M. DE MADARIAGA (Spain) wished it to be clearly understood that he, as Chairman, had no responsibility in the matter. He had presided over the meetings of the Air Commission, whose work was in suspense, and which had been converted into a new Committee composed, not of technical experts, but of politicians. This new Committee had not yet met. He was therefore speaking in his capacity as Rapporteur for air questions—a position which, he thought, perhaps imposed on him the duty of offering his services as intermediary between the countries concerned in the conversations which would inevitably have to be held on certain questions of paramount importance. He added that he did not feel under any obligation to convene the new Committee on air questions, of which he was not the Chairman and did not desire to be the Chairman.

M. DE VASCONCELLOS (Portugal) summarised the position with regard to the work of the Committee on Expenditure. That Committee, as represented at least by its Technical Committee, had been in permanent session since October 26th and had examined all the documents relating to the national defence expenditure of nineteen countries. It still had to examine those relating to the expenditure of nine countries. In October and November it had proceeded with the provisional discussion of the various questions submitted to it, and the Rapporteurs were at present drawing up their report on those subjects. The draft report would be presented to the Technical Committee at its meeting to be held on January 10th. It would then be discussed and adopted and might then be distributed to the members of the Committee on Expenditure towards the end of January and be examined by the middle of February. M. de Vasconcellos added that the task of the Committee on Expenditure was tremendous. Its Technical Committee had had to discuss no fewer than twenty-five subsidiary questions, some of which were particularly complicated, as could be seen from their titles. It would be understood that, in the circumstances, the Committee's final report could not be ready before the end of February.

The CHAIRMAN thanked M. de Vasconcellos for his statement, and added that all the members of the Bureau were well aware of the enormous difficulties which the Committee on Expenditure had encountered in the accomplishment of its task.

THIRTY-THIRD MEETING (PUBLIC).

Held on Monday, January 23rd, 1933, at 3.30 p.m.

Chairman: Mr. HENDERSON.

43. PROGRESS REPORT BY THE CHAIRMAN.

The CHAIRMAN recalled that, at its meeting on December 13th, 1932, the Bureau had decided to resume work on January 23rd, 1933, beginning with the examination of the report by the Drafting Committee on the question of supervision, together with the draft articles on supervision, and then to deal with the report of the Special Committee on Chemical, Bacterial and Incendiary Weapons. The Chairman recalled that the Bureau had examined M. Bourquin's first report on supervision at its nineteenth, twenty-first, twenty-second and twenty-third meetings. At its twenty-eighth meeting, the Bureau examined the second report prepared by M. Bourquin in the light of the previous discussions and decided to ask a Drafting Committee to prepare a draft on the basis of the second report and the discussions to which it had given rise.

The Drafting Committee, which had worked under the chairmanship of M. Politis, Vice-Chairman of the Bureau, now submitted draft articles accompanied by an explanatory report by M. Bourquin in the form of a preface (document Conf.D./Bureau/39). The Chairman would invite the Rapporteur, M. Bourquin, to explain the Drafting Committee's work to the Bureau.

In response to a request by the Chairman of the Committee for the Regulation of the Trade in and Manufacture of Arms, and with the Bureau's consent, the Chairman had on October 28th, 1932, sent a circular letter, 1 accompanied by a questionnaire with regard to the private and State manufacture of arms and war material, to all the States invited to the Conference. The Secretariat had as yet received replies from only nineteen States. The Chairman asked the delegations of the States that had not yet replied to the questionnaire to facilitate the Conference's work by obtaining replies from their Governments as soon as possible.

Lastly, he asked the German delegation to appoint representatives to the various Committees of the Conference, especially the Committee for the Regulation of the Trade in and Manufacture of Arms, which had been set up in that delegation's absence.

M. BOURQUIN (Belgium), Rapporteur, explained that the Drafting Committee appointed on November 15th, 1932, which had met under the chairmanship of M. Politis, had asked him to submit on its behalf the draft articles; this would constitute his third report on supervision. \(^1\) This report was distinguished from the other two because, generally speaking, it did not touch the substance of the problem, since the Bureau had already reached a decision in this respect, within the limits of its competence, of course, since it was only required to prepare proposals for submission to and discussion by the General Commission. As the Drafting Committee had had before it comprehensive decisions adopted on November 15th, 1932,\(^2\) its task had been confined to giving legal expression to the ideas on which the Bureau had reached agreement. The texts thus prepared might subsequently constitute one of the chapters of the future Disarmament Convention.

In conclusion, the Rapporteur proposed that the Drafting Committee's text should be examined, article by article.

M. NADOLNY (Germany) said that, on consulting the Minutes of the meetings held during his absence, he had specially noted, with regard to supervision, that certain of his colleagues thought it would be better to deal with this question after that of disarmament. The German delegate felt bound to say he shared this view and felt that the cart had been put before the horse. However, as the Bureau had decided to adopt this procedure, M. Nadolny would raise no objection. But as he had not taken part in the previous discussions, he would venture, if occasion arose, to make observations on some of the provisions.

The CHAIRMAN was sure M. Nadolny would have several opportunities of expressing his opinion during the discussion.

M. MELI DI SORAGNA (Italy) said the Italian delegation was prepared to collaborate with the greatest goodwill in the Bureau's discussions on supervision. He confirmed, however, what had already been said by his delegation—namely, that this detailed discussion did not in any way affect the Italian delegation's general reservation. In other words, the final decision of his delegation on the whole of this draft and on its details was subject to the general results of the Conference. He thought it necessary to give this explanation, because, although the Italian delegation thought it desirable to take part in the discussion on one point and not on another, this must not create the impression that its general reservation was not fully and completely maintained.

M. BOURQUIN (Belgium), Rapporteur, desired, in order to meet the German and Italian delegates' scruples, to read the last paragraph of his second report,\(^3\) which would remove any doubts and would make the scope of the forthcoming discussion perfectly clear. The last paragraph was as follows:

"Various delegations have pointed out on several occasions the close connection between the question of supervision on the one hand and the question of disarmament on the other, and the impossibility of pronouncing definitively with regard to the former without knowledge of the nature and scope of the solutions to be adopted in the case of the latter. These delegations have accordingly placed on record that their assent to certain of the principles formulated above was governed by their desire to facilitate the adoption of an effective system of disarmament, and remains subject to the realisation of their hopes in this respect."

There was therefore no room for doubt. The Bureau was at present dealing with a question which constituted one of the factors of the whole problem of disarmament. Various delegations had pointed out that supervision was inseparable from disarmament and had declared their readiness to accept certain solutions if efficacious solutions were found with regard to disarmament. The present assumption was, therefore, that substantial results would be achieved with regard to disarmament. It was, of course, understood that if these hopes were disappointed no arguments would be drawn from the acceptance, in respect of supervision, of what was said in his second report.

M. SATO (Japan) said that, after M. Bourquin's explanations, it was unnecessary for him to speak. The Japanese delegation had made a general reservation which was mentioned in the first footnote to paragraph 7 of Chapter III of document Conf.D.148. This reservation was for the moment maintained and was not affected by the new report of M. Bourquin, whose explanations completely satisfied the Japanese delegation.

The CHAIRMAN invited the Bureau to discuss, article by article, the text proposed by the Drafting Committee.

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A. Composition.

"Article 1. — There shall be set up at the seat of the League of Nations a Permanent Disarmament Commission composed of representatives of the Governments of the High Contracting Parties. Each such Government shall appoint one member of the Commission. Each member may be accompanied by substitutes and experts.

The Governments of the High Contracting Parties will inform the Secretary-General of the League of Nations of the names of their representatives, substitutes and experts on their nomination and on any changes being made.

"Article 2. — The Commission shall set up committees, whose number, composition and functions shall be decided by the Commission."

Articles 1 and 2 were adopted without observation.

Article 3.

"The Commission may be assisted by experts chosen by itself, not being experts appointed by the High Contracting Parties to accompany their representatives."

M. NADOLNY (Germany) asked the following questions with a view to elucidating the aim of this provision:

Would these be isolated experts selected, when the need arose, from among scientists or persons competent to deal with a special subject, or a panel of experts as provided in Chapter I, paragraph 3, of M. Bourquin’s second report (document Conf.D.148)?

How would this panel of experts be composed?

On what subject would its members be experts?

What would be their rôle as compared with the experts accompanying members of the Commission?

M. BOURQUIN (Belgium), Rapporteur, pointed out that one of the proposals in his preliminary report was for the appointment of a panel of experts by the Commission. Those who had framed this proposal had had in mind that, in addition to the experts brought by each delegation, the Commission should itself have a panel of experts. The idea underlying this proposal was that, in certain eventualities, the Commission might desire to select its own experts without reference to the purely national experts. During the Bureau’s early discussions, the idea itself was approved, but certain delegations preferred that this procedure should be regarded as a possibility and not as an obligation. It was agreed not that there should be a panel of experts but that the Commission should be able, if it thought fit, to set up such a panel. Hence, the wording of Chapter I, paragraph 3, of document Conf.D.148. That had been the second stage of the idea. The third stage was as follows: With regard to the expression "panel of experts", certain members of the Drafting Committee had observed that the experts to whom the Commission might have recourse would not necessarily constitute a panel in the technical sense of the term. For this reason, the word "panel" had been omitted from the present text in order to give the necessary flexibility.

Mr. EDEN (United Kingdom) said that the United Kingdom Government held the same view as the Italian delegation, whose declarations he supported. He also thanked the Rapporteur for his preliminary explanation. The United Kingdom delegation proposed that the English text of Article 3 be amended as follows to make it more clear:

Substitute "other than any experts" for "not being experts".

Mr. Eden’s proposal was adopted.

Article 3, as amended, was adopted.

Articles 4 and 5.

"Article 4. — The members of the Commission, their substitutes and experts, and the experts and officials of the Commission, when engaged on the business of the Commission, shall enjoy diplomatic privileges and immunities.

"Article 5. — The Secretary-General of the League of Nations shall provide the Secretariat of the Commission."

Articles 4 and 5 were adopted without observations.

B. Functions.

"Article 6. — It will be the duty of the Commission to watch the execution of the present Convention.

"Article 7. — The Commission shall receive all the information which the High Contracting Parties are bound to communicate to the Secretary-General of the League, etc."
of Nations in pursuance of their international obligations in this respect. The Commission may request the High Contracting Parties to supply, in writing or verbally, any supplementary particulars or explanations in regard to the said information which it may consider necessary."

*Articles 6 and 7 were adopted without observations.*

**Article 8.**

"The Commission may take into account any other information which may reach it from a responsible source and which it may consider worth attention."

M. Nadolny (Germany) noted that under this article the Commission could take into account, not only the information furnished by the High Contracting Parties, but also information "from a responsible source" (d'une source autorisée). M. Nadolny was not quite clear as to the exact meaning of this expression. He thought the explanation must be sought in M. Bourquin's first report, but this explanation in itself appeared somewhat inadequate. It was essential to state from what source the Commission was authorised to obtain information, as otherwise so obscure a provision might subsequently lead to divergencies in interpretation when the Commission's rules of procedure were being drawn up.

M. Bourquin (Belgium), Rapporteur, explained that Article 8 was simply a reproduction of Article 49, paragraph 2, of the Preparatory Commission's draft. At its meeting on November 15th and at previous meetings, the Bureau had unanimously agreed that the Permanent Disarmament Commission, as appointed and organised under the Convention, should have available at least the means of supervision and the information accorded it under the Preparatory Commission's draft, the arrangements laid down in that draft constituting a minimum. The Bureau's attitude was based mainly on the General Commission's resolution of July 23rd, 1932, which laid down the principle that a Permanent Disarmament Commission should be set up with such extension of its powers as might be deemed necessary. Consequently, the General Commission had contemplated, not the restriction of the Permanent Commission's powers, but a possible extension. With this in mind, the Bureau had accepted the Preparatory Commission's draft as a minimum.

What was to be understood by "a responsible source"? In reply, the Rapporteur could only repeat what was said in the report annexed to the Preparatory Commission's draft, which the German delegate had certainly in mind. M. Bourquin had himself taken part in the Preparatory Commission's discussions and had prepared this part of the report. All the members of the Preparatory Commission had understood that it was essential for the Permanent Disarmament Commission to have other sources of information in addition to that supplied officially by the Governments in execution of their international obligations—that was to say, Part IV of the draft. To restrict the information it might take into account to the information supplied by the Governments under the above conditions would prevent the Permanent Commission from carrying out its work satisfactorily. No doubt a selection would have to be made among this mass of information constituting information other than that supplied by Governments. Obviously, the Commission would receive information from anonymous sources and information to which the Commission would not attach importance. By "responsible source", the sense of which was clear though it was not perhaps a technical expression, was meant, for example, information which had some authority in view of the nature of the body from which it came. For example, if the Federation of League of Nations Societies drew the Permanent Commission's attention to a fact, could it be said that the information had not come from a "responsible source"? Everyone could, of course, think of extreme cases. Selection would be essential, and it should be made according to certain criteria and rules.

The Preparatory Commission had been asked whether these rules should be embodied in the Disarmament Convention, or whether they should not rather be included in the Permanent Commission's rules of procedure. There was one obvious difference between the two solutions. The Disarmament Convention would be concluded for x years, but, even if provision were made for its revision at a relatively early date, it would hold good for several years and must be applied, during that time, as it stood. It would, therefore, to some extent be immutable. The Permanent Commission's rules of procedure, however, could be modified to suit the needs of the moment, and would be much more flexible. To draw a comparison: there was the same difference between the two solutions as between a constitution and a law, and the Rapporteur thought it much wiser to fix the criteria by which the degree of responsibility of the source of the information would be judged in the Commission's rules of procedure. That was the meaning which the Preparatory Commission attached to its text and the meaning of the present text.

*Article 8 was adopted.*

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1 Document Conf.D.140.
Article 9.

"Each member of the Commission shall be entitled, on his own responsibility, to have any person heard or consulted who is in a position to throw any light on the question which is being examined by the Commission."

M. NADOLNY (Germany) wondered whether this provision was in any way useful. Why should a member of the Commission—that was to say, a Government representative—be able to suggest that the Commission should hear a particular person on his own responsibility—that was to say, on the responsibility of his Government? Would it not be more natural and frank for the Government representative himself to submit, on behalf of his Government, the information he had received from this person, instead of hiding behind an individual whose motives might be of a very diverse nature?

Mr. EDEN (United Kingdom) shared the German delegate's feeling as to the present form of the provision under discussion. If he understood this clause rightly, any member of the Commission would be entitled to ask that a person be heard, even contrary to the desire of the Government of the country of which that individual was a national. The person in question would, as it were, become the accuser of his own Government. This must not be the aim of the provision. To prevent any likelihood of abuse, while at the same time giving satisfaction to the German delegate, Mr. Eden suggested that the words "The Commission shall be entitled" be substituted for "Each member of the Commission shall be entitled". This amendment would remove any possibility of abuse, while not diminishing the scope of the provision.

M. BOURQUIN (Belgium), Rapporteur, was quite prepared to accept this amendment. On reflection, he thought the text of Article 9, which was taken from the Preparatory Commission's draft, was perhaps not very well adapted to the new system for the composition of the Permanent Commission. It must not be forgotten that, under the Preparatory Commission's system, the members of the Permanent Commission were not Government representatives but delegates who, although appointed by the Governments, did not represent them. As under the new conditions the Permanent Commission would consist of Government representatives, Mr. Eden's wording was better.

M. MASSIGLII (France) recognised that the present text of Article 9 was not altogether suitable as it related to a previous stage of the work, but thought that, if Mr. Eden's amendment were accepted, it should be specified that the Commission must decide by a majority. M. Massigli seemed, moreover, to remember that one reason for including the provision in question in the draft was to provide that, when highly technical questions which might arise were being examined, even in a plenary meeting of the Commission, any delegation might desire to ask an expert to speak. M. Massigli thought the Rapporteur would have no difficulty in embodying the necessary wording in the text.

Mr. WILSON (United States of America) wondered whether satisfaction could not be given to the Rapporteur and the other members of the Bureau who had spoken by simply deleting Article 9 and amending Article 3 in the sense that the Commission might consult any person it desired to hear.

M. BOURQUIN (Belgium), Rapporteur, said, with regard to M. Massigli's remarks as to it being possible for a delegation to ask specially qualified persons to speak on technical matters, that the solution was already provided, as each delegation could be accompanied by experts. It would therefore suffice for the particular delegation to employ the person concerned as an expert.

As to the formula required to cover Mr. Eden's idea, the Rapporteur did not entirely agree with Mr. Wilson. This chapter dealt with the Permanent Commission's functions—that was to say, the means of supervision available to it—whereas Article 3 came in the chapter on composition—that was to say, the chapter dealing with the personnel of the Commission. It would seem essential to insert a special article in the chapter on functions, where—it must not be forgotten—the sources of information were enumerated restrictively. The Rapporteur suggested that Article 9 be amended in the sense of Mr. Eden's observations as follows:

"The Commission may hear or consult any person who is in a position to throw light on the question which is being examined by it."

The CHAIRMAN thought that rather than return to Article 3, which was already settled, a solution should be provided in Article 9. It had been suggested that the Commission itself, and not the individual members, should be entitled to have any person heard. If a person were in possession of information which would throw light on a particular question, he must be in a position to pass it on to someone. If for this purpose there must be a debate in the Commission, the latter would have to meet and there would be some delay in communicating
the information. One solution would be to authorise the Bureau of the Commission, consisting of its Chairman, Vice-Chairman and Secretary—that was to say, the Secretary-General—to receive the request of an individual member of the Commission for the hearing of a private person, and to decide whether the matter were sufficiently important and valuable for the Commission to hear him. This intermediate solution would prevent the abuse to which the present text might lead, while avoiding the need for putting into motion the complicated machinery for calling together the whole Commission.

Mr. Wilson (United States of America) said that, in view of the Rapporteur’s observations, he withdrew his proposal with regard to Article 3.

M. MoreSCO (Netherlands) wondered whether the simplest solution would not be to leave the Commission to lay down in its rules of procedure the procedure to be followed. The question was not sufficiently important to be settled in the Convention itself. If, under the Convention, the Commission was entitled to hear private persons, it could also delegate to its Bureau the right to take a decision.

The Chairman thought the Bureau should first decide whether the first three words of Article 9 should be deleted, as Mr. Eden had suggested.

Mr. Eden (United Kingdom) was prepared to accept the Chairman’s previous suggestion. He merely feared that this would place a heavy responsibility on the Bureau of the Commission, but if his colleagues preferred this suggestion he would accept their view.

