LEAGUE OF NATIONS

CONFERENCE FOR THE REDUCTION AND LIMITATION OF ARMAMENTS

REPORT SUBMITTED TO THE BUREAU ON THE
PROHIBITION OF CHEMICAL WARFARE AND
VIOLATIONS OF THE PROHIBITION TO USE CHEMICAL,
BACTERIOLOGICAL AND INCENDIARY WEAPONS

in Execution of the Decision of September 22nd, 1932.

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CONTENTS.

I. — Report:

Previous Developments ........................................ I
General Considerations ....................................... 3
Chapter I. — Absolute or Relative Character of the Prohibition .......... 3
Chapter II. — The Prohibition of Preparations for Chemical, Incendiary and Bacteriological Warfare ................................. 4
Section I: Prohibition of the Manufacture and Possession of Appliances and Substances ............................................. 4
Section II: Prohibition of Training ............................. 5
Chapter III. — The Supervision of the Observance of the Prohibition of Preparations for Chemical Warfare .................................... 5
Chapter IV. — Sanctions in the Event of the Use of Chemical,Incendiary and Bacteriological Weapons ........................................ 7
Section I: Establishment of the Fact of Infringement ............... 7
Section II: Effect of the Establishment of the Fact of Infringement .... 8

II. — Conclusions ................................................. 9

I. REPORT.

Previous Developments.

I. The Bureau of the Conference for the Reduction and Limitation of Armaments, at its seventeenth meeting, held on September 22nd, 1932, instructed me to submit a report to it on the question of chemical, incendiary and bacteriological weapons, and breaches of the provisions regarding the use of those weapons.
I may be permitted to refer to the antecedents of the Bureau's resolution giving me these instructions.

II. (1) On May 10th, 1932, the General Commission set up a Special Committee, consisting of representatives of fourteen States, to consider the question of chemical and bacteriological weapons in the light of the second of the two resolutions passed by the General Commission on April 22nd, 1932. 1

(2) The task of the Special Committee, of which I had the honour to be Chairman, was exclusively to consider whether chemical and bacteriological weapons were to be included in qualitative disarmament. The Committee gave an affirmative reply to this question, and said that qualitative disarmament should cover, not only chemical weapons and means of warfare and bacteriological weapons and means of warfare, but also incendiary projectiles and flame-projectors. 2

The Committee was also careful to define, in unequivocal terms, what was meant by chemical, bacteriological and incendiary weapons and means of warfare.

(3) The General Commission adopted the Special Committee's conclusions. It accordingly embodied the following in its resolution of July 23rd, 1932:

(a) Under the heading "II. Conclusions of the First Phase of the Conference:

"Chemical, bacteriological and incendiary warfare shall be prohibited under the conditions unanimously recommended by the Special Committee."

(b) Under the heading "III. Preparation of the Second Phase of the Conference:

"Rules of international law shall be formulated in connection with the provisions relating to the prohibition of the use of chemical, bacteriological and incendiary weapons and bombing from the air, and shall be supplemented by special measures dealing with infringements of these provisions."

III. In the course of its proceedings, the Special Committee realised that the prohibition of chemical, incendiary and bacteriological warfare raised other questions than those it was called upon to consider, and that these questions were of considerable importance. As, however, they did not come within its terms of reference, it refrained from examining them. On this subject, the report says:

"The Committee was anxious to keep strictly within its terms of reference, and therefore deliberately ignored the question of the methods whereby qualitative disarmament could be effected. Obviously, the decision that will be adopted regarding these methods will be able to give practical effect to the resolutions submitted by the Special Committee. Consequently, the study of these methods and the decision to be taken in this matter are of paramount importance from the practical point of view."

The manner in which the prohibition is to be applied to chemical, incendiary and bacteriological warfare involves various technical and legal questions. In the first place, there is the question whether the prohibition should be absolute or relative. The way in which this question is answered will influence the question of the prohibition of preparations for chemical, incendiary and bacteriological warfare. This second question entails consideration of the material reparations and of the nature of the various appliances and substances, some of which can be used for military purposes only, and others for either military or peaceful purposes; and also consideration of the training of personnel. The third question is that of supervising the observance of the prohibition of preparations for chemical, incendiary and bacteriological warfare. The fourth question is that of the penalties to be applied in case of a breach, in time of war, of the prohibition to employ chemical, incendiary and bacteriological weapons, and of determining what may and should be the line of conduct of the country which is the victim of such a breach and of other countries.

