International Law Studies—Volume 21

International Law Documents

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
Mr. Sarraut replied that he had noted with sincere satisfaction the statement that Lord Lee had just made and he could only express regret that Lord Lee had not given the French delegation an earlier opportunity to express their sentiments by informing them in advance of the references that he intended to make to the entirely personal views of a naval officer who could, under any circumstances, only speak for himself and on his own responsibility without assuming in the slightest degree to express the views of the French Admiration.

It gratified Mr. Sarraut to hear the statements of Lord Lee at the moment when the French delegation had just given their assent to a resolution containing a clause which bound together all the powers represented on the committee by prohibiting the use against each other of certain weapons which France, at least, had never thought of directing against her friends, a clause to which the French delegation subscribed with especial willingness.

Mr. Sarraut hoped that this interchange of statements would do away with certain misunderstandings and assist in clearing the atmosphere which, outside of this hall, had been befogged, and thus facilitate the establishment of a durable peace on earth—the work which all present had most deeply at heart and the consummation of which was their highest aspiration.

The chairman said that he was sure that all would be deeply gratified to have spread upon the minutes the statement made by Lord Lee and the response which had been made by Mr. Sarraut; these statements, which showed a mutual appreciation of the sentiments that were cherished by both, would greatly aid the committee as it continued its efforts to bring about results which would greatly promote not only the economic administration of the respective governments, but a better understanding and an enduring peace among their peoples.

He assumed that the committee might not care to have all the discussions that had taken place over various legal and other questions appear in the communique. There was, of course, no objection to it, if it was desired. Possibly it would be sufficient to say that these resolutions, now numbering three, were presented, discussed, and adopted. General assent was expressed.

The committee then adjourned until Friday, January 6, 1922, at 11 a.m.

---

**SIXTEENTH MEETING—FRIDAY, JANUARY 6, 1922, 11 A.M.**

**PRESENT.**

*United States.*—Mr. Hughes, Senator Lodge, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz. Accompanied by Mr. Wright, Mr. Clark.
The sixteenth meeting of the Committee on Limitation of Armament was held in the Columbus Room of the Pan American Union Building on Friday morning, January 6, 1922, at 11 a.m.

There were present: For the United States of America, Mr. Hughes, Senator Lodge, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz; for the British Empire, Mr. Balfour, Lord Lee, Sir Auckland Geddes; Sir Robert Borden (for Canada), Senator Pearce (for Australia), Sir John Salmond (for New Zealand), Mr. Sastri (for India); for France, Mr. Sarraut, Mr. Jusserand, Vice Admiral de Bon; for Italy, Senator Schanzer, Senator Albertini, Vice Admiral Acton; for Japan, Admiral Baron Kato, Prince Tokugawa, Mr. Hanihara, Vice Admiral Kato, Capt. Uyeda.

The following secretaries and technical advisors were present: For the United States of America, Mr. Wright, Mr. Clark; for the British Empire, Sir Maurice Hankey, Capt. Domville, Mr. Knowles, Mr. Flint; for France, Mr. Kammerer, Mr. Denaint, Capt. Odend'hal, Mr. Ponsot; for Italy, Marquis Visconti-Venosta, Count Pagliano, Commander Prince Ruspoli; for Japan, Mr. Tachi, Mr. Sugimura, Mr. Ichihashi, Mr. Shiratori.

The secretary-general of the conference, assisted by Mr. Pierrepont and Mr. Paul, was present. Mr. Camerlynck (interpreter) was also present.

The chairman, Mr. Hughes, said that the committee would proceed with the discussion of the use of submarines in warfare, and placed before the committee the final resolution presenting this question, mentioning that it was originally the third resolution presented by Mr. Root, but was now designated as No. 4. He then read the resolution, as follows:

"The signatory powers, desiring to insure the enforcement of the humane rules declared by them with respect to the prohibition
of the use of submarines in warfare, further declare that any person in the service of any of the powers adopting these rules who shall violate any of the rules thus adopted, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war, and shall be liable to trial and punishment as if for an act of piracy, and my be brought to trial before the civil or military authorities of any such powers within the jurisdiction of which he may be found."