The Chairman asked the Rapporteur to give the Commission his views.

M. Bourquin (Belgium), Rapporteur, said that he had not had time to consider the Chairman’s suggestion sufficiently to express an opinion. He saw in it advantages and possibly some danger—for example, the danger to which Mr. Eden had drawn attention. As for the moment the Bureau was simply drawing up proposals for the General Commission, would it not be better to submit both solutions? Mr. Eden’s text of Article 9 might be put before the General Commission, together with the Chairman’s suggestion, and the General Commission could discuss them and decide between them. In the meantime, the delegations would be able to consider the matter and might settle the question in more satisfactory conditions than were at present possible.

The Bureau decided to substitute M. Bourquin’s new text for Article 9.

Immunity.

The Chairman read the passage in M. Bourquin’s report entitled “Reference: Immunity,” and asked the members of the Bureau whether they wished to discuss the other articles immediately and then take the question of immunity, or whether they preferred to discuss the latter question at once.

M. Bourquin (Belgium), Rapporteur, said that he was prepared to comply with the Bureau’s wishes, but he saw no reason why the question of immunity should not be discussed immediately, since this was the correct order and the question would in any case have to be examined.

The Chairman opened the discussion on the question of immunity.

M. Bourquin (Belgium), Rapporteur, could only repeat what he had said in his report—namely, that he had to transmit to the Bureau an admission of failure. The Bureau’s decision of November 15th, 1932, contained the following passage (document Conf.D./Bureau/39):

“8. Subject to an agreement as to the legal details involved in the application of such a principle, the Bureau has declared in favour of immunity for persons denouncing violations of the Disarmament Convention from all repressive measures.”

This text, which had been approved after lengthy discussion, showed that the Bureau felt both a desire and a fear—a desire to protect persons who wished in good faith to facilitate the Commission’s work by denouncing violations, and the fear that the protection thus accorded in case of denunciations might involve abuses. The Bureau had realised the impossibility of drawing up any absolute formula on such a subject and of the necessity of making distinctions, but it had not stated what distinctions should be made. Under these circumstances, it had been the Drafting Committee’s task not only to find a legal formula but also to analyse the

problem. It had made a conscientious attempt to do so, but without reaching any satisfactory conclusion.

There was no doubt that in some cases protection would be useful. This would be so when the denunciators were persons acting in good faith, but account should also be taken of the necessity of considering other circumstances in which unrestricted immunity would protect undeserving cases. It was possible to perceive a line of demarcation in practical cases, but it appeared to be very difficult for the Drafting Committee to draw such a line in a convention.

M. POLITIS (Greece) thought the logical conclusion to be drawn from the impossibility of defining immunity was to abandon the idea and omit it from the Convention.

M. Motta (Switzerland) recalled that, at a previous meeting, he had supported the idea that immunity should be granted to persons denouncing a derogation even if by doing so they ran the risk of offending their own Government. In such a case, immunity was in conformity with a great moral postulate. He seemed to remember that, while all the members had agreed on the principle, they found it very difficult to reach a legal formula expressing this postulate.

He also remembered that the Bureau had already been in a similar position to that of to-day, and he would have thought it better to leave the question open, so that the General Commission might discuss it and possibly find the formula which was at present lacking. He would have difficulty in admitting that law should resign its rights and admit that it was unable to express a postulate of morality; in his opinion, it should not be stated that a formula could not be found. The question should be left open, at any rate in such a way that, if any State wished to raise it again in the General Commission, it could do so without exposing itself to the objection that the Bureau had already examined the question and found it quite impossible to reach a legal formula. He still thought it indispensable to find a formula which would enable this moral postulate to be respected.

M. POLITIS (Greece) thought it might throw some light on the present discussion if he were to describe the work of the Drafting Committee on the question of immunity. The Drafting Committee had considered the problem at great length. The difficulty did not consist in bringing law and morality into line, since law was both precise and elastic enough to express any idea whatever. The difficulty lay at the root of the problem. The Drafting Committee had been unable to define the conditions which, in the present state of morality, would enable an adequate formula to be found for ensuring immunity. It had sifted the question so thoroughly that it had found that, even if a formula were reached, it would be impossible in the present state of morality to protect the person in question, since he would be in an impossible position, if not from the legal, at any rate from the social point of view. The Drafting Committee had wondered whether it was not the question itself which was insoluble. The result of these discussions had been the admission of failure mentioned by the Rapporteur.

M. Massigli (France) said that his Government would much regret if a positive solution for such a serious problem could not be found. It had often been said that the Conference should reach its decisions as far as possible in public and should, in a certain sense, be placed under the control of international public opinion, just as it was world opinion which would supervise the execution of the undertakings embodied in the future Convention. It would be most regrettable if the public opinion of the various countries had not also the means to make itself heard, for it should not be forgotten that the efficacy of the Convention would to a great extent depend on the desire of public opinion in each country to respect it. It was a fact that the countries which would be signatories to the Convention differed greatly as regards their legislation concerning the Press, the right to hold meetings, etc. In certain of those countries, nothing could be printed until it had received the Government’s visa. Obviously, as far as the Convention was concerned, the situation would be very different in those countries from those with a free Press. In certain countries, the idea of the crime of high treason was particularly wide; elsewhere, it was much better defined. The position of those two countries would not be the same when it came to applying the Convention.

M. Massigli did not overlook the obstacles encountered by the Drafting Committee, but he wondered if, in order to get over the difficulty, certain criteria could not be sought. Take the case of a denunciation of such a serious nature as to bring the Permanent Commission into action on the initiative of a Government: the enquiry carried out established the correctness and gravity of the facts. The persons who had taken the initiative in such a denunciation must not be treated in the same manner as if the enquiry had shown that the facts were of trifling account. The problem could be settled either in the Bureau or in the General Commission; but to declare the question closed was a solution which must be ruled out. The French Government was of opinion that the matter should remain open and be brought before the General Commission.

1 See page 86.
endeavour to produce formula which the Bureau could examine at its next meeting.

Commission's activities and that task it must perform. He considered that the Drafting
referred to the General Commission at that stage. It was the Bureau's task to prepare the
its responsibility to others. The Chairman was not of the opinion that the question should be
was that M. Motta had concluded with a suggestion that the Bureau should pass on
consideration by the General Commission.

in good faith that the Convention had been violated, they must not declare this to be a
publicity. Everywhere, in all States, there must be the fullest possible light as to the manner in

take too long. In agreement with M/I. Massigli and M. Benes, he therefore confined himself to
M. Motta agreed with the German delegate that an attempt to discover a formula at once would

disclosure of State secrets, which was the basis of the crime of high treason. On the other hand,
which all were applying the Convention. If, therefore, one of their nationals were to reveal

dealing with supervision was valueless. It was, nevertheless, unquestionable that if no means
were discovered of solving the problem it would mean a serious gap in that chapter. The
drafting was not entirely accurate and that there was indeed a wide divergence between the

qualifications of the Drafting Committee and hoped that it might be through the members of
the latter and not through others that a formula would be found.

M. NADOLNY (Germany) drew M. Benes's attention to the fact that the analogy he had
drawn was not entirely accurate and that there was indeed a wide divergence between the
two cases. In minority matters, the persons concerned availed themselves of a recognised right
to appeal to the League. The case under discussion was that of a simple denunciation, the moral
usages of the country concerned. If the guarantee of immunity was not to be found in the
usages of a given country, it was all the more essential to embody it in the Convention. The
elaboration of a legal formula was of less moment than the inclusion of the principle in the
Convention.

Mr. Wilson (United States of America) thought it would be regrettable that the question
of immunity should be regarded as closed. The Bureau might affirm the desirability of finding
appropriate terms for a principle which had been unanimously regarded as reasonable, just
and indispensable. On the other hand all the members of the Bureau recognised the great

drawn was not entirely accurate and that there was indeed a wide divergence between the

Mr. Wilson (United States of America) thought it would be regrettable that the question

M. Motta (Switzerland) thanked M. Politis for his explanations of the Drafting
Committee's work. He persisted in the belief that the question should not be abandoned. As
had been pointed out, the issue had a bearing on the guarantees as to the loyal execution of
the Convention and was of importance. It was of course not vital, and even if the Convention
were to contain no such provision it would be an exaggeration to suggest that the chapter
dealing with supervision was valueless. It was, nevertheless, unquestionable that if no means
were discovered of solving the problem it would mean a serious gap in that chapter. The
guarantee that the Convention would be executed remained in the greatest possible measure of
publicity. Everywhere, in all States, there must be the fullest possible light as to the manner in
which all were applying the Convention. If, therefore, one of the nationals were to reveal
in good faith that the Convention had been violated, they must not declare this to be a
disclosure of State secrets, which was the basis of the crime of high treason. On the other hand,
M. Motta agreed with the German delegate that an attempt to discover a formula at once would
take too long. In agreement with M. Massigli and M. Beneš, he therefore confined himself to
asking that the question be not regarded as shelved. It must remain absolutely open to see whether it remained open or not.

M. BENES (Czechoslovakia) agreed with the German delegate that the two cases were not
entirely analogous, but the difference favoured his own argument. When a private individual
gave proof of his desire to see the State of which he was a national abide by its international
undertakings, his action was morally on an infinitely higher plane than when defending his
own selfish interests.

M. Motta (Switzerland) thanked M. Politis for his explanations of the Drafting
Committee's work. He persisted in the belief that the question should not be abandoned. As
had been pointed out, the issue had a bearing on the guarantees as to the loyal execution of
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take too long. In agreement with M. Massigli and M. Beneš, he therefore confined himself to
asking that the question be not regarded as shelved. It must remain absolutely open for consideration by the General Commission.

The CHAIRMAN had listened to M. Motta's remarks with keen interest. His only regret
was that M. Motta had concluded with a suggestion that the Bureau should pass on its
responsibility to others. The Chairman was not of the opinion that the question should be
referred to the General Commission at that stage. It was the Bureau's task to prepare the
Commission's activities and that task it must perform. He considered that the Drafting
Committee, which comprised members of the eminence of M. Politis and M. Bourquin, might
endeavour to produce formulae which the Bureau could examine at its next meeting.

The CHAIRMAN had listened to M. Motta's remarks with keen interest. His only regret
was that M. Motta had concluded with a suggestion that the Bureau should pass on its
responsibility to others. The Chairman was not of the opinion that the question should be
referred to the General Commission at that stage. It was the Bureau's task to prepare the
Commission's activities and that task it must perform. He considered that the Drafting
Committee, which comprised members of the eminence of M. Politis and M. Bourquin, might
endeavour to produce formulae which the Bureau could examine at its next meeting.
M. BOURQUIN (Belgium), Rapporteur, was at the Bureau's disposal, and he thought that
the same would be true of M. Politis. He nevertheless thought it desirable to suggest an
addition to the Chairman's proposal—namely, that those delegations which had given their
adherence to the principle of immunity—a principle which the Bureau, moreover, had accepted
in its general terms—should submit definite proposals.

On November 15th, 1932, the Bureau had been unanimously in favour of a somewhat
vague idea, and it was necessary to have done with vagueness if an explicit formula was to be
devised, a task which the Drafting Committee had attempted in vain. On this particular point,
indeed, the Drafting Committee had undertaken a task which was not entirely within its
province. The task was not to discover a legal formula to embody a definite conception :
it was the definite conception which was lacking. It would therefore be most valuable if the
deleagations specially interested in the question would co-operate with the Drafting Committee
by putting forward concrete proposals. Otherwise, there was little hope that the Committee's
success would be any greater than on the previous occasion.

M. MASSIGLI (France) considered that the delegations in question should not submit
texts, but merely make suggestions. This would be easier if the Rapporteur would inform
them of the precise objections which the Drafting Committee had encountered.

M. BOURQUIN (Belgium), Rapporteur, supported the suggestion.

The CHAIRMAN, in conclusion, announced that M. Politis and the Rapporteur would again
endeavour to devise a formula which the Bureau would discuss at its next meeting.

THIRTY-FOURTH MEETING (PUBLIC)
Held on Tuesday, January 24th, 1933, at 3.30 p.m.

Chairman: The Right Honourable A. HENDERSON.

45. SUPERVISION: EXAMINATION OF THE THIRD REPORT BY M. BOURQUIN (BELGIUM) AND
OF THE DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (Continuation).1

"Article 10.

"Any High Contracting Party, whose attitude may have been the subject of criticism,
shall be entitled to request the Commission to conduct in his territory such investigations
as may be necessary in order to verify the execution of the obligations of the said Party
under the present Convention.

"On receipt of such a request, the Commission shall meet at once in order to give
effect to it, to determine the scope of the investigation within the limits of the criticism
which has been made, and to lay down the conditions in which the investigation is to
take place."

M. NADOLNY (Germany) thought that Article 10, which provided that each State should
be entitled to request that investigations be conducted in its own territory, was somewhat
dangerous. For instance, in the case, referred to in the report, of criticism on the part of
the Press of the attitude of a State, strong pressure could thereby be brought to bear upon that
State. If it did not ask for investigations against itself, it would be open to the worst suspicions.
It would therefore be compelled to make that request. This result might be brought about
by means of accusations devoid of all foundation, made perhaps by circles which, for some
reason, were anxious to poison the atmosphere and to disturb friendly international relations.

He thought that, in every case where there were serious reasons to believe that a State had
violated the provisions of the Convention, some other State would be found to bring the matter
before the Commission in the general interest. In the course of the procedure which would be
instituted in consequence of this complaint, it would always be possible for the State in question
at once to declare that it accepted the investigations of its own accord and in its own interests,
so as to prove that the charges brought against it were unfounded.

M. Nadolny did not agree, therefore, with the Rapporteur, who thought that criticism
which gave rise to an investigation need not necessarily have an official character, and that
a Press campaign, for instance, might suffice. In his opinion, on the contrary, provisions which
would enable any private circles to create a situation necessarily leading to an investigation

in the territory of a State, and consequently to serious difficulties, should be avoided. He thought that full responsibility for such a grave measure as an investigation should always be left to the Government of another State, and he accordingly proposed that Article 10 should be deleted.

M. Bourquin (Belgium), Rapporteur, explained that Article 10 was the exact expression of the provisional decision taken by the Bureau at its meeting on November 15th, and reproduced in Chapter III, paragraph 6, of the second report (document Conf.D.148). This article should be taken in conjunction with Article 11, which related to local investigations decided upon by a certain majority of the Commission at the request of a Government. Any Government had the right to ask, in virtue of Article 11, that an investigation should be conducted in the territory of another State, and it was for the Commission to grant or refuse that request. During the discussion of this point by the Bureau, the delegation of the United States of America had put forward the proposal which had served as a basis for Article 10 and had supported it with arguments which had led to the unanimous approval by the members of the Bureau of Article 10. The United States delegate had held, in particular, that if a Press campaign were instituted at any moment against some other country which was accused of violating its obligations, and if no Government took the initiative of submitting to the Commission under Article 11 a request for an investigation, it would be necessary to enable the accused State to clear itself of the charges brought against it by asking for an investigation to be conducted in its territory for this purpose.

Mr. Wilson (United States of America) reminded the Bureau of what he had said at the last meeting. When supervision and control were spoken of, there was always an impression that a guilty State was contemplated. As a matter of fact, cases would also arise in which the accused State would be innocent; there was no more convincing means of proving its innocence than for it voluntarily to invite investigations. If requested by a third State, the enquiry would not have the same moral effect.

He thought that the word "attitude" in this article was taken in too wide a sense, and proposed to supplement it as follows: "... whose observance of the execution of the present Convention may have been the subject of criticism . . ."

At M. Nadolny's request, a vote was taken on the German proposal to delete Article 10. The Bureau decided in favour of the maintenance of this article.

It also accepted the amendment proposed by Mr. Wilson. Article 10, as amended, was adopted.

"Article 11.

"At the request of one or more of the High Contracting Parties, the Commission may decide to have investigations conducted on the territory of any High Contracting Party, and to take a decision upon it. Its decision, which will determine, if necessary, the scope of the investigation, shall be taken by a (two-thirds majority of the members present at the meeting)."

M. Nadolny (Germany) emphasised the importance of this article and recalled the words of the Italian representative warning the Bureau against certain means of supervision which might be vexatious or liable to cause offence or be unnecessarily irritating. It could not be denied that investigation could be in the highest degree irritating. If it were, nevertheless, desired to employ this means of supervision, recourse should only be had to it in the last resort, when all other means had been exhausted. He therefore thought that there should be no question of investigation, except in the case of Article 15—that was to say, when one of the contracting parties was of opinion that the provisions of the Convention had been infringed and had addressed a complaint to the Commission. The Commission would then examine the matter and would hear the accused party. It was only when it did not succeed in clearing up the matter by this means that the investigation could be contemplated.

M. Nadolny did not see what was the difference between the procedure laid down in Article 15 and that provided for in Article 11. Actually, anyone asking for an investigation on the territory of another State was merely lodging a complaint against it because he considered
that the Convention had been infringed. In M. Nadolny's view, therefore, Article 11 should be combined with Article 15. If, notwithstanding the objections of principle which could be brought forward, the Bureau finally decided to adopt local investigation as a means of supervision, he was of opinion that, for the application of such a grave measure, a majority vote of the Commission should not be regarded as sufficient. Even a qualified majority would be inadequate. In the case of such a grave and trenchant measure, unanimity on the part of the Commission—excluding, of course, the votes of the State which had lodged the complaint and the State against which it had been brought—was, in his view, essential.

M. BOURQUIN (Belgium), Rapporteur, replied to M. Nadolny's objections as follows:

As regards the question of the inclusion of Article 11 in the Convention, was it necessary to have a separate article dealing with local investigations or should this article be combined with Article 15, which dealt with the procedure regarding complaints? When the Bureau had dealt for the first time with supervision and local investigations, it had had to consider several formulæ. The oldest formula, which had already been before the Preparatory Commission, proposed that a local investigation should be allowed only in the case of a complaint. Another formula, that of the Soviet delegation, stated that investigations would be carried out if there were "reasonable suspicion of a breach" of the Convention. These two formulæ resembled each other in some ways and differed in others. In both cases, the object was to avoid irresponsible action, but the first formula stipulated that a formal complaint should be lodged—that was to say, that the whole procedure regarding complaints should be set in motion. After discussion, the Bureau had decided in favour of an intermediate solution. It had not desired that the procedure relating to complaints—which was somewhat irritating—should be applied in every case. At its meeting on November 15th it had decided that, "at the request of one or more members of the Commission, acting in the name of their Governments, the Commission may decide to conduct local investigations". The request represented a compromise between a formal complaint and the simple decision of the Commission. This explained why the text dealing with local investigations had not been inserted in Article 11, which dealt with the procedure for complaints.