IV. Subsequently to the General Commission's adoption of the conclusions of the Special Committee's report, the Norwegian delegation submitted to the Bureau of the Conference, on August 1st, a draft text concerning the prohibition of the use of chemical, bacteriological and incendiary weapons. 3

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1 The two resolutions passed by the General Commission on April 22nd, 1932, were as follows:

"Without prejudice to other proposals which fall to be discussed under later heads of the agenda, the Conference declares its approval of the principle of qualitative disarmament—i.e., the selection of certain classes or descriptions of weapons the possession or use of which should be absolutely prohibited to all States or internationalised by means of a general Convention." (Document Conf.D./C.G.26(1).)

"In seeking to apply the principle of qualitative disarmament, as defined in the previous resolution, the Conference is of opinion that the range of land, sea and air armaments should be examined by the competent special Commissions with a view to selecting those weapons whose character is the most specifically offensive or those most efficacious against national defence or most threatening to civilians." (Document Conf.D./C.G.28(2).)


Further, the Bureau of the Conference held, at its fifteenth meeting on September 21st, a preliminary exchange of views on the subject of chemical, bacteriological and incendiary weapons. In compliance with a request made by Sir John Simon at that meeting, the Secretary-General had a memorandum prepared reproducing the opinions expressed by various League committees of experts as to the possibility of preventing preparations and training for the use of chemical and bacteriological weapons in peace-time.

V. Instructions given to the Author of this Report. — In the Minutes of the seventeenth meeting of the Bureau, held on September 22nd, 1932, it is stated that the report I am asked to produce is to deal with the two following questions:

1. Prohibition of chemical warfare;
2. Breaches of the provisions concerning the prohibition of the use of chemical, bacteriological and incendiary weapons.

With regard to the first point, the document headed "Steps to be taken as a Result of the Decisions of the General Commission on July 23rd, 1932," states that "the question of the preparation of chemical, bacteriological and incendiary arms in time of peace and of the training for the use of the said arms" is raised.

As regards the second point, it should be observed that the General Commission’s resolution of July 23rd, 1932, defined the problem as follows:

"Rules of international law shall be formulated in connection with the provisions relating to the prohibition of the use of chemical, bacteriological and incendiary weapons and bombing from the air, and shall be supplemented by special measures dealing with infringements of these provisions."

GENERAL CONSIDERATIONS.

1. The Special Committee drew a distinction which is fundamental. It considered, on the one hand, appliances, devices and projectiles specially constructed for chemical warfare, and, on the other hand, appliances and substances of which only the use in time of war to inflict injury on an adversary should be prohibited.

2. The Special Committee endeavoured to give general but sufficiently detailed definitions of the two classes of appliances and substances to cover new inventions. It deliberately refrained from making a list of chemical substances capable of being used to inflict injury on an adversary. There would be a great risk that such a list might be incomplete when it was drawn up, and, in any case, it would almost inevitably become so after a very short time, owing to the constant advance of technical knowledge. The most that could be done would be to draw up purely indicative lists of appliances and substances in the two classes. In that case, the Special Committee would again have to be called upon for its assistance in drawing up such lists.

3. There is no need to return in this report to the questions that have been elucidated by the Special Committee. The report will deal solely with the questions which the Special Committee was not instructed to examine. Before embarking upon a study of these delicate questions, I personally and unofficially consulted certain members of delegations, in order to procure further information and learn their views.

CHAPTER I. ABSOLUTE OR RELATIVE CHARACTER OF THE PROHIBITION.

The protocol of June 17th, 1925, concerning the prohibition of chemical and bacteriological warfare, does not formally exclude the condition of reciprocity. Accordingly, twelve States out of the thirty which are at present bound by that declaration have ratified it only subject to that condition.

Article 39 of the draft Convention drawn up by the Preparatory Commission for the Disarmament Conference, which prohibits chemical and bacteriological warfare, prohibits the former on condition of reciprocity, while the latter prohibition is absolute. In the course of the Conference, however, it became clear, from the proposals and declarations made by various delegations, that any prohibition that was not absolute would lose much of its force. States would contemplate recourse to the chemical weapon as a possible eventuality if the Convention itself admitted it in certain cases. Any attempt to prohibit preparation for chemical warfare in peace-time would therefore seem to be illusory. Hence the prohibition of chemical warfare must be absolute.
If the prohibition is absolute, that excludes the right of resorting to the prohibited means of warfare in the two following cases:

1. Even if an undertaking not to use chemical weapons could not be given by all countries, the undertaking would not be allowed to be given on condition of reciprocity.

