

No. 12.

*Mr. Atherton to Sir Austen Chamberlain.*

SIR,

United States Embassy, London, 23rd June, 1928.

It will be recalled that, pursuant to the understanding reached between the Government of France and the Government of the United States, the American Ambassadors at London, Berlin, Rome and Tokyo transmitted on the 13th April, 1928, to the Governments to which they were respectively accredited the text of M. Briand's original proposal of the 20th June, 1927, together with copies of the notes subsequently exchanged by France and the United States on the subject of a multilateral treaty for the renunciation of war. At the same time the Government of the United States also submitted, for consideration, a preliminary draft of a treaty representing in a general way the form of treaty which it was prepared to sign, and inquired whether the Governments thus addressed were in a position to give favourable consideration thereto. The text of the identic notes of the 13th April, 1928, and a copy of the draft treaty transmitted therewith were also brought to the attention of the Government of France by the American Ambassador at Paris.

It will likewise be recalled that, on the 20th April, 1928, the Government of the French Republic circulated among the other interested Governments, including the Government of the United States, an alternative draft treaty, and that, in an address which he delivered on the 28th April, 1928, before the American Society of International Law, the Secretary of State of the United States explained fully the construction placed by my Government upon the treaty proposed by it, referring as follows to the six major considerations emphasized by France in its alternative draft treaty and prior diplomatic correspondence with my Government :—

1. *Self-defence.*

"There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defence. That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times, and regardless of treaty provisions, to defend its territories from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defence. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. In this respect, no treaty provision can add to the natural right of self-defence. It is not in the interest of peace that a treaty should stipulate a juristic conception of self-defence, since it is far too easy for the unscrupulous to mould events to accord with an agreed definition."

2. *The League Covenant.*

"The Covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is secondary, and attaches only when deliberately accepted by a State. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly, but not formally adopted owing to one adverse vote, to mean that: 'It is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of the members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces.'

"There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances, but it is an authorization and not a positive requirement."

3. *The Treaties of Locarno.*

"If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that, if all the parties to the Locarno treaties become parties to the multilateral anti-war treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such an event it would follow that resort to war by any State, in violation of the Locarno treaties, would also be a breach of the multilateral anti-war treaty, and the other parties to the anti-war treaty would thus, as a matter of law, be automatically released from their obligations thereunder and free to fulfil their Locarno commitments. The United States is entirely willing that all parties to the Locarno treaties should become parties to its proposed anti-war treaty, either through signature in the first instance, or by immediate accession to the treaty as soon as it comes into force in the manner provided in Article 3 of the American draft, and it will offer no objection when and if such a suggestion is made."