Senator Schanzer said that the Italian delegation, while associating itself completely with the condemnation of submarine warfare methods as expressed in the resolutions which had already been approved, and also agreeing in principle with the resolution now being discussed, felt called on to point out that while the rules reconfirmed in the first resolution, approved yesterday, concerned both submarines and surface craft, thus strengthening principles which corresponded to rules of existing international law, the new resolution proposed contained sanctions the exceptional gravity of which might appear justified, but which it was desired to apply only to submarines.

The Italian delegation could not accept the resolution under discussion except on the condition that the principle therein expressed should not be limited solely to the crews of submarines, but extended to all the cases contemplated by the first resolution, and therefore also to the crews of surface vessels. The Italian delegation proposed that the resolution should be modified in this sense and that the identical sanctions should be applied to officers and crews of all ships, without distinction, who should infringe the rules contemplated in the first resolution.

He did not doubt that the spirit in which the Italian delegation had proposed this amendment would be appreciated by everybody, for it tended in no way to weaken the strength of the resolution, but, on the contrary, to augment it, and was inspired by an evident principle of justice and equity. In fact, it was not admissible that the commander of a submarine should be condemned as guilty of a determined act while the commander of a surface vessel would not be submitted to trial in an identical case.

He was sure that all the delegations would recognize the equity of the Italian proposal, which constituted, as a matter of fact, the indispensable condition for the acceptance by the Italian delegation of the resolution proposed by Mr. Root.

Senator Pearce said that he did not propose at this juncture to discuss the amendment suggested by Senator Schanzer, but he rose to bring before the committee again, in order that it might be discussed at the same time, the amendment which he previously suggested as to whether if the clause under consideration were to be adopted as a whole it should not be made to apply not
only to the powers that adopted these rules but also to other powers not represented at the conference. It seemed to him that the object of bringing forward the declaration was to obtain for it universal acceptance and application. It might, however, be possible that one or two powers might not adhere to the rule. Was it to be considered that in the unhappy event of a power which adopted the rule going to war with a power which did not adhere to it the power which adopted the rule should be bound by the rule, while the other power should be free to give orders for the sinking of merchant ships, and that the officers of the latter power should be free from the penalties set out merely because the power had not adhered? If his amendment, that the words “adopting these rules” should be omitted, were accepted, the rule would become universal in its application.

Mr. Balfour suggested that Senator Pearce should move to omit the words “in the service of any power adopting these rules.” Senator Pearce accepted the suggestion of Mr. Balfour and intimated that he considered that the rule as proposed to be amended would be a notification to the world at large. He ventured to say that if the rule was amended as he suggested it would be rather an inducement to powers to adhere. But if there was any power not represented at the conference that wished to have an unrestricted use of submarines against merchant ships it would be encouraged not to give its adherence to the rule if it were left in its present form. In that case not only would such a power not be bound by the rule, but its officers would be free from punishment. He pointed out that at the Versailles Conference the powers took up the attitude that the submarine commanders who had violated these laws were liable, and they demanded that they should be tried by a court set up by the Allies. Although that was not obtained, some of the commanders had been tried by the German court sitting at Leipzig. Thus, although the declaration before the committee was not in existence before the war, the Allies said that these submarine commanders should be tried as pirates for the offenses that they had committed, and, as he had mentioned, some of them had been tried. If therefore the committee adopted a declaration in the form originally suggested, it would not even be in keeping with what the powers had done at Versailles. He suggested therefore that the declaration if adopted should be made universal in its application.

The chairman said that these amendments brought before the committee two distinct questions. Quite apart from the specific phraseology which might finally be adopted, there were two distinct questions presented which, perhaps, might be considered separately. Senator Schanzer’s amendment related to two matters, first, the broadening of the provision so as to embrace all
ships of any class or description; second, the broadening of the provision as to individuals so as to embrace persons belonging to the crew, specifically, as well as officers.

Senator Pearce's amendment provided for the application of the resolution to all powers, and not simply to the powers adopting these rules.

Unless the committee desired a different course, the chairman thought that, in order to bring the discussion to a point, these matters could be dealt with, and should be dealt with, separately. He suggested that they take up Senator Pearce's amendment, that the words "in the service of any power adopting these rules" should be omitted, so as to broaden the provision to apply to all powers, and asked if discussion of that amendment was desired.