While it is necessary to bar the reciprocity proviso, it must none the less be borne in mind that a difficult position would arise if, in time of war, States which had undertaken not to resort to chemical, bacteriological or incendiary weapons were confronted by other States which had not given such an undertaking.

To ensure that no such situation shall arise, the undertaking should be given by all States, or by a very large number of States. The Conference should fix its attention on this point and consider the best means of making the undertaking as general as possible. Even if the undertaking could not be made absolutely universal, however, it might be decided that States accepting the undertaking should be required to take action against States using the chemical weapon, whether the latter had given any undertaking on the subject or not.

2. Even if a State were the victim of an unlawful war (a war undertaken in violation of the Paris Pact or the Covenant of the League), it would be bound to refrain from resorting to these prohibited means of warfare.

As regards the use of chemical or incendiary weapons by way of reprisal against a State which had first resorted to those weapons in time of war, the matter is dealt with in Chapter VI (Penalties).

I should perhaps add that, in my view, if the absolute character of the prohibition is to be respected, and if States are to regard it as a settled principle governing their conduct, the forms of control provided for must be as satisfactory as possible, and, above all, the penalties must be effective.

Chapter II. — The Prohibition of Preparations for Chemical, Incendiary and Bacteriological Warfare.

In principle, the prohibition of preparations for chemical, incendiary and bacteriological warfare applies both in peace-time and in war-time. In peace-time, there can be no exception to this prohibition. In war-time, the only exception that might perhaps have to be made would be in the event of an adversary’s having himself had recourse to the prohibited weapons. Since use of certain of these weapons by way of reprisal might be allowed under certain fixed conditions, as we shall see below in Chapter V of this report, preparations for their use would become lawful in the case contemplated.

The prohibition of preparations for chemical, incendiary and bacteriological warfare has two aspects—the manufacture and possession of material, and the training of troops.

Section I. — Prohibition of the Manufacture and Possession of Appliances and Substances.

This material is divided into two classes: defensive material (protective masks) and material for attacking purposes (gases and gas-projecting apparatus).

1. Defensive Material. — There seems to be no reason for prohibiting material solely intended to protect combatants and civilians against chemical and bacteriological weapons should such be employed by a belligerent. The existence of such protective material, calculated to lessen the injury caused by the prohibited weapons, would diminish the military advantages that an unscrupulous belligerent might derive from their use, and would therefore make resort to those weapons less tempting to such a belligerent.

2. Material for attacking Purposes. — This material would be completely forbidden. In view, however, of the peculiar characteristics of the chemical weapon, it is proper to mention the various elements covered by the prohibition, which may be reduced to three:

A. Prohibition to manufacture, import or store appliances exclusively suited to the conduct of chemical warfare (special apparatus for the projection of gases or propulsion of gas-shells).

These appliances exist, but their prohibition, even if strictly observed, cannot form a serious obstacle to the conduct of chemical warfare. In the first place, they are relatively simple appliances which can be fairly quickly manufactured, and, secondly, chemical warfare could be carried on, if necessary, without them.

It would doubtless be desirable to mention the commonest of these appliances, but such an enumeration should be purely indicative.

Should the Bureau of the Conference think that such an enumeration would be useful, the Special Committee might be again convened for the purpose of drawing up the list.

B. Prohibition to manufacture, import or store chemical substances exclusively suited to the conduct of chemical warfare.
There apparently exist certain gases which cannot be used for peaceful purposes. The Special Committee might perhaps be asked to make a list of the principal chemical substances falling into this class. Here, however, even more than in the previous case, care must be taken to avoid any suggestion that the list is exhaustive. New substances answering to the definition given above may be invented. Moreover, the Special Committee could tell us whether there was any practical possibility of substances which are rightly regarded as exclusively suited to the conduct of chemical warfare subsequently proving suitable for peaceful uses. In such a case the list would have to be revised.

Any stocks of the above-mentioned chemical substances which might be in the possession of States when the Convention is put into force should be destroyed.

C. Prohibition to manufacture, import or store appliances and chemical substances capable of being used both for peaceful and for military purposes with the intention of using them in war should occasion arise.

In this last case, it is not the nature of the appliances and substances, but the intention with which they are produced or stored, that would be reprehensible.

(a) This general prohibition might be accompanied by a subsidiary prohibition to issue the above-mentioned appliances and substances to the armed forces, to keep them in military establishments ( arsenals, fortifications, barracks, etc.), or to store them for army use. Should the armed forces have need of a certain quantity of such appliances or substances for use otherwise than as fighting weapons (e.g., chlorine cylinders, chlorine required for disinfection purposes), the States should perhaps be asked to say what quantity they would wish to leave at the disposal of the armed forces. These special prohibitions would, of course, have only a limited value.