In reply to M. Nadolny's second suggestion, M. Bourquin showed that the decision to carry out a local investigation could not be made conditional upon all other means of enquiry having been exhausted. If this investigation were carried out only in the last resort, it might be absolutely useless because it was delayed. It should be possible for an investigation to be conducted before there had been time for the facts which it was proposed to examine to disappear or be modified. Speed might be an essential element, if an investigation were to be effective.

As regards the question of the majority raised by M. Nadolny, the Bureau had already taken a decision, but, as was stated in the report, this would be incomplete until the question of the quorum necessary to enable the Commission to take a valid decision had been settled. No one had thought of proposing that its resolutions should be adopted unanimously. To require unanimity in this case would be tantamount to doing away altogether with the article under discussion.

M. NADOLNY (Germany) pointed out that, in the case of Article 11 as much as in that of Article 15, a complaint was necessary, and, in order to make this quite clear, he proposed that the two texts should be combined. In his opinion, the investigation procedure was of such a grave nature as to make its application out of the question, except in the very last resort. Even then, the factor of speed was not altogether excluded; full particulars might first be collected and, after that, the investigation could be made.

Moreover, he was convinced that, for such a grave measure, a simple majority of the Commission could not be regarded as sufficient and that unanimity must be required as in the case of certain decisions taken by the League.

Mr. EDEN (United Kingdom) made a proposal which he thought would satisfy M. Nadolny. He suggested that Article 15 should precede Articles 10 and 11, which, in his opinion, was the logical order. The conditions under which local investigations should be conducted would first be laid down and the procedure to be followed would be indicated later.

He also proposed the insertion in paragraph 1 of Article 11 of the words "of alleged infractions of the Convention brought to the notice of the Commission". He reminded the Bureau that it had been agreed that no itinerant commission should be set up, but the explanations given by the Rapporteur seemed to show that this possibility was not excluded.

In the third paragraph of Article 11, Mr. Eden proposed the suppression of the words "if necessary"

The question of the majority required for valid decisions by the Commission regarding local investigations had been discussed at length and was, in fact, a very important one. Personally, he did not think it possible in such a case to require unanimity of a Commission including sixty or more members.

On the basis of the final provisions of the draft Convention (Article 55, paragraph 2) and Article 15, paragraph 10, of the Covenant, the following procedure might be adopted: unanimity would be required among the States Members of the Council of the League, plus one or two other specially appointed States, and the decision should be approved by the majority of the remainder. This procedure would represent a compromise between the German proposal and the Rapporteur's suggestion.

M. Massigli (France) did not see any objection to the reversal of the order of Articles 10, 11 and 15, provided that it was understood that the application of Article 11 was not to be made dependent upon the exhaustion of all the procedure provided under Article 15; otherwise investigation on the spot would be entirely a dead letter.

Moreover, it was clear that the investigation could only cover infractions falling within the scope of the Convention.

M. Massigli also agreed that the words "if necessary" in the third paragraph of Article 11 might be regarded as superfluous.

As regards the size of the majority by which the decision under Article 11 should be taken, there were two extremes, according as it was desired to make investigations as difficult or as easy as possible. The French Government had adopted the second attitude. As the principle of investigations applied equally to all States signatories to the Convention, it could not be objectionable to any one of them.

M. Massigli thought that Mr. Eden's suggestion went too far, as it granted a real right of veto to certain Powers; in his view, all the Powers must, in this matter, be on a footing of equality. Only the number could be the decisive factor.

The position of the French delegation was therefore as follows: investigations should be made as easy as possible and should be decided by as small a majority as possible.

M. Nadolny (Germany) agreed to the amendment to Article 11 suggested by Mr. Eden and thanked him for the compromise which he had proposed. As the proposed method of voting altered the situation to some extent, he would like to have time to consider it before coming to a decision.

The proposal to reverse the order of the articles did not entirely meet his objections. The aim of the German proposal that Articles 10 and 15 should be combined in a single article had been not to retain the exceptional character of investigations on the spot, but, on the contrary, to make them an integral part of the procedure for dealing with complaints.

M. Leitmaier (Austria) thought that there was some justification for the words "if necessary" in Article 11, as the Commission might very well decide that there was no need to proceed to an investigation.

He recalled the fact that, in the Committee of Jurists and at a meeting of the Bureau, the Netherlands delegate had proposed that the decisions of the Commission should not be valid unless taken by a majority consisting of a certain fixed percentage of the States which had ratified the Convention.¹

M. Meli di Soragna (Italy) stated that the Italian delegation was prepared to accept the reversal of the order of the articles as proposed by Mr. Eden.

Between the two opposing views regarding the method of voting, the Italian delegation would prefer a middle path, and, in this matter, also supported the suggestion of Mr. Eden.

M. Bourquin (Belgium), Rapporteur, said that he had no objection in principle to the reversal of the order of Articles 10, 11 and 15, as suggested by Mr. Eden. He pointed out, however, that the present order was logical. The chapter dealing with functions included Articles 7 to 13, in which the methods of supervision were set out. These articles formed a single whole, and in them was stated what information was to be collected, what persons consulted and in what form enquiries on the spot could be made. After having specified the sources of information, the complaint itself was then dealt with. It was, moreover, possible to follow an exactly opposite order, but he doubted whether it was advisable to split up the articles dealing with sources of information.

The amendments proposed by Mr. Eden to the text of Article 11 were of minor importance, and M. Bourquin agreed to the insertion in the first paragraph of the words "of alleged infractions of the Convention".

He shared the opinion of the Austrian delegate as to the advisability of retaining the words "if necessary" in the third paragraph. Provision should be made for cases in which the Commission did not accede to the request for an investigation on the spot.

He thought that the method of voting should be considered from the practical point of view. There were two opinions: on the one hand were those who were not much in sympathy with investigations on the spot and wished to make them difficult; and on the other were those who had confidence in such investigations and wished to make it easy to set them in motion. It was advisable, if it were desired to achieve results, to find some sort of compromise taking into account these two opinions.

M. Bourquin was not much in favour of the formula proposed by Mr. Eden, as it amounted to granting a right of veto to certain Powers—those which were Members of the Council, plus two others. If certain Powers were enabled to hold up the procedure, the results would, in practice, be almost the same as those produced by requiring unanimity, of which M. Nadolny was in favour. It would perhaps be as difficult to obtain unanimity among the great Powers in the most important cases as among the members of the Commission. This procedure would involve a distinction between the High Contracting Parties which would be somewhat disagreeable for some of them. It was understood that the great Powers sometimes enjoyed a special position, and more especially that a Convention could not come into force until they

¹ See page 87.
had ratified it. The position would not, however, be the same when it was merely a question of ascertaining whether certain undertakings entered into on the basis of equality had been loyally observed.

The Bureau decided to invert the order of the articles, Article 15 being placed before Articles 10 and 11.

It accepted the amendment proposed by Mr. Eden in regard to the first paragraph of Article 11.

It also agreed to delete the words "if necessary" and to insert the words "if such is decided upon" after the word "investigation" in paragraph 3 of Article 11.

Finally, the Bureau pronounced, by nine votes to three, in favour of the principle that decisions should be taken by a two-thirds majority of the members present at the meeting of the Commission.

"Article 12.

"The result of the investigations decided upon in accordance with Article 10 or 11 shall be embodied in each case in a special report by the Commission.

"The High Contracting Parties shall promptly advise as to the conclusions of the report.

"Article 13.

"Independently of the investigations referred to in Articles 10 and 11, the Commission shall be entitled to conduct periodic investigations in regard to States which have made a special agreement to that effect.

"Article 14.

"The Commission shall make, at least once a year, a report showing the situation as regards the execution of the present Convention, and containing any observations which this situation may suggest to it.

"Article 15.

"If one of the High Contracting Parties is of opinion that the provisions of the present Convention have been infringed, or that a threat of infringement exists, such Party may address a complaint to the Commission.

"The Commission will invite the High Contracting Party whose attitude has produced the complaint to supply it with all explanations which may be useful. The Commission will proceed to investigate the matter, and may employ, with this object, the various methods of obtaining information provided for in the present Convention.

"The Commission will draw up as soon as possible a reasoned report on the result of its investigation.

"The High Contracting Parties shall promptly advise as to the conclusions of the report.

"Article 16.

"Each member of the Commission shall be entitled to require that, in any report by the Commission, account shall be taken of the opinions or suggestions put forward by him, if necessary in the form of a separate report."

Articles 12 to 16 were adopted without observations.

"Article 17.

"All reports by the Commission shall be immediately communicated to the High Contracting Parties and to the Council of the League of Nations, and published."

M. Nadolny (Germany) observed that Article 17 provided for the publication of all the Commission's reports simultaneously with their communication to the Governments and to the Council of the League. He thought it would be preferable not to follow such a procedure invariably. It was conceivable that a case might occur in regard to which immediate and complete publication might lead to undesirable consequences; there might, for example, be a risk that such publication would compromise the efforts being made to restore international order without further complications. M. Nadolny therefore suggested that a formula should be employed which would leave the Commission itself free to decide when and to what extent the reports should be published.

M. Bourquin (Belgium), Rapporteur, saw no objection to accepting M. Nadolny's proposal. He proposed to say that the Commission's reports "shall be made public in the conditions determined by the Commission".
M. MORESCO (Netherlands) asked if it would be really useful to prevent the immediate publication of the reports; if, indeed, they were to be sent to all the contracting parties, at least sixty copies would have to be prepared and the risk of leakage in such a case was obvious. If it were really desired to prevent the publication of the reports, the Commission would have to be empowered to refrain from sending them immediately to the contracting parties.

M. MASSIGLI (France) declared his willingness to accept any formula making it clear that publication of the reports would not be automatic. Nevertheless, he did not think it possible to have illusions on this matter; the contracting parties to whose interest it was for the reports to be published would also see that this was done. If, on the other hand, the Commission considered it undesirable to communicate the reports to the contracting parties, its precautions would be in vain, as all contracting parties were members of the Commission. They would therefore know of the reports from their delegates. As a consequence, it would be preferable to accept the principle of "the open window" and to proceed to the official publication of the entire reports rather than to the publication of an abridged version. The safeguard against the unfortunate consequences to which M. Nadolny had referred lay in the fact that the reports would be published on the responsibility of the Commission. Should it appear desirable, however, to defer publication, a formula might be devised conferring upon the Commission the right to take a decision to that effect. The formula might read as follows: "The reports shall be made public as soon as the Commission thinks it feasible to do so." This would not affect the principle of publicity.

M. NADOLNY (Germany) pointed out that his suggestion was not at all incompatible with those of M. Moresco and M. Massigli. He merely wished to leave the Commission free to take decisions regarding the publication of the reports.

M. BOURQUIN (Belgium), Rapporteur, made the following proposal: to divide Article 17 into two sentences, the second of which would be worded as follows: "They shall be made public as soon as possible in the conditions determined by the Commission". This proposal was adopted.

"Article 18.

The Commission shall prepare, for submission to the High Contracting Parties, such agreements as may be necessary to ensure the execution of the present Convention.

"Article 19.

The Commission shall make preparations for the revision of the present Convention, in order to facilitate the subsequent stages of disarmament.

"Article 20.

The Commission shall in general carry out any preliminary studies which may appear useful for the execution of its duties.

"Article 21.

Within the limits of its functions, the Commission shall supply the Council of the League of Nations with any information and advice which the Council may request of it.

"C. Operation.

"Article 22.

The Commission shall meet for the first time, on being summoned by the Secretary-General of the League of Nations, within three months from the entry into force of the present Convention, to elect a provisional President and Vice-President and to draw up its Rules of Procedure. Thereafter it shall meet at least once a year in ordinary session on the date fixed in its Rules of Procedure.

It shall also meet in extraordinary session:

1. When such a meeting is prescribed by the present Convention;
2. If its Bureau so decides, either of its own motion or on the request of one of the High Contracting Parties;

"Article 23.

The High Contracting Parties will furnish the delegates of the Commission who are entrusted with the investigations referred to in Articles 10, 11 and 13, with the necessary facilities for the execution of their mission. The Parties will employ the means at their disposal to secure the attendance of any witnesses whom the delegates of the Commission may wish to hear, and to ensure that such witnesses are free to testify."

Articles 18 to 23 were adopted without observation.
Article 24.

"Except where otherwise provided by the present Convention, the decisions of the Commission shall be taken by a majority of (the members present at the meeting).

"A minority report may be drawn up."

M. Meli di Soragna (Italy) noted that, in Article 24, as in Article 11, reference was made to decisions taken by a majority vote, without indicating what quorum was necessary for the Commission to be validly constituted. In his opinion, the two-thirds majority mentioned in these two articles should never represent less than one-half the signatories of the Convention plus one.

M. Bourquin (Belgium), Rapporteur, pointed out that the wording of Article 24 faithfully reflected the decision taken by the Bureau, but that the decision was incomplete. The question whether a quorum was necessary, and, if so, what the quorum should be, had not been settled. The Bureau had decided to adjourn consideration of this question. Article 43 of the Preparatory Commission's draft required a quorum of two-thirds of the members; but, though so high a proportion was comprehensible when the Commission was to be a small body limited to a score of members, it might constitute a hindrance in the case of a universal Commission comprising all the signatories of the Convention.

M. Bourquin thought it preferable to postpone a decision until the problem could be viewed as a whole, and more especially until a complete list of the Commission's powers and duties was available. In this case, the question would be merely adjourned. For his own part, M. Bourquin saw objections to insisting that decisions could only be taken when the majority of the signatory States were present. There were indeed cases in which the majority of the representatives of the signatory States could not attend, and in which it would nevertheless be necessary to take an urgent decision.

Article 25.

"The general expenditure of the Commission shall form the subject of a special chapter in the budget of the League of Nations.

"The High Contracting Parties who are not members of the League shall bear a reasonable share of the said expenditure. An agreement to this effect will be reached between these Parties and the Secretary-General of the Commission.

"The travelling expenses and subsistence allowances of the members of the Commission, their substitutes and experts, shall be paid by their respective Governments. The Commission shall draw up regulations relating to the expenditure necessitated by its work."

Article 25 was adopted without observation.

Article x.

"It is hereby declared that the loyal execution of the present Convention is a matter of common interest to the High Contracting Parties.

"Article y.

"The present Convention is not to be interpreted as restricting the provisions of the Covenant of the League of Nations, in particular those which fix the powers of the Council and the Assembly."

M. Westman (Sweden) quoted the following passage from the Preparatory Commission's comments upon Articles 51 and 52 of the draft Convention:

"Article 51 embodies an important principle, in that it lays down that any violation of the Convention is a matter of concern to all the contracting parties. Should such a violation occur, any one of them, therefore, would have the right to act and set in motion the procedure in the matter of complaints provided for in Article 52."

The amendments subsequently introduced into Article 51 had given it the character of a mere "recommendation", and M. Westman wondered whether it was desirable to retain it in the text of the Convention and whether it did not help to cast a certain suspicion on other conventions not containing a similar clause. The principle embodied in Articles x and y were, indeed, implicitly included in all international conventions.

M. Bourquin (Belgium), Rapporteur, recalled that Articles x and y had been derived from Articles 51 and 52 of the Preparatory Commission's draft Convention. The Drafting Committee had noticed that the rules laid down therein did not relate exclusively to the question of complaints, to which Articles 51 and 52 referred, but were more general in character and related rather to the Convention as a whole. M. Bourquin therefore proposed to adjourn the discussion until the time came to examine the general principles of the Convention.

The Bureau adopted these two articles provisionally, it being understood that a decision regarding their final wording and their place in the Convention would be taken when the time came to discuss the general characteristics of the Convention.

It was also agreed to refer Articles 10 to 25 to the General Commission, due account being taken of the amendments and reservations to which they had given rise.
The CHAIRMAN pointed out that the next meeting would be devoted to examining the report of the Special Committee on Chemical and Bacterial Warfare, prior to its being referred to the Drafting Committee for casting into articles.

On Tuesday, January 31st, at the request of the French delegation, the French plan would come before the General Commission for discussion, in accordance with the procedure adopted for the examination of the Hoover plan.

M. Nadolny (Germany) referred to the reservation made by certain delegations and mentioned in the last paragraph of the second report on the question of supervision (document Conf.D.148); the reservation stressed the close connection between the question of supervision and that of disarmament and the impossibility of pronouncing definitely with regard to the former without knowledge of the nature and scope of the solutions to be adopted in the case of the latter.

On the other hand, he saw no objection to the General Commission's proceeding to discuss the French plan. He hoped, however, that it would not be forgotten that the aim of the Conference was disarmament. He was persuaded that the French plan was directed towards that end, and he therefore considered that an examination of the plan would not prevent the examination of concrete disarmament proposals, and more especially the German proposal for qualitative disarmament. In his opinion, both these tasks might be pursued side by side.

The CHAIRMAN explained that the reservations mentioned by M. Nadolny had been referred to the General Commission with the text of the articles adopted. He had felt it his duty to specify without further delay the date on which the French plan would come up for discussion, in order to enable the delegations to prepare for it. The General Commission's programme of work would be drawn up subsequently, when account would, if necessary, be taken of M. Nadolny's remarks.

M. Nadolny (Germany) understood that discussion of the disarmament plan was being adjourned until after the discussion of the French plan, a complicated scheme the examination of which would take time. He again urged that the possibility of conducting the discussions on the disarmament plan and on the French plan side by side should be entertained.

The CHAIRMAN wished to clear up a misunderstanding. He had not suggested that there should be a detailed discussion of the French plan. He understood that the French delegation was anxious to supply additional information in regard to its scheme. He had also pointed out that, as in the case of the Hoover proposals, the discussion would be of a general character. On its conclusion, the Bureau would decide upon the procedure to be adopted in regard to its subsequent activities.

M. Massigli (France) said that the French delegation would have certain suggestions to make when the Bureau discussed the question of method.

He did not wish the French plan to be placed in opposition to a disarmament plan; the French plan had only one object, which was to bring about genuine and substantial disarmament.

M. Nadolny (Germany) recalled that, in regard to the French plan, he had spoken to the same effect as M. Massigli; for that reason, he did not feel called upon to reply.