Sir John Salmond suggested that before discussing the amendment it might clarify the situation if he were to ask a question, namely, as to whether Resolution IV referred to the humane rules decided on by the powers with reference to the action of submarines, or to the prohibition of submarines provided for in the third resolution. The first resolution, Sir John Salmond said, referred to existing law and laid down rules for the conduct of submarines, restricting but not prohibiting their use. The third resolution, which was passed yesterday, was a new rule prohibiting the action of submarines against commerce. He assumed that the fourth resolution referred to the first and not to the third resolution. The rules in the first resolution were provided to prevent a gross abuse of submarines, whereas the rules in the third resolution were against the use of submarines altogether. He assumed that it was not intended to brand this as an act of piracy. He suggested therefore that some clarifying words should be introduced in the fourth resolution to show what was intended.

The chairman said that, in answering Sir John Salmond's question, it was understood that the rules the violations of which were to be deemed acts of piracy were rules of law. It would be difficult to maintain the position that an act of piracy had been committed in the manner stated unless it was a violation of rules of law. They had set forth, in the first resolution adopted, the existing law, and he assumed that the humane rules referred to in the fourth resolution were the rules of law set forth in the first resolution. He also assumed, subject to correction if a different intention had been entertained, that the third resolution proposed an amendment of law, as distinct from the immediate agreement of the five powers here represented. When that amendment should be adopted, there would be a new rule of law, and he supposed that it was the intention to characterize the violation of that rule of law, if it became a rule of law, in the same manner; but for the present the committee were dealing with the humane
rules declared in the first resolution, since those were the only rules of law at present operative.

The chairman then asked the committee if it was their desire to proceed at once to a discussion of Senator Pearce's amendment, which was to the effect that this declaration should apply not simply to the five powers here acting, but to all the powers, and asked if there was any objection to that amendment. He said that this was not a question on the resolution. Assent to this amendment did not involve approval of the resolution, but merely the acceptance of the amendment to present the resolution for consideration in the amended form.

Mr. Root said he thought Senator Pearce's amendment raised very clearly a somewhat difficult question involved in their action and developed a little confusion between the two classes of rules with which they were dealing. The first set of rules, the rules in Article I, were rules of existing law, and he thought they were competent to make a declaration about those without any limitation, following Senator Pearce's suggestion. They were competent to make a declaration that would characterize a violation of the existing law of nations as being a crime which should subject the violator to punishment; they were competent to declare that those who violated the laws of war were guilty of acts of piracy. They were not making law, they were making a declaration regarding existing law, and that necessitated no limitation at all to the powers that were here.

The next resolution, which forbade the use of submarines as commerce destroyers, that was to say, forbade submarines attacking merchant ships, and which if it were to become a part of the law of nations would supersede these other rules so far as submarines were concerned—but which would not supersede them until it had become a part of the law of nations—was an entirely different proposition. It certainly was not competent for them to make an agreement between the five powers here that would produce the effect of a law of nations, upon which they could denounce a punishment as for piracy.

Now, there were several ways to avoid that confusion, which he thought did not exist in the original resolution. One way would be to limit the resolution to the existing rules of law, and there was no reason why they should put in the descriptive words "of the powers now present."

There was another way which he thought would meet Senator Pearce's proposal, and he was inclined to think that it also disposed of Senator Schanzer's suggestion. It would satisfy the purpose that underlay Senator Schanzer's suggestion, and would include both, but would discriminate between the contractual stage of the provision against use of submarines as commerce destroyers and its eventual status after it had become established.
and had become a rule of international law. Until it had become a rule of international law they had to limit what they did to their contracts between themselves. They could not treat the rule as if it were a rule of law; after it had been accepted then it would come under the same basis as the first one.

He had jotted down a suggestion or two, rather to define his own ideas about it than to offer it; but he would like to see how it met the views of his colleagues around the table.

Mr. Root then read:

"The signatory powers desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships and the enforcement of the prohibition against the use of submarines as commerce destroyers after that prohibition shall have been accepted as a part of the law of nations, further declare that any person in the service of any power who shall violate any of the rules thus adopted"—

Mr. Root here mentioned that that would include everything that Senator Schanzer wanted, and then continued reading:

"Any person in the service of any power who shall violate any of the rules thus adopted—"

That was to say, Mr. Root explained, the existing rules and this special rule of prohibition against submarines after it should have been adopted—

"whether or not such person is under orders of a governmental superior, shall be deemed to have violated the rules of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any power within the jurisdiction of which he may be found."