Any stocks of chemical substances which might be in the possession of States themselves when the Convention is put into force should be disposed of for actual consumption.

(b) It might also be possible to fix for each State the maximum quantity of chemical substances capable of use for military purposes which might be stored in industrial establishments of every kind in its territory. That would involve making an estimate of the needs of consumers and the normal reserves necessary to meet those needs. Such an estimate would, of course, present real difficulties.

Section II. — Prohibition of Training.

Training may be either for defence or for attack.

1. Defensive training aimed exclusively at protecting people against the effects of chemical, incendiary or bacteriological warfare must be authorised for the same reasons as were given above in connection with defensive material.

2. Training for the practice of chemical, incendiary or bacteriological warfare must be absolutely forbidden.

Chapter III. — The Supervision of the Observance of the Prohibition of Preparations for Chemical Warfare.

The question of the supervision of the observance of the prohibition of preparations for chemical warfare must be distinguished from the question of penalties, which will be dealt with in the next chapter. The supervision in question is designed to prevent breaches of the prohibition. The penalties are intended to punish the actual use of the chemical weapon. The question of supervision arises in peace-time as in war-time, with this difference, that in war-time supervision would be exercised over the belligerents under even more difficult conditions than in peace-time. On the other hand, the question of penalties arising out of the prohibition of the use of the chemical weapon clearly cannot arise except in war-time.

The question of supervision is a particularly difficult one. The characteristic of the substances used in chemical warfare is that they can be easily prepared in a country which has a well-developed chemical industry, and that manufactures of a peaceful character can be used as means of chemical warfare without conversion, or with only very simple and rapid conversions.

In regard to the prohibition of training for chemical warfare and the prohibition of the manufacture and possession of materials exclusively suited to the conduct of chemical warfare, the question of supervision presents difficulties, but they are the same in kind, if not in degree (the manufacture of gas-projectors is easier to conceal than the manufacture of heavy guns), as those that are encountered in other fields; this supervision cannot therefore be separated from the general system of supervision that will be instituted to enforce other prohibitions laid down by the Convention.

On the other hand, as regards, first, the prohibition to manufacture, import or store substances exclusively suited to the conduct of chemical warfare, and, secondly, the prohibition to manufacture, import or store appliances and chemical substances capable of being used both for peaceful and for military purposes with intent to use them in war should occasion arise, the difficulties of supervision are considerable. As was shown, however, by the discussions of the Special Committee that met in May 1932, it is the two categories to which these prohibitions relate that are of the greatest practical importance, more especially the second—the category of appliances and substances capable of being used for two purposes.
First, as regards chemical substances exclusively suited for military use, the attempt to trace their manufacture would entail inspections of factories and a careful study of the processes in progress there. This method of supervision would be of very doubtful efficacy. Concealment would, in fact, be easy in view of the size and intricacy of the chemical industry, and of the fact that the products in question may not become· products exclusively suited for war until they have undergone one slight final transformation at the end of the process of manufacture. Moreover, this form of supervision would have the disadvantage of affording openings for malpractices, or giving rise to suspicion of affording such openings. It would entail the examination of processes of manufacture, and would thus involve a risk of industrial espionage. Consequently, it might lead to friction, without yielding much in the way of results.

In the case of appliances and chemical substances suited for both peaceful and military use, supervision is no less difficult. It should establish three facts:

1. Output, and what part of the plant, if any, is not actually used but can be if desired;
2. Any excess of production over consumption;
3. That this excess of production over consumption is not a mere accident due, for example, to the invention of new processes of manufacture, or to mistaken economic forecasts, or to a depression, but is intended to allow of the formation of stocks with a view to the conduct of chemical warfare.

In view of the difficulties attendant upon the supervision of the production of chemical substances, one is led to feel that it would be better to abandon the idea of using certain forms of supervision which, while yielding but small results, would entail highly complicated investigations and might provoke friction and incidents.

The idea has been put forward that international agreements between the chemical industries of different countries might permit of an effective supervision of chemical production with a view to preventing it from being carried out in preparation for chemical warfare. The value, from the point of view that concerns us, of these agreements, which would have the effect of rationing production and preventing certain manufactures, would vary according to their nature and the number of parties to them. It does not appear, however, that the Conference for the Reduction and Limitation of Armaments and the Governments of which it is composed have any means of deciding upon such agreements. Supervision will gain from the existence of such agreements if they are created, but one can hardly contemplate creating them in order to facilitate the supervision with which we are concerned.