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THIRTY-FIFTH MEETING (PUBLIC)

_Held on Wednesday, January 25th, 1933, at 3.30 p.m._

Chairman: Mr. Henderson.

47. Armaments Truce: Communication from the German Government.

The CHAIRMAN read the following letter from the German Government, dated January 20th, 1933:

"The German Government having declared itself prepared to resume the discussions of the Disarmament Conference, I am now able to reply to your letter of August 4th last regarding the prolongation of the armaments truce, and I have the honour to inform you that the German Government agrees to its prolongation until February 28th, 1933."

(Signed) Neurath.

The Chairman read the following letter from the German delegation, dated January 25th, 1933:

"At yesterday's meeting, you invited the German delegation to be represented on all the Commissions of the Conference. As regards the Air Commission, the names of the German representatives were forwarded yesterday to the Secretariat of the Conference. Not having taken part in the discussion preceding the institution of this Commission, I have the honour, in order to prevent any misunderstanding, to inform you that the German delegation comprehends the task of the Commission in the sense that it is in a position to consider proposals going further than the conclusions shown in the resolution of July 23rd, 1932, in regard to air forces. Actually, this resolution states expressly, at the beginning of its Chapter IV, that it in no way prejudices the attitude of the Conference towards any more comprehensive measures of disarmament.

(Signed) Nadolny."


The Chairman recalled that, at the meeting on the previous day, the Bureau had decided, in principles to send out the invitations to the next meeting of the General Commission to be held on January 31st and to place on the agenda the discussion of the French memorandum of November 14th, 1932. He had made one reservation as regards the exact time at which the meeting should be held, and had suggested that the time should be fixed in consultation with the Secretary-General, having regard to dates fixed for other meetings. He understood from the Secretary-General that, in view of the number and importance of other meetings to be held during the next few days, it would relieve him and the services very much if the Bureau would decide not to hold any meetings on the following day or on Friday. Under these circumstances, he suggested that the next meeting should be held on Monday next, January 30th, at 3.30 p.m., and that, consequently, if the Bureau agreed, the date of the meeting of the General Commission should be fixed for Thursday, February 2nd, at 3.30 p.m. He gathered that this date would be more convenient for the principal French delegate. He hoped the Bureau would be able to complete its task before the meeting of the General Commission. The Chairman's proposals were adopted.

50. Chemical, Incendiary and Bacterial Weapons: Draft Conclusions submitted to the Bureau by M. Rutgers (Netherlands), Rapporteur of the Special Committee.

M. Rutgers (Netherlands), Rapporteur, said that M. Pilotti had submitted to the Bureau a report in October last on the prohibition of chemical, incendiary and bacterial weapons. In the course of the discussion, it was found necessary to have information on certain technical points. A questionnaire had been drawn up and submitted to a Special Committee instructed to deal with the question of chemical, incendiary and bacterial weapons. The Special Committee had made a thorough study of the questions submitted to it, with the co-operation of certain highly qualified scientists.

M. Rutgers did not propose to summarise the report, which had already been distributed to the members of the Bureau. It contained conclusions on technical points which were calculated to assist the Bureau in reaching its decisions. M. Rutgers explained that the replies to the technical questions contained in the report of the Special Committee emanated not from the lawyers on the Committee but from the experts. The problems before the Bureau were not all settled by the report. Even if the arguments and conclusions of the Special Committee were approved, other resolutions would still have to be taken which were indicated in the draft conclusions.

He thought it useful to draw attention to some of the main ideas of the report. The starting-point was, of course, the prohibition of the use of chemical, incendiary and bacterial weapons, and of preparations for their use. On the prohibition of the use of such weapons, the Special Committee had already stated its views in its first report, and there was nothing to add to the conclusions submitted by M. Pilotti in October, which were reproduced without change in Chapter I of the draft conclusions.

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1 Document Conf.D.146.
4 See Minutes of the twenty-third to twenty-seventh meetings.
5 Document Conf.D.152.

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The question took a different form in the case of preparations for the use of chemical, incendiary and bacterial weapons; and it was mainly on this point that the Special Committee had carried out its researches, which had led to two main conclusions:

(1) In the case of chemical warfare, its preparation was not an essential element. It could be improvised in a very short period, varying according to the position of the countries and their resources in raw materials and in industry. This point had already been made, for example, in the report of Sub-Committee A of the Preparatory Commission.

(2) It was to a large extent impossible to detect preparations for chemical warfare. It might be said, generally speaking, that substances and appliances used for chemical warfare were also used for peaceful purposes of a perfectly legitimate character, and the use for chemical warfare of appliances and substances intended solely for that purpose was rather the exception than the rule. Consequently, it would not be possible to abolish chemical warfare by prohibiting (so far as that was possible) the possession and manufacture of such appliances and substances, since they were not essential for such warfare. At the same time, in the case of appliances and substances which, while capable of use for chemical warfare, were used for perfectly legitimate purposes, it was very difficult, if not impossible, to lay down specific rules with regard to preparation for chemical warfare. It must be recognised that the intention to enter upon chemical warfare, and even to prepare for it, might exist without its being possible to prove such intention. The Special Committee had endeavoured to find criteria permitting of the detection of the intention, in the case of a party possessing such appliances and substances, to make or prepare chemical warfare, but it had failed to discover any such criteria which could be inserted in a Convention.

The upshot was that in a Convention it was possible to begin by prohibiting in toto the use of chemical weapons, and to go on to prohibit in toto preparations for chemical warfare; but any attempt to go further than this met with very serious obstacles. The Special Committee had made use of certain suggestions, already put forward in M. Pilotti's report, with a view to giving concrete form to the prohibition of preparations for chemical warfare. It would be possible, for example, to prohibit the manufacture, possession, etc., of appliances and substances solely used for such warfare, and also the manufacture and possession of appliances and substances capable of being used for both peaceful and warlike purposes, with a view to their possible use in chemical warfare. Such prohibition would affect the different countries unequally, since its effect on those possessing large supplies of raw materials and a flourishing industry would not be the same as on the others. It must be admitted that any such prohibition would not be of much importance; it would not be sufficient to render chemical warfare impossible, since, in the event of war, the countries possessing the aforesaid resources would nevertheless command sufficient quantities of everything required for chemical warfare.

It would also be possible to prohibit instruction and training of armed forces with a view to chemical warfare; but such a prohibition again would not mean very much, for it might be said, generally speaking, that there was no special training for chemical warfare. It did not make much difference to gunners, who needed no special training, whether their projectiles were filled with explosives or with toxic materials.

The Special Committee had accordingly realised, as appeared from the report, that the prohibition of chemical warfare or preparations for the same, as such, could not constitute any effective guarantee, and that, in particular, it could not be supervised in any way. That point had already been made in the Bureau, in particular by M. Politis on November 9th last.1

In Chapter II of the draft conclusions ("Prohibition of Preparations for Chemical, Incendiary and Bacterial Weapons") with regard to the prohibition of the preparation of chemical, incendiary and bacterial warfare, the main paragraph was the first one. The specifications, whereby an attempt was made to give concrete form to the prohibition thus formulated, were only of relative value.

Chapter III ("Supervision of the Observance of the Prohibition of Preparations for Chemical, Incendiary and Bacterial Warfare") was, it must be admitted, somewhat meagre, as it only contained the following clause:

"The Permanent Disarmament Commission shall examine the complaints put forward by States which may allege that the prohibition to prepare for chemical, incendiary or bacterial warfare has been violated."

The Special Committee would have liked to achieve more definite results and submit to the Bureau really effective methods of supervision as regards the prohibition of the preparation for chemical warfare. But it found itself faced with an impossibility, and thought it better to recognise the fact.

If the prohibition to make preparation could not give effective guarantees against the possibility of chemical weapons being used in warfare, it was all the more important to seek other means of countering the danger of a possible transgression. This problem impinged upon the sphere of penalties, and the questions which arose in this connection coincided in part with the general questions connected with the problem of penalties.

Nevertheless, the problem presented a special character as regards chemical, incendiary and bacterial weapons. This character had been already recognised in the resolution of July 23rd, 1932, which asked that special measures should be taken regarding breaches of the prohibition. In dealing with the prohibition of chemical weapons, the Bureau was dealing

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1 See page 60.
with a part of the future Convention which would be applicable primarily in time of war, and which, hence, differed from most of the other provisions of a disarmament convention, which were applicable in time of peace. No doubt there were other parts of the Convention of which the same could be said—for example, the prohibition of bombardment from the air—but provisions of this kind only constituted the smallest part of the Convention. As regards chemical, incendiary and bacterial weapons, there were a certain number of special points which were related to penalties and the consequences of a violation of the prohibition to use these weapons.

There was, first of all, the question of retaliation by the use of the same weapons. There was also the question of the establishment of the fact of a breach, which offered special difficulties in this particular case, and which necessitated on the part of the authority responsible for establishing the facts, not only impartiality, but also competence and, above all, speed. Chapter IV of the conclusions, which had been drawn up chiefly by the legal experts of the Special Committee, dealt with the establishment of the facts. These conclusions, for the most part, imposed no obligations on States, and really constituted "internal rules of application". States had, of course, certain obligations, notably that of giving all possible assistance in the event of investigations, but the greater part of the conclusions of Chapter IV were of the character he had just indicated, and it would perhaps be a good thing to place them in an annex to the Convention, so as not to make the latter too long.

As regards the consequences of a breach once this had been established, the Special Committee had confined itself to the technical point of view, and it was from this point of view that it had reached certain conclusions which the Rapporteur, for the moment, would merely indicate.

1. Question of retaliation. — Prohibition, pure and simple, to resort to retaliation by the use of the same weapons would be dangerous in so far as it would encourage a transgressor State wishing to obtain an advantage by the use of the prohibited weapon, since it would ensure this advantage and handicap States which did not use chemical weapons.

The fact of allowing such retaliation did not necessarily imply, as might at first be thought, that preparations for chemical warfare in peace time, and even before the transgression was established, would be authorised. To remedy the dangers which might arise from this point of view, the Special Committee had formulated certain strict conditions to which the right to retaliate was to be subordinated. In the first place, retaliation, or even preparations therefor, would not be allowed until the transgression had been established.

The Special Committee had further examined other consequences of the establishment of the transgression and had made a few suggestions in this connection.

2. Third States would be under an obligation, as a result of the establishment of the transgression, to supply the State attacked with assistance of a scientific, medical and technical nature, in order to repair, mitigate or prevent the effects of the use of the prohibited weapons.

3. The Special Committee suggested that States should be forbidden to supply the transgressor State with the appliances and substances necessary for the use of the prohibited weapon. This obligation was only a special instance of the obligation of third States, as laid down in M. Pilotti's report, to bring pressure to bear on the transgressor State, varying according to circumstances and their particular situation, so as to induce that State to relinquish or discontinue the use of the prohibited weapons.

Strictly speaking, such provisions did not represent penalties, either in the case of assistance to the State attacked or of pressure on the transgressor State. Nevertheless, in addition to these stipulations, which could only be regarded as penalties in the widest sense of the term, provision had been made for penalties properly so called, already included in M. Pilotti's draft resolution, which had then been revised by the Drafting Committee of the Bureau, and were now simply reproduced in the draft conclusions (Chapter V, point (2)).

The Chairman thought that the best procedure to adopt for the discussion would be to examine the Special Committee's draft conclusions chapter by chapter (document Conf.D./Bureau 41). He recalled that conclusions had already been adopted on the question by the General Commission in its resolution of July 23rd, 1932. Whatever the Bureau's decision as to the present draft conclusions, the text adopted would have to be referred to a Drafting Committee in order to be drawn up in the form of articles of the Convention. The same procedure had been adopted for M. Bourquin's report on supervision.

Chapter I. — Prohibition of Chemical, Incendiary and Bacterial Weapons.

No observations.

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

Mr. Wilson (United States of America) first of all paid a tribute to the Rapporteur for having given a concrete form to the results of the Special Committee's studies and for the contribution he had thus made to the Bureau's work. The Bureau now possessed all the necessary elements to provide a basis for its decisions. If he himself was obliged to differ from the Rapporteur on certain points, he hoped the latter would not regard this as a lack of appreciation of his efforts, but as a desire to contribute also to the work of the Conference.
The second paragraph of Chapter II read as follows:

"This prohibition shall not apply to material and installations intended exclusively to ensure the individual or collective protection of individuals against the effects of chemical, incendiary and bacterial weapons or to the training of individuals to protect themselves against the effects of the said weapons."

In the other document submitted to the Bureau, however (reply to the questionnaire, document Conf.D.152), it was stated in the Section entitled "Suggestions of the Special Committee regarding Protection of Civilians" at the end of Chapter I, Part I, Head I:

"In this connection, it should not be forgotten that the individual protection which should be afforded to civilians depends in part upon the methods adopted for the organisation of their collective protection."

Again, in Chapter IV ("Summary and Conclusions") of the same document, it was stated, in paragraph 1 (b):

"The prohibition must not apply to research work, the preparation, manufacture, importation or exportation of apparatus for giving protection against poisonous substances, the preparation of measures of collective protection, the training of troops and of the population in protective measures against poisonous substances... lest such prohibition should give an aggressor a decisive superiority and so increase the temptation to use the chemical arm."

Bearing these various texts in mind, the United States delegate proposed to amend as follows the second paragraph of Chapter II of the draft conclusions:

"The prohibition shall not apply to material and installations intended to ensure individual or collective protection against the effects of chemical, incendiary and bacterial weapons or to training in protective measures against the effects of the said weapons."

M. RUTGERS (Netherlands), Rapporteur, considered Mr. Wilson's amendment entirely in keeping with the Special Committee's views. He was sure that, in speaking of the "individual or collective protection of individuals", the Special Committee had not intended to exclude collective protection.

_The amendment was adopted._

M. MASSIGLI (France) wished to submit an observation on point (3), which read as follows:

"...to instruct and train armed forces in the use of chemical, incendiary and bacterial weapons and means of warfare, and to permit any such instruction and training in their territory."

This text already appeared in the previous report, but it would be well to make it clear. What it was desired to prohibit was not only the permitting of such instruction and training, but the mere fact of tolerating them by shutting one's eyes thereto. It should therefore be clearly stated that it was the duty of Governments to prevent this instruction and training in every way. Moreover, the words "any such" were ambiguous, for they might appear to relate only to the training and instruction of the regular armed forces with a view to the use of chemical weapons. What must be prohibited was all kinds of instruction and training with a view to the use of these weapons by the regular or other forces. The delegate of France therefore proposed that this paragraph should read as follows:

"...to instruct and train armed forces in the use of chemical, incendiary and bacterial weapons and means of warfare, and to allow any instruction and training to be carried on for this purpose in their territory."

Mr. WILSON (United States of America) asked if there was not a slight contradiction between point (3), of which M. Massigli was speaking, and the second paragraph of the same chapter which had been amended at the suggestion of the United States delegation.

Point (3) might be modified as follows:

"...to instruct and train armed forces, except as regards individual or collective protection, in the use of..."

M. MASSIGLI (France), while quite understanding the purpose of Mr. Wilson's amendment, feared that it could be given a too general interpretation. No doubt protective material must be authorised, but if it were further admitted that protection against chemical weapons involved a possible training in the use of the weapons, it was to be feared that the prohibition of such training would no longer have any meaning.

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M. Rutgers (Netherlands), Rapporteur, thought that, to meet Mr. Wilson's point, the second paragraph of Chapter II might be placed after point (3), since the second paragraph constituted an exception, while point (3) specified certain points which arose out of the general prohibition embodied in the first paragraph of the chapter. In this way there would no longer be any ambiguity. M. Rutgers had, moreover, no objection to M. Massigli's amendment.

The Chairman thought that the Rapporteur's suggestion was the best solution. It must not be forgotten that the whole text was to be sent to a Drafting Committee.

Mr. Wilson (United States of America), in reply to the observations of M. Massigli and the Rapporteur, proposed to add in point (3) after the words: "the use of chemical, incendiary and bacterial weapons and means of warfare", the words: "other than those serving for individual or collective protection."

The proposed amendments were adopted.

Mr. Eden (United Kingdom) wished to make a general remark and to draw the Bureau's attention to the position which would arise if such amendments were adopted. The Special Committee's report was of great value as a guide to the Bureau in its discussions, but it must be agreed that it made somewhat depressing reading. It showed that, whatever decisions were taken, the countries which were rich in certain raw materials and had a highly developed industry were very well equipped for carrying on chemical warfare and there were really no practical means of preventing such warfare. Moreover, it was clear that, for the most part, appliances and substances suitable for chemical warfare at present existed in industry for perfectly legitimate purposes. In short, as far as this part of the Convention was concerned, it had to be admitted that everything depended on the goodwill of the States in carrying out their undertakings. In this matter, more than in any other, nothing could take the place of goodwill and, without it, no result could be reached.

From these considerations, it followed that the really important part of the experts' conclusions was Chapter I: "Prohibition of Chemical, Incendiary and Bacterial Weapons". The United Kingdom Government accepted Chapter I as it stood.

The other chapters would have to be judged in the light of the position as described by the technical experts. Was it worth while trying to provide against a situation in respect of which nothing could be done from a technical point of view? For instance, point (1) of Chapter II stated that: "States must declare the quantities of the said substances necessary for their protective experiments". Of what use could such a provision be, after the remarks made in the Special Committee regarding the fact that States with a developed industry possessed in large quantities the materials for these substances?

A little further on in the same chapter of the conclusions came the provision prohibiting the manufacture, import, etc., of appliances and substances suitable for both peaceful and military purposes with intent to use them in war should occasion arise. Obviously, these appliances and substances existed in abundance in the great industrial countries and it was impossible to prove the intention to use them in war should occasion arise. In the opinion of the United Kingdom delegation, the Bureau should be on its guard against inserting in a Convention provisions which, under existing circumstances, could not be applied with any certainty and the realisation of which was impracticable.

Mr. Wilson (United States of America) also thought that the greatest difficulties would inevitably be encountered if it were desired to go beyond an undertaking not to prepare appliances and substances for chemical warfare in time of peace. The United Kingdom delegate had referred to some of these difficulties and others might also be mentioned. For instance, it was stated at the end of point (1) of Chapter II that "the manufacture of and trade in these substances may not be undertaken without Government authorisation". Such a statement was perfectly legitimate, but its proper place was in the Convention on the Trade in and the Manufacture of Arms and Implements of War which was being studied by another body.