Sir Robert Borden asked that Mr. Root, before resuming his seat, inform him whether the proposal which he had made took into account the fact that Rule III took effect at once as between the five powers represented at the conference.

Mr. Root answered that it was only a contractual obligation; it was not a rule of law upon which they could denounce punishment. This last resolution which they were then talking about denounces a punishment and that can not apply except for a violation of the rules of law.

The proposed amendment, he said, aimed to deal with the suggestion made by Senator Pearce and was also aimed to deal in part with the suggestion made by Senator Schanzer. In order, however, to avoid mingling two distinct things in the discussion, he wished to call attention to the fact that it did not deal with the suggestion of Senator Schanzer as to the application of the resolution to all ships. He suggested that merely to preserve that suggestion for a later discussion while the committee proceeded to deal with the form of the resolution in its present ap-
plication to submarines. The amendment desired could be presented later. He meant merely that this was an amendment dealing with the other phases of the suggestions made. The resolution in its amended form—that is, in the form proposed—read as follows:

"The signatory power, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, and the enforcement of the prohibition against the use of submarines as commerce destroyers, after that prohibition shall have been accepted as a part of the law of nations, further declare that any person in the service of any power who shall violate any of the rules thus adopted, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any power within the jurisdiction of which he may be found."

The chairman asked whether this resolution was in a form now acceptable upon the question of the application to all the powers in the light of the different aspects presented by the existing rules of law and the proposed amendments to the existing rules of law.

Senator Schanzer said he wished to thank Mr. Root for his explanation. With the proposed amendment, he felt he could accept the resolution in principle, though he would like to examine the written text before speaking more definitely. He wished to say that Senator Pearce's amendment served to support his suggestion that vessels of all classes be included in the scope of the resolution. If he had understood it correctly, the new formula would satisfy the wishes of the Italian Government.

Sir John Salmond said he did not wish to raise any objection to Senator Schanzer or Senator Pearce's amendments. The amended resolutions just proposed by Mr. Root, however, went further and extended its scope to include the prohibitions agreed to in Resolution III on the previous day as soon as those prohibitions became international law. There was, however, no particular moment at which it could be stated that a declaration of this kind had become international law. International law was created progressively by the adherence of one power after another. It was impossible to say that on any particular day the rule had become part of international law so that a submarine commander would know whether he was liable to be treated as a pirate. He therefore suggested the limitation of Resolution IV to the rules laid down in Resolution I. It was fit and proper that a breach of these rules should be branded as a crime; but to say
that breaches of new rules only just established between the five powers should be branded as piracy would, he thought, not meet with public approval. He would therefore suggest that Resolution IV should be confined to a statement that the signatory powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to the use of submarines in warfare, further declare that any person violating those rules shall be liable to trial and punishment as if for an act of piracy. Further, he would propose to insert this rule immediately after the present Resolution II.

The Chairman said that Sir John Salmond's amendment was, first, that the resolution in the form which he suggested (and now numbered IV) should be a part of resolution II. Coming at the end of resolution II as now adopted, it was proposed that the resolution read as follows:

"The signatory powers desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any power within the jurisdiction of which he may be found."

He then asked if the amendment was accepted.

Mr. Root said that he hoped Sir John Salmond would, before pressing his amendment, abandon the idea of making it a paragraph of the present Article 2 and make it a separate paragraph.

Sir John Salmond said that this was what he had intended.

Mr. Root said there was a distinct idea in the subcommittee's article which was referred to by Mr. Balfour the other evening, and the two should not be confused.

The chairman asked whether, with this, it was acceptable.

Mr. Root said that he was quite satisfied with it.

The chairman said that the proposal of Sir John Salmond, with the modification suggested by Mr. Root, was that this article should appear as the third article in the series of resolutions adopted; and that, he assumed, would carry the point that the article which had been adopted as number III would not become Article IV.

The chairman then asked if the committee was ready to proceed to action upon that resolution.

Senator Schanzer said that he accepted in the name of the Italian delegation the new formula as worked out by Mr. Root and Sir John Salmond, which gives entire satisfaction, as its
wording has the effect to extend the sanctions of trial and punishment to all persons violating the rules of law laid down in the first resolution, without distinction.