We must now consider whether it would not be possible to obtain some results by a necessarily limited method of supervision which would present no great drawbacks. One might, it would seem, resort to the following method:

(a) A specialised Section for chemical warfare would be established in the Permanent Commission.

(b) It would be the duty of this Section to collect all the information that could be found in official trade statistics or private statistics carrying some weight, relating to the manufacture of chemical substances in the territory of each signatory State, and their import into that territory.

(c) Having seen this information and made a preliminary study of it with all necessary safeguards, the Section might ask the Governments of the countries concerned to supply it with any further information it thought necessary.

(d) Further, any signatory State might, on the strength of any information received by it, apply to the Section for explanations regarding chemical substances manufactured in the territory of another State or imported into that territory. The Section would make a preliminary examination of such applications, with all due discretion and subject to the necessary safeguards, in order to establish whether it was worth while to obtain fuller information. If it were so decided, the State whose position had been impugned would be asked for explanations.

(e) When it was in possession of the information required, the Section would decide whether the matter was to be dropped or laid before the Permanent Commission. In the latter case, the Commission would take all proper steps, within the limits of the powers conferred upon it by the Disarmament Convention.

The idea has been put forward that, to facilitate the provision of information for the specialised Section of the Permanent Commission, the signatory States might undertake, not only to reply to any request for information they might receive from the Section, but also to send it, periodically and regularly, statistics of the manufacture of chemical substances in their territory and the imports of such substances into that territory. It is, however, doubtful whether fuller and more useful information would be obtained in this way than is already available in the trade statistics normally published in most countries. In any case, if the Bureau of the Conference decided to take up the idea of asking the Governments for statistics, it would doubtless be advisable to call again on the Special Committee to give its opinion on the general value of the method and state the precise points to which the numerical data to be periodically supplied by the Governments might refer.

The limited supervision we are suggesting would still be a delicate matter, and would yield only incomplete results. The work of various technical bodies connected with the League of Nations (Sub-Commission A and Sub-Commission B of the Preparatory Commission for the Disarmament Conference, and the Joint Commission for the Reduction of Armaments), which in 1926 studied the question of preparation for chemical warfare, demonstrated the inevitable imperfection of any form of supervision. More than that, they established the fact that, for a country
with a well-developed chemical industry, preparations for chemical warfare will always be easy and can be made very rapidly. We therefore must not rely essentially on the preventive supervision of the observance of the prohibition of preparations for chemical warfare to prevent such preparations. The system of penalties to be applied in the event of the employment of the chemical weapon must be so severe as to make up for the deficiencies of preventive supervision.

CHAPTER IV. — SANCTIONS IN THE EVENT OF THE USE OF CHEMICAL, INCENDIARY AND BACTERIOLOGICAL WEAPONS.

The sanctions meant are those which would follow on a violation, not of the prohibition to prepare for chemical warfare in time of peace or in time of war, but of the prohibition to use chemical weapons in time of war.

The question of sanctions embraces both that of the attitude to be adopted by the State against which chemical weapons had been employed (retaliation consisting in the use of chemical weapons, various forms of reprisal) and that of the attitude to be adopted by the other States parties to the Convention.

It seems essential to consider in succession two questions which, chronologically and logically, arise one after the other—namely, the establishment of the fact that the prohibition has been infringed, in the first place, and the consequences of that violation in the second.

Section I. — Establishment of Fact that the Prohibition has been infringed.

This should be governed by a number of rules on which it would seem easy to arrive at unanimous agreement:

1. The establishment of the fact of infringement should not be carried out by the State complaining of such infringement, but should be entrusted to a neutral authority.

   If the establishment of the alleged infringement were left to the State in regard to which it is alleged to have been committed, it would be attended by no safeguards. Without going so far as to suppose that a State desirous of employing chemical weapons would, in order to provide a semblance of justification for its conduct, accuse its adversary of having had recourse to that prohibited arm, one might simply fear a mistake on the part of military men over-ready to jump to a conclusion and to impute to chemical weapons the asphyxiating effects produced by the normal combustion or detonation of ordinary explosives or by some other cause. But, even if the establishment of the infringement were based on fact, it would be lacking in authority if it were effected by the actual victim. It is to the latter's interest that the establishment of the infringement, designed as it is to produce moral, legal and political effects, should be carried out under all desirable conditions of impartiality, so that it will carry conviction with all Governments and public opinion.

