proposal that Great Britain should make such a declaration, particularly on the ground that upon a number of matters of international law, especially those relating to belligerent rights at sea, the view taken by continental jurists (who would, of course, form a majority on the Permanent Court) was opposed to the principles long established in England and essential to the interests of Great Britain.

Union of South Africa.

The Government of the Union of South Africa stated in October 1924 that the matter was receiving their careful consideration, and that they had come to the conclusion that it was not necessary at that stage, at all events, for them to offer any observations on the question.

The subject of compulsory arbitration was, however, referred to on several occasions in the course of correspondence regarding the Protocol for the Pacific Settlement of International Disputes, and the following expressions of opinion may be cited:

Canada.

In a message from the Prime Minister of Canada of the 4th March, 1925, it was stated that, "as Canada believes firmly in submission of international disputes to joint enquiry or arbitration, and has shared in certain number of undertakings in this field, we would be prepared to consider acceptance of compulsory jurisdiction of Permanent Court in justiciable disputes with certain reservations and co-operation in further consideration of method of supplementing the provisions of the Covenant for settlement of non-justiciable issues."

Commonwealth of Australia.

A message from the Prime Minister of the Commonwealth, dated the 5th March, 1925, stated at length the views of the Commonwealth Government on the provisions of the Geneva Protocol relating to compulsory arbitration. These views may be summarised as follows:

(a.) The provisions of the Covenant dealing with the settlement of disputes, which furnish an alternative procedure (viz: enquiry by the Council of
Note on Recent Views expressed by Dominion Governments in regard to Compulsory Arbitration.

In September 1924 the notice of the Dominion Governments was called to the provision contained in article 36 of the statute establishing the Permanent Court of International Justice under which, either at the time of signature or ratification of the protocol to which the statute is adjoined, or at a later moment, a declaration may be made that the parties recognize as compulsory *ipso facto*, and without special agreement, in relation to any other member of the League of Nations or State, accepting the same obligation, the jurisdiction of the Court in certain specified classes of legal disputes.

It was stated that no such declaration had been made on behalf of His Majesty's Government either on the 16th December, 1920, when the protocol was signed by Lord Balfour, or subsequently, and that no declaration had been made on behalf of any of the dominion members of the League, or of India. It was further stated that representations had recently been made to His Majesty's Government from parliamentary and other quarters that the time had arrived when the matter should be reconsidered; the issues raised were, however, of great importance and complexity, particularly in relation to the position of the British Empire in time of war, when acceptance of the compulsory jurisdiction of the Court would enable any foreign country, if it were similarly bound, to contest before the Court the legality of naval measures.

The only specific replies to this despatch were those received from New Zealand and the Union of South Africa.

New Zealand.

The New Zealand Government in November 1924 stated that they strongly objected to any proposal that Great Britain should make such a declaration, particularly on the ground that upon a number of matters of international law, especially those relating to belligerent rights at sea, the view taken by continental jurists (who would, of course, form a majority on the Permanent Court) was opposed to the principles long established in England and essential to the interests of Great Britain.

Union of South Africa.

The Government of the Union of South Africa stated in October 1924 that the matter was receiving their careful consideration, and that they had come to the conclusion that it was not necessary at that stage, at all events, for them to offer any observations on the question.

The subject of compulsory arbitration was, however, referred to on several occasions in the course of correspondence regarding the Protocol for the Pacific Settlement of International Disputes, and the following expressions of opinion may be cited:

Canada.

In a message from the Prime Minister of Canada of the 4th March, 1925, it was stated that, "as Canada believes firmly in submission of international disputes to joint enquiry or arbitration, and has shared in certain number of undertakings in this field, we would be prepared to consider acceptance of compulsory jurisdiction of Permanent Court in justiciable disputes with certain reservations and co-operation in further consideration of method of supplementing the provisions of the Covenant for settlement of non-justiciable issues."

Commonwealth of Australia.

A message from the Prime Minister of the Commonwealth, dated the 5th March, 1925, stated at length the views of the Commonwealth Government on the provisions of the Geneva Protocol relating to compulsory arbitration. These views may be summarised as follows:

(a.) The provisions of the Covenant dealing with the settlement of disputes, which furnish an alternative procedure (viz: enquiry by the Council of

* Cmd 2458.*
the League of Nations) appear to have advantage in elasticity and adaptation to the existing state of public opinion over the proposed machinery of compulsory arbitration.

(b) The absence from the League of certain of the foremost nations of the world renders premature any endeavour at the present time to generalise the principle of compulsory arbitration.

New Zealand.

In a memorandum, dated the 6th January, 1925, signed by the then Prime Minister of New Zealand (Mr. Massey), the objections to the admission of the Permanent Court as a deciding factor in determining Great Britain's belligerent rights at sea, to which reference is made above, were developed at length. The fear was also expressed that the Permanent Court might interfere with the New Zealand immigration laws should the principle of compulsory arbitration be adopted.

Irish Free State.

A statement on the Geneva Protocol was made in the Dail by the Minister of External Affairs of the Irish Free State on the 13th May, 1925, which contained the following passage:

"An extension of the principle of arbitration, which serves to define and enunciate international judgment, and which relies in the last resort on the moral pressure of world opinion, and not upon the application of material sanctions, appears to us to be the most effective feasible means of attaining, at least in a large measure, the objects which the protocol has in view."

Later, in the course of the same debate, in reply to a question as to the Permanent Court of International Justice, the Minister stated:

"There is also what is known as the optional clause No. 36. We are considering adherence to that clause. There is one matter which had delayed our action in that, and that is, we are not quite sure whether we can already be regarded as being bound by the statute, which was ratified by Great Britain before our coming into separate existence, and before our membership of the League. It is a question of whether or not we have to ratify it on behalf of this country. When that question is cleared up, so far as I have gone into the matter, I would be entirely in favour of adopting that optional clause."

It may be noted that in July 1925 the New Zealand Government again referred to the danger of submitting questions regarding belligerent rights at sea to the Permanent Court in connection with the renewal of the Arbitration Convention with the Netherlands. It was, however, found possible to reassure the New Zealand Government that such questions could be excluded from the application of the Convention under article 1, as matters affecting the vital interests of either party, and the New Zealand Government did not press for any special action to be taken to make this clear at the time of the renewal of the convention.

Dominions Office, March 2, 1926.