The chairman asked whether any further discussion was desired. No reply being made, he said that the matter would be put to vote; whereupon the delegations of the United States of America, the British Empire, France, and Italy assented.

Mr. Hanihara said that before speaking for the Japanese delegation he would like to be enlightened as to the exact meaning of the words "punished as if for an act of piracy."

The chairman said he assumed the phrase to mean that violation of the laws of war thus declared should be created as amounting to an act of piracy and that the person violating the laws would be subject to punishment accordingly.

Mr. Root interposed that such a person would not be subject to the limitations of territorial jurisdiction. The peculiarity about piracy was that, though the act was done on the high seas and not under the jurisdiction of any particular country, nevertheless it could be punished in any country. That was the really important point.

The chairman asked whether the Japanese delegation assented. Baron Kato replied in the affirmative.

The chairman then stated that the resolution was unanimously adopted. He assumed that that closed the discussion upon the subject of submarines.

He now desired to bring to the attention of the committee the question of the use of gases, or what has been called chemical warfare. The committee would recall that a subcommittee, composed of members representing the five powers, had been appointed to consider this question. He was advised that this committee agreed—their memorandum stated "more or less unanimously"—on certain points. He would read their memorandum, stating the points thus agreed upon:

"The committee agreed more or less unanimously on the following points:

"(a) Chemical warfare gases have such power against unprepared armies that no nation dare risk entering into an agreement which an unscrupulous enemy might break if he found his opponents unprepared to use gases both offensively and defensively.

"(b) Since many high explosives produce warfare gases; or gases which are the same in their effects on men, any attempt to forbid the use of warfare gases would cause misunderstandings at once in war—that is, one or both sides would in the first battle find men dead or injured from gas. The doubt would at once arise whether gas is actually being used as such or whether the casualties were due to high explosive gases. This could be made
the excuse to launch a heavy attack with warfare gases in every
form.

"(c) Research which may discover additional warfare gases

can not be prohibited, restricted, or supervised.

"(d) Due to the increasing large peace-time use of several
warfare gases, it is impossible to restrict the manufacture of any
particular gas or gases. Some of the delegates thought that proper
laws might limit the quantities of certain gases to be manufac-
tured. The majority opinion was against the practicability of
even such prohibition.

"(e) It is possible to confine the action of chemical-warfare
gases the same as high explosives and other means of carrying
on war. The language used in this connection was that ‘it is
possible, but with greater difficulty.’ On this question, as in the
case of (f) and (g) following, it was evident that among the
representatives of the three nations thoroughly acquainted with
chemical-warfare gases, namely, the United States, Great Britain,
and France, there was less doubt as to the ability to confine these
gases than among the Japanese and Italians, who know less
about them.

"(f) The kinds of gases and their effects on human beings can
not be taken as a basis for limitation. In other words, the com-
mmittee felt that the only limitation practicable is to wholly pro-
hibit the use of gases against cities and other large bodies of
noncombatants in the same manner as high explosives may be
limited, but that there could be no limitation on their use against
the armed forces of the enemy, ashore or afloat.

"(g) The committee was divided on the question as to whether
or not warfare gases from a method of warfare similar to other
methods, such as shrapnel, machine guns, rifle, bayonet, high
explosives, airplane bombs, hand grenades, and similar older
methods. In this, as in (e) and (f), the United States, Great
Britain, and French members (five in number), who know gas,
were emphatic that chemical-warfare gases form a method of
waging war similar to the older forms.”

The chairman then said that he desired to read, on behalf of the
American delegation, the report adopted by the advisory com-
mmittee of the American delegation, to the constitution of which he
had already referred. This report had been adopted by the ad-
visory committee upon the recommendation of its subcommittee
which had dealt with new agencies of warfare. The report was as
follows:

“The committee (of the advisory committee) on new agencies
of warfare having had a number of meetings, one conjointly with
the committee (of the advisory committee) on land armaments,
has the honor to report that it has given careful consideration to
the subject referred to it. Chemical warfare, which is the scien-
tific term to cover use of gases in all of their forms, reached very important and significant phases during the World War. The surprise of the first gas attack on the British forces at Ypres -shocked the civilized world, but its military effectiveness caused the allied Governments at once to take measures not only of protection against gas attacks but also offensive action. In consequence, at the close of the war, the use of poison gases, not only temporarily injurious but of toxic character, became universal.