2. The establishment of the infringement must be effected within a fairly short time.

   Since the establishment of the infringement must precede any retaliation on the part of the victim and any intervention by third States, it is essential that it should take place rapidly; otherwise the State guilty of resorting to chemical weapons might derive great military advantage from its initiative. If the establishment of the infringement is effected with all requisite speed, it seems unlikely that the few days' delay which it may have necessitated will really be prejudicial to the victim. Again, as regards the third States, their assistance cannot reasonably be given until the facts which call for it have been established with certainty. Then again, as regards the victim, it is probable that, even if it were to retaliate by itself employing the prohibited weapon, it would require some few days at least to make its preparations.

3. Practical rules for the establishment of the infringement must be laid down in advance.

   The injured State must know to whom it should apply in order that the establishment of the infringement may be effected. The person in question, who might be the doyen of the diplomatic corps in the country concerned, would call upon agents such as consuls or military attaches, with the possible help of doctors or chemists, and those agents would be responsible for actually establishing the infringement. The result of the investigation would be forwarded to the Permanent Supervisory Commission set up by the Disarmament Conference, and that Commission would draw its conclusions from the investigation and declare that an infringement had or had not taken place. Simultaneously with the person responsible for instituting the investigation, the Permanent Supervisory Commission would have been informed of the occurrence and would have had an opportunity of ordering that enquiries be made from authorities of the State accused of the infringement, while it would, in every instance, inform that State of the charge brought against it and request its observations.

   It is understood that the States concerned would be obliged to allow measures of supervision to be carried out without restriction, so that the authorities responsible for supervision might move about the country and carry out their observations. A State which placed obstacles in the way of supervision would create an unfavourable presumption against itself.

   As regards the actual establishment of the infringement, it would probably be easy to carry out. There is reason to think that a State which, by resorting to prohibited weapons, exposed itself to the intervention of third Powers and to retaliation on the part of its adversary, would from the outset have made use of those arms on a very big scale. It is a fairly simple matter to decide, even without special expert knowledge, in the presence of a certain number of killed and wounded, whether they have been stricken by a chemical weapon or by other arms.
Section II. — Effects of the Establishment of the Fact of Infringement.

Preliminary Observation.

It might be thought that the question thus raised comes within the more general question of the effects of any properly established violation of the Convention. True, the solution found for the specific question of infringements of the prohibition to use chemical weapons must be in harmony with the general system of sanctions laid down in the Convention. Nevertheless, the infringement of the prohibition to use chemical weapons is an offence of a rather special kind. On the one hand, any recourse to chemical weapons would constitute one form of violation of the Convention, a violation of special gravity from the standpoint of its military consequences, and, on the other, in contradistinction to the supervision in respect of other categories of prohibited arms (heavy artillery, heavy tanks, etc.), supervision in time of peace would be of very limited efficacy; presumably, therefore, the inadequacy of the preventive action should be offset by provision for more drastic penalties.

1. Attitude of Third States in the Event of an Infringement of the Prohibition to have recourse to Chemical Weapons. — (a) Directly the Permanent Supervisory Commission has established that the prohibition to use the chemical weapon had been infringed, other States would be both entitled and bound to take a series of measures against the offending State which, by gradually increasing the pressure brought to bear upon it, might induce it to abandon the use of the chemical weapon or make its continued use impossible (diplomatic representations, rupture of diplomatic, economic and financial relations, blockade).

(b) After the establishment of the infringement of the prohibition, there would be a consultation between States which would make it possible to determine the methods most appropriate, in the circumstances, in order to put a stop to the infringement and assist the State which has been a victim of the violation of the Convention.

That consultation would have to take place as rapidly as possible. Indeed, to gain time, it might be possible to provide for the convening, in the first place, of a body smaller in size than the General Conference of all the States parties to the Convention.

(c) Whether the States would be prepared to enter into other obligations in the event of an infringement of the prohibition to use chemical weapons is a political question. Will the Conference decide that a State guilty of having infringed the prohibition to use chemical weapons will be deemed to have committed an act of war against the other States parties to the Convention? Or will it undertake to apply increasingly drastic economic or financial sanctions or more or less extensive military sanctions, or simply to renounce the benefits and duties of neutrality?

One cannot prejudge the attitude which the Conference may adopt in the matter. It is, however, certain that if the States agreed to enter into such undertakings, the prohibition would be accompanied by powerful safeguards and would run little risk of being infringed.