The last paragraph of Chapter II referred to the use of lachrymatory substances for police operations. How could a State be required to give a complete list of such substances and appliances and state the quantity of such appliances? These elements were constantly changing. Lachrymatory substances and appliances were used in the United States of America throughout the entire country by the police, banks and various undertakings, and the models frequently varied. It must be presumed that the arrangements made would be observed in good faith and the provisions of points (1) and (2) could be regarded as sufficient. They would be more comprehensible and would give rise to fewer difficulties if they did not enter into so many details.

M. Politis (Greece) understood that two proposals were before the Bureau; Mr. Eden was of opinion that the whole of Chapter II should be omitted, while Mr. Wilson proposed to retain the first two paragraphs of this chapter.
Mr. Eden (United Kingdom) said he had not proposed to omit the whole of Chapter II. He merely wished the Rapporteur to give explanations, in particular regarding the following sentence in point (1): “States must declare the quantities of the said substances necessary for their protective experiments” and the following words in point (2): “with intent to use them in war, should occasion arise.” How did the Rapporteur think such a provision could be codified?

M. Rutgers (Netherlands), Rapporteur, entirely agreed with Mr. Eden that the Special Committee’s report was rather depressing. It would have to be admitted that it was impossible in time of peace to provide guarantees against the possible use of chemical weapons in case of war. This was due to the two facts that chemical warfare could be improvised and that it could be prepared without there being any visible sign of such preparation.

In reply to Mr. Eden’s remarks, he noted that the United Kingdom Government was prepared to accept Chapter I, while recognising that, in a large measure, the insertion of this chapter in a Convention might take the goodwill of the signatories for granted. In that connection, he thought it was possible to go a step further and accept the first paragraph of chapter II. The United Kingdom delegate no doubt would not decline to accept the prohibition of the preparation of chemical warfare, as this was also an obligation which would depend to a very great extent on the good faith of the contracting parties. Then came the second paragraph, to which there were no objections. Lastly, points (1), (2) and (3) to a great extent reproduced M. Pilotti’s draft and did not conflict with the Special Committee’s report. That Committee had not said that any specification would be dangerous but that it would not give any real guarantees. While appreciating the value of such specifications, care should be taken not to draw therefrom an undue feeling of security. The details contained in points (1), (2) and (3) seemed to be much stricter than the general prohibition, whereas in reality they added very little to it, and, even if they were accepted, the prohibition would, to a great extent, depend on good faith. The first point referred only to appliances and substances exclusively suited for the conduct of chemical warfare; but the Special Committee had realised that the necessary raw materials would always exist in various States and that this was one of the reasons why the prohibition to stock such substances had no great value for the States in question. In any case, once the obligation to refrain from making preparations for chemical warfare was accepted, the obligation not to stock appliances and substances exclusively suited for such warfare followed as a logical consequence.

The same remarks applied to point (2). The prohibition of appliances and substances employed for both peaceful and military purposes with intent to use them for chemical warfare was a logical consequence of the general prohibition. The Special Committee had considered that this provision should be recommended without, however, attaching any great importance to it, as such an intention was impossible to establish and this provision must not be allowed to engender a feeling of false security. In short, the special prohibitions of Chapter II, in particular those of points (2) and (3), though not of great practical importance, were the logical consequences of the general prohibition to prepare for chemical warfare. They were, moreover, given as examples in order to ensure respect for this general prohibition and were preceded by the words “It is particularly prohibited”.

As regards point (1), an exception had to be made for protective experiments and it had appeared advisable that the States should be obliged to declare the quantities necessary. While the Special Committee itself did not consider that this was a very great guarantee, it had not felt that it should be regarded as negligible.

With regard to Mr. Wilson’s remark concerning the sentence in point (1): “The manufacture of and trade in these substances may not be undertaken without Government authorisation”, the Rapporteur noted that the United States delegate had not expressed any formal opposition to this provision. It was clear that the question was related to that of the trade in and manufacture of arms, and, at the end of Part II, Head I, of its report, the Special Committee had recommended that the Committee for the Manufacture of and Trade in Arms should bear the work of the Special Committee in mind. The Chairman of the Special Committee had proposed to transmit this recommendation to the Chairman of the Committee in question. As M. Pilotti was no longer acting as Chairman of the Special Committee, it would be advisable to request the Chairman of the Bureau to transmit this recommendation to the Chairman of the Committee on the Trade in and Manufacture of Arms. The question of the place in the Convention which this provision should occupy was a matter of drafting, which perhaps it was preferable not to settle immediately.

In conclusion, the Rapporteur wished to reply to Mr. Wilson’s remarks regarding lachrymatory appliances and substances. A special difficulty arose in respect of the use of such appliances and substances by the police. It might be asked of what the police consisted and how far they could use the said products. The police might, in fact, be equipped with arms suitable for use in time of war. A question therefore arose in connection with the use of lachrymatory substances by the police, and the Special Committee had considered that this was not a matter of indifference from the point of view of disarmament and of the prohibition to prepare for chemical warfare. This question did not, of course, deserve the Conference’s entire attention but, on the other hand, it should not be forgotten. That was the object of the last paragraph in Chapter II.

2 Document Conf.D.152.
The CHAIRMAN asked Mr. Wilson if he insisted that the Bureau be consulted on the suggestions which he had raised.

Mr. Wilson (United States of America), while realising the force of M. Rutgers' arguments, noted that, according to his statements, these various proposals were really of very little practical value. He asked whether it was advisable to overload the Convention with such provisions at a time when the Conference was engaged on the framing of legal texts. When looking for substances exclusively suitable for chemical warfare, almost the only one to be found was mustard gas, and even this gas might eventually be used for entirely pacific commercial purposes. It should be borne in mind that ratifications of the Convention on this subject would be more easily obtained if it contained only a simple statement of main principles, without entering into so many controversial details.

As regards lachrymatory appliances and substances, to ask the States to carry out a census among a large number of departments and private organisations would be to impose on them an extremely arduous task. The United States of America was a country possessing a considerable potential of chemical weapons. It was prepared to state, in the name of humanity, that it renounced the use of chemical weapons, but there was really no reason to demand in addition that the Government should engage in impracticable and extremely tiresome investigations.

M. Massigli (France) was somewhat disturbed at the turn taken by the discussion, and he wondered whether the Bureau was not on the point of taking a step backwards? To judge by the statements of the United Kingdom and the United States delegates, it would appear that the question was very simple, and that it would be sufficient to keep to the 1925 Protocol. A few months ago, however, it had been recognised that this Protocol was, in fact, inoperative. It was not a question of good faith; if it were, it would also be useless to conclude a Disarmament Convention, since the Pact of Paris already existed. There were certain imponderabilia which made it necessary to consider the problem more closely, and, in spite of its difficulty, an endeavour must be made to solve it.

It must, moreover, be borne in mind that, although Chapter II to some extent hampered the great industrial States, it had a particularly restrictive effect on the countries which had not a highly developed industry. But it would appear that the delegations of these countries accepted the provisions in question. All the more, therefore, should the countries with highly developed industries also accept them. Only if the Bureau agreed as to effective systems of collective repressive action, could the French representative be content with general principles.

Mr. Eden (United Kingdom) attached great importance to the French delegate's remarks. It was obviously possible for the powerful countries to prove their good faith, for instance, by agreeing to give up a few ships or a few guns or tanks. On the other hand, in the sphere of chemical warfare, it was more difficult to give such proof, as the appliances and substances in question were, in most cases, used for commercial and entirely pacific purposes. Mr. Eden considered that Chapter II was of very little value, if any, and that it would be merely redundant in the case of countries with highly developed industries. On the other hand, M. Massigli's remarks regarding the position of the countries which had not a powerful industry were calculated to swing the balance in favour of maintaining Chapter II, in spite of the fact that there was little to be gained from retaining mere redundancies in a Convention.

M. Komarnicki (Poland) wished to make a general remark on Chapter II. M. Rutgers' explanations, in fact, confirmed the pessimistic opinions expressed by the previous speakers. The Polish delegation did not attach any special importance to Chapter II. It even thought that its provisions were rather calculated to create a feeling of false security. But it was not opposed to the insertion of these provisions, which might be useful under certain circumstances. In any case, the Polish delegation reserved the right to express its final opinion in the General Commission, when the entire question would be discussed, particularly from the point of view of political repercussions. It considered, and this was, moreover, the general impression gained from the discussion, that a real guarantee was to be sought, not in the sphere of prevention, but in that of sanctions. The Polish delegate proposed to give his opinion on the whole report when Chapter V, in particular, came up for discussion, and he reserved the right to revert to the question in the General Commission.

The CHAIRMAN asked whether he must consult the Bureau on Mr. Wilson's proposal to retain only the first two paragraphs of Chapter II, the second of which had been amended by the Bureau, and to omit the remainder—that was to say, points (1), (2) and (3).

Mr. Wilson (United States of America) pointed out that he had made no formal proposal in this sense. As there appeared to be no general desire in the Bureau to follow his suggestion, he withdrew it. If, however, points (1), (2) and (3) and the paragraph relating to lachrymatory substances and appliances remained in their present form, he would be obliged to make a reservation.

The CHAIRMAN said that this reservation would be recorded in the Minutes.

Chapter III. — Supervision of the Observance of the Prohibition of Preparations for Chemical, Incendiary and Bacterial Warfare.

No observations.
Chapter IV. — Establishment of the Fact of the Use of Chemical, Incendiary or Bacterial Weapons.

M. MASSIGLI (France) paid a tribute to the attempt made by the Special Committee and its Rapporteur to present a complete system relating to the establishment of the fact of the use of prohibited weapons. He had the impression, however, that the Special Committee and its Rapporteur had been too conscientious; an attempt had been made to enter into details regarding the application of the provisions but certain of these details might have escaped them. He wondered if it would not be better in such a case rather to lay down a number of very clear principles and leave it to the Permanent Disarmament Commission to establish the rules for the application of those principles. In this way, the future Convention would not be burdened with details out of proportion to the other provisions contained therein, while, at the same time, there would be no danger of having to note later that the provisions adopted—however detailed they might be—contained gaps which could be filled by no known procedure.

M. RUTGERS (Netherlands), Rapporteur, thought, on the contrary, that there was some advantage in drawing up rules immediately, even if they were only provisional, on the understanding that the Permanent Disarmament Commission would be entitled to amend them. Chapter IV not only contained rules on the establishment of the facts but it also contained a considerable number of obligations to be assumed by States. It might be advisable to summarise them in one article of the Convention, but, since the rest of the work had to a great extent been already accomplished, it was useful to continue it. During the subsequent work of the Conference, it might be necessary to make amendments; moreover, the Permanent Disarmament Commission could make any necessary changes. Further, it was not essential that the Convention should be encumbered with these detailed provisions. They might be inserted in an annex, but that was merely a question of drafting.

The Rapporteur thought that it would be possible to agree immediately on the principles as to the establishment of the facts and to draw up provisional rules; otherwise, it would be difficult to have a useful discussion on penalties and the effects of the establishment of a breach, since these effects could not be produced until the breach had been established. If there was no material objection regarding the manner in which the Special Committee propose to regulate the establishment of the facts, the Bureau might leave it to the Drafting Committee to draw up provisional rules subject to any amendments to be made by the Permanent Commission. One part of the Convention would thus be completed.

M. MASSIGLI (France) explained that he had not asked that the whole of Chapter IV be omitted. He had merely suggested that it should be summarised in a few articles, it being left to the Permanent Commission to adjust and develop the very important principles which would be involved.

The CHAIRMAN reminded M. Rutgers that he would be a member of the Drafting Committee and he could inform that Committee what portions should be reserved for articles of the Convention and what portions for the Permanent Disarmament Commission.

M. RUTGERS (Netherlands), Rapporteur, said he would accept the Bureau’s decision.

The CHAIRMAN thought the procedure proposed by the French delegate was satisfactory. If it were accepted, it would be agreed that M. Rutgers should help the Drafting Committee to condense the principles of Chapter IV into one or more articles, the remainder being referred to the Permanent Disarmament Commission with a view to the framing of rules. These suggestions were adopted.

THIRTY-SIXTH MEETING (PUBLIC)

Held on Monday, January 30th, 1933, at 3.30 p.m.

Chairman: Mr. HENDERSON,

51. Chemical, Incendiary and Bacterial Weapons: Draft Conclusions Submitted to the Bureau by M. Rutgers (Netherlands), Rapporteur of the Special Committee (continuation).

Chapter V. — Penalties for the Use of Chemical, Incendiary or Bacterial Weapons.

M. Rutgers (Netherlands), Rapporteur, explained that, of the three points dealt with in Chapter V, the first and third had been thoroughly discussed by the Special Committee, but not the second, since the Committee considered that, on account of its political character, the question did not fall within its sphere. The Rapporteur had merely reproduced in his draft conclusions the draft resolution submitted by the Drafting Committee.
M. Nadolny (Germany) asked that, as he had not taken part in the previous discussions on this subject, he might be allowed to state the attitude of the German delegation. As regards the use of chemical and incendiary weapons as reprisals against States which had already had recourse to them, the German delegation had made its attitude clear from the very first; it had pronounced in favour of as complete prohibition as possible of the use of chemical, incendiary and bacterial weapons. It considered that the use of such weapons was inadmissible, even by way of retaliation, since to allow the right of retaliation was tantamount to allowing also preparations for chemical warfare, which would make prohibition illusory. The Permanent Commission would require some time to establish that such weapons had been used; retaliation, however, would have to be rapid, and this need for rapidity would make preparations indispensable.

An attempt was being made at present to humanise warfare, and it was for that reason that the German delegation considered that the employment of such prohibited weapons should not be countenanced, even by way of retaliation. Retaliation had been prohibited in the case of bacterial weapons; incendiary and chemical weapons should be treated on the same basis. In this connection, M. Nadolny recalled that the international provisions relating to the respect of the Red Cross, the treatment of prisoners, etc., did not allow for reprisals in the case of violation. He wondered, in any case, whether it was indispensable to settle immediately the question of the penalties to be applied to the State which had recourse to chemical, incendiary and bacterial weapons. The penalties contemplated were not, in fact, peculiar to this kind of warfare. They were equally applicable to other methods of war, such as aerial bombardment and floating mines.

It was desired to make prohibition effective, but there were other means to that end of which advantage should be taken before contemplating retaliation. The German delegation, therefore, was of opinion that it would be preferable to refrain, for the time being, from dealing with the question of penalties especially applicable in the case of recourse to chemical, incendiary and bacterial weapons, and to devote a single chapter to dealing with all the penalties provided for in the event of violation of the provisions of the Disarmament Convention.

M. Rutgers (Netherlands), Rapporteur, defined the connection between the conclusions actually under discussion and the general question of penalties. This connection was manifest in the case of Chapter V, point (2), which referred to consultations between third States to determine what joint steps should be taken and to decide on the joint punitive action of every description to be taken; but in the case of points (1) and (3), which related to medical assistance, to the withholding of supplies, to reprisals in the form of identical retaliation, the provisions in question were peculiar to chemical, incendiary and bacterial warfare, and such penalties should, in his opinion, be discussed in close relation with the provisions relating to the use of chemical, incendiary and bacterial weapons, rather than as a special case of penalties in general. Point (2) was the only one on which discussion could be postponed until the general discussion on penalties.

M. Stein (Union of Soviet Socialist Republics) supported M. Nadolny's proposal to postpone the discussion of Chapter V until the General Commission dealt with the question of penalties in general. Chapter V bore upon a number of highly serious points. To judge by the date on the document in which it was embodied, moreover, its text had not been available until a few days previously. M. Stein considered it desirable that his Government should be able to examine it at its leisure. In the near future, the Conference would be required to open a general discussion on the questions of penalties and mutual assistance in the event of violation of the provisions of the Convention; the delegation of the Union of Soviet Socialist Republics thought it wiser to postpone until then the discussion on the question of penalties specially applicable to the use of chemical, incendiary and bacterial weapons and to treat it as a special case under the general chapter on penalties.

Mr. Wilson (United States of America) reminded his colleagues that the General Commission's resolution of July 23rd, 1932, contained two references to chemical warfare, one under " Conclusions of the First Phase of the Conference ", point 3, which reads as follows:

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

The second reference was to be found under Part III, dealing with the " Preparation of the Second Phase of the Conference ", point 5, entitled " Violations ", and which reads 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 infringement of these provisions."

At the time of the adoption of these resolutions, the method of dealing with this problem was by no means clear, and the fundamental question whether the prohibition should be of a reciprocal nature or a universal renunciation had not yet been reached. In the discussions of the Bureau during the second phase of the Conference, it was clear that the conception of

1 See Conference Documents, Volume I, page 269.
the delegations was that the problem should be considered as one to which a rule of international law of universal application could be applicable. The United States delegation not only acquiesced in this understanding, but was one of those which urged most strongly this method of treatment of the problem.

One of the underlying reasons for this attitude on the part of his own delegation—and Mr. Wilson ventured to believe on the part of many other delegations as well—was that the adoption of a rule of universal application enormously simplified the ramifications of this very complex matter and tended most strongly to accomplish the real abolition of this form of warfare through the creation of a world condemnation thereof.

So long as this problem was envisaged as one in which the States undertook reciprocal obligations to abstain from the use of chemical warfare, the situation had to be investigated of certain States which would not accept this obligation, and provisions had to be made as to what should be done in the event of hostilities breaking out between States on the one hand reciprocally bound and States on the other hand not having undertaken such obligations. With the present conception, such a difficulty did not arise, inasmuch as the Bureau was working on the basis that all the world would accept this renunciation in good faith. It would appear that, on acceptance, it became a recognised tenet of international law which was self-working on the basis that all the world would accept this renunciation in good faith. It would run the danger of weakening the force of the universal provision to which they were intended to apply.

Mr. Wilson could not escape the conviction that there was a risk of losing a sense of perspective in the present discussion. Important as was the subject of the abolition of chemical warfare, it was, after all, only one of the many phases of warfare and, in all probability, not one of its most important aspects. Chapter V, with which the Bureau was now dealing, brought to the forefront some of the most important political conceptions and decisions with which the Disarmament Conference would be called upon to deal. Chapter V pre-supposed action along the lines of diplomacy, economics and active assistance, which could hardly fail in their application to extend the scope of any war to make it universal. This sanction was therefore, in its essence, the ultimate sanction which could be applied against any State, no matter what international crime that State had committed. The State that violated the Pact of Paris, that wantonly had recourse to war, could not run any greater risk than the State which violated this one provision of international law.

