by Lord R. Cecil.

1. His Excellency Signor Schanzet rightly pointed out at the meeting of the T.M.C. held on February 10, 1923, that the proposed treaty of mutual Guarantees as at present drafted would in fact abolish what has been known in international law as the right of war. The remarks made on the subject by Sr. Schanzet were so acute and the considerations which his points raise are so important, that I think it may perhaps be useful to circulate to my colleagues the following reflections:

Sr. Schanzet put forward the proposition that to make it possible to abolish the right of war some other alternative method of finding a solution of every possible international dispute would have to be provided. He said that in his view the only way of doing this would be to give an obligatory jurisdiction to the Permanent Court of International Justice, that is to say, to revive the old system of what used to be known as "obligatory arbitration". He further pointed out that in the present state of opinion such a proposal is hardly practicable, and that therefore the Treaty of Mutual Guarantees as drafted would require some modification.

2. The first part of the proposal put forward by Sr. Schanzet is in fact this: That if the right of war were abolished it would be necessary to proceed to such a perfection of the system of international law as would render obligatory upon the parties the pacific settlement of every possible dispute. It is perhaps worth while to investigate this proposal by means of a comparison with a perfect system of national law.

The national law of every civilised country is assumed to be perfect in the sense that its rules provide a true legal decision for every conflict of right or interest which could possibly arise between its subjects. This being so the legal rights of its subjects are made absolutely secure by the three
following obligations imposed on all of them.

(i) The obligation not to resort to force against other citizens in any way except in self-defence.

(ii) The obligation to appear before the legal tribunals of the State on the demand of any other citizen.

(iii) The obligation to accept the decisions rendered by the legal tribunals of a State on any question whatever, subject to penalty in case of non-fulfilment of such decisions.

ny system of law which imposes on its citizens these three obligations is a perfect system in the sense that it provides complete machinery for the determination and enforcement of the legal rights of its subjects.

3. The Covenant has made greater strides than is generally recognized towards imposing on the subjects of international law obligations corresponding to the three distinguished above.

The obligation to appear before the tribunals of the League is an absolute one. There are, however, still two defects in the system established by the Covenant, which make it fall short of theoretical perfection:

(i) The obligation to accept the decisions of the tribunals of the League is not absolute, i.e. the Council decisions not reached by unanimity except for the parties, are not binding.

(ii) In the case of such decisions reached only by majority, and in the case of a Council decision reached by unanimity, but not accepted by the other party, a right of war is allowed.

5. It is only right, however, to recognise that in certain cases a right of war under the Covenant exists. It is also necessary to recognise that if the Treaty of Mutual Guarantee abolished this right of war without providing some pacific means for the settlement of the disputes in which otherwise the right of war would have arisen, there would be a diminution of the rights at present possessed by States under the Covenant.
6. But it is questionable whether any practical injustice would result. The cases in which aggressive warfare except to ward off some expected counter aggression is essential or even advantageous to a state's material interests are extremely rare even if they exist. Moreover, aggrieved states would still have at their command all the means of pressure short of hostilities, whether diplomatic, economic or otherwise which they have at present. They would also, of course, have the right of self-defence unimpaired in case of an attack on their territorial integrity or independence. No doubt at present states feel sometimes compelled to go to war on questions of honour, just as individuals are obliged to fight duels in countries where duelling is customary. But individual honour is not really less precious or less safe in countries where duelling does not exist, and national honour would not suffer if war were no longer regarded as a permissible method of defending it.

7. No doubt it would be theoretically better that recourse to a pacific method of redress should be secured in the case of every international wrong. But even if that cannot be done or cannot be done immediately it remains highly desirable to take all possible measures to put an end to war, for the following among other reasons:

(a) The community of states cannot afford to allow wars to continue even for the sake of avoiding possible injustices. New wars in the future will inevitably be more terrible than any that have occurred hitherto, and will almost inevitably become general. They are thus a menace to civilisation as a whole, and almost any price must be paid for preventing their outbreak.
(b) The machinery of the League is developing so rapidly and its power and prestige increasing in such a striking degree, that it may be predicted that after a period of peace the existing institutions of the League will be strong enough to deal with any dispute that may arise. It must not be forgotten that Article 19 gives the League the right to review any treaty arrangement of any sort and that the words of this Article: "The consideration of international conditions, whose continuance might endanger the peace of the world", which appear in close continuity with the words: "treaties which have become inapplicable" definitely indicate the most difficult possible classes of dispute.

(c) In any case the abolition of the right of war will probably in itself lead to the improvement of the procedure for the pacific settlement of disputes more rapidly than anything else could do. I.e., if the abolition of the right of war led to cases of clear injustice, opinion would very quickly form in favour of the amendment of the Covenant so as to make it possible to secure an impartial and obligatory decision on any conflict that might arise.

For these reasons it appears to me desirable to press on with the Treaty of Mutual Guarantee in spite of the difficulties which Signor Schanzel raised, and for which it appears to be impossible to make any provision at present. The dominant consideration in the whole matter ought in my view to be the vital necessity of preventing the outbreak of war on any ground whatever.