"The committee has found on consultation with experts and reference to scientific study of the subject that there are arguments in favor of the use of gas which ought to be considered.

"The proportion of deaths from their use when not of a toxic character is much less than from the use of other weapons of warfare. On the other hand, the committee feels that there can be no actual restraint of the use by combatants of this new agency of warfare, if it is permitted in any guise. The frightful consequences of the use of toxic gases if dropped from airplanes on cities stagger the imagination. No military necessity can excuse or extenuate such events as were of frequent occurrence during the recent war when bombs were dropped on undefended and thickly populated cities, towns, and villages for no other purpose apparently than to demoralize the population. If lethal gases were used in such bombs it might well be that such permanent and serious damage would be done, not only of a material character, but in the depopulation of large sections of the country as to threaten, if not destroy, all that has been gained during the painful centuries of the past.

"The committee is of opinion that the conscience of the American people has been profoundly shocked by the savage use of scientific discoveries for destruction rather than for construction.

"The meeting of the Conference on the Limitation of Armament in the City of Washington affords a peculiarly advantageous opportunity for comparison of views on all questions bearing on the subject. Whatever may be the arguments of technical experts, the committee feels that the American representatives would not be doing their duty in expressing the conscience of the American people were they to fail in insisting upon the total abolition of chemical warfare, whether in the Army or the Navy, whether against combatant or noncombatant. Should the United States assume this position, it would be no evidence of weakness but of magnanimity. Probably no nation is better equipped by reason of scientific knowledge among its technicians and by means of its material resources to use chemical warfare effectively. This committee, therefore, submits the following resolution for adoption by the advisory board and to be communicated to the American delegates to the Conference on the Limitation of Armament:
"Resolved, That chemical warfare, including the use of gases, whether toxic or nontoxic, should be prohibited by international agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease, and other methods that are abhorrent in modern warfare."

The chairman observed that the foregoing resolution, as he had said, was submitted to the advisory committee of the American delegation by its subcommittee and, he was advised, was unanimously adopted by the advisory committee.

The committee would observe that in this report reference was made to the fact that the subcommittee reporting had held a meeting jointly with a committee of the advisory committee which dealt with the subject of land armament. He had been furnished by the advisory committee with a copy of the report of its subcommittee on land armament, this report having been unanimously adopted by the advisory committee. It contained the following recommendation with regard to chemical warfare:

"Chemical warfare should be abolished among nations, as abhorrent to civilization. It is a cruel, unfair, and improper use of science. It is fraught with the gravest danger to noncombatants and demoralizes the better instincts of humanity."

The chairman pointed out that this report was signed by Gen. John J. Pershing, as chairman of the subcommittee on land armament of the advisory committee, and it had been adopted by the advisory committee.

Continuing, the chairman said that in view of the reference to a difference of opinion among experts, and especially in view of the statement contained in the findings of the subcommittee of this committee of the conference, he desired to read, for the information of this committee, a report by the General Board of the United States Navy upon this question of the prohibition of gas warfare. This report had been submitted to the American delegates.

"Question. Should gas warfare be prohibited?"

"Answer. Yes.

"Comment: The United States would undoubtedly give up a material advantage if gas warfare were abolished. The resources and scientific development of this country place it in the front rank of nations in the ability to wage efficient gas warfare and insure an adequate supply of special gases. Nevertheless, its abolition would be popular in this country, even though its effectiveness as a weapon in war has been clearly proved when employed under special conditions.

"2. The tendency of rules of modern warfare is toward restraint in the employment of weapons that produce unnecessary suffering. The limitations in the employment of the different weapons have that end in view. The dum-dum bullet and the explosive bullet
are well-known examples. Following this general principle, gases which produce unnecessary suffering should be prohibited.

"3. Gas warfare has a peculiar quality different from any method heretofore employed, in that though directed toward a particular target its destructive effect is not limited to that target, but passes beyond control of the belligerent agent and may involve a sacrifice of innocent lives over a wide area. On account of this peculiarity the use of gas which causes death is objectionable because not only the combatant is killed, a perfectly legitimate target, but many noncombatants may also be victims, and these innocent persons may deliberately be made the objects of gas attack by unscrupulous belligerents. Lethal gases should therefore be prohibited.