Mr. Wilson said that these reflections had led him to the conviction that the problem of violations must be studied as a whole and not as applying to any one phase of the Convention in course of preparation. Unless and until it was found that the general clauses of the Convention were insufficient, it was not the time to examine special measures applicable to any one phase of it.

He realised that the above-mentioned clause in the resolution of July 23rd, 1932, provided for the discussion of such violation. Nevertheless, the conception of a number of the delegates present as to the extent of the sanctions to be applied was so broad as to go far beyond the field which had been envisaged at the time of the resolution. This conception was so broad that it gave rise to fundamental political problems which must, at some stage of the Conference, be discussed in their application to the whole problem of disarmament. What the United States Government could do on these broad political questions remained to be seen. Mr. Wilson felt that he had no right to ask his Government to consider questions of such magnitude in dealing with one particular phase of the problem. Indeed, to attempt any such isolated consideration of matters of this importance would, he feared, jeopardise the future consideration of the problem as a whole.

In reply to M. Rutgers’ statement that point (1(b)) of Chapter V introduced no new factor into the question of chemical, incendiary or bacterial warfare, Mr. Wilson pointed out that by prohibiting neutral States from supplying raw materials, products and appliances necessary for chemical, incendiary and bacterial warfare to the offending State, point (1(b)) raised in effect the much broader question of the position of countries not members of the League of Nations.

M. Massigli (France) remarked that the representatives of Germany and the Union of Soviet Socialist Republics had asked for the discussion of Chapter V to be postponed, but the statement just made by Mr. Wilson proved that, even among the delegations which had voted for the resolution of July 23rd, 1932, there were some who now were in favour of such a postponement. This resolution seemed to have ratified the agreement of the members of the General Commission on one point—namely, that, whatever the steps to be taken in the general case of a breach of the Convention, it would be necessary, in the special case of a violation of the prohibition to use chemical, incendiary and bacterial weapons, to make provision also for special measures. Moreover, this word “special” appeared in the text of the resolution itself.

It had been argued that the sanctions to be taken in the case of chemical warfare were general in character. It was said that a rule of international law had been formulated, and that it would not be possible to discuss the special sanctions to be taken in the case of breaches of particular provisions of the Convention until the problem raised by possible breaches of the Disarmament Convention had been fully studied. Such a discussion was, in reality, only a discussion of method; as regards the substance of the matter, the problem of the special
Mr. Wilson had said that there had been too great a tendency to be unduly haunted by the problem of chemical warfare, which in Mr. Wilson's view, was only one of the forms of war and not one of the most important. M. Massigli could only agree with that view; but would chemical war in the future be the same as it had been in the past? There was every reason to believe that it would not. It was possible that, in certain parts of the world, the problem of chemical warfare was of no special gravity; that did not in any way mean that, in Europe, a toxic-gas attack might have decisive effects on the country attacked. Such a possibility existed, and that fact was sufficient to necessitate a special consideration of the matter on the part of the Conference.

Mr. Wilson had also said that point (1) of Chapter V raised questions of a general character, especially the question of the forms of pressure to be exercised in relation to the State employing chemical, incendiary or bacterial weapons, as well as the question of the measures of assistance for the victimised State, and that these were questions which went beyond the scope of chemical, incendiary or bacterial warfare. Undoubtedly, there was a certain amount of truth in that observation, but it was also true that, in the special case of chemical, incendiary and bacterial warfare, the question of the measures contemplated to bring pressure to bear on the guilty State assumed different aspects in different countries, and, for that reason, should be studied separately.

Point (2), as drafted, appeared to M. Massigli to be clearly inadequate. Moreover, in view of its general character, Chapter V was perhaps not the right place for it.

Point (3), on the other hand, raised a problem of extreme importance. The principle of retaliation was not entirely condemned in international law. He hastened to add that he personally was not in favour of reprisals, but on condition that provisions should be drawn up to ensure that prohibition would be respected. Point (3) said that "the Permanent Disarmament Commission shall decide . . . whether chemical and incendiary weapons may be employed . . . ." Either that provision was a piece of trickery or it meant that action might be taken against the offending State in other ways than by retaliation. Facts must be faced. In Europe, in present circumstances, chemical warfare was the typical form of aggressive war. In conjunction with attack from the air it was capable of reducing a State displaying good faith to a position of helpless inferiority, unless it received the aid of other States. Was it proposed merely to guard against this risk by the vague threat of consultations, or was it proposed to adopt a system of penalties which, by its vigour and the rapidity with which it could be put into action, would discourage in advance any recourse to chemical, incendiary or bacterial warfare?

If the majority of the members of the Bureau considered that the question of penalties, for which Chapter V provided, should be referred to the General Commission for discussion at the same time as the general consequences of breaches of the Disarmament Convention, he was prepared to bow to its decision; but he was bound to say that, in that case, a general discussion of the question would not be sufficient. The problem, if adjourned, would still call for solution. It was a special problem, as the General Commission had itself declared in its resolution of July 23rd, 1932, and as, moreover, the Bureau itself had recognised: for what was the use of admitting that, in the case of the use of chemical, incendiary or bacterial weapons, the establishment of the fact was of special value unless it was thereby recognised that the use of these prohibited weapons called for immediate repressive action?

Mr. Eden (United Kingdom) welcomed M. Massigli's action in drawing the Bureau's attention to the terms of the resolution of July 23rd, 1932, and to the importance attached to the action to be taken in the event of recourse to chemical, incendiary or bacterial warfare. No one proposed to question the interpretation of the sentence of the resolution to which M. Massigli had referred. The only question which arose was whether it was desirable to discuss the question of penalties in the case of recourse to chemical, incendiary or bacterial warfare separately and at once, or in conjunction with the question of penalties in general.

He would have thought it easier to take a decision with regard to the special penalties in the case of recourse to these prohibited weapons when the Conference came to discuss the action to be taken in the much more serious case of recourse to war. The United Kingdom delegation took the view that the special action contemplated in the resolution of July 23rd, 1932, could not usefully be discussed at present, and agreed accordingly with the view of the delegates of the United States of America and the Soviet Union.

In regard to the right of retaliation in the event of recourse to chemical warfare, on which M. Massigli had commented in striking terms, he would remind the Bureau of the discussion which had taken place previously on a similar subject, when it was contended that all States should undertake to renounce the right of retaliation, as otherwise there would be a risk of the continuance of preparations for a form of warfare which was specially prohibited. Since that time, the Bureau had had before it the report of the experts, which showed that, in the case of industrial States, chemical warfare did not call for any preparations. It was therefore quite intelligible that the former proposal should have been amended in certain respects, and that it was now proposed to allow the adoption of retaliation in kind on the decision by a majority vote of the Permanent Commission.

He was not, however, satisfied with the proposal in its present form. It might well be asked how much time would be required for a procedure which involved the establishment of the use of chemical, incendiary or bacterial weapons followed by the adoption, by a majority
vote, of a resolution by the Commission. Extension of the prohibition to all countries would therefore have to be considered, and it also meant that the country which was subjected to a gas attack must wait to exercise its right of retaliation until the Commission to which the case was referred reached a majority decision. Was not that placing the country in question in an extremely difficult position? On this point, he confessed he agreed with M. Massigli. He had himself had occasion in the past to witness the effects of chemical warfare, and he saw no reason to suppose that, if chemical warfare were waged in the future, it would be waged with any more gentle methods. On the contrary, the attack would be even more sudden and more terrible than in the past. Was it possible to expect a country, when attacked by such methods, to forego its right of reprisals? He had seen how his own country in the past was placed in a position where it was impossible for it not to exercise its right of reprisals; and he might add that it would be equally impossible for it to forego that right in the future.

It was not possible to ask a State to undertake an obligation which it could not possibly in practice fulfil. Was not the very fact that a country which was the victim of chemical, incendiary or bacterial attack would be entitled to defend itself the best means to dissuade the assailant from making use of such weapons? It was essential in considering this question to remain within the limits of what was possible and not to ask more of human nature than human nature could bear. There was no country which, when subjected to chemical attack, would agree to wait for authority before exercising its right of reprisals. Public opinion would not accept such a limitation.

M. Rutgers (Netherlands), Rapporteur, remarked that, since the resolution of July 23rd, 1932, in which the General Commission instructed the Bureau to formulate rules of international law, the question had been studied on several occasions, as was shown by M. Pilotti’s report of October 25th, 1932, and that of the Special Committee dated December 13th, 1932. The document at present before the Bureau added no new element to the discussion. It contained nothing which was not already in the Special Committee’s report or in that submitted by M. Pilotti. It would appear, therefore, that the Governments had had plenty of time to examine the suggestions which it contained.

The resolution of July 23rd, 1932, which invited the Bureau to lay down rules of international law, had not been the subject of public discussion, and might be taken as a typical case of what happened when texts were accepted in haste, leaving till later the discussion of the way in which they were to be interpreted. In his opinion, the rules of international law in question were not recognised principles of international law, but rules of conventional jurisprudence, and he thought it was going too far to say that these rules should be obligatory in themselves. It was, of course, a fact that the majority of international obligations were without penalties; but, in the present case, he did not think it could be admitted that the obligations in question were in themselves obligatory, and that the addition of penalties could therefore be regarded as superfluous.

All the members of the Bureau seemed prepared to ask for the adjournment of the discussion of point (2), which could be considered simultaneously with the question of general penalties. Points (1) and (3), on the other hand, were, if not measures exclusively appropriate to chemical warfare, at all events special measures applying to that kind of warfare, particularly in the form in which they were presented in Chapter V. On that subject, M. Rutgers thought it useful to recall the example of Roman law. If law had progressed, it was because the praeator used to settle questions submitted to him without reference to legal doctrine. He had thought that Anglo-Saxon law proceeded by a similar method and that each case had to be considered on its merits. He was therefore surprised at the opposition to the proposal to discuss at once the question of granting scientific, medical and technical assistance to a State victim of an attack by chemical, incendiary or bacterial weapons. In his opinion, there was no advantage in discussing those questions under general penalties; even the penalty involved in cutting off supplies from a guilty State might be dealt with at the same time as the penalties to be employed in the event of the use of chemical, incendiary or bacterial weapons, without prejudice to the questions connected therewith, on which each could reserve his opinion.

Mr. Wilson had said that he could not possibly submit to his Government the question of penalties in the special form it assumed in Chapter V of the document under discussion, and that he was not prepared to consider that question except in the broad sense of the term “penalties”. The delegate of the Union of Soviet Socialist Republics too had stated that the wished his Government to be allowed time to study the dossier. In that case, the discussion of this important question would have to be adjourned. If the Bureau considered that decision inevitable, M. Rutgers would accept it, but would none the less deplore it.

The question of reprisals was an extremely serious one. On that subject, very divergent opinions had already been expressed—in the first place, those in favour of the absolute prohibition of reprisals and, secondly, those which would allow of the unlimited application of the principle of reprisals. The Special Committee, in its report, stated that it could not accept the proposal for the absolute prohibition of reprisals; it was of opinion that prohibition would merely give a false security, for the Governments would inevitably be led, inevitably be forced, to resort to reprisals on account of the particularly disastrous, and in some cases decisive, effect which might be produced by the use of chemical and incendiary weapons.

As regards investigations, the Bureau had already given its general support to the Special Committee’s proposal. M. Rutgers himself was of opinion that if a formal investigation by the authorities set up in virtue of the Convention were to be of any use, its value certainly lay in the fact that it must be the condition for allowing reprisals in any given case.
Mr. Eden had pointed out the difficulties which might be caused on account of the time required for the establishment of the facts. It could truly be said that if the Bureau had taken up the study of this question, it would certainly have been led to consider the limitation of the time to be allowed. M. Rutgers recognised that, in the matter of reprisals against the use of chemical or incendiary weapons, speed was an essential factor, not only to enable the reprisals to be effective, but actually to enable the facts to be established, because the traces might disappear very quickly. The procedure of investigation must therefore be so regulated that it could be carried out with the greatest possible speed.

There was, however, one danger in allowing reprisals without a previous investigation. Cases had arisen, and might arise again, in which a unilateral investigation gave rise to a mistaken belief that the enemy had made use of chemical weapons. Soldiers might, for example, have been asphyxiated through the mere conflagration of gases in an explosion. If, therefore, a unilateral investigation were to be sufficient to allow of reprisals, there would be a risk that each party might resort to them immediately.

Lastly, as M. Massigli had pointed out, the extremely grave nature of chemical warfare must be borne in mind. The use by a State of the chemical weapon would certainly have an enormous moral effect throughout the world and might be expected to produce a strong reaction, a reaction which might be felt even in the State using the prohibited arm and might bring about a change of Government there. Other States, moreover, would probably hasten to require the guilty State, not only to promise not to resort again to that kind of warfare, but also to give pledges ensuring that that promise would be kept. Lastly, it might be expected that every effort would be made by third States to bring about the cessation of that kind of warfare, and to take measures of conciliation, and in certain cases immediate reprisals would be not merely useless but even harmful.

The Special Committee was not of opinion that reprisals should be absolutely prohibited, but it thought that they must be made subject to a preliminary establishment of the facts. That solution would seem to be a compromise between absolutely prohibiting reprisals and unreservedly allowing them.

M. Politis (Greece) felt bound to confirm the Rapporteur's remark that the conclusions he had submitted contained nothing in the nature of an improvisation and gave an account of the whole question, for the evolution of the matter was most instructive. After having been studied by the Special Committee, a first report on it had been submitted by M. Pilotti, the conclusions of which, and, in particular, Section 4, relating to penalties and the right of retaliation, had been the subject of a long discussion, as a result of which a Sub-Committee had been formed, with M. Politis as Chairman, to draft texts taking the discussion into account. The new text had been the subject of a verbal report on November 12th, 1932, by the Chairman of the Sub-Committee. M. Politis had then been surprised to find that the unanimity which had been displayed in the Special Committee no longer existed, and that reservations of all kinds were submitted by the representatives of certain Governments on that Committee, including the delegate of the Union of Soviet Socialist Republics, who stated that he must refer the matter to his Government. The Chairman then adjourned the discussion until a fresh enquiry had been carried out by the experts.

The Technical Committee was again convened by M. Pilotti, and the outcome of its investigations was the report submitted by M. Rutgers. In the text he was now submitting to the Bureau, M. Rutgers had narrowed down the problem, as would be seen from a comparison of the text submitted on November 12th, 1932, and the draft conclusions now before the Bureau. In point of fact, a retrograde step had been taken, and yet agreement upon the new proposals now seemed more difficult than ever. In November 1932, the whole problem had been concentrated on the point whether or not it was intended to recognise the right of retaliation, and all the delegations admitted that the recognition of that right must involve an increase in the severity of sanctions. At the present meeting, the whole question had been raised anew, and the Bureau indeed no longer seemed inclined to accept the prohibition of the right of retaliation. In these circumstances, it was very difficult to arrive at a conclusion. It had been proposed that the question should be examined after the General Commission had given an opinion on the general problem of penalties. But whether or not it was found desirable to postpone the examination of details, there was one point to be borne in mind—namely, that whatever system of penalties might be decided upon, a special system must be contemplated for the use of chemical, incendiary and bacterial weapons. To reach agreement on that point at the present meeting would really be a step forward; the question of the special treatment to be given to the prohibition to have recourse to chemical, incendiary and bacterial weapons would be solved.

M. Meli di Soragna (Italy) stated that the Italian delegation shared M. Massigli's view. As regards point (3) of Chapter V, he fully recognised the force of the arguments advanced by Mr. Eden; the prohibition of recourse to reprisals until the Permanent Commission had given an opinion would probably be violated in practice, because the country attacked would hardly be disposed to wait and would prefer to defend itself immediately. M. Rutgers' argument was equally striking, and M. Meli di Soragna was of opinion that, for the moment, it would

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2 See page 78.
be difficult to replace the Rapporteur's text by any other. He personally thought that the question of reprisals was of only secondary importance. Penalties constituted the essential point, and the Italian delegation thought those provided in Chapter V much too mild, as it considered that an aggressor could only be dissuaded from having recourse to chemical and incendiary weapons by the threat of terrible penalties.

The Italian delegate was of opinion that the question was not yet ripe for discussion by the Bureau, in view of the complete divergencies of opinion which had been revealed. He therefore thought it preferable for the matter to be adjourned until the meeting of the General Commission, which could take up the discussion in the light of the fresh arguments which would arise as the work of the Conference proceeded.

M. Stein (Union of Soviet Socialist Republics) agreed with M. Politis that the reservations made in November 1932, when the Special Committee's report was discussed, included one by the delegate of the Union of Soviet Socialist Republics. That, however, was in no way inconsistent with what M. Stein himself had said. In November, the only issue had been the actual principle of penalties; texts had now been submitted defining them, and accordingly M. Stein thought it better to postpone the discussion of the subject until the General Commission took up the general problem of penalties.

Mr. Eden (United Kingdom) desired to remove any misunderstanding as to the attitude of the British delegation. In reply to M. Politis' reference to the delegations which, after having accepted the Sub-Committee's text, had disapproved of it at the meeting of the Bureau, he wished to point out that on the Drafting Committee he had reserved his Government's view. He had since consulted it, and had had in consequence to adopt his present attitude.

The Chairman thought that the Bureau might agree upon the following draft resolution, which, by adjourning the discussion of Chapter V, left the question of penalties open, while advocating the adoption of special measures for chemical, incendiary and bacterial warfare.

"The Bureau agrees to the principle of special measures being taken in case of a violation of the prohibition of the use of chemical, incendiary and bacterial weapons. It decides to elaborate the relevant articles with regard to such special measures after the general penalties for the case of the violation of the Convention have been examined by the Conference."

The draft resolution was adopted.

No observations.

Chapter VI. — Organisation.

The Chairman proposed that the texts approved by the Bureau should, in accordance with the procedure previously followed, be referred to a Drafting Committee which would meet under the chairmanship of M. Politis and would comprise the delegates of the United States of America, France and Germany, and the Rapporteur.

The proposal was adopted.

M. Massigli (France) desired it to be clearly understood that the Bureau and the General Commission would not be asked to discuss the articles drawn up by the Drafting Committee until the question of special penalties for chemical, incendiary and bacterial warfare had been settled.

Agreed.

52. Programme of Work proposed by the United Kingdom Delegation with a View to Embodying in a Convention the Proposals already Made by Various Delegations.