2. Rights of the State which is the Victim of the Violation of the Prohibition. — It is desirable that the State which is the victim of the breach of the prohibition should not require to retaliate by employing the chemical weapon, and that the assistance given it by third States should compensate it, and more, for the disadvantage resulting from the fact that the chemical weapon has been employed against it; if, however, the State which is the victim of the breach is not assured of receiving such assistance, and, in particular, if the assistance is not immediate, but conditional on a consultation between States, which may take some time, the State in question cannot be forced to refrain from the use of the chemical weapon when, through being unable to fight its adversary with equal weapons, it might be crushed or suffer great injury. In no case could a State which has honourably fulfilled its obligations under the Convention be allowed to be placed in a position of inferiority; it therefore seems prudent to decide that the establishment by the Supervisory Commission of the fact that a belligerent has definitely employed the chemical weapon shall confer on the victimised State the right to retaliate by employing the chemical weapon in its turn, or making other reprisals, subject to the condition that such reprisals shall not occur outside the fighting area.

But the Permanent Supervisory Commission, after establishing the breach, should have power to recommend the State which has been the victim of that breach to renounce the use, by way of retaliation, of the chemical weapons in question. In so doing, it would take into account all the circumstances, and more particularly the practical possibility of giving effective aid to the State which has been a victim. The latter might, of course, not follow the recommendation to refrain from using the chemical weapon, but it would do so at its own risk—that is, it might lessen its chances of receiving assistance from third States.

Similarly, and with added authority, the third States consulting together might advise the victim of the breach not to retaliate by using the chemical weapon, or to defer such retaliation.

The possibility of retaliating by the actual use of the prohibited weapon would apply only to the chemical and incendiary weapons, and not to the bacteriological weapon. The bacteriological weapon, since it strikes everyone indiscriminately, and cannot be regarded as an appreciable element of military superiority, would still be prohibited, but its use, if duly established, would give the other belligerent the right to employ other prohibited weapons by way of reprisal.

It must be remembered that the problem of penalties arises in the event of a breach of the prohibition of chemical warfare in a special form and with exceptional gravity; at the same time, this problem cannot be isolated from the more general question of penalties for breaches of the
Convention. Any special solution adopted for this or that element of the question must be in harmony with the general solution.


One complication arises from the fact that the attitude to be adopted towards belligerents by States bound by the Covenant of the League or the Paris Pact would be, or should be, determined by the circumstance that one belligerent appeared to them to be supporting a lawful war and another to be supporting an unlawful war. To take the case of States Members of the League: they would have to decide whether they should not take against certain belligerents the action provided for in Article 16 and lend assistance to States which had suffered aggression in breach of the Covenant.

In such circumstances, if the covenant-breaking State resorted to chemical warfare, additional action would have to be taken against it. If the State attacked in breach of the Covenant resorted to chemical warfare, it would perhaps suffice to refuse or withdraw the assistance to which it would have been entitled.

It would seem that, as the Disarmament Convention is to be signed by States which are not Members of the League or are not parties to the Paris Pact, it is not possible for the Convention to lay down rules for situations arising out of the existence of other pacts, or to involve in the effects of those pacts States which are not parties to them.

At the same time, the existence of these pacts, to which a large number of States are parties, is a fact that cannot be ignored. But it will be sufficient, we feel, if States parties to these instruments take them duly into account, so that, in practice, the application of the Disarmament Convention, the Paris Pact and the Covenant of the League may be satisfactorily reconciled.

There are various means of doing this. In the first place, if the States parties to the Disarmament Convention are called upon to hold a consultation as the result of a breach of the prohibition to use the chemical weapon, they may consider, as one factor in their decision, the lawful or unlawful character of the war from the standpoint of this or that belligerent. Secondly, the Disarmament Convention might contain a clause providing that the use of the chemical weapon might deprive of the assistance laid down in other treaties States which would otherwise have been entitled to such assistance. Thirdly, there would be nothing to prevent States Members of the League from deciding among themselves by some appropriate means (special protocol, amendment to the Covenant) that the use of the chemical weapon should produce the same effects as a breach of Article 16 of the Covenant.

II. CONCLUSIONS.

I. PROHIBITION OF CHEMICAL, INCENDIARY AND BACTERIOLOGICAL WARFARE.

The contracting parties renounce as against any State, whether or not a party to the present Convention, and in any war, however unlawful such war may be on the part of their adversaries:

(1) The use, for the purpose of injuring an adversary, of all natural or synthetic noxious substances, whatever their state, whether solid, liquid or gaseous, whether toxic, asphyxiating, lachrymatory, irritant, vesicant, or capable in any way of producing harmful effects on the human or animal organism, whatever the method of their use.