"4. The two principles in warfare, (1) that unnecessary suffering in the destruction of combatants should be avoided, (2) that innocent noncombatants should not be destroyed, have been accepted by the civilized world for more than 100 years. The use of gases in warfare in so far as they violate these two principles is almost universally condemned to-day, despite its practice for a certain period during the World War.

"5. Certain gases, for example, tear gas, could be used without violating the two principles above cited. Other gases will, no doubt, be invented which could be so employed; but there will be great difficulty in a clear and definite demarcation between the lethal gases and those which produce unnecessary suffering as distinguished from those gases which simply disable temporarily. Among the gases existing to-day there is undoubtedly a difference of opinion as to which class certain gases belong. Moreover, the diffusion of all these gases is practically beyond control and many innocent noncombatants would share in the suffering of the war, even if the result did not produce death or a permanent disability.

"6. The General Board foresees great difficulty in clearly limiting gases so as to avoid unnecessary suffering in gas warfare and in enforcing rules which will avert suffering or the possible destruction of innocent lives of noncombatants, including women and children. Gas warfare threatens to become so efficient as to endanger the very existence of civilization.

"7. The General Board believes it to be sound policy to prohibit gas warfare in every form and against every objective, and so recommends.

"(Signed) W. L. Rodgers."

The chairman thought it was hardly necessary to add anything to these comprehensive statements with respect to the use of gases in warfare. He said that despite the conclusions reached by the subcommittee of this committee and set forth in the report which he had read, the American delegation, in the light of the advice of its advisory committee and the concurrence in that
advice of General Pershing, the head of the American land forces, and of the specific recommendation of the General Board of the Navy, felt that it should present the recommendation that the use of asphyxiating or poison gas be absolutely prohibited. He would ask Mr. Root to present the resolution.

Mr. Sarraut said that the hour was late; in order not to weary the interpreter unduly he suggested that the committee adjourn and that copies of the documents read by the chairman be circulated among the various delegations for their consideration before the next meeting.

The chairman said that he felt sure it would be quite agreeable to all present to postpone the translation; but he suggested that Mr. Root should present the resolution before the adjournment of the committee.

Mr. Root said that the chairman had asked him to prepare this resolution, pursuant to the recommendation of those military and naval authorities and advisory committees to which the American delegation was bound to pay the highest respect. There was an expression on this subject which presented the most extraordinary consensus of opinion that one could well find upon any international subject. He had drafted the resolution which he would present in a moment in the language of the treaty of Versailles which was subscribed to by four of the five powers here and was appropriated and taken over by the United States and Germany in the treaty concluded between them on the 25th of August last and was repeated in the treaty of St. Germain between the same powers and Austria, and again in the treaty of Neuilly of the same powers with Bulgaria, and again in the treaty of the Trianon with Hungary, and taken over and homologated by the United States in its treaty with Austria and its treaty with Hungary and repeated again in the treaty of Serves. He read from article 171 of the treaty of Versailles, which says:

"The use of asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices being prohibited, their manufacture and importation are strictly forbidden in Germany. The same applies to materials specially intended for the manufacture, storage, and use of the said products or devices."

That declaration of prohibition against the use of poisonous gases be understood to be a statement of the previous rules which had been adopted during the course of The Hague conferences; and, without undertaking to question or to inquire into it, it stood as a declaration of all the countries here represented that that is prohibited. And accordingly, following the language of the treaty, the language which all had adopted, he would present the resolution:

"The use in war of asphyxiating, poisonous, or analogous liquids or other gases and all materials or devices, having been justly con-
demned by the general opinion of the civilized world and a prohibi-
tion of such use having been declared in treaties to which a
majority of the civilized powers are parties—

“Now, to the end that this prohibition shall be universally ac-
cepted as a part of international law, binding alike the con-
sience and practice of nations, the signatory powers declare
their assent to such prohibition, agree to be bound thereby be-
tween themselves, and invite all other civilized nations to adhere
thereto.”