The Chairman observed that the United Kingdom delegation had submitted a series of proposals regarding disarmament (document Conf.D.154). Those proposals touched upon nearly all the problems which the Conference had taken up. Some of them, however, more particularly concerned the Bureau, which would take a decision regarding them and would subsequently announce the procedure to be followed in examining them. It was understood that the United Kingdom proposals would be discussed after the examination of the French Plan.
THIRTY-SEVENTH MEETING (PUBLIC)

Held on Tuesday, January 31st, 1933, at 10.30 a.m.

Chairman: Mr. HENDERSON.

53. SUPERVISION: IMMUNITIES: LIST OF QUESTIONS SUBMITTED BY THE DRAFTING COMMITTEE WITH A VIEW TO THE ESTABLISHMENT OF A FORMULA: GENERAL DISCUSSION.

The CHAIRMAN opened the discussion on the note prepared by M. Politis, Chairman of the Drafting Committee, and M. Bourquin, Rapporteur, containing a list of certain points on which the Bureau should come to a decision in order to enable the Drafting Committee to draft a formula: 1

"(1) Should it be recognised that the nationals of a High Contracting Party and, in general, persons resident in its territory have the right to divulge any breaches by that Power of the obligations assumed by it in virtue of the Disarmament Convention?

"(2) Should this right be recognised as belonging to all persons without distinction? What, for example, would be the position of officials?

"(3) Should distinctions be drawn according to the methods by which the information is divulged?

"Should a distinction be drawn, for example, in this connection between:

" (a) The divulging of information to the Permanent Commission itself;

" (b) The divulging of information in writings or speeches;

" (c) The divulging of information to a foreign Government?

"(4) It is not in any case desirable to ensure full freedom of expression for persons who may be requested, either by the Permanent Commission itself or by its representatives in the case of an enquiry, to furnish information?

"(5) Should any distinctions be drawn on the basis of the good faith of the person divulging information?

"If so, how is his good faith to be established, and on whom will the onus of proof rest?

"(6) In the case contemplated under (4), it would seem that the information supplied to the Commission or its representatives might be regarded as in the nature of evidence in a court of law. This would enable the question raised under (5) to be settled by stating that the 'witness' has complete freedom except in the case of 'perjury', the onus of proof resting upon the State which alleges perjury with a view to prosecution.

"(7) With regard to the other cases, can the criterion of 'good faith' be found in the correctness of the information divulged? If so, is there to be a presumption of good faith which could only be overthrown by evidence of the incorrectness of the information given?

"(8) Irrespective of the extent of the right to divulge information, by what means is it to be protected? More particularly, will immunity in respect of criminal proceedings only suffice, or is it necessary to go further and assure immunity from other forms of punishment (disciplinary action, etc.)?

"(9) Must the Permanent Disarmament Commission be recognised to have the right of withdrawing immunity? If so, in what cases?"

M. POLITIS (Greece), Chairman of the Drafting Committee, reminded the Bureau that, as it had proved impossible to reach agreement on the rules to be laid down, 2 the question had again been referred to the Drafting Committee, which had once more noted that it was impossible to draft a formula unless the ideas were more clearly defined. The object of the questionnaire under discussion, which was as detailed as possible, was to obtain the necessary explanations. If, as a result of the discussion, it was decided to retain certain ideas, it would be relatively easy for the Drafting Committee to express them in a legal form, which would then be submitted to the Bureau.

2 See Minutes of the thirty-third meeting.
M. MELI DI SORAGNA (Italy) said that, having carefully examined the document submitted by the Drafting Committee, the Italian delegation had come to the conclusion that the whole significance of the document was in this first point, from which all the others followed. Nevertheless, the Italian delegation did not understand clearly what question was put to the Bureau. Paragraph 8 of Chapter III of M. Bourquin’s second report on supervision 1 read as follows:

“Subject to an agreement as to the legal details involved in the application of such a principle, the Bureau has declared in favour of immunity for persons denouncing violations of the Disarmament Convention from all repressive measures.”

The Bureau had therefore already replied in the affirmative to this question. The above passage showed that the members of the Bureau were in favour of immunity, provided the necessary formula could be found in practice—that was to say, provided this principle could be reconciled with the legislation of the different countries. If it could, the reply was in the affirmative; if not, it was in the negative. The question having been referred to the Drafting Committee composed of highly qualified jurists, however, they had replied that they were unable to give the principle a practical form. How then could the Bureau do so? Personally, the Italian delegate was not competent to make any reply other than that of the jurists, or to go further than what his colleague on the Italian delegation, M. Rosso, had said on a previous occasion.

M. BOURQUIN (Belgium), Rapporteur, stated that the Bureau had, in fact, already replied to the first question. The decision taken by the Bureau on November 15th, 1932, 2 and embodied in document Conf.D.148, amounted to an acceptance of the principle of immunity, subject to certain reservations, or rather to the condition mentioned at the beginning: "Subject to an agreement . . ." In other words, the Bureau, while accepting the principle of immunity, had realised that it was impossible in practice to apply it radically and absolutely.

From the practical standpoint, the real problem at the moment no longer concerned the principle itself, but the reservations and limitations to be provided. That was just the object of the list of questions before the Bureau. In examining the problem, the members of the Drafting Committee had noted that the limitations to be attached to the principle could be considered from different points of view. This questionnaire was perhaps incomplete: that would emerge from the discussion. In any event, the Drafting Committee thought that three criteria should be applied:

1. Should not distinctions be drawn between the persons divulging a breach?

2. Should not distinctions be drawn according to the method employed in divulging the information? The questionnaire mentioned, simply by way of example, the three following methods:

   (a) The divulging of information to the Permanent Commission itself;
   (b) The divulging of information in writings or speeches;
   (c) The divulging of information to a foreign Government.

3. The question of good faith. During the Bureau’s discussions, delegations had frequently pointed out that it was desirable to draw a distinction according as the person divulging the information was or was not reliable.

The questionnaire had been prepared on the basis of the above three factors.

M. DE MADARIAGA (Spain) thought the observations of the Italian delegate and the Rapporteur were absolutely contradictory. The Italian delegate, if he was not mistaken, had said that the Bureau had replied in the affirmative to the first question, provided means were found of reconciling this general, international principle with the national legislations, but that, as the jurists had replied that agreement on this matter was impossible, the reply was in the negative. The Rapporteur, however, if M. de Madariaga had understood rightly, said that the Bureau had replied in the affirmative, subject to the legal details involved in the application of the principle. These details must therefore be considered, and the original affirmative reply should hold good, even if it were more or less attenuated by the details in question. To sum up, the Spanish delegate asked whether the Bureau was considering a document enabling it to give details of the application of an affirmative reply or a document to cloak a negative reply.

M. KÜNZL-JIZERSKY (Czechoslovakia) said that, as the Bureau had already approved the principle of immunity on November 15th, 1932, it seemed to him that the reply to the first question, which simply laid down the principle, should certainly be in the affirmative.

2 See Minutes of the twenty-eighth meeting.
Mr. Eden (United Kingdom) greatly admired the ingenuity of the members of the Drafting Committee who had prepared the questionnaire. They had brought down to the level of reality the somewhat idealistic hopes that seemed to be springing up. It was to be presumed that this new discussion would lead to the same results as before. The United Kingdom delegate was not unduly alarmed at this prospect, for the question was one to be settled last, just before the end of the Conference—that was to say, when the colour of the binding of the volume containing the Disarmament Convention was considered.

It seemed to the United Kingdom delegate that, for the moment, the solution most satisfactory to the various delegations would be to submit the questions and observations to the jurists of their respective Governments, in order to ascertain their views on the matter. The Bureau could wait a month or two, and in the meantime the examination of the suggestions made would perhaps solve the difficulties. There were many difficulties. The Italian delegate considered that the first question was the most important. The Rapporteur had drawn particular attention to questions 5 and 7, dealing with good faith. Question 7, however, was as follows: "... can the criterion of 'good faith' be found in the correctness of the information divulged?" The reply was obviously "No", for, acting in complete good faith, a person might give information which proved to be incorrect, while well founded information might be supplied in bad faith. From the practical point of view, it would be very difficult to find a criterion which the administrative and judicial authorities could apply. However, good faith was a necessary condition if Governments were to subscribe to these arrangements. The jurists had said that they had been unable to embody the principle in a definite provision.

It seemed, therefore, that the best solution would be to refer the matter to the Governments, who would consider the problem in the light of the observations submitted. In the meantime, the delegations might get into closer touch with the Rapporteur with a view to drawing up a more precise form of words.

M. Massigli (France) said he had already had occasion to express his anxiety as to the tendency shown by certain delegations to postpone embarrassing questions for study later. In his opinion, the General Commission’s intention in asking the Bureau to settle a number of delicate problems was in order that, when it resumed its meetings, it might have before it definite proposals on concrete points. He greatly feared that, if the method now in favour were continued, a situation would be created which would be fraught with serious consequences for the future work of the Conference. The Bureau had to study certain definite questions. In connection with the problem of chemical warfare, which seemed relatively simple, it had already encountered obstacles which were said to be insurmountable. The present one was a similar case. M. Massigli did not think the question was as secondary as Mr. Eden had stated. If it were proposed to wait before settling it until the time had come to decide on the colour of the binding of the Convention, he was afraid that the binding would not contain much much.

This question, in reality, went to the root of the problem of supervision; and if no solution were found for it there would be a serious defect in the Convention. He realised the difficulties involved, and understood that some delegations found themselves in difficulties when faced with such a subtle questionnaire. They were asked to reply "Yes" or "No" to extremely serious questions involving State problems of the highest importance. But if the delegations merely transmitted this document to their Governments with a recommendation that it should receive attention, there was a danger that the results in two months’ time would be disappointing; he thought he perceived a sign of this in the Italian delegate’s remarks. Each Government would examine the problem in the light of its domestic legislation and legal practice; it would reply that one or another of the proposed provisions was not in conformity with that legislation; it would not make the effort, which the Bureau was obliged to make, of viewing the matter from the international plane in order to find an equitable and honest solution, if that solution called for modifications in domestic legislation. In a matter affecting such important questions as Press regulations and duties of officials, it was at Geneva that the delegations must try to find a common basis; otherwise, an agreement would be impossible. M. Massigli, therefore, would like the delegations at least to compare their ideas, in order to find a means of overcoming the present difficulty. He would be very sorry if the discussion were closed without going to the root of those difficulties.

M. Leitmaier (Austria) thought that, if the Bureau proposed to forward the questionnaire to the Governments, their task might be greatly facilitated by an immediate decision on point 8. The Austrian delegate agreed with the French delegate that the Governments should not merely be requested to furnish information on their national laws, but that they should state whether they were prepared, if necessary, to amend those laws. It would certainly be easier for them to take a decision if they knew that only criminal law, and not the other laws, would, if necessary, have to be taken into consideration.

M. Buero (Uruguay) said his view was almost identical with that of M. Massigli. A solution for this problem would have to be sought from the international point of view and should not be left to the legislations of the various countries, which were, moreover, very
M. MORESCO (Netherlands) supported the French delegate’s proposal to continue the discussion and not to refer the question to the Governments. If the Bureau adopted the latter procedure, it would obviously be taking the line of least resistance, but it would not fulfil the task entrusted to it by the General Commission.

He was perhaps at greater liberty to express his views than the members of the Bureau, who were representatives of States; as he only represented the Naval Commission, his observations on this matter were of a purely technical character. In this special question, however, he thought the representatives of the Governments were on the same footing, since it was a question of preparing proposals for submission to the General Commission, where all the delegates would be entitled to express views, even contrary to the principle maintained in the Bureau by the representatives of the same countries.

M. Moresco did not despair of finding a reply to all the questions put by the jurists and of thus drawing up a “minimum formula” on the degree of immunity which all wished to grant, at any rate to persons giving evidence before the Permanent Disarmament Commission. It should not be forgotten that the present business was to draw up the chapter on the question of supervision—that was to say, the chapter relating to the Permanent Disarmament Commission. In order to enable that Commission to fulfil its task, persons giving evidence before it should be guaranteed full liberty of speech, in so far as it was compatible with their particular position in their own country. From this special point of view, he would be inclined to reply in the negative to the question regarding officials. On the other hand, the Bureau’s reply to the first question was already given in M. Bourquin’s second report. He even thought that the formula in that document contained the reply to a number of the questions put by the jurists. As regards the Austrian delegate’s remarks, for instance, M. Moresco would be inclined to retain the expression “repressive action” contained in M. Bourquin’s report, in order to guarantee persons giving evidence before the Disarmament Commission against such repressive action in the form of administrative or disciplinary measures. Similarly, as regards M. Buero’s suggestion, the reply was to be found in the decision of November 15th, 1932, which spoke of “persons denouncing infringements”. Obviously, persons making false denunciations could not be regarded as having denounced an infringement.

If the Bureau kept strictly to questions relating to evidence given before the Permanent Commission, without endeavouring to draft a chapter for insertion in the criminal codes, which would be impossible, a definite result could be reached.

M. MELE DI SORAGNA (Italy) wished to make clear the position of the Italian delegation in respect of the interpretation of the passage in question in M. Bourquin’s second report. In view of some of the remarks made by M. Moresco, he would like to avoid any misunderstanding on the subject. The Italian delegation had declared itself in favour of immunity “subject to an agreement on the legal details involved in the application of such a principle.” M. Moresco appeared to think that, as regards the substance of the question, the Bureau had declared in favour of the immunity of informers. This was not the idea of the Italian delegation, which had only expressed its view subject to the reservation mentioned, which it considered as a main factor. If no agreement were reached on a legal formula, the provision fell to the ground. The Italian delegation therefore pointed out that its accession was not general, but subject to the agreement mentioned.

M. NADOLNY (Germany) said it would no doubt be regrettable to leave a further question open, but, as this question referred precisely to supervision, it would not be of great consequence, since all were agreed that there were more important questions to be settled first and that the question of supervision might very well be left to the end. It would appear from the discussion that it would be very difficult, if not impossible, to reach a settlement in the Bureau. There were many questions on which the German delegation was unable to express an opinion. He himself was a lawyer; while he felt unable to go further in these legal questions than the

members of the Drafting Committee, he could state that M. Buero's suggestion did not settle the question and still left open a number of problems which were difficult of solution.

M. Nadolny therefore entirely agreed with Mr. Eden's proposal that the present questionnaire, together perhaps with certain cognate questions, should be examined by the lawyers of the various countries. The Bureau could decide whether this examination should be made here or whether the document should be sent to the Governments. What was indispensable was that the document should be thoroughly examined by the national jurists. The French delegation, too, had rightly shown the seriousness and complexity of the problem, which related, not merely to an amendment, but possibly to a transformation of the whole national legislation in order to bring it into line with international law. This was an extremely difficult and complex question, which could hardly be settled by the Bureau. He therefore supported Mr. Eden's suggestion, which was also in accordance with the Italian delegation's view.

M. De Madariaga (Spain) said the statements of the Italian and German delegates confirmed him in the idea that the main question to be settled now was that which he had raised previously. In two days, it would be the first anniversary of the Disarmament Conference. He greatly desired that the Conference should not have to celebrate a third anniversary. This it would certainly have to do if the Bureau continued to work as it had done that morning.

On what basis was the Bureau working? Did its members agree or not to accept the principle of immunity as adopted on November 15th last? If they were not agreed on this principle, the General Commission obviously could not accept it, and it then became useless to continue to examine the problem. The Spanish Government, for its part, strongly supported this principle and considered it, if not an indispensable principle, at any rate one which would make the Convention more effective. The opinion of delegates who were not in agreement with this principle should, however, be respected. There was, at any rate, one Government represented, and possibly more, for whom the passage in question of the decision of November 15th, 1932, meant that the reservation governing the formula implied that the principle itself could be invalidated. In the view of the Spanish delegation, this reservation referred solely to the application, the principle itself having been accepted. Other delegations might hold a different opinion, but, as the Convention must be unanimous, he saw no interest in continuing the discussion on a confused issue. He therefore asked the Chairman to put the following proposal to the vote:

"The Bureau declares in favour of immunity for persons denouncing violations of the Disarmament Convention from all repressive measures, adopting this as a principle of international law to which the legislation of the various countries must be adapted."

The question of reservations drawn from the application might be the subject of a second paragraph. If the Bureau could not adopt this principle, M. de Madariaga proposed that it should pass to some other question.

M. Massigli (France), without knowing the turn that the discussion would take and whether the Bureau would decide to refer the question to the Governments, wished to make the position of his Government quite clear by submitting a draft article relating to immunities. This draft had already been communicated semi-officially to the Rapporteur, but had been modified in the light of the questionnaire prepared by M. Politis and M. Bourquin. The French delegation had endeavoured to draw up a simple text which, without affecting the right of the Governments, would solve the fundamental question of good faith and the delicate point raised by the question of officials. This text distinguished between two theses: that of the publication or divulging of information regarding an infringement of the Convention, and that of evidence given before the Permanent Commission.

The French delegation's draft merely established the principle that the publication or divulging, by persons not in Governmental service, of information regarding a breach of the Convention could not give rise to any proceedings. The French delegation realised that the question of good faith arose, and it therefore did not preclude a Government's right to take proceedings for untruthful denunciations; but, in this case, precautions were necessary and it was required that the persons in question should be judged in public. If for any reason—and this was a new feature—a public judgment was impossible, it was required that the Permanent Commission should be represented at the legal discussions.

The draft laid down the principle of immunity for any person giving evidence before the Permanent Commission during an enquiry. In case of any subsequent proceedings for false evidence, the Permanent Commission should be informed.

The case of officials was delicate. It appeared impossible to grant them outright the right to give evidence spontaneously before the Permanent Commission for fear of compromising the necessary discipline, but, at the same time, the French delegation thought that officials should not be obliged, as a matter of conscience, to ask themselves whether they should reveal or maintain silence regarding facts which had come to their knowledge, because their Governments were interested in concealing them. The French text therefore laid down the
principle whereby an official who, in the course of an enquiry, was called upon to report an
infraction of the provisions of the Convention could only do so if he had previously informed
his superiors of the infraction he had noted.

The text of the French proposal was as follows:

"I. The publication or divulging by persons not in Government service of infor-
mation relating to points forming the subject in the present Convention of undertakings
regarding limitation or publicity, by which a breach of obligations thus contracted is
established, may not give rise to any criminal proceedings.

"II. Proceedings taken for untruthful denunciation of an alleged breach of the
Convention shall take place in public; if, for particular reasons, such publicity is not
possible, the Permanent Commission shall have the right to appoint representatives to
follow the proceedings.