This prohibition shall not apply:

(a) To explosives as such, or to the noxious substances arising from the combustion or detonation of explosives, provided that the latter have not been designed or used with the object of producing noxious substances;

(b) Or to smoke or fog used to screen objectives or for other military purposes, provided that such smoke or fog is not liable to produce harmful effects under normal conditions of use.

(2) The use of projectiles specifically intended to cause fires.

This prohibition shall not apply:

(a) To projectiles specially constructed to give light or to be luminous, and, generally, to pyrotechnics not intended to cause fires, or to projectiles of all kinds capable of producing incendiary effects accidentally;

(b) To projectiles designed specifically for defence against aircraft, provided that they are used exclusively for that purpose.

(3) The use of appliances designed to attack persons by fire, such as flame-projectors.

(4) The use for the purpose of injuring an adversary of all methods for the projection, discharge or dissemination in any manner, in places inhabited or not, of pathogenic microbes in whatever phase they may be (virulent or capable of becoming so), or of filter-passing viruses, or of infected substances, whether for the purpose of bringing them into immediate contact with human beings, animals or plants, or for the purpose of affecting any of the
latter in an indirect manner—for example, by polluting the atmosphere, water, foodstuffs or any other objects.

2. **Prohibition of Preparations for Chemical, Incendiary and Bacteriological Warfare.**

All preparations for chemical, incendiary and bacteriological warfare shall be prohibited in time of peace as in time of war. This prohibition shall not apply to material intended exclusively to protect individuals against the effects of chemical, incendiary and bacteriological weapons (e.g., gas-masks), or to the training of individuals to protect themselves against the effects of the said weapons. In order to enforce the aforesaid general prohibition, it is expressly prohibited:

1. To manufacture, import, export or be in possession of chemical appliances and substances exclusively suited to the conduct of chemical, incendiary and bacteriological warfare;
2. To manufacture, import, export or be in possession of chemical appliances and substances suitable for both peaceful and military purposes with intent to use them in war should occasion arise.
3. To instruct and train armed forces in the use of chemical, incendiary and bacteriological weapons and means of warfare, and to permit any such instruction and training in their territory.

3. **Supervision of the Observance of the Prohibition of Preparations for Chemical, Incendiary and Bacteriological Warfare.**

A special Section for questions relating to preparations for chemical, incendiary and bacteriological warfare shall be set up in the Permanent Disarmament Commission. This Section shall collect all useful information that it can obtain from official and private statistics concerning the manufacture, import, export and possession of appliances and substances suited to the conduct of chemical, incendiary and bacteriological warfare. It may request Governments to furnish it with additional information and explanations. It shall receive applications from States for explanations concerning the position of other States. After examining such applications, it shall decide whether they shall be dropped or forwarded to the Permanent Commission.

4. **Penalties for the Use of Chemical, Incendiary or Bacteriological Weapons.**

I. It will be the duty of the Permanent Disarmament Commission to establish the fact of the use of chemical, incendiary or bacteriological weapons by making a declaration to that effect. The State which alleges that chemical, incendiary or bacteriological weapons have been used by its adversary will immediately inform the Permanent Commission, which will notify the State against which the charge is brought. The complainant State will at the same time apply to the doyen of the Diplomatic Corps accredited to it. The doyen of the Diplomatic Corps will appeal for assistance in establishing the actual facts to agents such as consuls or military attaches, for whom he will, if necessary, secure the assistance of doctors and chemists. He will then report to the Permanent Commission. The Permanent Commission will have the right to carry out any preliminary enquiries both in the territory subject to the authority of the complainant State and in the territory subject to the authority of the State against which the charge is brought.

II. The declaration of the Permanent Disarmament Commission establishing the fact of the use of chemical, incendiary or bacteriological weapons shall have the following effects:

1. It shall be the right and duty of third States to bring pressure to bear upon the State which has used the chemical, incendiary or bacteriological weapons, to induce it to give up the use of the said weapons, or to deprive it of the possibility of continuing to use them.
2. A consultation shall be held among third States at the earliest possible moment to determine what steps shall be taken, to decide if necessary on the punitive action of every description to be taken and to address injunctions or recommendations to the States at war.
3. The State against which chemical, incendiary or bacteriological weapons have been employed shall have the right to retaliate by the use of chemical and incendiary weapons and to make other reprisals, subject to the condition that such reprisals shall not be made outside the fighting area.

It is understood that the Permanent Commission and the meeting of States in consultation shall have the right to recommend expressly to the State in question that it shall refrain from specified measures of retaliation or reprisal.