In these various treaties there were, Mr. Root thought, between
30 and 40 powers which had assented to the statements of the
prohibition of these practices, so that there was not much further
to go in securing that general consent which changes a rule
from contract to law.

Senator Schanzer said that it was with a deep feeling of
satisfaction that the Italian delegation welcomed the statements
made by the chairman. The Italian representatives in the sub-
committee had had the honor of being the first to propose the
abolition of poisonous gases as weapons of warfare. Therefore
he could only heartily indorse the American proposal which, if
accepted—and this would no doubt be the case—would constitute
one of the greatest claims to honor of the conference and a real
step in the path of progress and civilization.

Mr. Balfour said that he associated himself with the view to
which he understood the chairman had agreed, that all documents
of this nature should be circulated as soon as possible. There
was one about which there appeared to be some misunderstanding.
It was a report of the committee with respect to poison gas. A
report on this subject had been circulated to the British dele-
gation, but not to anybody else and, though it might be similar in
substance to the report which the chairman had read, it differed
in length and in phraseology. He suggested, therefore, that they
had both better be circulated. He took this opportunity of ex-
pressing his view that it would be better if documents containing
reports of subcommittees should be circulated a little sooner than
they were. As an instance, he wished to mention the report of
the subcommittee on aircraft. He suggested that that report
should be circulated at once.

The chairman said that the matter was not presented now for
discussion—because these documents must be circulated and an
opportunity accorded to study them. He wished to say that the
report presented by Mr. Balfour had not been brought to the at-
tention of the chairman. He knew nothing about it, and a hasty
glance at it did not indicate that it differed in substance, although
it did differ strikingly in language, from the memorandum of con-
clusions reached by the subcommittee which he had read. He as-
sumed that it did emanate from the subcommittee, and as the del-
legates should possess all information presented to the committee, he assumed there was no objection to its being circulated.

The chairman said he feared it would not be possible to get all these reports circulated in time to be examined and discussed that afternoon, and if it was thought best the committee might adjourn until the next morning.

Accordingly, the meeting was adjourned until Saturday, January 7, 1922, at 11 o'clock a.m.

SEVENTEENTH MEETING—SATURDAY, JANUARY 7, 1922, 11 A. M.

PRESENT.

United States.—Mr. Hughes, Senator Lodge, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz. Accompanied by Mr. Wright, Mr. Clark.

British Empire.—Mr. Balfour, Lord Lee, Sir Auckland Geddes, Rear Admiral Sir E. Chatfield, Sir Robert Borden (for Canada), Senator Pearce (for Australia). Accompanied by Sir Maurice Hankey, Capt. Domville, Mr. Mousley, Col. Day, Mr. Flint.

France.—Mr. Sarraut, Mr. Jusserand, Vice Admiral de Bon. Accompanied by Mr. Kammerer, Mr. Denaint, Capt. Odend'hal. Mr. Pensot.

Italy.—Senator Schanzer, Senator Albertini, Vice Admiral Baron Acton. Accompanied by Marquis Visconti-Venosta, Count Pagliano, Col. Asinari di Bernezzo.

Japan.—Admiral Baron Kato, Prince Tokugawa, Vice Admiral Kato, Capt. Uyeda. Accompanied by Mr. Ichihashi, Mr. Shiratori, Mr. Sugimura.

The secretary general. Assisted by Mr. Cresson and Mr. Osborne. Mr. Camerlynck, interpreter.

1. The seventeenth meeting of the Committee on the Limitation of Armament was held in the Columbus Room of the Pan American Union Building on Saturday, January 7, 1922, at 11 a.m.

2. There were present: For the United States, Mr. Hughes, Senator Lodge, Mr. Root, Senator Underwood, Col. Roosevelt, Admiral Coontz; for the British Empire, Mr. Balfour, Lord Lee, Sir Auckland Geddes, Rear Admiral Sir E. Chatfield, Sir Robert Borden (for Canada), Senator Pearce (for Australia); for France, Mr. Sarraut, Mr. Jusserand, Vice Admiral de Bon; for Italy, Senator Schanzer, Senator Albertini, Vice Admiral Acton; for Japan, Admiral Baron Kato, Prince Tokugawa, Vice Admiral Kato, Capt. Uyeda.

3. Secretaries and technical advisors were present as follows: For the United States, Mr. Wright, Mr. Clark; for the British