"III. Any person having in good faith supplied the Permanent Commission during
an investigation with information relating to the strict execution of obligations assumed
under the present Convention, either at the request of the Commission or its representa-
tives or spontaneously, may not be prosecuted on account of this fact and shall be protected
by the competent authorities against any reprisals.

"This immunity must be guaranteed even to officials, but, in the case of information
furnished spontaneously during an investigation, it shall be subject to the official having
reported the breach in question to his superiors and no steps having been taken to put
an end to it.

"IV. The Permanent Commission shall be informed of proceedings for false evidence
brought against a witness who has given evidence to the Commission or its delegates
in the course of an investigation.

"V. Article 17 of the provisions regarding supervision shall be supplemented
by the following provision:

"The High Contracting Parties shall not take or authorise any measure calcu-
lated to restrict the publication of records and documents issued by the Commission
and published by the latter or by the Council of the League of Nations. Each of
the High Contracting Parties shall employ the means at its disposal for preventing
direct or indirect acts of reprisal being taken against any person in connection with
such publication."

M. Massigli pointed out that this draft was merely an attempt to make the present
discussion more definite and to lead the Conference towards a reasonable solution guaranteeing
the existence of conditions of clarity and publicity necessary for the proper working of the
Convention.

The CHAIRMAN thought the moment had come to define the results of the discussion.
It was obvious that there was a general tendency against referring the question to the Govern-
ments, at any rate at the present stage. It was no less obvious that some delegations would
find great difficulty in replying at the present meeting to the nine questions put by the Drafting
Committee and that they would require more time to consider them. If they were required
to reply "Yes" or "No", a further meeting would be necessary.

He suggested therefore that the questionnaire should be regarded as still being tabled
in the Bureau; the Drafting Committee should be requested to reconsider the questions
which it had put and to examine M. de Madariaga's draft resolution and M. Massigli's draft
article in the light, not only of the discussions at the present meeting, but also of the previous
discussion on M. Bourquin's report. In this way, the Drafting Committee might be able
to prepare a formula for submission to the Bureau. There was no hurry. The problem was
a very important one, but after listening carefully to all the speeches the Chairman thought
it would not be useful to continue a general discussion. If his suggestions were followed, the
fresh report of the Drafting Committee could be submitted at such time as to enable the dele-
gations wishing to consult their Governments to do so before the question was reconsidered
by the Bureau.

M. BOURQUIN (Belgium), Rapporteur, entirely concurred in the Chairman's suggestions.
It was particularly advisable to refer the question to a Drafting Committee as a definite
proposal had just been submitted to the Bureau—namely, that of the French delegate. It
would serve no useful purpose to endeavour to hasten the matter unduly and the problem
must be carefully studied. The present Drafting Committee, however, had merely the limited
task of giving legal form to resolutions adopted; it was, moreover, very small. He proposed
that a committee of jurists should now be appointed, including, in addition to the delegations
represented in the present Drafting Committee, the delegations of Germany, the United States
of America, Italy and Spain.

The Chairman's proposal, amended in the sense suggested by M. Bourquin, was adopted.
THIRTY-EIGHTH MEETING (PUBLIC)

Held on Thursday, February 9th, 1933, at 3 p.m.

Chairman: Mr. HENDERSON.

54. PREPARATION OF THE AGENDA OF THE FORTHCOMING MEETINGS OF THE GENERAL COMMISSION.

The CHAIRMAN said that the Bureau had now to attempt to prepare the agenda of the forthcoming meeting or meetings of the General Commission. He would observe that, on rereading a good many of the speeches made in the General Commission during the discussion on the French plan,¹ he had found that the delegations were very anxious to drop the general discussion and try to arrive at definite proposals. He hoped that the Bureau would bear that in mind when discussing what questions were to be placed on the agenda. On January 30th, the United Kingdom delegation had submitted to the General Commission and the Bureau, through the Secretariat, a programme of work (document Conf.D.154). To make discussion easier, he would ask Mr. Eden to expound the United Kingdom delegation's views on that programme.

Mr. EDEN (United Kingdom) wished first of all to emphasise that the programme of work put forward by his delegation was in no sense a new declaration of policy by His Majesty's Government. Its policy towards all those problems had already been made known, and to those declarations he had nothing to add. He would like, however, to say something of the reasons which had actuated the United Kingdom Government in putting forward its programme, as also of the methods by which it thought that the programme could be worked if the Bureau were willing to adopt it. The sole purpose of his Government had been to facilitate and, if possible, to hasten the work of the Conference. The United Kingdom Government, in common, he knew, with many other Governments represented at the Conference, had become anxious at the slow progress that was being made. It had sought, therefore, in that draft programme, to present a method of work whereby disarmament in all its aspects might be furthered. There was no alternative between doing that and watching the Conference flicker out in ineffective reiteration.

After all, what had the past year yielded? The progressive presentation of a number of plans. That had been useful, but it was not a process which should be continued indefinitely. Those plans had placed at the disposal of the Conference a mass of material. Their authors had never pretended that any one of those plans must be considered to the exclusion of all else. Each had been presented as a contribution, and there were now many such contributions. Sooner or later they must set to work to sort that material, to order it into its component parts, to register the greatest common measure of agreement that could be realised, and to classify the results into a convention. The United Kingdom Government believed that such a task could not be entered upon too soon. Indeed, it should, in the judgment of his Government, be begun at once.

The programme was only a draft programme; it was in no sense sacrosanct. Perhaps it could be improved upon, no doubt other items could be added; but the broad outline was proposed by the United Kingdom Government for acceptance by the Bureau, in the conviction that, without some such programme, the Conference could not hope to achieve a result in the near future, and because his Government feared that, unless substantial decisions were reached within the next few weeks, the prospects for the Conference must grow steadily darker.

To turn to the programme itself and to the topics, the discussion of which it sought to make possible. He trusted that the United Kingdom Government had shown by its programme that it had very seriously in mind the attitude of those delegations which would emphasise the connection between disarmament and security. That attitude was most completely and clearly set forth in the French plan, and in drafting the programme the United Kingdom Government had taken that plan into full consideration, though it could not of course leave out of account other proposals that had been made to the Conference. The programme provided for the study of security. It was true, however, that, for that purpose, his Government had not included all the portions of the French plan. It had not provided at that stage for a study of the consultative pact. As Mr. Gibson had said on Tuesday last,² that project could better be taken in hand later. Chapter III of the French plan, however, outlined an arrangement between the States of continental Europe, and the British programme provided for the

¹ See Minutes of the twenty-ninth to thirty-third meetings of the General Commission.
² See Minutes of the thirty-second meeting of the General Commission.
discussion of that matter. Its suggestion was that those States themselves should at once study such an arrangement. It was to be hoped that out of that discussion might emerge a system or systems that would reinforce or complete by regional understandings the measure of security that already existed.

Section B of Chapter II of the United Kingdom programme ("Disarmament") was regarded by His Majesty's Government as of vital importance. The first sub-section of that section referred to effectives. The Bureau would, of course, be well aware that the provision as to effectives in both the Hoover proposals and the French plan were far-reaching. He did not himself see the incompatibility between the two, since the French plan dealt with the qualitative aspect of the problem, but admitted that there must be quantitative reduction also; and, for the latter purpose, the Hoover proposals would surely supply valuable guidance.

Sub-section (b) dealt with land war material. Mr. Eden would like to indicate some of the questions that might come up for discussion under that head. Let it be supposed for the sake of argument, that it could be agreed, as he hoped it might be, that guns over 105 mm. were not to be constructed in the future. What was to become of the existing material?

To take another problem—that of the air. Let it be supposed that it could be agreed, as a result of serious examination, that the suppression of military and naval aircraft in the conditions set forth in the speech of Sir John Simon to the Bureau on November 17th, 1932, was the only effective method of dealing with the awful menace of aerial warfare, then some method of control of civil aviation would certainly be required. He believed that some such method could be worked out, but in that case surely the Conference could not begin upon that difficult task—for it was admittedly difficult—too soon. If the Conference could achieve what he believed was the only effective method of disarmament in the air, then undoubtedly every nation would gain immeasurably in security. The Bureau would note that His Majesty's Government had asked for the appointment of a special Air Committee. What it had in mind was that, just as the naval Powers had been specially charged with the problem of their own armaments, so should the air Powers, in the light of the drastic reductions it was now hoped to realise, be charged with a similar responsibility. He hoped, therefore, that the Bureau would see its way to agree to appoint an Air Committee and that the nations would pay their tribute to the importance of that Committee by the authority of those whom they chose to represent them upon it. But while that part of the programme was being thus discussed, the Bureau must not lose sight of the more immediate practical steps which were also before the Conference.

Mr. Eden would say one word as to naval disarmament. In this connection, the Bureau would recall that the General Commission, by its resolution of July 23rd, 1932, had invited the Powers parties to the Naval Treaties of Washington and London to confer together. Conversations had, in fact, already been initiated, but had not, he regretted to say, yet developed to a stage at which it would be possible to report anything to the Conference. So far as His Majesty's Government was concerned, however, he could give the assurance that they had not attempted to put on paper. His Majesty's Government believed that the present session was not merely the resumption of the work of the Conference, but that it should mark the entry upon a new phase—one of decisions. Nearly all the proposals for disarmament, which had been made at various times to the Conference, had already been fully examined from the technical point of view. They had been dissected and discussed to the last detail, and even if that had not been done in all cases in discussion in the Conference itself, it had at all events been done in the privacy of the various delegations. The watchful eye of the technical expert had seen the difficulties and the dangers involved in each one of those proposals, but the time had come for Governments to shoulder their responsibilities and, facing realities, to weigh the risks against the incomparably greater danger of allowing the Conference to fail.

His Majesty's Government believed that on most of the questions with which they were confronted they now possessed the data necessary to enable Governments to define their...
positions and reach decisions. It sincerely hoped that the Conference would face that task, for it must be recalled that, while advice was the function of the experts, decision was the responsibility of Governments.

M. Nadolny (Germany) had no difficulty in agreeing with the Chairman's and Mr. Eden's observations concerning the need for facilitating the progress of the Conference's work. On many previous occasions, the last being that of his speech on the French memorandum, he had stated that the German delegation would be the first to welcome with keen satisfaction any acceleration of the work, and that any measure likely to contribute to the prompt success of the Conference would not fail to obtain the adherence of the German delegation, which, on the contrary, resist any measures calculated to delay the Conference or to result in its final outcome being of an unsatisfactory nature. With this aim in mind, M. Nadolny took the opportunity to protest against certain opinions expressed in public recommending that, in view of the political and economic situation in certain parts of the world, or of the difficulties that had arisen in the Conference, the latter should terminate its work as soon as possible, without any real reduction of armaments, by means of a Convention which would only disguise its failure from the world. M. Nadolny uttered a strong warning against the danger of such a method, which would inevitably have serious effects.

He had therefore warmly welcomed the submission to the Conference of a practical programme of work, due to the very happy initiative of the United Kingdom delegation. As regards the method of work—and he attached great importance to this point—he would merely like it to be made quite clear in the text of the programme of work that the delegations agreed that decisions should be reached on the various points without long repetitive discussions, and, in particular, without protracted technical studies, and that the Conference should proceed to vote on them as soon as possible, in order that it might be ascertained beyond any doubt just how far the Conference would go along the path of the reduction of armaments. In his opinion, the Conference would find no advantage in recommending a possible, without any real reduction of armaments, by means of a Convention which would only disguise its failure from the world. M. Nadolny uttered a strong warning against the danger of such a method, which would inevitably have serious effects.

With regard to the contents of the United Kingdom delegation's scheme, the German delegation accepted in principle the method proposed in Chapter II, which represented the programme of work in the strict sense of the term. During the subsequent discussions, it would have certain changes to propose in matters of detail.

The United Kingdom delegation had included certain political questions in Chapter I. The first two appeared again later in the programme of work properly so called. It would then, he thought, be sufficient if they appeared in the latter part only. Again, at the end of paragraph 5 of Chapter I, mention was made of the reduction of the armies of the continental European States to a uniform general type of organisation. This point, too, might perhaps be inserted in the programme of work under Chapter II, B (a), "Effective".

Further, paragraphs 3, 4 and 5 of Chapter I dealt with certain points of principle connected with the question of the equality of rights. As members were aware, the solution of that question had been of decisive importance for Germany's return to the Conference. The arrangement of December 11th, 1932, had settled the question in principle by an agreement reached after long and difficult negotiation. M. Nadolny observed with satisfaction that the United Kingdom delegation had prefixed to its programme of work certain conclusions which, in its opinion, resulted from that agreement. The practical application of the principle of equality of rights involved in the agreement of December 11th, 1932, must, however, be effected during the execution of the programme of work. The framing of a programme of work at the present moment did not, therefore, appear to call for a discussion of principle on these points. In any case, M. Nadolny would be unable to agree to such a discussion. He hoped that the United Kingdom delegate, too, had no intention of asking for any such discussion in that connection either in the Bureau or in the General Commission. He would be glad if his United Kingdom colleague would confirm that this was so. He would accordingly refrain from dealing with these various matters in detail, and, while reserving his right to define his attitude until the time came for giving the principle its practical application, he proposed that these points should not be discussed by the Bureau and that they should be removed from the programme of work. To sum up, only the points mentioned in Chapter II of the United Kingdom proposal should be submitted to the Bureau for its approval as forming the General Commission's practical programme of work.

M. Paul-Boncour (France) thanked Mr. Eden and took note of his declaration expressing his intention of giving the French plan the fullest consideration. In view of the very definite position taken up by France, there was no need to say that the French delegation could only contemplate, as a practical programme of work, one which would permit of that plan being studied exhaustively and in the conditions he had set forth on the previous day. He believed, moreover, that, with a few changes, the United Kingdom programme of work was in accord with this point of view.

It was clear both from the text of the programme and from Mr. Eden's verbal comments that the concrete questions which were of the greatest interest to the French delegation would

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1 See Minutes of the twenty-ninth meeting of the General Commission.
2 See page 110.
come up for discussion immediately in both domains—that was to say, in the political domain and in that of the reduction of armaments properly so called. There were two basic ideas in the French plan, and it would be possible, from the attitude taken up regarding them by the General Commission or by the Political Commission, or both, to have a clear view of the future work to be accomplished. For France, the armaments reductions which she could contemplate were dependent on the decisions to be taken with regard to these two basic ideas in the French plan—namely, in the political sphere, the pact of European mutual assistance, and, in that of armaments reduction properly so called, the question of effectives involving standardisation of the types of European armories, which was time 

M. Paul-Boncour was obliged next to make certain reservations regarding the United Kingdom programme of work. In the first place, Mr. Eden’s verbal explanations seemed to show that his main concern was that certain concrete questions should be taken up—namely, those in Chapter II of the programme. M. Paul-Boncour accordingly thought that the United Kingdom delegation would be prepared to drop Chapter I, which dealt with principles and the discussion of principles. In that connection, he agreed with the German delegate, as regards procedure at least, for it was obvious that he would have to make the most express reservations concerning some of his colleague’s remarks. The reason why M. Paul-Boncour had not mentioned the very important agreement of December 11th, 1932, in his speech to the General Commission on the previous afternoon was that that was an agreement between a few Powers only and therefore outside the jurisdiction of the Conference; but that agreement of principle could not take the place of decisions by the Conference itself. He had taken up this matter on the previous day, he would not have failed to bring out perfectly clearly, as moreover was plain both from the text of the agreement and from the laborious discussions that had preceded it, that the French delegation did not contemplate equality of rights as feasible except within some system of security. Subject to these remarks, he had gladly joined M. Nadolny, and he thought that that would be the feeling of the Conference in general, in asking Mr. Eden that time should not be lost in discussing questions of principle by which the delegations were sharply divided and which would certainly not expeditе the work.

It was, therefore, to the second part of the United Kingdom programme that the Bureau should turn its attention, but even on this part M. Paul-Boncour had some rather important reservations to make. On the previous day, he had said that concrete questions—and the two on which he had laid stress formed the kernel of the French plan—could only be studied by similar bodies working simultaneously. The written text of the United Kingdom programme, however, indicated that there was a very wide divergence on this point, since according to the programme, while the Bureau was immediately to discuss disarmament questions in the strict sense of the term, the political questions of security would be referred to the Political Commission. The Political Commission, which had indeed been set up on the proposal of the French delegation itself, had, of course, had to wait only too long for work, but the French delegation had a fundamental objection to any such distribution of the work. It appreciated as highly as any one the part played by the Bureau in watching over the order and progress and, so far as possible, the expediting of the Conference's proceedings. But, precisely by reason of its composition, which enabled it to direct the proceedings, it was unable to deal with matters which were under the sole jurisdiction of a body representative of all those taking part in the Conference.

In the particular case under consideration, there would, the French delegation believed, be another drawback, due to the fact that, owing to its special composition, the Bureau would handle certain issues very quickly and others much more slowly. These various discussions should, however, be pursued at a uniform rate. It would, he believed, be illusory to hope that the discussions could be expedited if the questions were handled by the Bureau, and the generality of Powers represented at the Conference—that was to say, the General and Political Commission—would have difficulty in allowing that such important questions should be considered only by the Bureau. The latter could elucidate them, but they must necessarily come before the General Commission, where the discussions would certainly be as long as in the Bureau. He did not mean to say that all the issues could be handled in exactly the same manner by the whole General Commission. Some of them could be referred with advantage to special sub-commissions, as had often been done both at the Conference and at the annual Assemblies of the League, but these sub-commissions would have to receive directions from the General Commission, they would be set up ad hoc and be given a special composition, whereas the composition of the Bureau did not vary and the Bureau could not be equally qualified and competent to deal with all the land, sea and air questions that might arise.

For these reasons, the French delegation, whose point of departure was nevertheless identical to that of the United Kingdom delegation, suggested that it would be better for the political questions and, for the purpose of immediate discussion, that of the possibility or otherwise of concluding a pact of European mutual assistance, to be referred to the Political Commission. Disarmament questions—and, first and foremost, that of effectives, which dominated the entire problem and a failure to solve which would apparently preclude the solution of the questions regarding war material—would be referred to the General Commission. In this way, two fundamental issues, which would serve to show most clearly the subsequent direction of the work, could be settled, he thought, fairly quickly.

Second reservation: The schedule outlined in the United Kingdom programme contained no mention of quantitative naval limitations. Mr. Eden had of course stressed the fact that